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After Intervention: Public Security Management in Post-Conflict Societies - From Intervention to Sustainable Local Ownership

**PfP Consortium Working Group
"Security Sector Reform"**

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Introduction

Introduction

The transition from interventionist (military) peace-keeping to local (civilian) ownership of public security management has proved not only to be a severe challenge for most peace-keeping operations and their civilian administrators, but also a reason for such operations being prolonged at tremendous cost. In many cases, peace-keeping operations and/or other international agents rapidly became part of the local economy, and thus contributed to the preservation of the *status quo* rather than to a sustainable process leading toward local governance; meanwhile local police organs - often remnants of the winning force in the antecedent conflict - remained tribal or clannish in their approaches and interests. They could thus hardly be seen as enforcement agencies of a law which remains equally applied to all citizens.

What seems to be needed instead of the scenario described above is a democratically overseen, systematic and cumulative process which involves confidence-building, legal, cultural (values) and institutional elements; each of which may need to be interpreted differently at different stages of the process: from utter local alienation from existing security structures to functional local ownership of public security management.

Against this background, DCAF invited practitioners and researchers to reflect on how to improve the prospects and parameters for local ownership of public security management and transitional justice in post-conflict contexts. DCAF convened the designated authors twice (in 2004 in Budapest and in 2005 in Riga) in cooperation with two associate institutions - the Centre for Strategic Studies at Zrinyi National Defence University/Budapest, and the Latvian Ministry of Defence. The value added of these conferences was to have brought in the structured views and perspectives of both providers and users of public security management and to have them discussed in the light of lessons learned from other current post-conflict reconstruction areas.

A first group of contributors were tasked to look into issues with reference to post-conflict security institution building and local ownership thereof.

A second group of authors with concrete geographical foci were tasked to contribute area studies, consisting of the following:

- Brief descriptions of the political situation in the conflict/post-conflict area;
- Brief descriptions of the main political factors affecting internal security issues;
- Brief descriptions of the main public security issues;

- Descriptions of the local and national agencies tasked with public security management (including structure) including means and instruments used;
- Assessments of the local and national agencies tasked with public security management;
- Descriptions of local responses to state public security strategies;

- Brief descriptions of the regional and international actors present in the country;
- Brief descriptions of the mandates of regional and international actors present in the country;
- Assessment of the regional and international actors' contribution to public security management;

Special attention was given to the assessment of the interaction between international and local actors on public security issues, along the lines of the following questions:

- What form does their cooperation take?
- What are the benefits of that cooperation?
- What are the problems affecting cooperation?
- What steps could be taken to enhance cooperation?

The conclusions the contributors were asked to formulate reflect the varied nature of the conflicts, peace-keeping and post-conflict arrangements. The editors urged them to concentrate on the following questions

- What are the most problematic public security issues in the country concerned?
- Have local law-enforcement agencies addressed those issues?
- Have international organisations addressed those issues?
- Which public security strategies have been successful?
- Should any public security strategies not have been used?
- What needs to be done by local and international organisations to increase public security?

Geneva, July 2005

The Editors

Part I

Post-Conflict Security Arrangements - the Role of the International Community

Chapter 1

The International Community and State Reconstruction in War-Torn Societies

Robin Luckham[1]

There is some hubris in the idea that the international community (and in particular the major donors and international bodies) can assist the reconstruction of entire states and national societies after war and state collapse. Yet in recent years this is precisely what it has been attempting in country after country, including Bosnia, Kosovo, Sierra Leone, Afghanistan, the Democratic Republic of Congo (DRC), Liberia and (even more problematically) in Iraq.[2]

War and political violence in the developing world have been endemic since World War II. There has been a gradual long-term increase in the number of conflicts in progress at any one time, but largely because more conflicts have been started than have ended. Many of the most virulent conflicts - notably those in Afghanistan, Angola, Burma, Colombia, the DRC, Indonesia, Kashmir, Rwanda, Sri Lanka, and Sudan - have roots that extend back two to five decades. An immediate upsurge in conflicts after the end of the Cold War was followed by a decline starting in the mid-1990s (Fearon and Laitin 2003), reflecting the success of conflict resolution efforts, for instance in Central America.

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[1] Senior Research Associate, Institute of Development Studies, University of Sussex, UK.
[2] Sometimes reconstruction has occurred under a UN umbrella, as with the UN Transitional Authority in Cambodia and subsequent UN post-conflict administrations in other countries. Sometimes the lead roles have been assumed by major alliance systems and regional organisations, like NATO, the Organisation for Security and Cooperation in Europe, and the European Union in the Balkans. Sometimes, as in Iraq, it has been 'coalitions of the willing', in particular the United States and other Western powers. Regional organisations like the Economic Community of West African States or Southern African Development Community in Southern and Central Africa have stepped in to support peacekeeping operations, peace negotiations, and sometimes national reconstruction, as in the DRC.

Even so, the tendency for conflicts to become self-perpetuating or to reignite over the long term underscores the priority of peace-building and reconstruction.

Even if the number of wars has not dramatically increased, their nature and impact has. 'New', 'post-modern' or 'network' wars have challenged political authority, governance, and the entire social fabric of conflict-torn states more directly than did earlier wars (Kaldor 1999; Kaldor and Luckham 2001; Duffield 2001). These wars have also been extremely destructive in terms of civilian casualties, the displacement of populations, the destruction of livelihoods, physical and social capital, and their negative impact on development (Nafziger and Auvinen 2002; Luckham, et al. 2001; Stewart in this volume).

All this is enough reason for the official development community to be seriously concerned. But it does not explain why that community, and notably bilateral donor agencies and international financial institutions, have shed previous inhibitions about interceding in conflicts and security issues. During the Cold War these issues were seen as too 'political' and risky for them to handle. World Bank reports eschewed any analysis of authoritarian rule or of conflict until the early 1990s, when the introduction of the concept of 'good governance' permitted the Bank and other development assistance agencies to address such issues through a seemingly neutral and technocratic discourse. The Bank's post-conflict unit, like the UK Department for International Development (DFID)'s Conflict and Humanitarian Affairs Department and similar units in other donor agencies, was established during the 1990s.

A gradual but decisive shift took place toward more interventionist theories and practices of development assistance: from simply funding development policies and programmes; to influencing aid recipient countries' policy frameworks under stabilisation and structural adjustment programmes; to directly transforming political and administrative institutions under the rubric of good governance, so as to ensure a supportive institutional framework for market-based development. From this it has been a fairly short and logical step to the idea that the development community could and should concern itself

with reconstructing governance in war-torn states and societies after conflict.[3]

The political stabilisation of the developing world is prioritised because of the fears of Western governments, international firms, and multilateral agencies that political turmoil and violent conflict threaten global security and the expansion of global markets. Humanitarian principles have been twisted to legitimise interventions that serve great power politics and corporate interests, as in Iraq. These interventions in turn generate what Chalmers Johnson (2000) terms 'blowback': anti-Western protests, including the emergence of armed networks such as Al-Qaeda, able to strike at targets in the West itself. The current preoccupations with the 'war on terror' and with weapons of mass destruction are the most obvious markers of such concerns.

The dramatic and horrifying events of 9/11 brought these issues to the centre of the international stage. Yet as Halliday (2002) and others have argued, the train of events following 9/11 simply accelerated changes already underway in the security policies and development agendas of the United States and other Western countries. Section 1 of this paper examines these policies and agendas, and their effects on the scale and nature of the major powers' interventions in the developing world. Section 2 analyses some common causes of conflict and state failure, emphasizing that the particularity of causes, and legacies, means that there can be no 'one-size fits all' approach to peace-building and reconstruction. Section 3 looks at how dialogue with a wider range of stakeholders can be fostered, so as to ensure that the reconstruction of states and societies is inclusive and legitimate. Section 4 concludes by identifying some generic policy dilemmas of post-conflict reconstruction.[4]

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[3]   Duffield (2001) argues powerfully that the 'securitisation of development' and the rise of a 'new humanitarianism' - the belief that the traumas and suffering associated with conflict are a global responsibility - constitute a new form of global hegemony and interventionism. Duffield argues that these trends have led increasingly to the uncritical imposition of Western liberal values, political institutions, and capitalist markets on a subordinated but diverse and multi-cultural developing world.

[4]   Useful discussions of state collapse and the role of the international community in putting states together again are Doornbos (2002), Ottaway (2002) and, with specific reference to

What Motivates International Intervention?

International involvement in the reconstruction of war-torn states is Janus-faced.[5] It reflects not only a drive to achieve new forms of hegemony but also normative conceptions of an interdependent liberal global order and of the role of the United Nations in preventing violent conflict and peace-building (Annan 2002).

These conceptions can be traced back to many earlier initiatives, notably the Brandt Commission Report on international development, *North-South: a Programme for Survival,* and the Palme Commission Report on *Common Security: a Programme for Disarmament*, both published in the early 1980s, and indeed to the UN Charter itself. They have gradually introduced many valuable new elements into the theory and practice of international relations and of global development: greater recognition of the importance of international humanitarian law; the withdrawal of legitimacy from military and authoritarian regimes; support for democratisation; greater emphasis on human rights; the idea that state security should be based on human security; and greater international involvement in conflict resolution, peace-building, and post-conflict reconstruction.

A major misperception about this liberal and democratic world view - which critics like Duffield (2001) may have encouraged - is that it has simply been foisted on the world as part of the apparatus of international hegemony. To be sure, the democratic and developmental principles behind international humanitarianism have all too often been hijacked by Western leaders to lend respectability to their interventions. Yet they are nevertheless important and deserving of support in their own right. Moreover, they enjoy wider legitimacy in the international system and in developing countries themselves, where they have been taken forward through regional initiatives.

Afghanistan, Cramer and Goodhand (2002). All are published in an excellent issue of *Development and Change* on state collapse.
[5] This argument is more fully spelt out in Luckham (2003).

The Brandt/Palme vision of global interdependence was the product of an alliance between European social democrats and Third World statespersons, and for a long time it was ignored or opposed by the major world powers. The notion of 'human security' was the product of a powerful critique of traditional state-centred thinking about security, and it became a central feature of the UNDP's Human Development Reports in the early 1990s. Demands for democracy originally arose from struggles against military and authoritarian rule in the developing world, and were only later taken up by aid donors, many of which indeed had earlier lent support to dictatorships. Campaigns for human rights and international humanitarian law drew strength from campaigns against rights violations in countries like Pinochet's Chile, apartheid South Africa, Nigeria, or Chile, as well as from international advocacy groups such as Amnesty International. Many of the most respected UN peacekeeping forces have been recruited from developing countries, including Ghana and Fiji. Even recent additions to the donor peace-building armoury, such as security sector reform, have emerged from the theory and practice of democratic transition in countries like South Africa, which have had much to teach the West itself about democratic civil-military relations. In Africa, initiatives for the promotion of humanitarian values include the African Charter of Human Rights and the African Union's Peace and Security Council, together with the conflict-prevention and peacekeeping mechanisms of the African Union, the Economic Commission for West Africa, Southern African Development Community, and other regional and sub-regional bodies.

A less remarked on feature of the new interventionism is a certain 'developmentalisation' of security.[6] National security planners, defence ministries, military staffs, staff colleges, and defence academies have begun to involve themselves in development issues, the theory and practice of peacekeeping, humanitarian law, human rights, human security, peace-building, and post-conflict reconstruction. To a large extent this is because they are having to undertake a much wider range

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[6] Recent events in Iraq, including the torture and humiliation of prisoners, might seem to suggest the contrary, and that crude *realpolitik* after all prevails in Western security establishments. Pentagon and White House policies have encouraged flagrant disregard for human rights and international human law, including the Geneva Convention.

of roles, including 'out of area operations', counter-terrorism, peace support operations, and security sector reform.

One of the most controversial aspects of international intervention has been the erosion of national sovereignty. Processes of globalisation already severely restrict the capacity of national governments to manage their economies and to deliver security unaided. The erosion of sovereignty opens the gates for interventions driven by the geopolitical interests of major powers, as well as by humanitarian concern for people who suffer state repression or conflict.

The view that the international community has the right, indeed the responsibility, to intervene to prevent gross human rights abuses or end conflicts raises the hackles of many governments in the South (though not necessarily of their citizens). But the force of such objections is diminished when sovereignty has already been dissipated by a government's failure to fulfil its core responsibilities, including provision of basic physical security and protection of citizens' rights. As the International Commission on Intervention and State Sovereignty insists, states that fail to deliver security to their citizens and massively violate their rights are not exercising their sovereign responsibility to protect (ICISS 2001). Hence state sovereignty needs to be supplemented by a more robust and genuinely equitable multilateralism, based on common norms and principles accepted by all the major international actors.

What has diminished the legitimacy of US and British intervention in Iraq, and made it so deeply offensive to most in the Middle East, has been the arrogant assumption that there is one law for the major powers and another for the developing world. A superpower that refused to sign up to or be bound by international agreements on global questions such as the International Criminal Court, or biological and chemical weapons, was already less likely to have its bona fides accepted when it intervened to restore democracy and prevent the proliferation of weapons of mass destruction in Iraq - even before its own aggressive peace-enforcement and disregard for human rights destroyed its remaining shreds of authority. There is now a real danger that the legitimacy of the United

Nations and of the entire peace-building agenda may be fatally compromised if it is seen as subservient to America's hegemonic agenda in the Middle East.

Yet the cooptation of the United Nations' and other international agencies' humanitarian, peace-building, human rights, and democratisation agendas is not a good enough reason to reject the agendas themselves. Whatever one's reservations about the hubris and blundering in Iraq, the paradoxes of donor-driven democratisation in Bosnia, or the biases and fragility of peace-building in Afghanistan, international intervention in violent conflicts is here to stay, simply because the problems it was designed to address are still with us. Fractured states, war-torn societies, the spread of insecurity within states and across boundaries, and the terrible problems they give rise to, are realities the international community simply cannot ignore.

Nor is it realistic to ignore the interests of the major international players, including the United States, the European Union, and the North Atlantic Treaty Organisation, or of regional powers including China, India, South Africa, or Nigeria. A recent empirical study of peace processes that have established a relatively durable end to violent conflict concludes that the active military engagement of major global or regional powers, or of the major alliance systems, as in Bosnia, Cambodia, Sierra Leone, or East Timor, has been an important ingredient in their success (Downs and Stedman 2002).

If humanitarian interventions are to be legitimate, and sustainable over the long term, they must be disentangled from the self-serving and sometimes grubby interests and policy agendas of the governments and agencies that undertake them. Even United Nations agencies and international humanitarian nongovernmental organisations are not exempt from the charge that their policies and programmes may be self-serving, or reinforce the very humanitarian disasters they are supposed to alleviate.[7]

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[7] On the failures of the international interventions in Somalia see Sahnoun (1994) and Clarke and Herbst (1997), and on those in Rwanda see Adelman and Suhrke (1996), Woodward (1997), Kuperman (2001), and Jones (2001).

One cannot of course ignore national interests in a world of nation states, any more than one can ignore the bureaucratic agendas of international organisations or the fund-raising priorities of international NGOs. But it is crucial to acknowledge the biases and the play of interests they introduce. Even if such biases cannot be wholly eliminated, they can at least be opened up to debate, challenge, and, hopefully, reform.

Evaluating the Humanitarian Agenda

In sum, one should interrogate the global humanitarian agenda at five levels:

First, as just suggested, there is a need for critical yet realistic discussion of the gaps between the manifest goals of military and other interventions (what they are supposed to achieve, such as resolving conflict or building democracy) and the latent or hidden agendas of those undertaking them, and of how policymakers can ensure those agendas do not get out of hand, as in Iraq.

Second, all forms of intervention need continual interrogation of their underlying moral and political premises. Given the accusations that they serve to advance a hegemonic vision, these premises cannot be taken for granted.[8]

Third, the principles of multilateralism require constant restatement and reassertion, as in *The Responsibility to Protect* (ICISS 2001). The issues are global in the first place. At least in principle, multilateral interventions are less likely than unilateral ones to serve special interests. And they are more likely to be regarded as legitimate, except where multilateralism is regarded as a mere flag of convenience for unilateral action, as seemingly in Iraq. In some situations, unilateral interventions may be legitimate, *faute de mieux*, like the UK's involvement in peace-building in Sierra Leone, but even in such cases

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[8]   They are beyond the scope of this paper, but I would cite for instance the ongoing debates concerning the validity of universal human rights; Amartya Sen's rethinking of the links between development and freedom and of the concept of human security (Sen 1999); and Biku Parekh's cogent critique (1994, 1997) of the cultural particularity of liberal democracy as well as of humanitarian military intervention.

they must enjoy the proper consent of national stakeholders and be defensible on the basis of general principles.

Fourth, better understanding is required of the historical trajectories of conflicts, the factors that drive them, how they might reignite, and how this could be prevented. Not all conflicts are the same, as I argue below.

Fifth, rather than being imposed from outside, peace agreements, reconstruction plans, or constitutions need to emerge from continuous dialogue with and engagement of a broad range of national stakeholders: not just with the warring parties (though they must buy into the peace), but civilians too; not simply with political and economic elites, but with a wide range of civil society and grassroots groups. Such dialogue might seem an obvious requirement of peace-building, but peace-makers forge ahead surprisingly often without giving it a second thought.

Conflicts, State Failure, and Their Legacies

Most recent conflicts in the developing and post-communist worlds can be viewed as state- and nation-building in reverse (Kaldor and Luckham 2001, Luckham 2003), as well as development in reverse (Collier et al. 2003). They have unravelled political authority, interrupted normal governance, fractured national societies, and often problematised the state itself. 'After conflict' would then seem to imply a teleology of state- and nation-building: a sequence from pre-conflict to conflict to post-conflict; from relief and humanitarian aid during conflict to reconstruction and development aid after it; from collapsed or failed to functioning states; from ethnic violence to national reconciliation; from the rule of the gun to the settlement of conflicts through democratic processes.

Real life is far more complicated, however. First, most conflicts do not simply end. The political, social, and economic factors sustaining them often remain, and even the violence may continue in other forms, notably criminal. Many conflicts that were once considered 'resolved' have reignited again and again, as in Colombia, Sudan, or Liberia. Breakdowns in governance may antedate conflict, as in the DRC, or be

caused by it and continue after it has 'ended', leaving societies suspended in a state of semi-anarchy and insecurity, as in Somalia.

Second, the major premise of state reconstruction is that states have in some sense failed or collapsed.[9] But in violent conflicts the roles of states vary immensely. In some, the problem may not be collapsed states, but regimes that have been exceptionally repressive or authoritarian - like the present government in Sudan, which has not only waged war directly against dissidents in the South but has also sponsored raiding and violence by armed militias in Darfur and in the South. In other cases, even democratically elected governments have aggravated conflicts by pursuing policies that result in the political, social, or economic exclusion of minorities or socially disadvantaged groups, such as Tamils in Sri Lanka or the urban and rural poor in Colombia. Some conflicts have spread not because of the failings of individual states alone but through an accumulation and interaction of violent conflicts across an entire region, such as the Great Lakes in Central Africa, or the Caucasus, subsuming states within wider regional or indeed global conflict complexes.

Third, violent conflict and state collapse leave baleful legacies that make peace difficult to build and states hard to reconstruct (Cliffe and Luckham 2000: 302-4; Luckham 2003: 21-5). These legacies include governance voids, or the disappearance of normal public administration in all or part of the national territory; the rule of 'un-law', including the breakdown of police and judicial systems, widespread human rights violations, and impunity for the perpetrators; the breakdown or absence of democratic accountability mechanisms; extreme political and social polarisation; 'societies of fear' (Koonings and Kruijt 1999), which normalise violence and human rights abuses; systematic redistribution of power, wealth, and status in favour of those who control the gun or can profit from war economies; and the disempowerment of minorities, women, refugees, and a wide range of other groups.

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[9] An indication of the conceptual and policy confusion surrounding this topic is the proliferation of terms: 'collapsed states', 'failed states', 'problem states', LICUS (lower-income countries under stress - the World Bank's clumsy euphemism), 'fractured states', and so forth. The terms matter less than the fact that one is talking about a highly complex and historically variable reality, not adequately captured by any single term.

Despite these legacies, the starting point for reconstruction cannot and should not be a simple return to pre-war normality and the reconstitution of the state in its previous form. Not only were the latter's failings among the reasons for conflict, but war and its legacies create new political realities, which must be recognised and adjusted for in peace-building.

Fourth, reconstruction is more likely to be sustainable if it factors in the multiple layers of political authority above and below the state, and is not excessively preoccupied with rebuilding the state and central governance alone. When states start to fall apart during conflicts, other layers of political authority - both above the state at the regional and international levels, and below it in political and civil society - tend to emerge into the open. Even in the most severe and anarchic instances of state collapse, as in Somalia, the Congo, or Afghanistan, there is seldom a total governance void. Other bodies including mosques, churches, community-based organisations and NGOs, and remnants of local bureaucracy cut off from the centre may assume services previously delivered by the state. Security functions may be carried out by a variety of non-state actors, although this adds to the risks of human rights abuses, extortion, and violence. Markets may even thrive in war economies and create their own modes of economic regulation; in Somalia, according to Mubarak (1997), the dismantling of the Barre regime's corrupt and intrusive state management of the economy opened spaces for entrepreneurs in the midst of apparent anarchy.

Understanding the Legacies of Conflict

Any strategy for post-conflict peace-building and reconstruction should address a complex array of legacies from past and present conflicts. The distinctions made in table 0.1 are a first step in understanding these legacies, insofar as they help identify generic problems stemming from the different ways the state has been called into question. The table shows different ways the state can be called into question, cross-tabulated against the three forms of conflict most often stressed in recent causal analyses of conflicts: struggles over resources; contested social

identities, especially ethnic and religious identities; and major social inequalities.

Table 0.1: States called into question by violent conflicts

How the state is called into question

Struggles over:	'Collapsed'	Authoritarian	Non-inclusive	Subsumed within wider conflicts
Resources	Sierra Leone	Angola	Colombia Indonesia	Iraq Democratic Republic of Congo
Identity	Somalia Bosnia	Sudan	Sri Lanka Kashmir	Afghanistan
Inequality	Liberia	El Salvador	Guatemala Philippines	Nicaragua

These contrasting situations are discussed below, but first several caveats are in order. The causes shown in table 0.1 are by no means the only 'causes' of violent conflict, and they often conflate the factors originating conflict with those sustaining it[10], as well as conflating cause with effect.[11] Nor are they necessarily mutually exclusive: Frances Stewart, for example, uses the term 'horizontal inequality' to describe how social inequalities tend to crystallise around and reinforce regional, ethnic, or religious differences.

Further, in reality none of the states chosen as illustrations can be assigned to any single analytical category. For instance, although the DRC and Sierra Leone are shown in different cells, both faced state

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[10] See Cliffe and Luckham (2000), in which we distinguish between factors 'producing' and 'reproducing' conflicts. There is some evidence that resources - and more generally 'greed', or the expectation of economic gain - are a better predictor of the continuation of conflicts than of their origins.

[11] The political mobilisation and polarisation of ethnic and religious differences, in particular, can be either a cause or a consequence of conflict, or both at the same time.

collapse after the state had been undermined by protracted periods of authoritarian neo-patrimonial governance. And both have become enmeshed in wider regional conflict complexes involving multiple interventions by their neighbours. In Angola, Indonesia, and Sudan, conflicts over resources have sharpened and been intensified by identity conflicts. In all three countries, protracted authoritarian governance has excluded particular regions or ethnic groups from power and the benefits of development.[12] In El Salvador, Guatemala, and Colombia, conflicts arose from deep social exclusion, but they were complicated in Colombia's case by the emergence of a shadow economy around the drug trade and extortion from the oil companies.

Thus in each instance the conflicts are best understood not as the product of individual causes, or even as the outcome of particular patterns of governance and non-governance, but rather in terms of the varying historical trajectories that create and sustain political violence. Angola provides an especially salient example: a conflict now widely characterised as a 'resource war' began in the 1960s as a liberation struggle against the inequities of colonial rule; evolved into a contest for power between different elites rooted in the country's ideological, regional, and ethnic divisions; was sustained in the Cold War context by the interventions of the USSR, Cuba, the US, and apartheid South Africa; and finally turned into an increasingly cynical and brutal struggle to control the country's mineral wealth. The point is that the conflict itself was radically transformed over many years; and in turn itself redefined the entire political economy of the state (Hodges 2001).

State Collapse

The first of the cases shown in table 0.1 is state failure or collapse proper, where state administration has effectively ceased, most often during violent conflict but sometimes before conflict has broken out or after overt hostilities have ended. State collapse is the most extreme manifestation of wider global trends that have problematised many states

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[12]   Indonesia and potentially Angola are now engaged in democratic transition.

and undermined their capacity to manage national economies, to orchestrate development, to deliver services, and to provide security.[13]

State collapse has almost always involved the loss of the state's monopoly of legitimate violence, which is usually regarded as the key component of Weberian statehood. Somalia is the most obvious case, and indeed it is the only country to have lacked a recognised and minimally functioning state for a long period, now more than a decade. The state has fallen apart for shorter periods in Afghanistan, Bosnia, Congo (DRC), Haiti, Liberia, and Sierra Leone. As these cases suggest, state collapse is also perfectly possible where there is a juridical but non-functioning state, as well as where there is no internationally recognised political authority, as was the case in Somalia.

State collapse can precede as well as follow conflict. For many years before it actually 'collapsed', Mobutu's kleptocratic regime in Zaire, now DRC, enjoyed almost no effective authority in much the country; basic services, including sometimes security, were provided, if at all, by churches, NGOs, and other bodies; and there was in effect no national economy, but rather a number of regional economies, each more integrated with those of neighbouring states than with the remainder of the country (Lemarchand 2001). A similar situation has prevailed under the presidencies of the two Kabilas, even following the peace agreement and establishment of a government of national unity (except that the anarchy and violence have in the meantime become more entrenched and destructive, and have enmeshed the DRC's African neighbours).

Where the existing state was part of the problem, it might seem that its temporary disappearance could potentially clear the ground for reconstituting the state on a more inclusive and legitimate basis. In practice it is usually hard to re-establish a functioning state at all, let alone undertake comprehensive state reform. However, Somaliland provides an encouraging example of how a legitimate and reconstructed

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[13] Whether economic interdependence undermines the state or strengthens it is endlessly debated in the literature on globalisation. This questioning also sheds light on how, in the modern world, there exist multiple layers of political authority, both above the state at the regional and international levels, and below it in political and civil society.

public authority can emerge from protracted political violence. A new political order emerged from lengthy negotiations among warring clans, which were facilitated by intermediaries that had no significant international involvement, except that of the diaspora community (Farah and Lewis 1997; Ahmed and Green 1999; Hularas 2002). Somaliland's lack of international recognition and support has emerged as one of the main obstacles to its long-term reconstruction. The main lesson, if any, for countries like Afghanistan, Liberia, or Sierra Leone, where the international community has taken the lead in reconstructing the state, is the need to recognise and support domestically driven democratic processes. Indeed Liberia's contrasting re-descent into despotism and war after 1997 under former warlord President Charles Taylor well illustrates the dangers of international complacency about externally brokered peace negotiations, constitution-making, and elections.

Authoritarian States Opposed by Predatory Groups

Authoritarian states, contested by armed adversaries seeking to control the state and appropriate its financial and other benefits, have tended to generate somewhat different problems of post-conflict reconstruction from those deriving from state collapse. Authoritarian state elites have often shared responsibility for continued human rights violations with the rebels opposing them, as in Sudan or Angola. And they have tended to resist external pressures to negotiate peace or to concede reforms, except when brought to the negotiating table by some combination of severe economic crisis, costly military stalemate, or defeat. Nor have the predatory groups opposing them necessarily been any more likely to negotiate, when they have profited from the 'attack trade' and war economies.

A ruling elite is better able to resist external and domestic pressures for change if it controls substantial mineral resources or other independent sources of state revenue, such as oil in Angola and Burma and timber (and oil) in Cambodia. Therefore the key issue is accountable governance - especially regarding the control of natural resource

revenues - more than state reconstruction per se, although the latter too may be essential after protracted conflict.

Moreover, the end of the fighting does not necessarily create circumstances that empower the political and social forces that could insist on government accountability. In Cambodia, for example, Hun Sen's Cambodian People's Party manoeuvred to recapture the state and subvert democratic governance, following interim UN administration under UN Transitional Authority in Cambodia and a period of coalition government. In Angola, after the conclusion of peace with a demoralised and militarily weakened UNITA (Uniao Nacional para a Independencia Total de Angola), the MPLA (Movimento Popular de Libertacao de Mocambique) nomenclatura has remained in control of the country's oil revenues and the levers of state power, and has continued to resist international and domestic pressures for more accountability.

Mozambique provides a rather more encouraging example, of an internationally brokered peace that laid the basis for reconstituting a battered (but not collapsed) state, democratisation, and economic reconstruction. The key factors in this success were a peace settlement, which was not imposed but negotiated via international intermediaries and the UN; the fact that the incentives to continue fighting were less than in resource-rich countries such as Angola or the DRC; the FRELIMO government's genuine commitment to the reform process (despite losing its revolutionary zeal, it never became as autocratic or as corrupt as the MPLA regime in Angola); the way the armed opposition, RENAMO, despite its involvement in atrocities, acquired a real stake in the democratic process by becoming a political party; and the fact that economic reconstruction, though not without problems, laid the basis for economic growth and, to an extent, poverty alleviation.

Authoritarian States Challenged by Popular Revolts

Authoritarian or non-democratic regimes may be called into question because of their non-inclusive policies, through struggles to address major societal injustices or political, economic, or social exclusion. The

paradigmatic armed struggles of the colonial and Cold War eras were waged by nationalist or radical groups with a transformational political agenda. Though analyses of the 'new wars' highlight the predatory nature of rebellions against the state, by no means have all of these wars fitted such a stereotype. For example, the rebellion that brought the National Resistance Movement to power in Uganda in 1986, the campaigns ending the *derg's* military despotism in Ethiopia and Eritrea, and the struggle against the apartheid state in South Africa and Namibia and that against Indonesian hegemony in East Timor, were all waged by armed groups with popular support and relatively well defined political agendas. Even where groups with well defined political goals, like the Sudan People's Liberation Army (SPLA) in the Sudan, have been diverted in more predatory directions during protracted armed conflict itself, elements of that agenda may survive and influence their approach to peace-building and reconstruction.

It is notable that a number of these armed struggles were concluded by military victory and the victors' assumption of power. Even where peace was negotiated after a military stalemate, as in South Africa, Namibia, and East Timor, it in practice amounted to a political victory for the liberation forces. Generally speaking, this political victory has endowed the victors with much greater popular legitimacy than most other post-conflict regimes. It has also committed them, at least in principle, to fundamental reforms aimed at addressing the social injustices that motivated their struggles. What has changed, however, since the end of the Cold War is that the socialist programmes of earlier liberation movements have been displaced by democracy and market-oriented economic reform programmes, reflecting a new realism both about the constraints on development in a globalised world and about the price to be paid for international donor support.

On the one hand the relative clarity of the winning groups about their development goals has clearly facilitated state and national reconstruction. It is striking that many of the apparent post-conflict 'success stories' have been managed by former revolutionaries. On the other hand their change in course away from socialisation in favour of market-oriented development has tended to generate distinctive policy

dilemmas. Most post-conflict programmes have featured the competing priorities of economic liberalisation and of social equity and poverty reduction, but the tension between these priorities has been especially acute where social equity was the principal demand of those taking up arms against the state. Another area of policy conflict has been the tension between the centralising, command-oriented tendencies of many liberation movements and the requirements of democratic politics, surfacing (in different ways) in countries like Eritrea, Ethiopia, Namibia, Rwanda, or Zimbabwe.

Wars of National Identity

Fourth are states whose national composition or territorial form has been challenged through wars of national identity, as in Bosnia, Kosovo, Sri Lanka, Rwanda, or Southern Sudan (where the SPLA has shifted back and forth between demands for partition and for power-sharing and regional autonomy within an undivided state). Such national struggles have often opposed social injustices as well, hence tending to share some of the same characteristics as other transformational struggles. But one should not forget that identity conflicts have often also been exacerbated by national majorities (or those speaking for them) reasserting their exclusive claims over the identity of the state - as have the Sinhalas in Sri Lanka, the previous Amhara elite in Ethiopia, Serbs in ex-Yugoslavia, or, in a particularly extreme manner, the Rwandan Hutus during the 1994 genocide.

The central issues tend therefore to concern the future identity of the state more than just its reconstruction. Issues include whether and how to accommodate the demands of separatist groups, like Sri Lanka's Liberation Tigers of Tamil Eelam (LTTE); and how to make existing state institutions more inclusive through power-sharing, constitutional reforms, or more equitable distribution of the benefits of development. Even if the state is ultimately partitioned, the same issues tend to recur, sometimes in an aggravated form, since partition tends to create new national majorities, like the Croatians or Kosovans in ex-Yugoslavia, or potentially Sri Lankan Tamils in Northern and Eastern Sri Lanka, many

of whom have no more commitment to inclusive politics than their former oppressors.

Conflicts at the Margins of the State

Conflicts waged at national peripheries may paralyse state administration in significant parts of the country. Examples include the festering conflicts in Kashmir and Punjab in India, in Northern Ireland, in Northern Uganda, in the Casamance region of Senegal, or the armed rebellions in Aceh and West Irian in Indonesia. These conflicts have often differed only in degree from the other struggles over the national identity of the state, just discussed above. But they do not usually challenge the existence of the state itself. Nor have they necessarily been the product of a non-democratic state. Indeed in all the examples just cited, the conflicts originated or were perpetuated because of the failure of elected governments to respond adequately to minority demands.

At the same time, national governments have tended to be better able to define these conflicts as purely 'domestic' insurgencies, thus deflecting international pressures to negotiate and postponing political and other reforms that might satisfy minority demands. This has meant there is a significant risk of complacency, with conflicts left to fester and eventually escalate, as did the LTTE insurgency in Sri Lanka in the 1970s and 1980s, or the rebellions in Northern Uganda from the mid-1980s until the present. Added to this has been the tendency of such disputes to be aggravated, as in Kashmir or Northern Uganda, by neighbouring governments' support for the rebels. Insofar as states have attempted to resolve the conflicts, the emphasis has been less on state reconstruction than on some combination of military counterinsurgency and political reform, to draw the sting from the rebellions by promising more inclusive forms of politics.

Regionalised Conflict

Some states have their authority undermined by the growth of regionalised conflict complexes. The DRC is an obvious example, whose conflicts have interlocked ever more tightly with those of its neighbours in the Great Lakes and Southern Africa. Other cases include the interlinked conflicts of the Mano River Union countries in West Africa (Liberia, Sierra Leone, Guinea, and, linked to them, Cote d'Ivoire); the conflicts engulfing ex-Yugoslavia and the Balkans (Woodward 2003); the complex links between the war in Afghanistan and the insecurities of its neighbours; and the links among the now-resolved conflicts in Central America, aggravated also by US interventions in the region. Not all countries caught up in such conflict complexes themselves have had collapsing states, or even conflicts, within their own boundaries. For example, among the DRC's neighbours, Angola, Burundi, Rwanda, and Uganda themselves have experienced recent civil wars, while Namibia, Zambia, and Zimbabwe have not.

In such cases, post-conflict reconstruction often has to be approached as a regional, not a purely national, endeavour. Where conflicts have become embedded in wider regional conflict formations - not to speak of global power politics - efforts to rebuild states and reform their governance can easily become hostage to conflicts ongoing in other states; to meddling by neighbouring governments and external powers; and to flows across national boundaries of weapons, conflict-goods, and military entrepreneurs. Thus regional approaches to peace-building, such as the Lusaka process in the DRC, the Stability Initiative in the Balkans, and the successful Contadora and Esquipela peace processes in Central America, have been indispensable prerequisites for state reconstruction.

Collapse Caused by External Intervention

Some states are undermined or collapse through external intervention, military invasion, or regime change. Examples include Afghanistan, Iraq, or previously (in certain respects) Cambodia or Nicaragua.

Afghanistan has had a long history of military interventions by global as well as regional powers, starting from the original Russian invasion, if not earlier, and continuing during and after the US-led military removal of the Taliban government, with many years of state disintegration and renewal[14] in between. In Iraq the US-led coalition not merely removed Saddam Hussein's regime, but was also responsible for destroying a powerful if flawed state, notably when it dismantled the entire military, security, and Ba'ath political party apparatuses. The protracted crisis that ensued has been one of insecurity and even more of illegitimacy - initially of the Coalition Provisional Authority and, since June 2004, of the interim Iraqi government.

The fundamental priority in both Iraq and Afghanistan is not simply to reconstruct the state and its monopoly of legitimate violence. Even more it is to establish a legitimate public authority, sufficiently independent of the occupiers to enjoy public respect, and sufficiently inclusive to draw wide support from the diverse ethnic and religious communities of each country. The international community and in particular the US-led coalition is regarded more as part of the problem than of the solution. Hence the need is to find an appropriate exit strategy that does not aggravate the prevailing insecurity and creates a more legitimate multilateral framework for international assistance for reconstruction and state reform. Making the UN responsible for reconstruction is by no means a panacea, and could backfire if it is under-resourced or is seen as a proxy for continued domination by the United States and its Western partners. Democratisation and state reform too are necessary, but only likely to succeed if they are home-grown and based upon some recognition of the powerful political and social forces, including radical Islam, that have emerged from the wreckage of the state.

Implications for International Intervention

No doubt one could come up with more categories. But the basic point is that the ways in which states are challenged by conflict have important

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[14] Whatever one thinks of the Taliban, at least it re-established some semblance of state authority, albeit at great cost in terms of human life and forgone development.

implications for peace-building and state reconstruction and for the role of international actors. Broadly speaking, there is more scope for international intervention where structures of public authority have been swept away entirely, or when protracted stalemate between the warring parties has become so costly for both that it forces them to call in the international community. States that have remained relatively intact have been generally more wary of international involvement, often seeing it as a threat to their sovereignty - above all if they are major regional powers in their own right. Examples include India in Kashmir, China in Tibet, Israel in Palestine, or Indonesia in Aceh. In the case of collapsed states, it makes a lot of difference whether the state fell apart from within or was brought down by external intervention. The latter almost inevitably makes foreign powers and even international agencies de facto parties in the conflict, making it much harder for them to act as legitimate honest brokers with a credible claim to be able to resolve it.

State Building, Nation Building, Democracy, and Development

External support has been directed not only towards the reconstruction of the state but also increasingly towards its reform. The problem remains that reform tends to be conceived in terms dictated by the major donors and international agencies, prioritising the usual formula of liberal democracy, good governance, and economic liberalisation. Whilst elements of this formula are desirable in themselves, the entire package, and the manner it is promoted or imposed from the outside, tends to inhibit the fundamental rethinking that post-conflict states require about the nature and purposes of political authority.

Such rethinking should engage with four parallel but linked endeavours:

- *Rethinking and reconstituting the state itself*, to assure as far as possible legitimate public authority, a functioning state apparatus, and effective and accountable security and law and order institutions. Rebuilding administrative capacity, as well as the state's monopoly of military, security, and policing functions, is clearly vital. But re-establishing the *legitimacy* of state institutions is

equally crucial, where their authority has been undermined by despotic rule, state violence, and the violation of human rights.

- *Inclusive nation building,* so as to reconstitute national citizenship on a more inclusive basis, whilst also recognising and respecting religious, ethnic, gender, and other societal differences. How to do this, and whether to place the emphasis on universal rights or on power-sharing and the institutionalisation of cultural differences, is best left to national dialogue and debate.
- *Democratisation at all levels of public authority,* not merely in the formalistic sense of creating replicas of western liberal democratic institutions, but in the broader sense of the popular accountability of government and greater citizen voice at all levels of political authority. Such democratisation requires not only democratic institutions but also democratic politics (Luckham, Goetz, and Kaldor 2003).
- *Building a developmental state* with the capacity to ensure that external assistance matches national priorities, to build alternatives to the previous war economies, to deliver basic services to citizens, and in the longer run to facilitate sustainable growth and development. Whether this is best done by expanding free markets and limiting the role of the state should be treated as an empirical issue, to be decided on the basis of national circumstances, rather than as an overriding priority.

There has been a natural tendency to prioritise the first and to a certain extent the fourth of these endeavours: rebuilding the state, restoring its capacity to carry out public administration, and enabling it to deliver security and basic services and to manage development and a market economy. All these goals are of course crucial. But focussing on state and economic reconstruction by themselves is not enough, especially where existing states and ruling elites may have been part of the problem in the first place, or where they have been challenged in multi-ethnic societies by groups with their own different conceptions of the legitimacy of the state and the goals of politics. As argued above, multiple levels of political authority coexist with the state and may indeed eclipse it, especially during conflicts. It is important to recognise

these, build on them, and ensure they support state authority, not subvert it.

Nation building was one of the central concepts of decolonisation. It is even more relevant in the early 21st century, when conflicts have sharpened ethnic and other polarisation and undermined the fragile sense of citizenship in the 'imagined communities' we call nation states. The international community has tended to focus on power-sharing arrangements and the design of constitutional frameworks to give all major groups a stake in the political process and the economy, and to minimise the exclusion and marginalisation that lead groups to take up arms against the state (Harriss and Riley 1998; Ghai 1998; Luckham, Goetz, and Kaldor 2003). Constitution making is a hazardous endeavour. It is likely to run into opposition, as in Iraq, if it is too visibly orchestrated by the international community or occupying powers; if it is insufficiently inclusive; and if it does not address the political realities on the ground. Building confidence among divided communities and rebuilding the social capital of trust between religious persuasions, ethnic communities, or clans can be delicately encouraged from above, but in the final analysis is best left to be nurtured as much possible as from below.

Democratisation has been given a bad name by the democracy-promotion efforts of the Western powers and international agencies. Moreover, democracy is not the infallible solution to conflict that it is often supposed to be. In principle it poses an alternative to violence, by encouraging the resolution of disputes through the political process. But in practice democratic institutions have often failed to resolve conflicts and in some cases have even aggravated them (Stewart and O'Sullivan 1999; Luckham, Goetz, and Kaldor 2003).

Legitimacy is key to building peace, to reconstituting public authority, and to resolving disputes through the political process. Hence democracy and elections are necessarily built into virtually every peace agreement and post-conflict reconstruction programme. But it cannot be taken for granted that democracy will be sustainable, that it will support rather than get in the way of reconstruction, or that it will foster conflict resolution. Hence careful attention must be paid to:

- *Questions of process and sequence:* the timing and management of elections relative to the other elements of peace-building, including the restoration of security; the sequencing of constitution making and its inclusiveness; and ensuring that the democratisation process is locally driven and locally owned, rather than externally imposed (Bastian and Luckham 2003).
- *Making both the democratisation process and democratic institutions as inclusive as possible* for all groups in society and at all levels of political authority. Most post-conflict programmes at least pay lip service to the strengthening of civil society and to the need for political and administrative decentralisation. Putting these principles into practice is another matter, especially if there are a range of social forces and political groups (such as ethnic nationalist parties or religious extremists) whose commitment to peace-building or democratisation is questionable or hostile.
- *Close attention to the design of democratic institutions.* Even the best designed constitutional and institutional framework cannot guarantee sustainable democracy or resolve conflicts, though it can help. Conversely, though, it is clear that badly designed institutions can damage democracy, institutionalise social divisions, politicise ethnic and other identities, and engender violence (Luckham, Goetz, and Kaldor 2003).
- *Fostering democratic politics and a democratic political culture to bring life and sustainability to democratic institutions.* In the final analysis, democratic politics has to develop from below. It can be encouraged by donor or international NGO support for civil society groups, but equally such support can stifle local initiatives or fail to create dialogue with popularly based groups (such as ethnic nationalist or religious political parties) that have the capacity to break democracy as well as to make it.[15]

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[15] For an instructive account of how this happened in Bosnia, see Chandler (1999).

The Policy Dilemmas of International Involvement

Recent history is littered with examples of botched or politically controversial international interventions and failed or stalled national reconstruction.

Yet it is also possible to discern a halting and incomplete learning process, through which different actors in the international community have come to recognise their own limitations and failings and to seek norms of good or at least better practice.[16] The best of these reports are detailed and unsparing in their critiques. Even so, their prescriptions tend to be pitched at a general level. They mostly do not address the hidden political and economic agendas of international, and especially military, interventions. They have too little useful to say about how to persuade major world powers and international bureaucrats in the North and national governments and conflict entrepreneurs in the South to alter their policies and practices. And they tend to disregard the various ways in which the goals of international actors may be mutually incoherent or may conflict with those of national stakeholders in post-conflict states themselves.

It is truly very difficult to devise broadly applicable models of good practice - to make appropriate choices between, for instance, early elections and establishing minimal security; between assuring armed groups some stake in the peace process and empowering civil and political society; between universal and more culturally specific

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[16] Recent examples include studies of the lessons of the international community's egregious failures in Somalia and Rwanda (on the former see Sahnoun (1994), Clarke and Herbst (1997); and on the latter Adelman and Suhrke (1996), Woodward (1997), Kuperman (2001), and Jones (2001)); the Brahimi Report to the UN on international peacekeeping (United Nations 2000) and other studies of the lessons of peace operations (CSDU 2003); the DAC/OECD Guidelines on helping prevent violent conflict (OECD 2001); a series of policy debates in the journal *Disasters* on the need for improved donor policy coordination and coherence in emergencies; a plethora of donor-supported methodologies for conflict assessments and 'conflict-sensitive' development assistance (DFID 2002a); assessment frameworks for good practice in security sector governance (DFID 2002b and Ball et al. 2003); and critiques of the US-led coalition's military intervention in Iraq, most notably by the United States' own Army War College (Record and Terrill 2004), which pulls very few punches in comparing it with the intervention in Vietnam.

conceptions of human rights; or between national reconciliation and post-conflict justice. To pretend otherwise is to show an arrogant disregard for the complexity of the problems and the real conflicts of principle that must be resolved to address them.

Models of good practice are even more difficult to apply than they are to create. Operationalising such models involves difficulties and contradictions in a context in which they are wilfully disregarded or subverted, both by major international players and by those who control violence in the developing world, whether to secure profit, gain political advantage, or pursue myopic political agendas. A case in point is the manner in which the American and British governments not only manipulated intelligence to justify military intervention in Iraq, but also ignored the advice of their own military and security establishments about the problems of post-conflict reconstruction. This advice was generally more realistic and based upon a better understanding of the realities on the ground than the policies implemented by the Coalition Political Authority. In the view of some US Army War College analysts, for example, the intervention in Iraq was a military victory but a strategic and political failure (Echeverria 2004: 13-14), in part because it disregarded their own relatively sophisticated analyses of the problems of post-conflict reconstruction published before the invasion (Crane and Terrill 2003).

Moreover, models of good practice invariably underestimate the contradictions of intervention. The international community has had to steer between the Scylla of intervening with too heavy a hand and the Charybdis of letting conflicts fester and failing to recognise and support locally based efforts to build peace. It has veered toward the first extreme in Bosnia, Kosovo, and even more so Iraq. Its failure to intervene in a timely or effective manner in Rwanda and Somalia and its woeful reluctance to recognise and support a home-grown process of peace-building, reconstruction, and democratisation from below in Somaliland have been at the other extreme.

Rather than attempting to derive policy prescriptions from general principles, it is more fruitful to capture the contested and contradictory

nature of conflict and of post-conflict reconstruction by identifying some generic policy dilemmas (Box 0.1).

Box 0.1: Some policy dilemmas of post-conflict reconstruction

International intervention: ending war and building peace?
- Multilateral action through the UN and regional institutions versus big-power unilateralism and 'coalitions of the willing'.
- International humanitarian law and human rights versus operational effectiveness ('playing to win').
- Development and global justice versus global security concerns (e.g. the 'war against terror').
- Light footprints, sensitive to national contexts, versus 'one size fits all' blueprints.
- Sustainable peace versus easy exit strategies.

Reconstituting state and society
- Security first, versus popular consent and electoral legitimacy.
- A holistic, strategic approach, versus compartmentalisation of economic, security, and governance issues.
- State building from above versus building consensus (and civil society) from below.
- Shutting out 'spoilers' etc, versus opening political space for dialogue.
- Making deals with warlords, ethnic nationalists, religious extremists, versus empowering civil and political society.
- National reconciliation versus accountability for human rights abuses (the issue of impunity).

Constitutional design and political restructuring
- Externally sponsored versus domestically driven constitution making.
- Formal versus process-driven constitution making engaging political and civil society.
- Western liberal versus alternative models of democratic practice.
- Imported constitutional models versus institutions based on national culture and experience.

- Legal and human rights universalism versus alternative conceptions of rights and citizenship.
- Democratic institutions (e.g. design of electoral systems) versus democratic politics and consensus building.
- Power sharing among different groups versus common citizenship and equal rights.
- Power-sharing versus an effective developmental state.

Rebuilding state capacity to deliver development
- Administration by international transitional authorities versus priorities of national stakeholders.
- Humanitarian aid versus long-term development assistance.
- Strategic thinking about long-term goals versus operational priorities of restoring services and public administration.
- Policy coherence among donor agencies versus priorities of national stakeholders.
- Economic stabilisation and adjustment versus longer-term sustainable development.
- Reliance on NGOs to deliver services versus rebuilding state and local administrative capacity.

Security sector transformation
- Prioritisation of security versus building peace and consensus.
- A powerful international security presence versus rebuilding national military and security forces.
- Human security versus state and regime security.
- Prioritisation of police, justice, and law and order versus military security.
- Rebuilding existing military and security institutions versus starting from scratch.
- Rebuilding state security institutions versus recognizing local militias, vigilantes, and other non-state armed bodies.
- Treating disarmament, demobilisation, and reintegration as a technical process versus giving ex-combatants a political stake.
- Cuts in military and security spending versus investment in security and law and order.

The characterisation of these dilemmas in Box 0.1 implicitly reflects the standpoint of international democratic Machiavellis[17] (prototypical figures might be, say, Kofi Annan, Mohammed Sahnoun, Lakhdar Brahimi, or even Clare Short), who accept the broad case for international humanitarian intervention and for the reconstruction of post-conflict states on a more democratic, inclusive, and developmentally sound basis. Other actors, not least the tumultuous and variegated stakeholders in post-conflict countries themselves, might well pose the array of dilemmas differently, even though there would be some common elements. Nor should one forget that, tugging at one or other end of each set of policy choices, there tend to be powerful interests, whose concern is with how the principles can be moulded to support their own special case.

Hence each set of policy choices must be open to dialogue and revision. Sometimes clear tradeoffs have to be made between clashing principles or opposed political and social interests. At other times there may be more scope for conflict transformation: that is, for creative policy choices that seek ways around apparent dilemmas, as well as potential complementarities among seemingly opposed principles. Security policies built on the insight that even military security is best achieved globally through broad international consensus and nationally under legitimate and democratically accountable public authorities, rather than raison d'etat, maximum force and state secrecy, are a pertinent illustration.

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[17] On democratic Machiavellianism, see Bastian and Luckham (2003).

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Chapter 2

Post-Conflict Security Arrangements

Souren G. Seraydarian

Introduction

This article will discuss the necessary components in any post-conflict security arrangements authorized under the United Nations Charter. Whether the arrangements are implemented by a UN peacekeeping operation, a regional organization, a sub-regional organization, or by multiple partners, there are certain issues that need to be addressed for peace and security to be sustainable. These include not only the provision of physical security but also disarmament, demobilization and reintegration; establishment of the rule of law; and facilitation of transitional justice. The main argument can be summarized quite simply: peace does not equal the absence of war and democracy does not equal the holding of elections.

Physical Security

The establishment of physical security in the territory in question will necessarily come first in an international intervention. No matter if the operation is authorized under Chapter VI or Chapter VII of the UN Charter, it must put an end to violence and guarantee the safety both of its own staff and of the civilian population.

Instituting physical security is of course greatly aided if there is a ceasefire or peace agreement in existence that the peace operation is supporting. This agreement gives the operation a legitimacy among the warring parties that a UN Security Council mandate may not necessarily achieve since it may be seen as an edict imposed by outsiders. A

ceasefire or peace agreement also provides a measurement against which its signatories can be held accountable.

One useful ingredient in such an agreement is the establishment of a ceasefire control committee that includes representatives from the warring parties and the international community. In Liberia for example, the Comprehensive Peace Agreement of August 2003 set up a Joint Monitoring Committee with military representatives of the three factions and of the UN Mission in Liberia (UNMIL). The Committee, headed by the UNMIL Force Commander proved a very useful tool in keeping the dialogue, maintaining contact with the factions, obtaining necessary information, and most importantly, in collectively monitoring the ceasefire and documenting any violations.

Disarmament, Demobilization and Reintegration

While holding the former warring factions to a ceasefire will end violence, it will not necessarily bring a sustainable peace. Another component of the peace agreement - and a crucial one - is therefore the disarmament, demobilization and reintegration of former combatants, or DDR. DDR programmes are now increasingly included in mandates for peace operations. Disarmament entails the collection and disposal of weapons and ammunition while demobilization is the process by which armed forces downsize or disband completely. The purpose of a demobilization process is the break-down of the command structure of a fighting unit. For the individual fighters - if demobilization is successful - it is the beginning of a process in which they cease to be combatants and start thinking of themselves as civilians.

Now, the reintegration phase of a DDR programme constitutes a much larger challenge than the disarmament and demobilization phases. Reintegration in this context means the social and economic inclusion of the ex-combatants into communities. If these former fighters are not provided with a livelihood, they are more likely to fall prey to the rhetoric of spoilers, including warlords who may promise wealth in return for taking up arms again.

But how do you reintegrate former combatants if there is nothing to reintegrate into? And when communities are shattered and the unemployment rate hovers around 70-80%, which is common in countries emerging from conflict?

In a post-conflict society, creating employment opportunities becomes a crucial ingredient in the peace process. Not only ex-combatants, but also other idle youth must find viable alternatives to warring and marauding. Hence, it is crucial that reintegration projects are timely, well funded and tied to other development programming.

But as it is now, the reintegration phase has, in many cases, been disconnected from disarmament and demobilization by the international community. While disarmament and demobilization activities are generally included in peacekeeping mandates and therefore to a large extent funded through the budget of a peacekeeping operation, reintegration is dependent on voluntary contributions. As evidenced earlier in Sierra Leone and currently in Liberia, this has led to considerable delays and gaps in the DDR programme, which in turn have fuelled unrest among ex-combatants.

This disconnect must urgently be addressed as it may have a detrimental effect on future peace processes. The possibility of including funding for the full DDR programme in the budget of future peacekeeping missions should be seriously considered.

Rule of Law

As has been attempted to demonstrate in this article, a sustainable peace requires more than just physical security. A serious attempt to turn a society around includes economic development. Furthermore, economic development requires governance reform, the rooting out of corruption and the establishment of democratic institutions. And for this the rule of law is needed.

The disintegration of the rule of law in crisis countries has led to a situation where violence, arbitrary killings and human rights abuses go unpunished, which in turn has led to mob justice and general lawlessness. When people's lives and possessions can be randomly taken away, they become afraid to invest in the future. And without investments - whether it is planting for the next season, sending the children to school, buying equipment for a business, or joining a civil society group - there can be no development.

We need a police force which can prevent crime and bring lawbreakers to justice. We also need a judicial system with courts that can try accused criminals, and a corrections system which can house tried prisoners in a humane way. There must also be a functioning system for property rights and legal channels for dispute settlements. And it is vital that the whole structure of rule of law is overseen by a democratic leadership and functions according to international legal norms and with respect for human rights. Not until there is public trust in these institutions, will there be a foundation for peace and democracy.

As the international community has learned in places like Bosnia, Croatia, Serbia, and Haiti, the approach of conducting elections without sufficient institution-building, has not led to democracy, but rather to a situation where the old corrupt and autocratic leadership is being reinstalled.

Implementing an Integrated Rule of Law Strategy

UNMIL was the first UN Mission to start implementing an integrated rule of law strategy. As the Deputy Special Representative of the Secretary-General in Liberia, the author of this article worked with the mission's various components to address the rule of law in a coherent manner. This included a holistic approach to restructuring and training a new police service, instigating professionalism in the judiciary, training corrections officers and monitoring the human rights situation.

This integrated approach allowed us to address issues such as juvenile justice across the board - from the time of arrest, through police detention and prosecution, to court hearings and juvenile detention. It is strongly recommended that peace operations include a consolidated approach to the rule of law as this is an invaluable tool in peace-building.

Police (and Army) Restructuring

At this point it should be added that in regard to the restructuring of the police - as well as the army - it is crucial that old structures are completely dismantled and that new institutions are built with the help of fresh recruits who have been selected in an open and transparent process and according to agreed standards. In this process, diversity in terms of gender, ethnic and geographical representation, cannot be over-emphasized.

While members of the old army and police force should be welcome to apply to the newly structured organizations, they should have to undergo the same selection and vetting procedures as new recruits. To ease economic hardship as well as to prevent unrest, it is however important that some type of pension system is set up for those who have served many years but do not qualify for employment in the new institutions.

It is important to stress that, as in all other post-conflict security arrangements, one has to be pragmatic. In Liberia for example, to avoid a vacuum in local law enforcement, UNMIL had to make use of the existing police as an interim measure before a sufficient number of new recruits could be trained. Internal candidates were therefore, after being vetted for past human rights abuses, selected and trained as an interim police service.

As another example, due to the overall poor educational level in the country, one may have to recruit officers with less education than preferred. As part of the professional training, general education may therefore be necessary.

Transitional Justice

Establishing the rule of law after a period of violent conflict is a particularly daunting task if the recently resolved conflict included widespread human rights abuses, violations of humanitarian norms and generalized impunity. But when a country is attempting to overcome a gruesome past, that past must be thoroughly unearthed through an adequate investigation and truth recovery.

Many would argue against revisiting a recent history laden with pain. They would say that such an investigation could negatively affect the search for peace, upset interim political stability, lead to the recurrence of hostilities and cause undesirable psychological suffering. They claim that, for the youth in particular, it is favourable that the past is forgotten. However, these arguments are outweighed by other concerns: first, we cannot change the past, but we can together form a better future. Secondly, as George Orwell said "whoever controls the past controls the future." Because of this it is essential that as many voices as possible engage in the process of remembering. Thirdly, the setting up of truth recovery processes and their ability to contribute to reconciliation have been forcefully asserted. Finally, the importance of acknowledgement of wrongdoings and the uncovering of truth is also commonly expressed as healing for victims or survivors. Traumas of the past will not disappear by simply ignoring them.

In regard to human rights violations, the choices made by any transitional government should take into consideration the specifics of the social and political environment in which it operates. It should seek to immediately establish either truth and reconciliation commissions or trials, or even both. "Forgive and forget" is always a tempting option but sooner or later it will prove to be useless, even harmful. There are two main needs to be satisfied through remembering: the need to learn from disaster as not to repeat it and the need to ensure that the record of thousands of infinitely valuable human lives not simply be blotted from the record.

Conclusion

In conclusion, in order for peace to be sustainable and democracy to take root, several processes must take place. These include the establishment of physical security; the disarmament, demobilization and reintegration of former combatants; the establishment of the rule of law and a thorough investigation into abuses and atrocities committed during the conflict.

Emphasis should also be given to something that was being alluded to throughout this article: in order for a peace process to have a chance to be successful, the parties to the conflict must be genuinely involved. Post-conflict security arrangements may be perfectly planned and laid out but if the people they are supposed to assist are not committed, the arrangements will unravel. The greatest challenge for the international community is therefore to keep all stakeholders - former factions, civil society, transitional leaders - involved in every step of the way.

Part II

Observations on Recent Interventions

Chapter 3

Public Security Management in Post-Conflict Afghanistan:

Challenges to Building Local Ownership

Richard Ponzio

Abstract

After the cold war international actors introduced the reform and democratization of the security sector in conflict-affected societies as a central component of peacekeeping strategy. Without democratic control of the security forces, the supposed guarantors of a people's security will continue to be viewed as their greatest threat. When the International Security Assistance Force (ISAF) was established in Afghanistan, on 20 December 2001, following the intervention by a UN-backed coalition, the international community recognized that the country's reconstruction efforts were contingent on it staying peaceful. The ISAF, however, was designed as only a temporary measure to provide the confidence and time required for the creation of an indigenous security sector. The Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, of 5 December 2001, states that the responsibility for ensuring security throughout Afghanistan ultimately rests with the Afghans themselves.
Following a critical examination of the conditions facing international actors determined to facilitate local public security management in Afghanistan following more than two decades of protracted conflict, the paper proposes practical recommendations applicable to governments and organizations committed to improving security sector governance after war. Although progress has been achieved in an inhospitable environment - particularly during the past six to twelve months, an

initially slow start, coupled with rampant local "patronage politics" within the security sector and a superpower preoccupied with its more narrow strategic "war on terror" objectives, means considerable work remains. Indeed, a greater investment in Afghanistan's public security management is now required than if proper political attention and resources, both financial and technical, were allocated to reforming this vital sector from the start. Furthermore, the potentially volatile clash between old and new forms of authority over the security forces must be skillfully reconciled through a variety of initiatives, including i) steps to "accommodate" select militia commanders in democratic governing institutions, ii) measures to improve local coordination among various components of the public security management reform strategy, iii) the enforcement of strict quotas to ensure balanced ethnic representation in public security institutions, iv) the direct involvement of communities in strengthening public security management institutions, and v) the extension of the disarmament, demobilization, and reintegration program to illegal armed groups outside the Afghan Militia Forces.

1   Introduction

Combined with extreme levels of poverty, widespread political injustice and social exclusion fuelled insecurity and contributed to violent conflict over the past two decades in Afghanistan. The long-standing conflict created the conditions for terrorism to flourish in the country and neighboring region. With the continued threat from terrorist elements in a highly volatile security environment, the case was made soon after the intervention in Afghanistan by a UN-backed coalition, on 7 October 2001, for a strong international response to the root causes of terrorism, poverty and poor governance in Afghanistan. At the centre of the international community's peace-building strategy is the Bonn Agreement[1], which provides a roadmap for the first stage of a political process toward the creation of locally owned and managed democratic system of governance.

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[1]   Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, signed on 5 December 2001 in Bonn, Germany.

While some commentators argue that the promotion of democratic institutions in Afghanistan is an unrealistic and misguided part of the country's reconstruction program[2], the overarching approach adopted by the international community took the opposite view: that the people of Afghanistan will never see enduring peace and public security without basic open and accountable institutions of governance. In particular, the police, military, judiciary and other security institutions (both statutory and non-statutory) would need to be brought under firm democratic, civilian control. Getting security sector reform (SSR) right is necessary to establish the foundations for progress in most other areas of reconstruction. It is an area where major international donors and the United Nations system, working through a nationally led process, were positioned to make a real difference.

Through a careful examination of international actors supporting the rebuilding of Afghanistan's security sector, this paper highlights the major components of the strategy adopted, the division of responsibilities among international and local actors, and the progress achieved to date. Specifically, I evaluate the integration of all armed groups into official security forces by the Joint Coordination Body, established in January 2002 to ensure close co-operation between the Interim Administration, the ISAF, and the United Nations. This has involved a large UN-led demobilization exercise (managed by the UN Development Programme with primary financial support from Japan), as well as United States led efforts (with support from France and the United Kingdom) to establish a new Afghan National Army. The study further assesses the German-led multilateral effort to create, train and sustain an Afghan national police force. Finally, following on the Bonn Agreement's call for the establishment of a Judicial Commission and an independent Human Rights Commission, I analyze efforts led by Italy, along with Canada, the UK, and the UN, to capacitate permanent justice, legal education, and human rights institutions.

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[2] See for example Marina Ottaway and Anatol Lieven, "Rebuilding Afghanistan: Fantasy versus Reality", Policy Brief, Carnegie Endowment for International Peace, Washington DC, 12 January 2002.

From this analysis, I identify the most problematic public security issues facing Afghanistan today and the steps required, by both local and international actors, to increase local ownership within public security institutions. The paper further outlines several lessons derived from efforts to build sustainable local ownership in the management of Afghanistan's security institutions. In conclusion, the paper highlights the transition, since the early 1990s, from traditional peacekeeping to "democratic peace-building", with a growing emphasis on building professional, civilian-led and ethnically balanced security sectors in war-shattered societies.

2 From Intervention to Reconstruction in Afghanistan

Following the Soviet withdrawal from Afghanistan, from 1988-89, and the United States' subsequent disengagement, Afghanistan inherited an illegitimate and weak state, a crippled economy, and multiple armed groups spread across the country.[3] With the collapse of the Najibullah-led communist regime in 1992, rival *mujahidin* commanders vied for control of Kabul, resulting in a further disintegration of the state.

The power vacuum and criminality that ensued gave rise to the Taliban movement in 1994, which sought to establish a pure Islamic regime with military aid largely from Pakistan and Saudi Arabia. Although the Taliban succeeded, by mid-1998, in controlling most of Afghanistan, the National Islamic United Front for the Salvation of Afghanistan, commonly known as the Northern Alliance and consisting of former *mujahidin* factions, held out until the US-led coalition joined forces with them to oust the Taliban from power in November 2001.

Once defined largely as a "humanitarian emergency", Afghanistan was placed on the global security agenda in the late 1990s with the increase in acts of terror traced to the Taliban supported al-Qaeda organization. Following the terrorists attacks, of 11 September 2001, on New York and Washington, the United States first warned and then acted against the Taliban for refusing to hand over wanted leaders of al-Qaeda. With

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3   Barnett Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System,* Yale University Press, New Haven, 2002, p. x.

the benefit of hindsight, those setting the international security agenda were, until recently, slow in drawing the connection between the terrorist threats to their own security and the threats to human security faced daily by the people of Afghanistan.[4]

Afghanistan at a Glance

Population:	28.5 million (July 2004 est.)
Ethnic Groups:	Pashtun 42%; Tajik 27%; Uzbek 9%; Hazara 9%; Aimak 4%; Turkmen 3%; Baluch 2%; other 4%
Religions:	Sunni Muslim 80%; Shiite Muslim 19%; other 1%
GDP:	$20 billion (purchasing power parity)
External Debt:	$8 billion bilateral, plus $500 million multilateral
Major Exports:	fruits, nuts, carpets, semi-precious gems, hides, opium
Major Imports:	food, petroleum, capital goods, textiles

Source: CIA World Factbook 2004

The Rationale behind Rebuilding Afghanistan's Security Sector

Devastated by more than two decades of civil and international war, compounded by recent prolonged droughts and omnipresent landmines and *Kalashnikovs*, Afghanistan today faces unprecedented challenges in providing peace and hope to its more than 28 million people. While the term "conflict" in Afghanistan implies the disruption of an already existing social order[5], a new social order started to emerge from the

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[4] For one analyst's indictment of the West in this regard, see Barnett Rubin, "Afghanistan and Threats to Human Security", paper delivered at the International Symposium on Human Security in Tokyo, 15 December 2001.

[5] For a review of different dimensions of the Afghanistan conflict, see: "Building Peace and Civil Society in Afghanistan: Challenges and Opportunities", the report of a symposium co-sponsored by the Asia Society and the Carnegie Council on Ethics and International Affairs, New York, 18 May 2001.

ongoing struggle for power, one seeking to move beyond the violence and neglect of Afghan livelihoods associated with previous rulers. However, efforts to rebuild the country and address the most pressing human security needs would continue to face serious risks, as long as the means for the legitimate use of force were not subject to democratic, civilian control.

From the start, the international and local leaders of Afghanistan's reconstruction recognized that building a functioning state required a basic level of security. By being responsive to the need for security, open and accountable governance could take shape over time, laying sustainable foundations for maintaining order and managing development. Conversely, reconstruction and longer-term human development would be held back in Afghanistan if the military, police and other security-related institutions held sway over future democratic institutions or remained unaccountable, fragmented and anarchic (see box 1).[6] Indeed, this situation has helped to sustain Afghanistan's deadly conflict over the years.

Box 1   Who's who in the security sector

A country's security community can include a range of actors:

- *Organizations authorized to use force*: armed forces, police, paramilitary forces, intelligence services (military and civilian), secret services, coast guards, border guards, customs authorities, reserve and local security units (civil defense forces, national guards, presidential guards, militias).
- *Civil management and oversight bodies*: president and prime minister, national security advisory bodies, legislature and legislative select committees, ministries of defense, internal affairs, foreign affairs, customary and traditional authorities, financial management bodies (finance ministries, budget offices, financial audit and planning units), civil society organizations (civilian review boards, public complaints commissions).

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[6]   UNDP, *Human Development Report 2002*, Oxford University Press, Oxford, 2002, p. 86.

- *Justice and law enforcement institutions*: judiciary, justice ministries, prisons, criminal investigation and prosecution services, human rights commissions and ombudsmen, correctional services, customary and traditional justice systems.
- *Non-statutory security forces*: liberation armies, guerrilla armies, private bodyguard units, private security companies, political party militias.
- *Non-statutory civil society groups*: professional groups, the media, research organizations, advocacy organizations, religious organizations, non-governmental organizations, community groups.

Source: Nicole Ball and Kayode Fayemi (eds.), *Security Sector Governance in Africa: A Handbook*, Centre for Democracy and Development, Lagos, 2004.

In both democratic and non-democratic countries, public security management institutions are frequently captured by extremist politicians or parties. Or, as witnessed across Afghanistan, security institutions may actually rest in private hands - with warlords, paramilitary groups or private security companies - and thereby contribute to crime and human rights violations. For Afghans, these types of situations risked severely undermining the Bonn process, because the means for the legitimate use of force were not subject to democratic, civilian control. Without that control, the supposed guarantors of the Afghan people's security would continue to be viewed as their greatest threat.

Public Security Management and the Bonn Agreement

The Bonn Agreement states that the responsibility for ensuring security and law and order throughout Afghanistan ultimately rests with the Afghans themselves. More specifically, the Bonn Agreement decrees that "Upon the official transfer of power, all *mujahidin*, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces."[7]

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[7] Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, signed on 5 December 2001 in Bonn, Germany, p. 4.

Nevertheless, the participants in the UN Talks on Afghanistan recognized that some time would be required for new Afghan security forces to be "fully constituted and functional" and that therefore other security provisions would meanwhile need to be put in place. In particular, they requested the United Nations Security Council to consider deploying a UN mandated force to "assist in the maintenance of security for Kabul and its surrounding areas" and "as appropriate, be progressively expanded to other urban centers and other areas."[8]

When the International Security Assistance Force was established, following the adoption of Security Council Resolution 1386 (2001) of 20 December 2001, the international community recognized that all Afghanistan reconstruction efforts are contingent on the country staying peaceful. However, placed under the leadership of NATO in August 2003, the ISAF has always been designed as only a temporary measure to provide the confidence and time required for the creation of an indigenous security sector. Until recently, the Western countries funding and supplying most of the troops for the ISAF were reluctant to extend its reach far beyond Kabul, given the increase in the size of the force this would entail coupled with the United States' particular reluctance to expand ISAF before its "war on terror" objectives were met.

In addition to the creation of a temporary international security force, the signers of the Bonn Agreement requested foreign technical and financial assistance for the establishment and training of new Afghan security and armed forces, as detailed in the next section of this paper. Moreover, the Bonn Agreement led to the creation of both a Judicial Commission to "rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions" and an independent Human Rights Commission, whose responsibilities include "human rights monitoring, investigation of violations of human rights, and the development of domestic human rights institutions."[9] Again, given the extremely low levels of capacity and prospects to mobilize resources internally for these institutions after

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[8] Ibid, Annex I.
[9] Ibid, pp. 2-3.

twenty-three years of civil war and foreign invasion, extensive support was sought from the UN and other international partners by the Afghan representatives in Bonn.

The gathering in Bonn, from 27 November to 5 December 2001, represented a historic opportunity for the people of Afghanistan to emerge from a perpetual cycle of conflict. Besides the initially favorable security environment created by the UN-backed intervention and the desire for peace among the Afghan signatories to the Bonn Agreement, the quick consensus reached in Bonn can be attributed to foundations laid over the previous decade through the "Rome process" negotiations, involving the former king, Zahir Shah.[10] At its core, the Rome approach proposed the traditional means of convening a *loya jirga* ("Grand Assembly of Elders" in Pashto) to resolve outstanding conflicts in Afghanistan. Although an imperfect document, an important characteristic of the Bonn Agreement is that it set into motion an inclusive political process that would be primarily driven locally[11], with mechanisms established to accommodate diverse interest groups and power-brokers across the country. But for this process to succeed, the citizens of Afghanistan would need to be convinced that there is a state led by a central government, and therefore, the regional warlords would need to be weakened.[12] As the remainder of this paper illustrates, Afghanistan's complex political transition has, arguably, met its most difficult challenges in relation to efforts to reform and build democratic, civilian control of public security management institutions loyal to the new central government.

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[10] Interview with Mr. Noorullah Delawari, Governor and President of Da Afghanistan Bank (the Central Bank of Afghanistan) on 20 March 2005.

[11] The UN Special Representative of the Secretary-General Lakhdar Brahimi was eager to reinforce local leadership of the process when he described the design of the UN Assistance Mission in Afghanistan structure as "an integrated mission that will operate with a 'light footprint', keeping the international UN presence to the minimum required, while our Afghan colleagues are given as much of a role as possible." Special Representative of the Secretary-General for Afghanistan briefing to the Security Council (6 February 2002).

[12] Interview with Mr. Ercan Murat, former UN Development Programme Country Director in Afghanistan (2002-2004), on 19 March 2005.

3   Afghanistan's Public Security Management Strategy and Division of Responsibilities among Key Actors

> *"Security Sector Reform, in short, is the basic pre-requisite to recreating the nation that today's parents hope to leave to future generations."*
>
> Afghan President Hamid Karzai, 30 July 2003

From the start of the intervention, the UN Secretary-General viewed the rapid establishment of a reformed security sector in Afghanistan as an urgent priority - one that was "constituted in accordance with and guided by international humanitarian and human rights law."[13] Shortly after the International Security Assistance Force declared that it had reached full operational capacity, on 18 February 2002, the Secretary-General supported the calls by Afghan Interim Authority Chairman, Hamid Karzai, to extend the multinational forces beyond Kabul to signal the international community's ongoing commitment to peace and security in Afghanistan. Moreover, with regards to building local ownership in the building of new public security management institutions, the UN system was well positioned to further mediate meetings among all Afghan parties on sensitive outstanding questions - the role of the security forces, their command structure, and size, as well as the demobilization of the various standing militia forces - as a continuation of the Bonn Agreement that brought the interim and then transitional government into being.[14]

To oversee the process of integrating all armed groups into official security forces, a Joint Coordination Body was established in January 2002 to ensure close co-operation between the Afghan Interim Authority, the ISAF and the United Nations. In the area of creating, training, and sustaining an Afghan national police force, two multi-donor meetings were convened by Germany, in January and February

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[13]   Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2002) A/56/875-S/2002/278, pp. 9-10.

[14]   Anja Manuel and P.W. Singer, "A New Model Afghan Army", *Foreign Affairs,* Vol. 81, No. 4, July/August 2002, p. 50.

2002, in Berlin. These meetings were followed by a major donors meeting, held in April 2002, in Geneva that set the Afghan security sector reform agenda through essentially a donor driven process.[15] What had initially started as a balanced program sensitive to the views and need for leadership from local Afghan stakeholders, in the true spirit of the Bonn Agreement, was suddenly sidetracked due to donor expediency. For one, donor motivations were linked to the desire to show voters (and taxpayers) back home that a major effort was underway to prevent Afghanistan from collapse again and the chance to harbor terrorists that could threaten the West.

The donor-led agenda forged in Geneva allocated "lead nation" responsibility within one of five critical areas or pillars to each of the following five donor countries: the United States (military reform); Germany (police reform); Italy (judicial reform); the United Kingdom (counter-narcotics), and Japan (the disarmament, demobilization, and reintegration of ex-combatants).[16] On the one hand, such a strategy has helped to ensure that the major public security management institutions are receiving sizeable financial and technical resources from at least one major donor. On the other, such a piecemeal approach has failed to foster effective coordination or even basic coherence among the stages of development of the closely related security sector institutions. A lack of political consensus is evident today among the major international and local actors in Kabul, and the sequencing of the reform programs of the five pillars are not in line with one another.[17] Consequently, even if, for example, the judiciary begins to demonstrate improvements in terms of professionalism and reach, it could be severely undermined by a police force that lacks the ability to apprehend criminal suspects and bring them to a court of law.

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[15] Mark Sedra, "Introduction" in Mark Sedra (ed.), *brief 28 Confronting Afghanistan's Security Dilemma: Reforming the Security Sector*, Bonn International Center for Conversion, Bonn, 2003, p. 11.

[16] Ibid, p. 11.

[17] Personal communication with an Afghanistan's New Beginnings DDR Regional Office Manager, 29 March 2005. A further criticism of the "lead nation" approach is that "… it narrows the scope of reform and is too dependent on the competence of the lead donor." Michael Bhatia, Kevin Lanigan and Philip Wilkinson, "Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan", AREU Briefing Paper, Afghanistan Research and Evaluation Unit, Kabul, June 2004, p. 3.

Moreover, the Afghan security sector reform agenda is all too often de-linked from the country's broader peace-building and reconstruction plan. For instance, the United States - the lead donor nation in support of a new Afghan National Army - has repeatedly compromised efforts to build a cohesive national force that submits to democratic, civilian control by central government leaders based in Kabul. According to Kristian Berg Harpviken, Arne Strand, and Astri Suhrke:

> *By collaborating with local commanders to hunt down suspected enemy units, US forces are nurturing the warlord phenomenon and related problems. The practice of arming, training and paying local militia units was formally reconfirmed as policy in early 2004. In pursuit of the war, the US has subordinated matters of democratic development and human rights to the needs of a close working relationship with Afghan military commanders at both the national and local levels.[18]*

Without a systemic erosion of the power and political influence of regional and local militia commanders, the public security institutions reform agenda decided upon, in April 2002, in Geneva and later elaborated upon in several detailed policy papers is unlikely to materialize over the long-run. This is arguably the number one political factor obstructing a peaceful future in Afghanistan. Only through a shared commitment to invest in a democratically accountable and strong central government, with adequate and reliable international resources for its security sector, will significant progress be achieved toward the fundamental objectives of the Bonn Agreement, "to end the tragic conflict in Afghanistan and to promote national reconciliation, lasting peace, stability and respect for human rights in the country."[19]

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[18] Kristian Berg Harpviken, Arne Strand, and Astri Suhrke, "Conflictual Peacebuilding: Afghanistan Two Years After Bonn", PRIO and CMI Report, the International Peace Research Institute and Chr. Michelsen Institute, Oslo and Bergen, 2004, p. vii.

[19] Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions, signed on 5 December 2001 in Bonn, Germany, p. 1.

In the following sub-sections, the mandates and activities of local and international actors are discussed in relation to three key areas of security sector reform: i) the building of the new Afghan National Army; ii) the renewal of the police force; and iii) the reassertion of the judiciary and establishment of new human rights bodies. For each institution or set of institutions, a brief progress assessment is shared that highlights the level and nature of the co-operation between the local and international actors, as well as the degree to which their joint efforts contribute to public security management.

Building the New Afghan National Army

Soon after the creation of the Afghan Interim Authority, hotly contested debates commenced among Afghans and their international partners about the role, size, command structure, and operating costs of the new national army. With pressure from ISAF, the Interim Authority initially budgeted for an army of 60,000, although influential Afghans - including the interim Minister of Defense, Marshal Mohammad Qaseem Fahim - projected controversially that the army would total around 200,000 within 18 months.[20] Given the financially poor and under-capacitated state of the central government in Kabul, it was clear from the start that extensive foreign assistance would be required to pay meaningful salaries to soldiers and police, providing an incentive for them to shift their loyalties from the warlords.[21]

Following proposals by ISAF and the Interim Authority on the size and structure of a future Afghan National Army (ANA), the United States started to assume a leading role in this crucial area of security sector reform. France offered assistance in the training of officers within the new army structure, the United Kingdom and Germany aided the training of a separate presidential guard to be based in the capital, and

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[20] Glenn Kessler, "Bush's Afghan policy is disputed", *International Herald Tribune,* 22 May 2002. Later in 2002, the Ministry of Defence lowered its projections to between 140 and 150,000, still substantially higher than the current proposals by donor countries. *Jane's Defence Weekly*, 13 November 2002.

[21] Barnett Rubin, "Afghanistan and Threats to Human Security", paper delivered at the International Symposium on Human Security in Tokyo, 15 December 2001, p. 10.

the UK later assisted the training of non-commissioned officers. The first major task toward building a multi-ethnic and non-factional ANA, however, was how to deal with the "transitional" army, later dubbed the "Afghan Militia Forces" (AMF), composed of various opposition factions to the Taliban.[22]

Claimed initially to consist of between 800,000 and 1,000,000 men under arms,[23] the actual number of "full-time" soldiers was estimated to be closer to 200,000. In appointing various regional and local warlords - implicated in serious human rights abuses - as generals and commanders in the AMF, the new central government legitimized the AMF as a temporary, yet necessary security measure.[24] With the Tajik faction of *Jamiat-i Islami, Shura-I Nezar*, under Minister Fahim, controlling the senior ranks in the Ministry of Defense, "patronage politics" dominated recruitment decisions for the AMF and the transfer of central government resources. Together with US pay-outs to local armed groups mobilized against the Taliban, the sized of the Afghan Militia Forces shot up dramatically for a short period in 2002 - thereby compounding the already difficult environment in which to build a unified, professional, affordable, and manageably sized national army. With the Ministry of Defense unable to pay salaries and a decline in US largess with the scaling-back of its campaign, only some 75,000 active militiamen were known to exist in units under the Ministry by mid-2002, with an additional 100,000 estimated to belong to private militia groups.[25] For the building of the new national army to succeed, a

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[22] For a discussion on the AMF, see: the International Crisis Group, "Disarmament and Reintegration in Afghanistan", ICG Asia Report No. 65, International Crisis Group, Kabul and Brussels, 30 September 2003.

[23] Antonio Giustozzi, "The politics of military reform in Afghanistan", in *State Reconstuction and International Engagement* (provisional title), Palgrave Macmillan, London, forthcoming, p. 2.

[24] For detailed discussions on the warlords system underpinning the AMF, see: Antonio Giustozzi, "Respectable Warlords? The politics of state-building in post-Taleban Afghanistan", Crisis States Programme Working Paper 33, London School of Economics Development Research Centre, London, September 2003, and Mark Sedra, "Challenging the Warlord Culture: Security Sector Reform in Post-Taliban Afghanistan", BICC Paper 25, Bonn International Center, Bonn, 2002.

[25] UN Assistance Mission to Afghanistan, quoted by the Afghanistan Research and Evaluation Unit in *The A to Z Guide to Afghanistan Assistance,* accessed on 20 March 2003 *http://www.areu.org.af/searchResultguide.asp*

comprehensive disarmament, demobilization, and reintegration (DDR) program would first be needed, along with a radical restructuring of the Ministry of Defense.

At the Tokyo donor's meeting, in January 2002, Japan pledged to support DDR, which officially commenced in July 2003 as the "Afghanistan's New Beginnings Programme". For this government initiated program, managed by the UN Development Programme (UNDP) and UN Assistance Mission to Afghanistan (UNAMA), Japan has provided over US $90 million to date, making it by far the largest donor. This comprehensive DDR program aims to "disarm tens of thousands of officer/soldiers and provide them with education, training, and/or job opportunities suited to their needs, interests, and skills."[26] The program's design encourages local participation by having UNDP and UNAMA officials work closely with the government's Disarmament Commission, Demobilization and Reintegration Secretariat, the Ministry of Defense and other relevant line ministries (e.g., Agriculture and Education), and local non-governmental organizations in the development of activities to collect weapons, decommission AMF members, and provide former soldiers alternative livelihoods in the civilian sector. Through regular program staff interaction with Ministry of Defense Officials, the government is positioned in the "driver's seat" on key decision-making, and a wide range of local views are canvassed across government in the formulation of specific strategies related to the program.[27]

DDR is normally one of the most complicated and risky activities in any peace process. Among the major challenges faced by the Afghanistan program include: i) determining the actual number of AMF militiamen to be demobilized; ii) dismantling the relationship between factional leaders and their troops by specifically targeting senior and mid-level commanders; iii) coordination with the Afghan National Police and Afghan National Army in the provision of security following the

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[26] Afghanistan's New Beginnings Programme, Programme Summary, accessed on 20 March 2003 at www.undpanbp.org/Overview/programme%20summary.htm on 28/03/2005

[27] Personal communication with an Afghanistan's New Beginnings DDR Regional Office Manager, 30 March 2005.

demobilization of the AMF in a region; iv) an initial reluctance by the US and Europeans to leverage the militia groups or provide international military observers;[28] and v) establishing confidence in the economy and alternative livelihood opportunities among those entering the program - in comparison to the profits to be made by illicit activities associated with militia life.

For many regional commanders in both the AMF and private militia groups, a key issue that would have implications for the DDR program and any future national army was centered around the domination of the Ministry of Defense by Marshal Fahim and his followers (along with his faction's control of the National Security Directorate, the Ministry of Foreign Affairs, and initially the Ministry of the Interior). Recognizing this situation as detrimental to Afghan stability and democratic development, the major foreign powers succeeded, by August 2002, in securing Minister Fahim's agreement to replace 30 of the top 38 positions in the Ministry of Defense with new appointees to be named by the then Afghan Transitional Administration Chairman Hamid Karzai. It subsequently took until February 2003 to name one-half of this group. Given the slow pace in redressing the Ministry of Defense's ethnic imbalances, the US and UN intervened through the introduction of a four phase reform program, starting in September 2003, intended to alter significantly the leadership composition at both senior and junior levels of the ministry.

After DDR and the Ministry of Defense restructuring, other significant challenges to the creation of the new Afghan National Army included the recruitment, training, and payment of soldiers. For this ambitious undertaking, the US, with support from France, established the Kabul Military Training Centre and began the first ten-week training cycle, on 14 May 2002, for 1,500 recruits (two cohort battalions). With a national army of approximately 22,000 soldiers and officers today, including 16,000 men in the following five corps: Kabul, Gardez, Kandahar,

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[28] Barnett Rubin, "Identifying Options and Entry Points for Disarmament, Demobilization, and Reintegration in Afghanistan" in Mark Sedra (ed.), *brief 28 Confronting Afghanistan's Security Dilemma: Reforming the Security Sector*, Bonn International Center for Conversion, Bonn, 2003, p. 44.

Herat, and Mazar-e-Sharif, the training schedule has recently been accelerated, enabling 3,000 soldiers to be trained simultaneously.[29] This could enable the government to reach its slightly revised target of 70,000 troops for the ANA by December 2006.[30] The US covered the first year of the ANA's budget (2002), estimated at US $235 million, and it spent an additional US $600 million in2003, in large part on defense related infrastructure.[31] Although the army's logistical capabilities are still limited, it has recently procured advanced communications systems. By 2011, the ANA expects to be fully operational, although the US is hoping to reach this milestone by 2009.

Although the Ministry of Defense had initially obstructed internal reforms, by early 2003 it started to implement the staffing changes noted above. Moreover, in October 2004, the Defense Ministry released its first *National Military Strategy*, progressively outlining the broad objectives, role, composition, and requisite reforms of the new Afghan National Army. The strategy responds positively to calls to improve standards for establishing a more de-politicized and multi-ethnic army, as well as proclaiming the need for the new army to conform to "modern standards and principles practiced in coalition and democratic countries."[32] On the other hand, upon the creation of the 70,000 strong ANA, a subsequent stage of development is envisaged by Afghan Defense Ministry officials, which entails an expansion of the army to 150,000 troops and the addition of a reserve component approximately three times this size.[33] As in 2002, such an ambitious target is likely to come under severe criticism by major donor countries, starting with the

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[29] Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2005) A/59/744-S/2005/183, p. 7.

[30] It is important to note that the target of 70,000 is only the "maximum strength" estimate and that Coalition officers training the ANA recruits are only preparing, at present, for a force of 40,000. Antonio Giustozzi and Mark Sedra, *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward – Afghan National Army Technical Annex,* Islamic Transitional State of Afghanistan (ITSA), Kabul, 2004, p. 8.

[31] Giustozzi, "The politics of military reform in Afghanistan", p. 7, and Giustozzi and Sedra, *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward – Afghan National Army Technical Annex,* p. 11.

[32] Government of Afghanistan Ministry of Defence, *National Military Strategy*, Government of Afghanistan Ministry of Defence, Kabul, 21 October 2004, pp. 10 and 13.

[33] Joshua Kucera, "Afghanistan looks to army expansion", *Jane's Defence Weekly*, 13 October 2004.

US. Even at a 70,000 troop threshold, the ANA budget will be highly dependent on foreign support for several years to come.

Progress Assessment

As argued earlier, the reduction of the power of regional and local warlords, represented after the fall of the Taliban in the form of the Afghan Militia Forces, is the single largest impediment to the creation of the new Afghan National Army and a general improvement in public security levels. Although the Afghanistan's New Beginnings Programme had an initially slow start for many of the reasons outlined above, the DDR program has exceeded the expectations of many analysts by disarming, thus far, 43,710 troops of the AMF - almost half of them over the past six months.[34] From this number, 38,984 have been demobilized, and 37,806 have started their reintegration programs (with three percent joining the Afghan National Army and National Police-ANP). Equally important has been the elimination of 78,794 AMF budgeted positions from the government payroll, resulting in some US $70 million in public savings.[35] Less than 10,000 remaining Afghan militia forces are expected to enter the program by 30 June 2005. At the same time, one worrying trend that undermines the DDR program's efforts to dismantle existing patronage networks is the growing number of questionable AMF commanders who, with help from high ranking government officials, have been appointed as police chiefs and governors of key provinces.

Besides reaching its intended goals, the DDR program has assumed additional disarmament components that were not part of the original mandate. For example, the program is currently conducting a country-wide survey of ammunition stores, depots and caches on behalf of the Afghanistan government. Once completed, the government is expected to enact a plan to deal with the surplus ammunition. Moreover, the DDR program has successfully cantoned 8,603 serviceable heavy weapons in

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[34] Afghanistan's New Beginnings Programme, Latest Update on ANBP/DDR (14 March 2005), accessed at www.undpanbp.org on 28 March 2005.

[35] Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2005) A/59/744-S/2005/183, p. 5.

six of eight targeted regions (twice the total number of heavy weapons that were originally surveyed).[36] Given the program's success to date, a second phase that would deal with the numerous "illegal armed groups" outside of the AMF is under deliberation between concerned local and international actors. In addition to building capacity within the ANA and ANP for better public management of surplus weapons, the program has demonstrated that high levels of local-international co-operation can be achieved, even on sensitive issues of disarmament and militia force reductions - previously a key source of political patronage.

Similarly, after an initially slow start and some resistance from within the Ministry of Defense, the fourth and final phase of a reform program to increase ethnic representation at all levels of the ministry is currently underway. Since September 2003, new professionals in 22 top positions, 65 colonels at the director level, 330 senior officers, and 38 general officers have all been appointed.[37] As part of the fourth phase, 965 new junior officers will soon be appointed. Another important development is the promotion of Deputy Defense Minister General Abdul Rahim Wardak, following the Presidential elections in October 2004, to the post of Defense Minister. Contrasting with the previous Defense Minister Marshal Fahim, who was viewed as an obstructionist and manipulative power-broker by many in the international community, Defense Minister Wardak had established a constructive working relationship with each of the major security donors.

By the end of 2002, given relatively modest investments in the Afghan National Army, only mere 4,000 Afghan troops were trained - far less than the tens of thousands needed to provide a minimum level of security. This number reached about 10,000 by the second quarter of 2004,[38] making additional security assistance by ISAF and the Coalition crucial still at the time of the country-wide Presidential elections on 9 October 2004. But even with the acceleration of the US-led training

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[36] Ibid, p. 5.
[37] Ibid, p. 5.
[38] Michael Bhatia, Kevin Lanigan and Philip Wilkinson, "Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan", AREU Briefing Paper, Afghanistan Research and Evaluation Unit, Kabul, June 2004, p. 9.

process resulting in some 22,000 ANA soldiers under arms and the encouraging prospects for reaching at least the Coalition's 40,000 troop target by late 2006, a number of recurring challenges confront efforts to building a new national army, including:

i)   the insufficient amount of time (eight weeks now, down from ten) to properly train or even discipline a new recruit;
ii)   the initially very high drop-out rate of over 40% during the training course and the sharp rise in the ANA's desertion rate to 10% a month in the summer of 2003, due to an increase in combat duty[39];
iii) a large number of recruits are physically unprepared, 60% are illiterate, and only a third can read Western-style numbers[40];
iv)   continued ethnic imbalance in the recruitment process, especially among Pashtuns[41];
v)   continued use of patronage networks in ANA recruitment;
vi)   tension between the former jihadi commanders and the former officers of the communist army, who are better educated and better trained;
vii) long-term funding sustainability issues is a growing US concern; and
viii) generally low morale among soldiers who live far away from their families and are paid relatively low wages, especially compared to the two to three times higher salaries received by militia members hired to fight alongside Coalition forces.

On the last point, perhaps nothing has done more harm to the building of sustainable local ownership in a unified, multi-ethnic army than the divisions inadvertently created in Afghan society by Coalition forces

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[39] By late 2003, the drop-out rate during the training course was reduced to just 6%, and similarly, the monthly desertion rate made a gradual downward slide to 6% by October 2003. Giustozzi and Sedra, *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward – Afghan National Army Technical Annex*, p. 7. By late 2004, monthly desertion rate had fallen to 1.2%, which corresponds to around 15% annually. Giustozzi, "The politics of military reform in Afghanistan", p. 13.

[40] Giustozzi, "The politics of military reform in Afghanistan", p. 6.

[41] This problem decreased over time when the US established several National Army Volunteer Centers outside of Kabul.

through their questionable support for the private militias of regional warlords. According to Michael Bhatia, Kevin Lanigan and Philip Wilkinson:

> *The US-led Coalition forces in Afghanistan have focused their attention and resources on the defeat of the remnants on the defeat of the Taliban and al-Qaeda, and to do this often have relied on, and thus supported, destabilising and abusive factional militias and their commanders. Addressing the broader security concerns of Afghans was left to a flawed and under-resourced Security Sector Reform (SSR) strategy and to the International Security Assistance Force (ISAF).* [42]

Besides the general under-funding and poor integration of public security management reform initiatives among the five "lead nation" donors, continued US reliance on informal militia commanders - many of whom deserve to be tried in a court of law for past crimes rather than "legitimized" through their association with the superpower - has undoubtedly worked at cross-purposes with efforts to build a professional and respected national army whose loyalty rests with the elected national leadership in Kabul.

Renewing the Police Force

In light of its previous co-operation with Afghanistan in the 1960s and 1970s, the government of Germany was requested to lead a combined bilateral and multilateral effort to create, train and sustain an Afghanistan National Police (ANP) force. A number of significant contributions were promised in this area by Belgium, China, India, Iran, Norway, Pakistan, the Russian Federation, the United Kingdom, and the United States. Through a newly established multi-donor trust fund, UNDP was also requested by the government to provide significant

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[42] Bhatia, Lanigan and Wilkinson, "Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan", p. 2.

financial oversight support for the Afghan law enforcement authorities. Furthermore, upon its arrival in early January 2002, ISAF contributed to the repair of several police stations.

Following a fact-finding mission in January 2002, the German government immediately pledged 10 million euros to support the Afghan police in the areas of training, the renovation of the police academy, and the reconstruction of police stations in Kabul, in addition to the donation of 50 police vehicles.[43] Along with a US-led six week intensive Constabulary Training Program, the German and US programs, totaling US $160 million, seek to train 50,000 regular police and 12,000 border guards by the end of 2006.[44]

Besides a lack of training and basic equipment, another fundamental issue for the revived national police force has been the payment of recurrent budgetary expenses. In response to this need, the Law and Order Trust Fund for Afghanistan (LOFTA) was created in 2002, under the management responsibility of UNDP. With contributions from multiple donors, the LOFTA channeled over US $125 million, between November 2002 and March 2005, in support of the Afghan National Police.[45] Besides the major area of police salary remuneration, the LOFTA has aided the ANP in the procurement of non-lethal equipment, the rehabilitation of police facilities, staff capacity-building, and institutional development. Among the priority activities for the next phase of LOFTA include: i) the computerization of the Ministry of Interior's payroll system; ii) the issuance of identification cards to all police personnel; and iii) and the procurement of vital equipment, as well as rehabilitation of eleven provincial police headquarters.[46]

By 2003, the Ministry of the Interior claimed approximately 73,000 police and 12,000 border guards under its jurisdiction in Afghanistan.

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[43] Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2002) A/56/875-S/2002/278, p. 11.

[44] Mark Sedra, "Security Sector Reform in Afghanistan: The Slide Toward Expediency", unpublished paper [check], p. 5.

[45] UNDP Afghanistan, "State-Building & Government Support Programme", UNDP Afghanistan, Kabul, 31 October 2004, p. 7.

[46] Ibid, p. 7.

However, such figures should be questioned as provincial level officials tend to inflate their police ranks to secure more revenue from the central government.[47] Recognizing that a far majority of the police consist of former *mujahidin* with limited training or even a basic level of education (who were assigned based on patronage rather than merit), the new reform-minded Minister of the Interior, the Pashtun Ali Ahmad Jalali, appointed on 28 January 2003, set out to enact a series of sweeping changes. Along with a pledge to create a professional police force of 50,000 and a border police force of 12,000 over a four- to five-year period (with a price tag of US $380 million), Minister Jalali's reform program introduced several short-term initiatives to improve public security management, including the creation of a mobile 3-4,000 strong police unit to stabilize volatile regions at short notice and a new Highway Patrol to safeguard Afghanistan's major roads and highways.[48] He has also set out to increase ethnic representation and accountability in the Interior Ministry and the powerful intelligence service known as the National Security Directorate, which is estimated to employ a staff of roughly 15,000 to 20,000.

Progress Assessment

After more than two decades of internecine conflict, a culture of impunity challenges attempts by the Afghan state - with help from international partners - to re-assert its monopoly over the use of violence through professional public sector management institutions. More than three years since the intervention, journalists regularly report that Afghans perceive violent crime levels to be far higher than under Taliban rule, and the country remains awash in high-powered weapons at the disposal of private, "illegal" militia groups. A virtual war economy continues to feed on illicit trade in gems, lumber, and archaeological relics, while the opium poppy crop - reaping an estimated

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[47] Mark Sedra, "Police Reform in Afghanistan: An Overview" in Mark Sedra (ed.), *brief 28 Confronting Afghanistan's Security Dilemma: Reforming the Security Sector*, Bonn International Center for Conversion, Bonn, 2003, pp. 32-33.

[48] Ibid, p. 34.

US \$2.54 billion in 2002 alone - constitutes 38.2 percent of country's legal gross domestic product.[49]

Given this dire public security environment, it is difficult to imagine that much progress has been achieved in terms of building a credible and effective police force. Nevertheless, as of February 2005, the German-led and US-assisted program for building the ANP had trained 53,400 personnel (albeit through a "crash course" format), including 17,705 officers and 35,695 non-commissioned officers and patrolmen.[50] At the current rate, the training programs should face little difficulty in reaching their original goal of 62,000 personnel trained by late 2006. The accelerated progress over the past year can be in part attributed to the close daily working relations between Germany, the US, and the Ministry of the Interior, as well as through more formal donor-government collaborative mechanisms, such as the "National Police & Law Enforcement Consultative Group".[51] As part of the new locally owned and driven Afghan Stabilization Programme, steps are also being taken to ensure coordination between ongoing police reform activities and related new sub-national training, administrative reform, and infrastructure projects.[52]

A further strengthening of co-operation between the government, key donors, UN, and international military partners will be required to achieve the political resolve necessary for much-needed additional reforms, such as the expulsion of corrupt and anti-government elements in the Afghan National Police. Other specific areas to be addressed

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[49] UNDP Afghanistan, *Afghanistan National Human Development Report 2004: Security with a Human Face: Challenges and Responsibilities*, UNDP Afghanistan, Kabul, 2005, p. 8.

[50] Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2002) A/56/875-S/2002/278, pp. 7-8. This is a considerable increase from the year before, when less than 20,000 police personnel had been trained. Bhatia, Lanigan and Wilkinson, "Minimal Investments, Minimal Results: The Failure of Security Policy in Afghanistan", p. 9. And as of December 2004, only 30,500 police had received some form of training (*New York Times*, 11 December 2004).

[51] For more information on the government-led "Consultative Groups", which involve exchanges between key ministries, donors, UN agencies and NGOs in preparing specific aspects of the annual national development budget, please visit: www.af/cg/default.asp

[52] See: Government of Afghanistan, *Afghan Stabilization Programme National Priority Programme Strategy*, Government of Afghanistan, Kabul, 4 August 2004, p. 6.

include: i) an in-depth reform of the ANP's existing structure to improve civilian oversight; ii) post-deployment monitoring and assistance; and iii) the expansion of the police force to the current target of 62,000.[53] Questions of financial sustainability abound, as police salaries and other vital needs of the police force continue to be funded by the Law and Order Trust Fund for Afghanistan administered by UNDP. Given the large shortfall of US $88 million for the LOFTA during its recent second phase (April 2004 through March 2005) - a period in which only 40% of requested funds were received, the major donors are beginning to signal a shift away from completely underwriting the full recurrent budgetary expenses of the ANP.

Reasserting the Reach of the Judiciary and Establishing New Human Rights Bodies

Together, Afghanistan's new Constitution of 2004, the Berlin Declaration of April 2004, and consecutive national development budgets have defined a "framework for justice reform" that calls for a complete overall and strengthening of the state's judicial organs. Italy serves as the "lead nation" donor in the area of justice reform, with additional support provided by Canada, the United Kingdom, and the US (through the American NGO the Asia Foundation). The United Nations, through UNAMA, UNDP and the UN Office on Drugs and Crime, has further supported the reform agenda drawn up by the Judicial Reform Commission established by the Bonn Agreement, in addition to helping legal education institutions and providing public administration strengthening technical assistance to the Ministry of Justice and office of the Attorney-General.[54]

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[53] Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2002) A/56/875-S/2002/278, p. 8.
[54] Ibid, p. 8.

Afghanistan's justice system faces several political, structural, and legal problems that are common to countries transitioning from protracted violent conflict. Although far from an exhaustive list, these include[55]:

i)   an inability of the central government to exert serious authority outside of Kabul, coupled with a lack of dialogue with and "political buy-in" from influential provincial and district level stakeholders;

ii)   structural challenges in the form of limited administrative capacity, rampant corruption, political interference from the executive branch, poor salaries, physical security, and infrastructure for personnel (including judges), and a severe lack of qualified justice system personnel; and

iii) a transitional legal framework that fails to define the relationship between formal and traditional legal mechanisms, as well as requires the creation of a digest for existing laws to underpin future legal reform efforts. Current legal reform efforts are uncoordinated and lack legitimacy, as elections for the country's first democratically elected legislative body have been pushed back until September 2005.

In response to these obstacles, the new government-led Justice and the Rule of Law National Priority Programme seeks to comprehensively reform and strengthen existing justice institutions through the following seven "sub-programs": law reform, a justice survey, justice infrastructure, legal training, legal awareness, capacity-building, and the procurement of equipment and vehicles.[56] These initiatives will require sustained financial and technical support from donors for the foreseeable future.

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[55] This list draws extensively on points made by UNDP Afghanistan, *Afghanistan National Human Development Report 2004: Security with a Human Face: Challenges and Responsibilities*, UNDP Afghanistan, Kabul, 2005, pp. 146-148, and UNAMA Rule of Law Unit, "Considerations on Criteria and Actions for Strengthening the Justice System", UNAMA, Kabul, 2005.

[56] See: Government of Afghanistan, *Justice and the Rule of Law National Priority Programme Strategy*, Government of Afghanistan, Kabul, 2004, pp. 1-5.

Supplementary to the traditional role of the formal judicial system, the Bonn Agreement calls for the monitoring and investigation of human rights and the development of domestic human rights institutions through an independent Human Rights Commission. With technical support from the United Nations, through the UN High Commissioner for Refugees, UNAMA, and UNDP, and US $11.5 million in financial support from several donors[57], the Commission operates through four Afghan Working Groups - with representatives from across government and civil society - and carries out specific activities in the areas of human rights policy, human rights education, transitional justice, human rights for women, and monitoring and investigation of human rights.[58] In addition, UNAMA maintains a human rights component that promotes human rights awareness across national institutions and civil society and conducts monitoring missions through the Secretary-General's Independent Expert on the Situation of Human Rights in Afghanistan.

Progress Assessment

Although Afghanistan's judicial system remains weak in overall capacity and requires massive further investments to build durable institutions of justice, Afghan officials in the judicial system have demonstrated considerable leadership and ownership of the process of reform. The Consultative Group for Justice[59], under the leadership of the Minister of Justice and with support from Italy and the United Nations, meets periodically to discuss judicial system needs in relation to the forthcoming national development budget, and an Interim Criminal Procedural Code came into force in early 2004. Equally noteworthy is the initiative of the Supreme Court to take charge of its own affairs, particularly in coordination of multiple donor-supported judicial training activities.[60]

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[57] Canada, Denmark, Finland, Luxembourg, Norway, Switzerland, UK, New Zealand, and the US.
[58] UNDP Afghanistan, "Democratization & Civil Society Empowerment Programme", UNDP Afghanistan, Kabul, 31 October 2004, pp. 12-13.
[59] For more on "Consultative Groups", see footnote 51.
[60] Report of the UN Secretary-General on "The situation in Afghanistan and its implications for international peace and security" (18 March 2002) A/56/875-S/2002/278, p. 8.

At the same time, due to overlapping mandates, substantive disagreements among donors, and the growing ambitions of the three permanent national judicial institutions (the Ministry of Justice, the Supreme Court, and the office of the Attorney-General), the Judicial Reform Commission - initially a favored body among the donors - has failed to provide leadership in the area of reform coordination, and its mandate is likely to be suspended soon by government. Moreover, while financial and technical support are accelerating now as Afghans guide the pace of their reform, the cultural shift required to embrace new rule of law norms across the entire country will take time, constraining the political will needed for major substantive changes.

Although the spread of general human rights norms has encountered similar cultural challenges and will take time to assimilate, several new human rights bodies are functioning today and, most importantly, the Afghan Independent Human Rights Commission's (AIHRC) importance has been recognized by its inclusion in the new Afghan Constitution (Article 58). By May 2003, the AIHRC's field activities extended their reach through the Kabul headquarters office and seven satellite offices in Herat, Bamiyan, Mazar-i-Sharif, Jalalabad, Gardez, Kandahar, and Badakhshan.[61] The establishment of a Human Rights Resource Centre and human rights units in the powerful Ministries of Defense, Interior, Justice and Foreign Affairs soon followed, along with the government's ratification of three important treaties: the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Rome Treaty of the International Criminal Court. With continued serious concerns about Afghanistan's human rights situation expressed by the AIHRC, local and international NGOs, and the UN, however, much work remains, beginning with an increased awareness about human rights and transitional justice issues at the district and community levels.

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[61] Kopalasingham Sritharan, Emilia Mugnai, and Simone Troller, *Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward – Human Rights Technical Annex,* Islamic Transitional State of Afghanistan (ITSA), Kabul, 2004, p. 3.

4   Lessons Learned from Efforts to Build Sustainable Local Ownership in Afghanistan's Security Sector

Increasingly, the rich nations underwriting international peacekeeping operations recognize that investments in rebuilding a war-torn society's public security management institutions are essential to building a durable peace. Slow to respond at first, major donor countries - and the US in particular - acknowledge that establishing professional security institutions in Afghanistan, with effective democratic oversight, is also central to meeting their "war on terror" objectives and preparing for an eventual exit. But building sustainable local ownership, especially in the security sector, is rarely an easy task that can be achieved quickly on the cheap. Facing the triple threat of terrorism, insurgency, and narcotics, Afghanistan poses its own unique blend of challenges for those considering the significant commitment required for success.

Consequently, Western nations and others concerned with public security management in fragile or failed states regularly ask the question: "How do ones go about building sustainable local ownership of the security sector in a time-frame as short as possible and at limited cost?" But simple, technocratic "one-size-fits-all" recommendations about building capacity and knowing precisely when to cede coordinating leadership authority to local counterparts are inadvisable for distinct peace operations fielded in constantly changing environments. Rather, it is the basic principles of i) respecting local counterparts, ii) investing seriously in their skills and institutions from the start of a mission (including professional education and long-term training), iii) steadily transferring core responsibilities over time, and iv) accepting (but helping to minimize the costs of) mistakes - an essential part of the learning process - that must be upheld. Specific to the case of Afghanistan, *eight additional lessons*, some of which could possibly be adapted in other post-conflict societies receiving external security sector assistance, include:

Lesson #1: Invest heavily in public security management reform from the beginning of state reconstruction rather than risk the need for a more costly and time-consuming intervention later

A greater investment in Afghanistan's public security management is now required than if proper political attention and resources, both financial and technical, were allocated to reforming this vital sector from the start. The US is estimated to have spent US $17 billion after its first seven months of Operation Enduring Freedom and subsequently spends around US $10 billion annually in its "war on terror" campaign in Afghanistan.[62] But according to James Dobbins, President Bush's former special envoy for Afghanistan and author of a new RAND study on the US and nation-building, Afghanistan is "the least resourced, large-scale American reconstruction program ever."[63] On a per capita basis, the US and its allies have spent far more in reconstructing the Balkans, East Timor and other post-conflict settings than it has in Afghanistan.[64] As argued, the US preoccupation with strategic "war on terror" objectives has had enormous implications for the pace of democratic change, especially since public security levels failed to improve following the US-led intervention. For one, this has cost more time and resources to correct mistakes from 2002-2003, due to the "patronage politics" that were allowed to predominate the security institutions. Fortunately, the major donors now seem to acknowledge the importance of Afghanistan's security sector to both national stability and fighting terrorism. It is unclear, however, whether appropriate investments will be made on the scale required, channeled in a manner that facilitates local leadership, and properly sustained over time.

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[62] Manuel and Singer, "A New Model Afghan Army", p. 51, and "Afghanistan: Going straight", *The Economist*, 4 December 2004, p. 66. The US government's Fiscal Year 2004 supplemental appropriation provided about $11 billion for Operation Enduring Freedom. Kenneth Katzman, "Afghanistan: Post-War Governance, Security, and U.S. Policy*"*, (CRS Report for Congress RL30588 – 28/12/04), Congressional Research Service/The Library of Congress, Washington DC, 2004, p. 24.

[63] "The Nation-Building the US Neglects,", Benjamin Duncan, al-Jazeera.net, March 1, 2004.

[64] See, for example, Barnett Rubin, Abby Stoddard, Humayun Hamidzada, and Adib Farhadi, *Building a New Afghanistan: The Value of Success, the Cost of Failure*, Center on International Cooperation, New York University, New York, March 2004, p. 15.

Lesson #2: Accommodate select militia commanders in democratic governing institutions to pre-empt possible efforts to subvert reforms

When governance systems are opened up and made more accountable after war, old forms of authority (e.g. militia and traditional leaders) inevitably clash with new forms (e.g. technocrats, civil society groups, and reformers with financial backing from diaspora). Although controversial among the new authorities, efforts must be made during a transitional phase to persuade potential "anti-democrats" to join rather than seek to undermine the new system. This entails the creation of political space and other incentives for select militia leaders and others wielding authority after war, on the condition that they submit to the rule of law and respect the legitimacy of newly elected leaders. The personal abilities of individuals in key posts matter, as the examples of Defense Minister Wardak and Interior Minister Jalali illustrate, but it was necessary to first co-opt their less scrupulous predecessors (who maintain strong local power bases) to build national cohesion and gradual support for the new regime - however, influential donor countries should have averted initial efforts to "factionalize" the major security institutions. Over time, in the interests of national reconciliation and peace, anyone seriously alleged to have committed human rights atrocities must face an impartial judicial inquiry.

Lesson #3: Ensure coherence among the various components of a public security management reform strategy and, to the extent possible, invest in local leadership and coordination of the reform components

As noted at the start of section III, Afghanistan's massive security sector reform agenda was essentially divided up, in early 2002, among five major donors. This tied aid, "lead nation" approach has failed to foster effective coordination and local ownership of a complete, overarching SSR strategy, creating opportunities for overlapping mandates, corruption, and waste. According to the Government of Afghanistan's "Security Sector Paper", prepared for the April 2004 donor's conference in Berlin, the lack of coordination across the security sector has led to

decreasing confidence among ministries, increasing frustration among donors, cases where activities work at cross-purposes, and instances where programs supported by a lead nation are found to be unaware of the common objectives and activities of another program.[65] Moreover, disappointed in the lack of progress in the areas of police reform, judicial reform, and counter-narcotics, the US has started to augment significantly the assistance provided by Germany, Italy, and the UK, respectively. The Afghan government has since sought to rectify the poor coordination problem by mandating the Office of the Afghan National Security Council, under the President, to meet regularly with key international actors to discuss and prioritize security sector reform issues. Whilst donors had some understandable reasons to drive the process of capacitating an extremely fragile Afghan state in 2002, it would be counterproductive today to not orient the current approach around the empowerment and sustainability of local leaders and institutions.

Lesson #4: Establish a credible and appropriately sized international security presence to bridge the security gap between a limited or non-functioning security sector and the eventual deployment of effective local security forces

As noted in lesson #1, the security situation failed to improve after the Coalition's intervention and even deteriorated in parts of the country. Repeated calls were made by Afghan leaders and the UN, in 2002 and 2003, to expand the ISAF's presence outside Kabul. Failure to initiate this process until mid-2004 - and still only in portions of the country - has arguably perpetuated the *de facto* power of regional warlords and their illegal armed militias. They remain the fundamental obstacle to the extension of central government authority across Afghanistan. Dismantling these groups requires a sufficient armed deterrent that far exceeds the between 5,000 to 8,400 peacekeepers supplied by ISAF troop contributing countries since 2002, particularly given the minimal

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[65] Government of Afghanistan, "Security Sector Paper", presented to the International Conference on Afghanistan in Berlin, Germany, 1 April 2004, p. 3.

investments made in preparing the new national army and national police.

Lesson #5: Ensure ethnically balanced, non-sectarian, and de-politicized staff recruitment of public sector management institutions

An improvement in the quality and ethnic make-up of recruitment for the national army and national police, in 2003 and 2004, did not *coincidentally* follow the significant staff restructuring in the parent Ministries of Defense and Interior, respectively. It is often more difficult to reduce trust among former combatants than it is to create a professional and affordable security forces under democratic, civilian control. Therefore, it was essential to reduce the predominance (and associated patronage networks) of the Tajik faction of *Jamiat-i Islami, Shura-I Nezar* in the two key security ministries, in order to pave the way for a more multi-ethnic, non-sectarian, and non-factional Afghan National Army and Afghan National Police. Unlike other areas of reform where the earlier local leadership is asserted the better (and contrary to the notion of a "light footprint"), external assistance providers should remain uncompromising and politically intrusive towards local counterparts on issues of ethnic balance and the de-politicization of public security management institutions.

Lesson #6: Promote community policing and other measures to improve relations between local populations and public security institutions

Community policing has taken on many meanings in different parts of the world. One common characteristic is its emphasis on overcoming mistrust and advancing collaboration between communities and the police, by giving people a substantial role in defining and guiding the performance of the police.[66] This can be particularly valuable for countries recovering from civil conflicts where the police perpetrated

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[66] UNDP, *Human Development Report 2002,* p. 94.

crimes against civilians, as in Afghanistan. Community policing activities, such as "Nightwatch Programs", provide concrete avenues for concerned individuals to constructively support the public safety and security-building work of the police. They also help to expand the notion of "building sustainable local ownership" to include *all* relevant stakeholders, not simply the personnel and civilians overseeing public security management institutions. Within a truly democratic society, the spirit of community policing should be extended to improve relations between citizens and all security bodies, including the national army.

Lesson #7: Extend the Disarmament, Demobilization, and Reintegration Program to illegal armed groups outside the Afghan Militia Forces

Roughly more than 1,000 illegal armed groups, with some 100,000 men in their ranks, are estimated to be operating outside the structure, established in 2002, for the Afghan Militia Forces. With the disarmament phase of the Afghanistan's New Beginnings DDR Programme expected to conclude in June 2005 for the quasi-official (government sanctioned) AMF, it is imperative that all remaining armed groups, outside of government control, be disarmed and offered support for civilian livelihood alternatives as an incentive. Contrary to initial expectations, DDR has proven effective in the Afghan context. Although potentially more complicated logistically and risky politically, extending DDR to illegal armed groups is necessary to further buttress the authority and reach of the central government's national army and police services.

Lesson #8: Promote principles of democratic governance in the security sector immediately following an intervention

As an integral part of security sector training and general political awareness-raising involving security officers but also local politicians, senior civil servants, and other key stakeholders, it is critical that democratic governance principles are deliberated, agreed upon, and then

instilled within all current and future recruits for Afghanistan's public security institutions (for some examples, see box 2). Relegating the importance of such principles within the current public security management reform program risks political setbacks later at the expense of the civilian leadership and wider public. In particular, establishing mechanisms for effective parliamentary oversight of the security sector should be prioritized to ensure high levels of accountability among both civilians in the executive branch and senior officers in all security institutions.

Box 2 Key Principles of Democratic Governance in the Security Sector

- Ultimate authority on key security matters must rest with elected representatives.

- Public security management institutions should operate in accord with international and constitutional law and respect human rights.

- Information about security planning and resources must be widely available, both within government and to the public. Security must be managed using a comprehensive, disciplined approach. This means that public security management institutions should be subject to the same principles of public sector management as other parts of government, with small adjustments for confidentiality appropriate to national security.

- Civil-military relations must be based on a well-articulated hierarchy of authority between civil authorities and defense forces, on the mutual rights and obligations of civil authorities and defense forces, and on a relationship with civil society based on transparency and respect for human rights.

- Civil authorities need to have the capacity to exercise political control over the operations and financing of security forces.

- Civil society must have the means and capacity to monitor security forces and provide constructive input into the political debate on security policy.

- Security personnel must be trained to discharge their duties professionally and should reflect the diversity of their societies - including women and minorities.

- Policy-makers must place a high priority on fostering regional and local peace.

Sources: Based on UK Department for International Development (2000), *Security Sector Reform and the Management of Defence Expenditure: High Risks for Donors, High Returns for Development*, Report on an International Symposium Sponsored by the UK Department for International Development, London. See also Nathan, Laurie (1994), *The Changing of the Guard: Armed Forces and Defence Policy in a Democratic South Africa*, Human Sciences Research Council, Pretoria. Bland, Douglas (1999), "A Unified Theory of Civil-Military Relations", *Armed forces and society*, Vol. 26, No. 1.; and Legault, Albert (2001), "Democratie et transfert de normes: les relations civilo-militaires", *Etudes internationales*, Vol. 32, No. 2.

5   Conclusion: From Traditional Peacekeeping to Democratic Peace-Building

In the early 1990s alone, more peacekeeping missions were initiated than during the UN's entire first four and one-half decades. But while this new generation of peace enforcement operations helped to end violence, they alone could not promote durable, democratic peace. Conflict, including contending political views, is an inherent part of an open, democratic society. Extending beyond the narrow mandates of traditional peacekeeping, multi-faceted peace-building operations today aim to foster democratic institutions and democratic politics that prevent conflicts from turning violent. By addressing issues of social disintegration, political exclusion and despair, new approaches to "democratic" peace-building can also become an essential component in the bulwark against global terrorism.

Afghanistan's costly two-decade-long conflict and its implications for global stability have underscored the need for a broader approach to conflict prevention. Securing a just, sustainable peace in war-torn societies, such as Afghanistan, means establishing democratically accountable states with professional, civilian-led, and ethnically balanced military and police. It further entails supporting a competent

and respected judiciary that upholds the rule of law and other bodies - both within and outside of government - to promote and safeguard human rights. Building sustainable local ownership in public security management institutions after war takes time, money, technical skills but most of all determination and a sincere political commitment to the people with the most at stake. Never forget that the recipients of external assistance - and the progress they achieve through their own sacrifices, risk-taking, and hard work - are the single most important variable for success.

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Chapter 4

Lost Opportunities and Unlearned Lessons – the Continuing Legacy of Bosnia

Kurt W. Bassuener

Introduction

The international intervention in Bosnia following the 1995 Dayton Peace Accords was among the first in a wave of such missions following the Cold War that were often derided, mostly from the right, in the United States as "nation building." Many of the personnel who worked in Bosnia, be they soldiers, administrators, police, trainers or aid and development professionals, were involved in subsequent high-profile missions: Kosovo, East Timor, Afghanistan, and now Iraq. While these missions have major differences amongst them (particularly the nature of the interventions, as well as the mandate and composition of forces involved), the question of providing for public security and ensuring it into the future with local actors was a major factor in all of them. Yet, of these, perhaps the only one that can be termed a success would be East Timor. Kosovo, Afghanistan, and Iraq still experience serious public security problems, Iraq's being most severe.

Bosnia should have provided lessons on how to create a secure public environment to allow a sustainable peaceful order to take root. Or rather, it should have provided vivid examples of how not to further those goals. Those lessons do not appear to be recognized, much less learned and applied. This is especially true of the United States, which played a prominent role in all but one (East Timor) of the missions listed above, and has been by far the dominant player in Afghanistan and Iraq. In each case, deficient public security in all its aspects, including minority communities' safety, has been a serious damper on post-

conflict stabilization and self-sustaining democratic development. The international community failed to seize a window of opportunity in all the above cases. This does not necessarily doom efforts to establish viable local public security, but certainly makes them more difficult and costly. Bosnia itself seems to be moving consistently forward of late due to an understanding of the current situation and of past failures.

The case of Bosnia, even after a belated international intervention in the war, is a cautionary tale of missed opportunities. Public security is a primary responsibility of governance, and therefore an inherently political question. The fact that this vital function remained in very dubious hands was not addressed directly until years after Dayton, and the consequences of that delay continue to be felt.

Military and civilian planners both should familiarize themselves with the Bosnia experience to grasp the centrality of establishing public security as a *sine qua non* of establishing a legitimate and stable postwar order. Without it, there can be no mission success. Gradualism, while expedient, rarely pays. A willingness to tackle public security head-on in the early phases of an international mission, combined with clear-headed planning on how to domesticate it sustainably, provides the most assured "exit strategy."

The Case of Bosnia

The War in Bosnia

The war in Bosnia and Herzegovina (hereafter "Bosnia" for brevity's sake) began in April 1992 and went on until the signing of the Dayton Peace Accords in November 1995. In those three-and-a-half years, and estimated 200,000 people were killed, and hundreds of thousands more were expelled from their homes or emigrated. It was by far the bloodiest of the five wars fought within the territory of what was once Yugoslavia over the course of a decade.[1] The antagonists were the Bosnian

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[1] These were: Slovenia (1991), Croatia (1991-1995), Bosnia (1992-1995), Kosovo (1998-1999), and Macedonia (2001)

government, which was internationally recognized at the beginning of the war; the Bosnian Serb "Republika Srpska," which was militarily integrated with rump Yugoslavia (Serbia-Montenegro); and Bosnian Croat forces which were heavily integrated with Croatia. Both the neighboring states had designs on territory within Bosnia and Herzegovina, and worked with their co-ethnics to seize it. During these wars, the term "ethnic cleansing," or forced expulsion and/or killing of other ethnic populations entered the English lexicon. Importantly, both regular and irregular forces, including Interior Ministry police forces (including from neighboring Serbia and Croatia) conducted ethnic cleansing campaigns and combat operations. This particularly included Interior Ministry "special police," who were often better equipped and trained than the armies. These forces were instrumental in clearing undesired populations by means of terror or extermination. While the United Nations Protection Force (UNPROFOR) was present in Bosnia through the war, it provided little in the way of public security, hampered by its mandate and a lack of international political will to confront the Bosnian Serbs, who were by any measure the primary - though not only - offenders.

Dayton and IFOR

The Dayton Accords, signed in November 1995 after weeks of "proximity talks" at Wright-Patterson Air Force Base in Dayton, Ohio, brought open hostilities in Bosnia to a formal end. The signatories, which included Croatia and Serbia for their co-ethnics in Bosnia, agreed to a weak Bosnian state composed of two "entities:" the Federation of Bosnia and Herzegovina (which already technically existed from the previous year) and the "Republika Srpska." These entities were ethnically derived, and held most of the powers that would normally accrue to a state: defense, taxation, and justice. The Federation was further divided into cantons, which led to four layers of governance for residents of the Federation: state, entity, canton, and municipality. The RS only had three. Policing was to be handled at the canton level in the Federation, and at the entity level in the RS.

In essence, the wartime nationalist parties (with some greater competition within the Bosniak community) were party to designing a political system that would protect their wartime gains and their own grip on power. However, the Accords contained passages committing the signatories to allow refugee return and arrest and hand-over to the International Criminal Tribunal for the former Yugoslavia (ICTY) indicted war criminals.

Part of the Dayton deal was that an international Implementation Force (IFOR) fielded by NATO was to guarantee separation of forces and the cantonment of weapons to preclude a resumption of hostilities. The Bosniak and Bosnian Croat communities generally welcomed the force, while the Bosnian Serb community generally saw it as an occupier. The force, with 60,000 troops (20,000 American) was allowed to deal with other public security issues such as assisting in refugee return and arresting war crimes suspects, but the Pentagon ensured that it did not have to pursue these tasks. This was a failure on the part of President Clinton to assert control over the U.S. military. In the mission's first few days, a challenge occurred when Bosnian Serb political leaders pressed Bosnian Serb residents to evacuate Grbavica, a Serb-inhabited neighborhood in Sarajevo that was to fall under Federation control. The IFOR Commander, Admiral Leighton Smith, met scenes of forced removal and wanton vandalism with apparent indifference. In the following months, reports of indicted Bosnian Serb political leader Radovan Karadzic driving through U.S. Army checkpoints leaked out. IFOR did its strictly military mandate well. But the strict constructionist approach adopted at U.S. military insistence did little to promote public security for individual Bosnians.

Dayton also created *ad hoc* bodies to assess implementation and progress. The Peace Implementation Council (PIC) is the supreme international supervisory body on Bosnia's Dayton Implementation, and consists of some 55 governments and international organizations, including the United Nations and the World Bank. The international High Representative, who was charged with coordinating the international civilian component of Dayton implementation on the ground through his office (OHR), reports to the PIC. The Organization

for Security and Cooperation in Europe (OSCE) was engaged in organizing elections, and later took a serious role in the promotion of democracy and human rights.

Yet despite the considerable international commitment of resources and personnel, very little ground was gained in the initial post-Dayton years. Not surprisingly, both Belgrade and Zagreb continued their pernicious involvement in Bosnia, violating the terms of the Dayton Accords regularly in various ways, most notoriously by sheltering war crimes indictees. Political power structures built on or supported by black marketeering and other criminal activity during the war maintained and usually expanded their assets postwar. It is fair to speak of a political-criminal nexus in each of the three communities, and often more than one. The international community's desire for a quick win or "deliverable" early after intervention led to a push for elections in 1996. Given a far from a level playing field, a short time lag since the end of the war, and the ethnification of the franchise through the design of governing structures, the 1996 elections served to grant a further veneer of legitimacy to the wartime political players and to cement them in power. These political forces used this time to further their personal economic interests and make it more difficult for Bosnia to become a functioning state.

The international community sent mixed signals in Bosnia, despite the massive commitment of troops and civilian personnel. The unrealistic one-year time frame initially articulated by President Clinton for domestic political purposes signaled a lack of commitment to Bosnia's recovery. The disposition of international forces toward the fundamental public security issues of secure minority refugee return and arrest of war crimes indictees also signaled irresolution. There was no apparent strategic approach to the international engagement in Bosnia, and the local political actors took note and drew their conclusions accordingly. A political fear of casualties, particularly with American forces, led to repeated threats (and incidents) of public disorder by nationalists should indictees be arrested, mosques be rebuilt, refugees allowed to return. This tactic was repeated regularly, and went essentially unchallenged for years, leaving the initiative to the adversaries of progress. International

engagement in Bosnia may have been pervasive, but it also appeared hollow and rudderless.

In 1996, despite the 1994 Washington Agreement that created the Federation (and incidentally was the first international agreement in Bosnia that recognized rights vested in peoples rather than citizens), there remained three armies, three separate intelligence services, and three interior ministries – the main body charged with promoting public security.   The Dayton Bosnian state didn't have any of these capacities – they were vested in the entities.

Post-Dayton Public Security

Bosnian security structures, especially those under the control of the Bosnian Serb and Bosnian Croat political leaderships, had little or no incentive to promote the tougher aspects of public security or perception thereof – it ran contrary to their interests, and would essentially undo the ethnic cleansing they had driven.   All three of the main nationalist parties – the Bosnian Serb Serbian Democratic Party, the Bosnian Croat branch of the Croatian Democratic Union, and the Bosniak Party of Democratic Action – all had vested political capital in maintaining "kept populations" of internally displaced persons and refugees who depended on them for housing, income support, etc. These persons often lived in the homes of previous residents who had been "cleansed," and were kept reliant on the patronage of these parties.   Furthermore, the return of refugees could make them homeless again with no guarantee that they would be able to go back to their home. That is, if it still existed or if it would be safe to return to an area where they were a minority.   A number of efforts to promote minority refugee return in the first few years after the war ended in failure, and violence against returnees was not uncommon. Intimidation was the norm.

Integral to this problem was the fact that the police that had been working during the war, including in "ethnic cleansing," killings, rape and other violations of human rights, were likely to remain on duty. The International Police Task Force (IPTF), a UN-run body charged with

police training (but without executive powers), certified police in both entities. However, the local police forces were not seen by a critical mass of refugees and IDPs who expressed an interest in returning to their homes to have been sufficiently weeded of likely war criminals. Even if these persons were removed from the police force, they usually remained in the community as a menacing, and often influential, presence. For a number of years after Dayton, minority refugee returns were very low, and remained on the outskirts of towns rather than in them. Demographically, returnees were more likely to be old, returning to live their final years in their homes. Very few returnees came with young children or with expectations of finding work.

The impediments to credible locally provided public security were fundamentally political, not technical. There was no doubt also a need to build institutions, provide appropriate law-enforcement training, etc. But to attempt to move on those fronts with the political actors and incentive structure unchanged was a recipe for stagnation.

Ownership of <u>What</u>, Exactly?

In 1998, well before Bosnia's institutions showed any hope of being able to handle the tasks normally expected of government, the international community began to employ the term "ownership" to indicate that Bosnia's institutions should take responsibility for these functions. This included the onus of public security, including the arrest of war crimes indictees and protection of returnees.

However, the term "ownership" begs the questions *of what?* and *by whom?* The nature of the Bosnian forces charged with maintaining public security, and the masters they served, had no interest in hastening their own demise by scattering their constituency. Their basic platform was fear of the other ethnic communities and promising protection to their own, so maintaining that as a central concern was critical.

The Dayton formula, taken rigidly, stood in the way of having its most fundamental aspects implemented, by providing insurance for the

political and criminal powers that benefited most from the war. This approach allowed them to retain and even expand their influence.

"Bonn Powers" and War Crimes Arrests

By the end of the second full year of international post-Dayton engagement in Bosnia, the international community seemed to be slowly sobering to the immensity of the task that remained, and the inadequacy of the tools to address it. At the December 1997 meeting of the Peace Implementation Council, the High Representative was given new powers to strengthen his hand in dealing with the Bosnian power centers. Soon termed the "Bonn powers," the PIC gave the High Representative paramount authority to not only oversee implementation of Dayton's provisions, but also to interpret what these meant. In essence, the international community now had an "elastic clause" allowing it more flexibility to push needed reforms forward. Not initially employed to a great extent, their application grew over time to be an essential trump card.

Another event earlier in 1997 also had an important impact on public security in Bosnia. In July 1997, British paratroopers attempted to arrest two Bosnian Serb wartime officials for war crimes. One, Milan Kovacevic, was successfully arrested. The other, Simo Drljaca, foolishly drew a weapon and was gunned-down by the paras. This was the first forcible arrest of a war crimes indictee in Bosnia, launching a trend that forced remaining indictees into hiding. Another innovation, the sealed indictment, was developed by the International Criminal Tribunal for the former Yugoslavia (ICTY) to preclude indictees from preparing to violently resist impending arrest or flee. Since then, an increasing number of indictees have been captured or have surrendered for trial.

Despite the innovations discussed above, Bosnia remained essentially stagnant for years following Dayton. Provision of public security remained the preserve of police forces that had been essentially unreformed since the end of the war. The political masters of these

forces saw little or no incentive to promote a climate of public security for minorities, would-be returnees, or even "their own" populations, given the centrality of fear to maintaining their grip on authority. With the exception of the Bosniak SDA (which saw a unitary state as one in which they would hold sway), the nationalist parties were against conveying powers to the state, where they would exercise less control.

In 2000, democratic transitions took place first in Croatia and then in Serbia. While neither completely overturned the wartime order, this change provided more leverage to the international community to curtail these countries' engagement in Bosnia. However, President Vojislav Kostunica of Serbia was an avowed nationalist, and gave a shot in the arm to Bosnian Serb nationalists who had begun to show signs of resignation to remaining in Bosnia (albeit with rigid guarantees that maintained *de facto*. Both countries remain under international pressure for their suspected harboring of war crimes indictees.

Minority returns did not begin occurring in significant volume until 2000. Not coincidentally, this was after indicted war criminals had begun to get arrested, and obstructionist public officials were dismissed with greater frequency. It is worthy of note that minority returns to northern Bosnia, in the RS, rose heavily in the British sector, where more war crimes indictees were forcibly arrested and where the troops took a more proactive and informal approach to their duties. This was despite the fact that some of the most chilling atrocities occurred in the area during the war, particularly around Prijedor, where the infamous Omarska, Trnopolje, and Keraterm detention camps were situated. Neither the American nor the French sectors earned such a reputation.

In 2001, a long-planned public event to mark the launch of the reconstruction of the famed Ferhadija mosque in Banja Luka, deliberately demolished during the war, was disrupted by violence unchecked by RS police or SFOR. The mob violence, clearly instigated and abetted by RS officials, was clearly intended to convey the message that minority returnees to the RS would be unsafe, and that the results of ethnic cleansing were irreversible.

The Problem is Political

Political structures are the key for Bosnia's ability to develop a functioning state under democratic governance and rule of law, factors essential to the mainstream European aspirations of the population. Bosnia's governing system and electoral structures ensured that the nationalist parties who prosecuted the war and their patronage networks remained dominant, hindering most progress. A lack of security for persons from one ethnicity in the territory controlled by another was central to maintaining these parties in power. The deeply politicized public security structures were involved in not only wartime activities but also continued organized crime. In essence, the forces that were charged with providing public security were seen by large swathes of the population as threatening their personal security. Bosnia's electoral system and convoluted governing structures gave little incentive to national reconciliation, reform, reconstruction, or professionalism. Instead, the system, with its many layers and overlapping competencies, facilitated graft. Politics was (and remains) a for-profit enterprise in Bosnia. Without fundamental political and structural changes, Bosnia would remain a dysfunctional ward of an increasingly fatigued international community.

Leveraging the International Factor

While the two High Representatives who had use of the Bonn powers, Spaniard Carlos Westendorp and Austrian Wolfgang Petritsch, used them increasingly to deal with obstructionist officials or those implicated in crimes, as well as to advance progress by decree, there seemed little strategy in their approach.

The attacks on September 11, 2001 in the United States created a renewed interest in Bosnia on the part of the Bush Administration, which had entered office vocally disdainful of "nation-building" in general and American engagement in the Balkans in particular. The fear of Islamist terrorist operations emanating or supported from Bosnia bolstered Washington's commitment to maintain a foothold force presence in

Bosnia, despite the emerging likelihood of the European Union succeeding SFOR with its own mission. This presence was deemed essential for national security reasons, and was also designed to assist EUFOR in operations to apprehend indicted war criminals.

With the replacement of Mr. Petritsch planned for mid-2002 and the likely arrival of Lord Paddy Ashdown, a British politician and former Royal Marine who earned a reputation for being forward-leaning on the Balkans, the Democratization Policy Institute (DPI) published *An Agenda for Bosnia's Next High Representative*.[2] The authors of the *Agenda* reverse-engineered from the goal of Bosnian candidacy for the EU, and then assessed what changes had to be made in Bosnia to make this a viable prospect. The *Agenda* then proposed ways that the High Representative could pursue these objectives within his powers. Central to our approach was the concept that Bosnia would not develop the ability to self-reform until certain major impediments were eliminated or sidelined. Simply put, some problems were just too great for Bosnians to overcome under the existing system. It was important to discern which issues, including those of public security, could be addressed by a combined approach with Bosnians and internationals, and which had to be confronted, at least initially, by international actors alone. Overall, the *Agenda* proposed a framework of increased cooperation and consultation, while recognizing that the internationals had to do some things themselves before a handoff of "ownership" could be made responsibly.

In the realm of public security, DPI had four direct recommendations, and one overarching one that would influence the entire political dynamic in Bosnia. While these are three years old, they remain relevant to a great extent. Each will be addressed in turn below. Most of the other recommendations would have had an indirect public security benefit, such as a judicial reappointment process, legal review and reform, and customs revenue redirection to state coffers. All the DPI recommendations were aimed at helping create of foster political and

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[2] *An Agenda for Bosnia's Next High Representative*; Democratization Policy Institute, Washington, 2002. Available at DPI's archived cite: www.anonime.com/dpinstitute

administrative structures capable of self-propelled reform and achieving the European aspirations of Bosnia's population.

The Bosnian electoral system built-in advantages for the nationalist parties that prosecuted the war and maintained patronage networks involved in organized crime and terrorism. Candidates can seek office by appealing only to their own ethnic group, making it politically advantageous to stoke nationalist fears. The resulting dearth of political moderates led to the need for OHR to remove public officials, apply pressure to cobble-together moderate coalitions, and impose legislation. Polls by the National Democratic Institute and others showed that citizens of all ethnicities did not have national or ethnic issues foremost in their priorities; the most salient concerns were economic. An electoral system that forced politicians to look beyond their own ethnic base for votes would force them to campaign on cross-cutting issues addressing voters' aspirations and needs. DPI recommended that the High Representative convene a group of Bosnian experts with some international advisors that to design new laws that would: conform to the spirit of the Dayton Accords, the Constitutional Court's ruling on Constituent peoples, force politicians to seek votes from outside their ethnicity and, if possible, simplify balloting. The High Representative could then introduce these as legislation at the relevant levels of Bosnian government, with the reserved right to impose them. Given the politicization of public security structures in Bosnia and governance in general, changes in this area would have an enormous impact on the provision of public security.

More directly pertinent to public security was the proposal to establish an internationally staffed Organized Crime Task Force. The rationale for creating such a force was that the persistence of wartime leaders, excessive layers of Bosnian government with little or no accountability, and impotent policing and judicial institutions left the country "paralyzed" by parallel power structures and riddled with organized crime.[3] While not all politicians are corrupt, organized crime's influence made reform difficult, for too many politicians found the

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[3] Ibid, p. 5.

system profitable. In addition, the country became susceptible for use as a transit stop, or even base of operations, for foreign terrorists. Radical militants with connections to the SDA and other Bosnian organizations dating to the war endangered long-term stability, and threaten Western targets in the country and beyond. Furthermore, parallel power structures wield major influence in the daily lives of many Bosnians, particularly in the RS and those Federation cantons dominated by the SDA and HDZ.

The proposed OCTF would be an international joint venture of the High Representative, the SFOR Commander, and NATO and EU governments, mandated to target parallel power structures involving terrorists, organized crime bosses, and war criminals, clearing the way for Bosnia to achieve self-sustaining peace and democracy. As even the most honest Bosnian officials are intimidated by the task of confronting organized crime and terrorists, and corruption is endemic in governing institutions, the recommendation was that the OCTF be directed exclusively by internationals initially, with greater local involvement as it achieves successes. As time progressed, Bosnians were to take an increasing role in the OCTF, with the goal of handing it over eventually to Bosnian state control. Even at this stage, the integration of EU and NATO personnel would be helpful, as a way station to the country's Euro-Atlantic integration. Prosecutions would fall under a special chamber of the Court of BiH. The full proposal is available at *www.anonime.com/dpinstitute*.

Two other public security recommendations were to press forward on the unification of the armed forces and intelligence services. Bosnia's militaries at the time, while being reduced, were still consuming a far greater proportion of the country's resources than any conceivable external threat could warrant, especially considering continuing NATO occupation. The intelligence services were more pernicious, with their lack of transparency, connections to neighboring states, Bosnian political actors, and criminal and terror networks. The unification and vetting of both forces would reduce threats to Bosnian reform and European integration while also reducing expenditure.

The Agenda also proposed the bolstering of the nascent State Border Service (SBS), which was at the time just extending its reach to all Bosnia's border crossings. Not only had the SBS quickly developed a solid reputation for effectiveness and professionalism in the short time it had been operational, but it also had helped reduce illicit cross-border trade and increase customs revenues, despite swimming upstream against the entities' legendarily corrupt customs services. Greater control of the borders since the SBS' inception has helped ameliorate Bosnia's image as the open back door of Europe for illegal immigration, a security threat brought into more stark relief after the September 11 attacks.

Finally, the *Agenda* proposed continued support for accelerating minority refugee return, and removing structural impediments to this process by working with neighboring governments to adopt a common simplified return process. Integral to this was enforcement of existing property laws, including holding public officials accountable for holding illegally acquired property by dismissing them without opportunity for reappointment.

The Brcko Model

Heavily influential in DPI's thinking was the example of the Brcko District in northeastern Bosnia. Brcko was the site of some of the earliest and most brutal "ethnic cleansing" of the war, and was strategically located at a point that would sever the RS in two if awarded to the Federation at Dayton. When Dayton was signed, Brcko was essentially left out for binding arbitration. In the meantime, the Administrator of the District was to be an American with even more power in his realm than the High Representative had in his, without the two-year wait for the Bonn Powers. Brcko was essentially a protectorate within a protectorate. The Administrator used this power to establish a local legislature, multiethnic police force, and create a functioning judiciary. Eventually in early 1999, the arbitration panel finalized Brcko's status as being part of the state of Bosnia and Herzegovina, but not subject to either entity. As a result of this good governance and its

strategic location, Brcko has become the most prosperous municipality in Bosnia. Admittedly, running a district is less daunting than a whole country. But one still wonders what sort of results might have been achieved if the initial High Representatives the authority and vision of the first Administrator did in Brcko.

Making Up for Lost Time: the Mission Implementation Plan

Despite the lost time, the international community in Bosnia now shows a more proactive and strategic approach than it had in the past, finally confronting some of the most fundamental problems standing in the way of Bosnia's ability to progress on its own.

Perhaps the best overall reflection of this new approach was the adoption of a Mission Implementation Plan (MIP) in January 2003. To quote the High Representative himself, "the purpose of the MIP is to set out clearly the core tasks which remain for me and my Office, and to provide us with a means of evaluating our progress."[4]   In the 2004 review quoted, Ashdown states that "(s)ome of the key goals in the MIP have been accomplished during 2003; and significant progress was made on others. The achievements of the last year include:

- Restructuring the judiciary and adopting new criminal codes;
- Establishing a State Court capable of dealing with complex and high-profile cases;
- Launching fundamental reform of (Bosnia's) indirect tax system;
- Endowing the Council of Ministers with a permanent premier and new ministries;
- Providing (Bosnia) with a new defense structure based on civilian, state-level command and control and creating a common defense ministry; and
- Registering the near-total completion of Property Law implementation and the transfer of responsibility for refugee return to domestic governments."[5]

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[4] *OHR Mission Implementation Plan 2004 (February 2004);* available at www.ohr.int
[5] Ibid.

Ashdown states the "overriding objective for the OHR remains the same in 2004 as it was in 2003: To ensure that Bosnia and Herzegovina is a peaceful, viable state on course to European integration."[6] In light of progress made in 2003, the MIP articulated four rather than six core tasks:

- Entrenching the rule of law;
- Reforming the economy;
- Strengthening the capacity of (Bosnia's) governing institutions, especially at the State level;
- Embedding defense and intelligence sector reforms so as to facilitate (Bosnian) integration into Euro-Atlantic structures.[7]

These core tasks remain in the recently released 2005 iteration of the MIP.[8] The MIP goes on to list a number of programs under each core task, including which international actors are responsible for them, with a defined transition point for the program to be considered completed or ready to be handed-off to a lead Bosnian body to complete. As Ashdown states in the introduction to the 2004 MIP, "the speed of (Bosnia's) progress toward transition – and towards a reconfigured international presence that can relinquish its powers – will be determined not by rigid timelines, but by an ongoing assessment of the situation on the ground. Are the habits of stalemate and obstruction being replaced by a dynamic of compromise and reform? Is peace enduring? Has the rule of law been made secure? Is the state functional and viable? Is (Bosnia) on track for European integration? Only when we are satisfied that sufficient progress has been made in these respects will we be able to declare our mission fulfilled. It follows from this that the more energetically our (Bosnian) partners implement reform – and the more (Bosnia) becomes a normal transition country – the sooner OHR will be able to hand over to a more traditional international support structure. Our clear aim is to achieve that objective at the earliest opportunity: we

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[6] Ibid.
[7] Ibid.
[8] http://www.ohr.int/print/?content_id=34144

do not want to prolong the role of OHR a day longer than is strictly necessary."[9]

Central to the "entrenching of the rule of law" is ensuring security for citizens and justice for those who had been victimized. One of the main drags on Bosnia's forward movement has been the continued impunity of war crimes indictees and the lack of effort expended by the Bosnian Serb entity's authorities to apprehend them. Bosnia's failure to be invited into NATO's Partnership for Peace Program in 2004 was directly attributed to this problem, resulting in the High Representative's dismissal of a number of senior officials in the RS. Already, the implementation of the Constitutional Court's decision that all of Bosnia's three "constituent peoples" – Serbs, Croats, and Bosniaks – were constituent throughout the territory of the entire state, and that entity constitutions had to be amended to reflect this, has altered Bosnia's political landscape significantly, given the number of returnees.

The 2005 MIP, with its self-assessment of progress was just published in March. The new high court of Bosnia, the Court of Bosnia and Herzegovina, has inaugurated new special chambers to adjudicate war crimes cases that are either handed down by the ICTY, or have never been pursued, and to address organized crime and corruption. Each will be endowed with both Bosnian and international judges, and international prosecutors will be involved in the Prosecutor's Office of Bosnia and Herzegovina. Bosnians will soon see other Bosnians tried for crimes committed in their country during the war against their fellow citizens. There is also an effort to build a Bosnian Judicial Police service. Police reform is a major hurdle to clear in the effort to attain a Stabilization and Association Agreement with the EU, and a public information campaign to create ground-up demand for this has just been started by OHR.[10] The intelligence services, a source of much mischief, have now been merged into a single service. There is now a state-level Defense Ministry, and civilian command and control of the armed forces. A new effort to coordinate among Sarajevo, Belgrade, and

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[9] 2004 MIP.
[10] See OHR's April 1, 2005 Press Briefing http://www.ohr.int/ohr-dept/presso/pressb/default.asp?content_id=34414

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Zagreb on refugee return – completion of Annex VII of the Dayton Agreement – has been initiated as well. These are major innovations and milestones for postwar progress, reflecting an effort to foment progressive partnership, not merely a cop-out handoff of "ownership" of an inherently dysfunctional system.

Exogenous Factors: an Improved Neighborhood Yields Better Public Security

Of course, external factors have assisted in promoting progress in Bosnia. So long as its two large neighbors, Serbia and Croatia, harbored territorial ambitions on its territory and influenced or controlled actors within the Bosnia, stabilization was always delicate. Democratic transitions in these countries in 2000 helped reduce the threat-level, both real and perceived, of future warfare in the country.

Even after the ouster of Milosevic in 2000, elements of the elected government, most notably President Kostunica, voiced discontent with Bosnia's statehood and protected numerous indicted war criminals. His ties to the military and Orthodox Church both acted as drags on Serbia's efforts to reform. The breakthrough of democracy was not converted into an outright victory for democracy due to the lack of will to capitalize on electoral success with thoroughgoing reform of state institutions, including the security services and the judiciary. The assassination of Prime Minister Zoran Djindjic in early 2003 brought home the depth of the threat posed by the still dominant criminal-political nexus, but the following crackdown (Operation Sabre) did not effectively bring the problem under control. This was illustrated by the involvement of state institutions in trafficking sophisticated arms and air defense techniques to Iraq, Libya, and other pariah states in the Yugoimport/Orao scandal that was discovered in autumn 2002.

Croatia's transition was less problematic in many ways than Serbia's; Tudjman's death not only cleared the way for a competitive election but also removed the problem of having to decide what to do with a man who would likely be indicted for war crimes by the ICTY. Unlike his

counterpart Kostunica next door, Croatia's President Stipe Mesic publicly disavowed any designs on Bosnia, much to the chagrin of Bosnian and (especially) Herzegovinian Croats. However, the legacy of the 1991-1995 wars in Croatia and Bosnia continued to have a negative impact on Croatia. The public outcry over the sentence meted-out to General Tihomir Blaskic spooked the fragile coalition government led by Socialist Ivica Racan, and cooperation with the ICTY became more fraught. The spectre of an indictee at large – Gen. Ante Gotovina – recently torpedoed Croatia's scheduled talks on EU accession. Even more detrimental to Bosnia's progress was the lack of forward movement on allowing Croatian Serbs to return to their homes, which would in turn allow other Bosnian citizens to return to homes in the RS. County-level obstruction was the main obstacle, but the national government did not make a concerted effort to overcome it. All told, the transitions in the neighboring countries were necessary, but not sufficient, conditions for Bosnia's progress since.

Strategy and Will are Key

Serious end-state planning, strategic tasking, and vision of international actors on the ground, particularly the High Representative, have been the decisive factors in Bosnia's recent progress. While external factors like the governmental changes in Zagreb and then Belgrade certainly had an influence, the pivotal factor in breaking the inertia in Bosnia was the decision that the status quo was untenable, and could only be changed by catalytic intervention from the OHR, with appropriate international backing. Had this determination been made at the outset, or at least sooner, a different dynamic would probably have developed, due to the incentives local actors would face and the assumptions they would draw. In 1996, local "spoilers," including senior political leaders, rightly determined there were few incentives to cooperate with the international community or implement unpalatable segments of the Dayton Accords. By 2004, there were ample incentives to do so and serious consequences for recalcitrance. In an ironic and amusing turn, many of the most vociferous opponents of the Dayton Agreement, particularly among the Bosnian Serbs, have now become "Dayton fundamentalists," taking a

very strict-constructionist legalistic view of the document to prevent encroachment on their influence and interests.

Bosnia's Future

Bosnia's future is by no means assured at this stage. Still too many of the country's youth determine that they should seek their fortunes abroad, taking with them their ideas and skills, as well as hope. There has been some noteworthy progress in reversing this brain drain, and many in the international community, including the High Representative, see this as a fundamental index of success or failure in the overall effort to assist Bosnia.

Furthermore, there is an understandable skepticism toward new initiatives on the part of many, if not most, Bosnians. Undergoing a series of frequent elections has left many concluding that politics does not provide an avenue to improve their condition. The unwieldy non-nationalist bloc that came to power in 2000 with high aspirations disappointed many of its initial voters (who tended to be younger), allowing nationalists to return to power by default, not by strength of their programs. Many in the now-opposition seemed to blame the incoming High Representative for their electoral fortunes, initiating an acrimony that has not yet been dispelled. Having been under international protectorate for almost a decade, many feel like guinea pigs in experiments that keep changing with the rotation of personnel. At this stage of international involvement, the standard of proof is higher than it would have been earlier for the same initiatives. This is not insurmountable – many if not most of the new institutions, such as the SBS or the planned special panel on organized crime, are popular with Bosnians. But the construction of a cohesive ground-up constituency for the full package of reforms is not what many had hoped.

Perhaps the most troubling issue remaining to secure public security in Bosnia in the long term is the country's electoral structure. Refugee return, arrest of war crimes indictees, dismissal of obstructionist officials from all three main communities, and establishment of new state

institutions (including public security organs) have changed the demographic and political landscape of Bosnia for the better. But there will only be international supervision and intervention for so long; ultimately the "ownership" question will return. Until Bosnia's electoral system forces political actors to build platform and issue-based constituencies, rather than ethnic ones, will the progress made be ensured and self-sustaining.

Lessons Not Learned

No two situations are identical, and simplistic analogies can lead to false conclusions. Yet few situations are *sui generis*. Most intervention scenarios are variations on a theme, and there are dynamics that are consistent, humans being human. The Bosnia experience therefore should have provided some guideposts for future missions, particularly to militaries such as the American, which had little experience in such operations (at least since the Second World War).[11] However, there is little evidence this occurred, judging from the conduct of subsequent missions.

1)   You never get a second chance to make a first impression.

A post-conflict mission, as with peacekeeping or peace enforcement, generates a mixture of great expectations and trepidation on the part of the local population. Will they maintain order? Will conditions improve while they are here? Can they confront and face-down the former belligerents? How tough are they? There is precious little time to make a strong impression, but it is imperative to do so. Critical to accomplishing this is a willingness to confront challengers and "spoilers" immediately and without hesitation. Failing to do so ensures expanding threats to public security further down the line. Furthermore, attention to the basic need of the population for security is usually appreciated and pays dividends later. Ignoring this need spells peril for a mission.

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[11] For a fascinating discussion of the U.S. military's oft-forgotten past experience in what are now termed "stability operations," read Max Boot's *The Savage Wars of Peace (2002)*.

Ray Jennings of the US Institute of Peace published a paper soon after the invasion of Iraq titled *The Road Ahead: Lessons in Nation Building from Germany, Japan, and Afghanistan for Postwar Iraq,* in which he concluded that an intervening power essentially has a narrow window in which to make clear to the local public, including political and security actors, that it is in control.[12] Once this time has elapsed, the local powers-that-be and the general population will have taken the measure of the intervening force and drawn conclusions. The mission will trade on the capital it earns in this period for the mission thereafter, allowing it to accomplish more, or saddling it with a deficit in respect it will have to expend greater effort to dispel. Failing to seize the opportunity available at the beginning of a mission reduces the likelihood for successfully achieving sustainable peace.

IFOR arrived in Bosnia in late 1995 with 60,000 troops – three reinforced heavy divisions. This show of overwhelming force gave the international community enormous leverage. The communities of Bosnia were exhausted by war. The Bosniak community in particular was inclined to see the NATO mission, and the American troops especially, in a favorable light. The Bosnian Serbs, while not at all happy with the occupation, realized that Dayton probably saved the RS from total collapse, and were quiescent. At this stage, there would have been little resistance to more aggressive measures to ensure public security, particularly by arresting indictees and helping ensure safety for those desiring to return to their homes. The intervening force in essence makes the rules, and has to be seen to do so.

However, the unwillingness of the American military (and many other contingents) to take-on a public security role at the outset left public security in the hands of those who prosecuted the war. Preventing effective international policing role – civilian police might need to be bailed-out, risking casualties – maintained this status quo. President Clinton declared that the U.S. would withdraw in a year. IFOR showed a hands-off approach to the forced evacuation and burning of Grbavica in 1995 and a laissez-faire attitude toward indicted war criminals. The

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[12] The report is available on the USIP website at the following link: http://www.usip.org/pubs/peaceworks/pwks49.html

casualty aversion of the U.S. military (or, more accurately, the political leadership and senior officers) was legendary. These factors led the actors who gained the most from the war conclude that they could wait-out the international community, and threaten unrest when they feared for their interests. They perceived no pressure or incentive to give any ground, especially on providing public security to Bosnian citizens (of whatever ethnicity) who they fought to expel in the first place. The wartime power elites began to assess their situations and consolidate their control over their respective fiefdoms, including their economic interests.

No large-scale hostilities broke out in Bosnia after Dayton. Bosnia has made a great deal of progress since the war, particularly in the past three or four years. But this progress comes not because of, but despite the initial posture of the intervening forces and their mandate. A great deal of time and money were squandered, and the criminal power elites are that much more entrenched, rich, and powerful as a result. Bosnian ability to promote public security from within was also stunted by the unwillingness to address the fundamental political and structural issues following the war. For years, particularly in the RS, no logical partnership could exist between international and Bosnian actors on ensuring public security. A "dead zone" between the responsibility exercised by the international forces (primarily external security) and domestic forces (charged with providing public security, but at best not proactive) allowed space for the nationalist political-criminal nexus to flourish. This left most ordinary Bosnians with little confidence in either set of actors and a growing sense of fatalism and political apathy that that further impedes the country's recovery.

There are other lamentable consequences of these largely wasted years. Bosnia suffers severely from brain drain, losing its best and brightest, particularly its youth. Many would-be returnees have now permanently settled abroad, taking foreign citizenship and depriving their country of their human capital, because they determined they would not be secure should they return. Life goes on. It is Bosnia's loss, and at least in part due to the weak mission assigned after Dayton and maintained for years after.

Furthermore, perception of initial success is important in donor and troop contributing countries as well. It is never a good idea to project overconfidence and delude voters that a commitment abroad will lead to rapid and sustainable success; the fact that it takes effort should be underscored. But the ability to achieve early and durable victories raises the credibility of the exercise, maintaining the public support that will be needed to see it through. This, of course, requires planning of what issues to target at the outset.

2)   *Goals and strategies to achieve them are indispensable.*

It may have been understandable in the immediate aftermath of the war that the Dayton model was not yet seen as unworkable without regular interpretation and intervention. But by the time the Bonn powers were adopted in December 1997, the same month Clinton announced U.S. troops would remain in Bosnia as long as they were needed, the policy of muddling along without goal-oriented planning was no longer tenable. Soon after, the mantra of "ownership" began to be heard from the international actors, but it was unclear what was actually being offered, other than a handoff of what was viewed as an insoluble problem and abdication of responsibility for addressing it. This was effectively a shift from naïveté into cynicism when the "evolutionary" model didn't gain ground.

The lack of a coherent political-military strategy to help Bosnia develop to the stage at which it would not need international life support was among the most crippling failures of the international community post-Dayton. Any such strategy must have the flexibility to adapt to unforeseen circumstances, both advantageous and negative. But the basics should have been obvious. What sort of institutions would be needed to make a truly democratic Bosnia viable? What were the impediments to public security – the necessary precondition for political and economic stability and development? How could these obstacles be overcome? Had such simple questions been pondered and honestly answered, the folly of muddling through would have become readily apparent, and a strategy would have to emerge to address, *inter alia*, the

threat posed to public security and stability by the wartime power brokers. While increasingly effective use of the Bonn powers and forward movement had accelerated under Petritsch, clear-headed strategic thinking only became apparent with the arrival of the current High Representative. The disposition of national capitals is critical. Paradoxically, the author concludes that the reduced visibility of Bosnia and the concentration of governments on other issues has actually helped accelerate progress in Bosnia by giving a strong High Representative more leeway.

Considered goals and detailed implementation strategies to attain them are crucial to establishing sustainable public security mechanisms. Benchmarks denoting advancement toward these goals, not merely incremental progress over previous failures, are integral to this.

3)   *Visible commitment is essential.*

The massive show of force brought by the 60,000 troops of IFOR should have provided a great deal of leverage to help transform the situation on the ground and remove or neutralize threats to public security. This potential was unrealized, in large part because the local actors who stood to lose from such a development determined (rightly) that the political will to confront them was lacking.

Potential "spoilers" who had no interest in a successful stabilization and democratic development in Bosnia didn't have to wait long to determine that the initial commitment to ensuring some of the harder aspects of the Dayton Accords – namely refugee return and accountability for war crimes indictees – was soft. The declaration of President Clinton that U.S. troops would be in Bosnia for only a year may have been politically expedient at home, but it had a profoundly detrimental impact on the ground. It took two years to arrive at a pledge that the mission would go on as long as necessary. Had that been arrived at sooner, this alone would have changed the calculations of those in positions to menace public security. Even after the declaration that there was no set end-date for the mission, American politicians continued to discuss an "exit

strategy," including such potentially disastrous shortcuts as formal partition of the country. This hardly bolstered perception of resolve.

In addition to the duration, the *depth* of international commitment to ensuring public security in Bosnia was also placed in doubt early in the mission by a *laissez faire* response to intimidation and arson in Grbavica and the impunity of war crimes indictees. Bosnian Serb wartime leader Radovan Karadzic's driving through U.S. Army checkpoints unhindered most vividly illustrated the latter. The eventual wave of forcible arrests changed this perception somewhat, but this came years later. Still, the most wanted indictees, Karadzic and former Bosnian Serb Army commander Ratko Mladic, remain at large.

4) *Underlying problems don't magically disappear – they have to be confronted.*

The Dayton Accords can provide a framework for progress in Bosnia, when interpreted with larger long-term goals in mind. The ultimate goal should be that Bosnia's political institutions develop to the stage where Dayton can be transcended, and that governmental institutions can be designed for a country Bosnia's size and configuration. These just happen to be the hurdles Bosnia has to clear to achieve an EU Stabilization and Association Agreement.

For all too long, the international community appeared to operate on the premise that given time, Bosnia would simply evolve out of its problems. Perhaps, had there been no clock ticking in terms of international and donor commitment, this might have been a tenable strategy – though by no means assured of success. But this soft touch combined with early signals of attention deficit disorder created disincentives for change and evolution, and incentives for obstinacy.

Bosnia's problems, including those in the public security sphere, are at their fundament political ones, requiring political remedies. Confronting the centers of power in each ethnic community is essential to creating a democratic center of power at the national level, which in turn is a

prerequisite for Bosnia's entry into the Euro-Atlantic mainstream. This would have been seen clearly had there been an effort to plan beyond the immediate term. Instead, wishful thinking prevailed. Sidestepping the problems posed by the concentration of power in the hands of nationalist political parties and organized crime only aggravated them.

These problems included the persistence on intimidating wartime figures in security structures, including local police, bureaucratic resistance to facilitating refugee return, and rampant corruption. The impunity of indicted war criminals for years after their indictment did not bolster accountability or the credibility of international forces. At a time when local security structures were essentially unreconstructed, the mantra that it was the responsibility of local bodies to apprehend these suspects, while technically true, was also cynical and ultimately counterproductive.

5)   *Personnel retention and institutional memory are vital.*

Public security in Bosnia involves aspects of politics and criminality that have to be learned on the ground. Expertise in what constitute the major threats, from whence they derive their support, how politically connected they are, is essential to developing plausible strategies and tactics to address them. Even in developed countries at peace, it can take years to develop a solid case against organized crime networks. A committed cadre of human capital to plan and execute public security strategies is essential.

However, as with most international missions, personnel are rotated in cycles far too short to allow this accumulation of knowledge and contacts. The local actors who pose threats to public security already have the built-in advantage of living in their own country. But the international community prevents its own ability to catch-up, and has been known to repeat its mistakes.

In the DPI proposal for the OCTF, we insisted that international personnel be detailed for a minimum of two years to allow for the

necessary development of in-theater experience. This view is widely shared by many analysts and rule-of-law professionals, who see the current staffing norms as self-defeating. To accomplish this, personnel need sufficient financial incentive, and greater flexibility from the government agencies in their home countries. All too often, missions such as the one in Bosnia are viewed as an extracurricular activity by parts of the governments that back them, preventing organizations like OHR and the OSCE from retaining their most experienced and knowledgeable personnel. This trend reduces not only the effectiveness and efficiency of international efforts, but also their credibility in the eyes of Bosnians.

6) *Identify and develop a local constituency.*

For years, the international effort in Bosnia seemed to work at a level that didn't interact a great deal with the average Bosnian. The High Representatives and many of their staff, as well as a great number of the international personnel, lived in a rarified world. For example, the previous High Representative would travel in a diplomatic car with Austrian flags, even though he was the most powerful executive in Bosnia and *not* representing Austria.

Most Bosnians express frustrations with the inefficiency and corruption of their institutions. There is no lack of support for the idea of reform, and surprising commonality on aspirations. All communities express concern about their economic future and whether their children will see fit to remain. Tapping into this constituency is essential to promoting a self-sustaining democratic Bosnia under rule of law. In so doing, Bosnian political actors could be squeezed between their own voters and a High Representative that has the power to impose in the case of their recalcitrance. This observation was one DPI made throughout its *Agenda*, aiming to involve the general population in designing and directing the reform effort. This strategy would have the added benefit of bringing new leaders to the fore, which is clearly necessary in Bosnia's sclerotic parties, which have little in the way of internal democracy or accountability.

The current international High Representative has made clear that his goal is to help Bosnia develop the institutions to eventually be a viable applicant to the European Union. This is particularly useful, as it is a popular goal among Bosnians and the EU supplies many democracy and reform benchmarks.

Bosnia is lucky in that it has the EU so nearby as a visible magnet for reform and hope for the future; many other countries emerging from war do not. But the bottom line that there must be a local constituency to move forward and achieve success is universal. The mistake in Bosnia was that for too long the international community sought a constituency among Bosnian politicians, who by-and-large had no interest in changing the status quo, regardless of what might be best for their people.

7) *Building professional state-level institutions is critical to ensured stability.*

In Bosnia, the state was designed to be incredibly weak, with no source of revenue independent of the entities at least one of which wished it to remain weak.

Properly exploited, this vacuum actually could have provided an opportunity to build new state institutions from scratch, without having to rely on co-opting personnel beholden to the dominant power elites. The few state institutions that did function, such as the Constitutional Court, were generally far more professional than the governing institutions at the entity level or below. Over time, there has been a more concerted effort to develop state institutions in Bosnia, along with dedicated revenue streams to keep them afloat. The State Border Service and Court of Bosnia and Herzegovina, with its special chambers discussed above, are further examples of this trend.

Manifestations Beyond Bosnia

In other situations, public security has fallen through the cracks due to lack of forward thinking combined with insufficient international political will. In many cases, the consequences have been more dire than those in Bosnia.

Kosovo

In Kosovo, there was little willingness for NATO's Kosovo Force (KFOR) to undertake maintenance of public security upon its arrival, which allowed the KLA to effectively fill that vacuum. A lack of accountability of KLA figures for postwar violence against minorities also had a detrimental effect on the society as a whole, and helped entrench organized crime.

KFOR was challenged at the outset of the mission when some returning Kosovo Albanian refugees and IDPs looted some abandoned Serb villages, claiming many of the contents were stolen. While this could have been true, allowing this sort of activity sent a signal that it would be tolerated, and that essentially there were no rules. Far worse was the wave of killings of Serbs and Roma in Kosovo following the arrival of KFOR. Again, initially there was little done to investigate or protect. Mitrovica became a divided city at the outset of the mission, and was allowed to remain so.

The division of labor was somewhat different from that in Bosnia – there was to be an international civilian policing mission under the UN, but it was not operational for a long time after the KFOR mission began, and remained under strength for much longer. KFOR did not take this problem on. Some high-profile attacks, such as a murder and rape at Devic monastery in June 2001, were undoubtedly linked to the KLA, but no charges followed. A climate of impunity developed as a result, one that is proving very difficult to supplant, and stymies the development of democratic politics and rule of law.

Kosovo also suffers from its indeterminate status. Few honest observers believe that continuing to muddle through is tenable. By failing to address the status question, or even seriously consider it, the international community foreswore the best opportunity to foster a political culture that demands accountability and respects rule of law. The best way to institutionalize these values would have been to nod to reality and state clearly and early that Serbian forces would not return, and that independence was an option (but not guaranteed). This should have been coupled with a willingness to maintain security for Kosovo's minorities at the outset, and articulating that this, as well as security for the territory's neighbors, would be litmus tests for Kosovo's hopes for independence. The hope that this problem, more intractable than those seen in Bosnia, could be avoided indefinitely has reduced options and detrimentally affected public security for all Kosovo's residents by further entrenching violent elites who see no gain in reform or political compromise. Creating "facts on the ground" has had a perverse logic given the lack of incentives (and disincentives) on offer. The reduction in Kosovo's indigenous Serb population may well be irreversible after the events of March 17, 2004. All this is a result of lack of serious planning and lack of will to confront Kosovo's threats to public security.

Domestic public security structures are a mixed bag. The Kosovo Police Service (KPS) was recruited and trained from scratch, including Kosovo's variety of ethnicities, and had a fairly decent reputation for professionalism. The Kosovo Protection Corps (KPC), designed to be a repository for the KLA, saw itself as an army-in-waiting, and was never really dissuaded from this pretension. Furthermore, its members were implicated in being involved in fomenting insurgencies in Macedonia and Serbia's neighboring Presevo Valley. Members were also suspected of attacks on minorities. Rarely were there consequences for members, and never for the institution. A serious long-term plan for Kosovo would have confronted Kosovo Albanians with the reality that the existing KPC stood in the way of the goal of Kosovo's independence.

With the indictment of Kosovo's Prime Minister, former KLA commander Ramush Haradinaj, by the ICTY and recent statements by

Serbian President Boris Tadic that Serbia would not give up Kosovo, the region's future remains in doubt.

Afghanistan

In Afghanistan, the exaltation of a "light footprint" for American and other Coalition forces, and a subordination of public security and the building of legitimacy for the provisional government to the perceived exigencies of warfighting has left a very shaky foundation for that country's institutional and democratic evolution.

The Bush Administration's pursuit of a "light footprint" in Afghanistan, reflecting the Defense Department efforts to reform the military, and its decision to begin diverting attention and personnel to the impending war with Iraq, meant there were always too few international troops to provide for public security. There was no credible attempt to promote public security beyond the confines of Coalition bases and Kabul early in the mission. Subsequent Provincial Reconstruction Teams (PRTs) scattered throughout the country – bases of platoon-to-company level units together with international civilian officials and Afghan government officials – explicitly eschew this as a goal (though it was hoped it would have this effect). There were hopes that the International Security Assistance Force would be expanded beyond the confines of Kabul to the major towns, patrolling the few major roads connecting them, but the forces to achieve this were never forthcoming. Furthermore, an irrational division between that Coalition forces and ISAF has been maintained, forgoing a potential force multiplier. As a result, Afghans outside the capital have to rely on warlords for their public security, except in infrequent cases where the Afghan police and Afghan National Army (ANA) are sufficiently developed to handle these tasks.

The results of this "light footprint" approach are readily apparent "a continuing public security vacuum in much of the country, the continued strong influence of warlords and their impunity for past crimes, and an explosion in the production of opium poppies. While presidential

elections in late 2004 were largely peaceful, parliamentary elections have been postponed, and international commitment appears to be waning.

Liberia

Liberia is a case where even a "light footprint" of professional western forces could have had a major positive impact. The launch of the UN Mission in Liberia could have been preceded by the deployment of the full U.S. Marine Expeditionary force waiting offshore in summer 2003. Such a force could have intimidated all local combatants and secured the major towns in the country until the handoff to the UN mission in Liberia (UNMIL) later in 2003. The Liberian population, including many combatants, was prepared to welcome such a force. And while there might have been some resistance on the part of warlord-cum-President Charles Taylor's forces, the outcome would have been a foregone conclusion. The British landing in Freetown, Sierra Leone, in 2000, throwing back the RUF rebel advance on the city, made a distinct impression region-wide, and saved the UN Mission in Sierra Leone (UNAMSIL) from humiliation and failure. Washington's failure to commit more to such a relatively inexpensive endeavor to begin the rehabilitation of a country it had abandoned over a decade before was a lost opportunity to prove that President Bush's trip to Africa weeks before was about more than domestic political maneuvering. While Liberia is on the mend now, it seems clear that the effort would be well advanced had it been launched on a more solid foundation of public security.

Iraq

In Iraq, the evident lack of planning and preparation for postwar public security has had a strong detrimental impact on the effort to build a durable, stable democratic post-Baath order, and cost many lives: Coalition, Iraqi, and others. More than in Bosnia, Kosovo, or even Afghanistan, the mandate and disposition of Coalition forces in Iraq, in

their unwillingness to contend with public security for the Iraqi population, has adversely affected the stated goal of constructing a viable democratic postwar order.

As in Afghanistan, a premium was placed on fighting light, and rosy assumptions were made about securing the postwar order. Most infamous was the testimony before the Senate by Deputy Secretary of Defense Paul Wolfowitz that the estimate that 200,000-300,000 would be needed to occupy Iraq, made by Army Chief of Staff General Eric Shinseki, was "way off the mark." Compounding these errors of judgment in planning was the idea that the Iraqi police forces would simply wait for orders from their new masters. The U.S.-led Coalition failed to harness the organization and manpower of the defeated Iraqi Army, even if only to muster them, disarm them, and employ them in some fashion consistent with the needs for public order and reconstruction. The official reasons given for this error – that the army had already disbanded itself, and was anyway riddles with Baathists, do not withstand serious scrutiny. By the time that attempts were made to reach-out to unemployed members of the disbanded army, most were disgruntled, and some no doubt had joined the ranks of the insurgency.

The Coalition's posture showed a laissez-faire attitude to public security during the wave of looting that went on immediately upon defeat of the Saddam Hussein regime. This was brought into most vivid relief by the unpreparedness of American forces to secure the National Museum and National Library. Numerous public assets were destroyed, costing untold sums to repair – if repairs have been made to date. Through such inaction, the Coalition sent a signal that such criminal activity was not its concern – a signal that has since come back to haunt these forces. For in addition to the general looting that went on, armories were systematically looted, and weapons and munitions not seized have since been directed at Coalition forces.

It is too early to say whether Iraq will emerge from its current crisis into becoming a prosperous, peaceful democracy. If it does, however, it will be because the errors made in devising the mission for Coalition forces have been surmounted.

Conclusion

The case of Bosnia shows the consequences of failure to plan on the basis of a goal and devising a political-military strategy to achieve it. For years, this left the international community and Bosnians who wished to build a functioning democratic state with no fixed point around which to coordinate and collaborate, or way to measure their progress. The failure to grapple with this necessity stemmed initially probably more from wishful thinking that success could be had on the cheap than outright cynicism. As the mission wore on, it became clear that cynicism – or at the very least insufficient will – in major capitals played an important role in retarding Bosnia's progress. There were insufficient domestic political constituencies demanding accelerated progress in Bosnia once the war had been swept from the front page by Dayton. Avoiding crisis, rather than securing progress, became the political imperative on the part of the intervening governments. Because of this, public security in the country remained tenuous and entirely dependent on external inputs; hardly a sustainable solution. The advantage conferred by entering the country in force in December 1995 was not leveraged into making fundamental improvements to public security, nor was there planning for viable domestic policing capability. While the situation was quiet, there was little or no freedom of movement, and impunity for indicted war criminals. The country was *de facto* partitioned, with international acceptance on the ground.

Some progress was visible even before the Bonn Powers were adopted, like the early and successful separation of forces and the forcible arrest of indicted war crimes suspects in 1997. Others, like dismissal of obstructionist public officials, became more prevalent under High Representative Petritsch. The Constitutional Court of Bosnia and Herzegovina was the first state-level body to play a serious positive role with its decision on constituent peoples in 2000. But this remained unimplemented for an excessive amount of time, despite the threats of High Representative Petritsch.

By the early years of the current decade, the international community became more seriously engaged in promoting transformation of the

Bosnian situation, including public security. The most fundamental change was the appointment of a High Representative with a solid vision and a strategic approach, willing to use his powers to leverage change in Bosnia, both by building support for reform among the general population and by coercive pressure on Bosnian officials at all levels. Integral to this approach is the need for solid backing by the donor community. The Ashdown team's strategy has yielded impressive results thus far, with more in store, despite some bumps and unfortunate conflict with Bosnians who profess to share the same goals along the way. This progress would not be possible were there no Bosnians with whom to partner in the construction of these new institutions and norms.

The Bosnia experience provides a useful model through which to view the development of local public security mechanisms, in large part because this process remained stunted so long for political reasons, and has only moved forward appreciably in the latter half of the international community's post-Dayton engagement there. Recognition of this reality underscores the centrality of political factors and incentives in creating public security in a post-conflict scenario.

Interveners need to recognize that they must seize control and responsibility for the full spectrum of public security at the outset of their mission. While this fact is daunting, unless there are credible non-military policing mechanisms at the intervention stage,[13] there is simply a vacuum that only the military can fill. It is self-defeating not to approach the issue in this fashion, as the problems ignored now must be confronted later, only with a poorer correlation of forces. This was the case in Bosnia, and has repeated itself in subsequent missions.

The most fundamental lesson that must be drawn from the Bosnia experience is that basing a mission on the hope that factors will coalesce into conditions favorable to success is costly, and potentially disastrous, folly. Public security, essential to progress on any front, can be best domesticated when international actors assume effective responsibility

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[13] Such a civilian post-conflict force has been proposed by Robert Perito of the U.S. Institute of Peace in his recent book, *Where is the Lone Ranger When We Need Him? America's Search for a Postconflict Stability Force.* http://www.usip.org/pubs/catalog/loneranger.html

for it early on, and then build on that foundation to develop viable and sustainable local bodies to whom responsibility can be safely handed. This is the precise reverse of the first iteration of the term "ownership" in Bosnia, when wartime criminal-political networks remained unchallenged.   It may sound paradoxical, but deep international commitment, with the requisite strategy and will, allow for faster domestication of responsibility for public security.

Chapter 5

The Police Reform in Bosnia and Herzegovina

Dominique Wisler

Introduction

The Dayton Peace Agreement (DPA) signed in Paris on 14 December 1995 put an end to the ethnic conflict that erupted almost four years before when President Alija Izetbegovic declared independence for Bosnia and Herzegovina on 29 February 1992.[1] The brokered peace agreement partitioned the country into two strong units, called the Entities – the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (hereafter Federation) - with only weak institutions at the national state level. The Republika Srpska adopted a central constitutional model, while the Federation's decentralized constitution was based on the Swiss example and instituted ten cantons with large portfolios of public policies. The origin of the Federation's constitution was an earlier agreement signed in Washington on 1 March 1994 that ended the war between the Croats and the Bosniaks. The Dayton Agreement contained 11 annexes, instituting a large set of mechanisms from the Bosnian constitution to the supervision and coordination of the implementation of the Agreement, return of refugees, elections, and reform in many sectors, including the police.

The Main Actors of the Policing Reform

The main actors of the policing reform process instituted by Dayton were the local authorities themselves, the United Nations International Police Task Force, the NATO-led troops, and the Office of the High Representative. Their respective roles, positions, and visibility, even identity, in the policing reform process have changed over the years. Let us introduce them briefly.

During and immediately after the war the police were organized in parallel structures along ethnic lines in Bosnia and Herzegovina. These lines were also territorial after the internal displacement and wave of refugees of over 1.2 million persons. The Croats controlled the Western part which they called the Croatian Republic of Herzeg-Bosna. The Serbian police had their headquarters in Pale, while the Bosniak police force was based in Sarajevo and controlled the districts of Central Bosnia (Palmer 2004a: 176). The police were further under the influence of the intelligence services and operated as a tool in the service of the political regime via the respective Ministers of the Interior. The DPA, with the new constitution, created a totally new policing system. A crucial decision of Dayton was to fully decentralize the order-producing power, namely policing, to the territories in Bosnia. No policing competencies were created at the national level. Policing was delegated to the Entities and, in the Federation, mainly to the cantons. In a later international arbitration, the autonomous district of Brcko was created with its own police force. This created 13 autonomous law enforcement agencies: 1 unique centralized police force in the RS within the Ministry of Interior with headquarter in Banja Luka, the capital of the RS; 1 federal police force in the Federation with limited competencies for complex and organized crimes, inter-cantonal crimes, anti-terrorism and VIP protection; 10 cantonal police agencies with most policing competencies; 1 district police force in the about 100,000-inhabitants-large district of Brcko with Entity-like policing competences. Later on during the mission, as part of the police reform, new law enforcement agencies were created at the state level: the State Border Service (border guards) in 2000, the Court polices, an Interpol office, and recently, a judicial police (the SIPA or State Investigation and Protection Agency).

All these new national agencies, with the exception of the court police organizations, have been integrated in the 2004-created Ministry of Public Security at the state level.

The United Nations Mission in Bosnia and Herzegovina (UNMIBH) started the implementation of annex 11 of the DPA with the creation of the International Police Task Force (IPTF) to implement the CIVPOL tasks listed in Annex 11 of the DPA. These tasks were essentially monitoring and inspecting, training as well as advising the local enforcement agencies, while the IPTF was expected to work in accordance with "internationally recognized standards and with respect for internationally recognized human rights and fundamental freedoms" (Annex 11). The DPA stated that the IPTF would be headed by a commissioner who would report to the High Representative[2] as well as the Secretary-General of the United Nations (who created a position of Special Representative of the Secretary-General in Bosnia and Herzegovina). The IPTF, which was ultimately created by a UN resolution, was 1,721 strong and, subsequently via several UN resolutions which gave the IPTF additional tasks, became a 2,057-large CIVPOL mission. The IPTF mission lasted until 31 December 2002 when it was replaced by the European Union Police Mission with an initial three-year mandate.

The NATO Implementation Force (IFOR) was tasked by Dayton to implement the military aspects of the Agreement contained in annex 1A. The 60,000-strong force IFOR had a one-year mandate and was replaced in December 1996 by the follow-up NATO-led troop organization, the Stabilization Force (SFOR), who maintained initially 32,000 troops in BiH. At the end of 2004, the SFOR was replaced by a 7,000-strong European Union military force (EUFOR).

The last crucial actor for the policing reform was the High Representative (HR) who represented the Peace Implementation

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[2] Article 2, par. 4 of Annex 11. During the IPTF period, however, it seems that the Commissioner "reported" to the SRSG and "worked closely" with the HR (see the contribution of General Vincent Coeurderoy in this volume).

Council, the PIC,[3] and was tasked with overseeing the implementation and coordinating the civilian aspects of the DPA. The High Representative's role in the implementation, as we will see below, was significantly reinforced in December 1997 when it was asked by the PIC to exercise its "final authority" in matters regarding the implementation.[4] On 1 January 2003, the HR was designated with an additional function as special representative of the European Union in Bosnia and Herzegovina giving him even more leverage on the EUPM and the EU funding for the police reform.

The Agenda and Levels of Interventions

For the discussion of the evolution of the CIVPOL mission in Bosnia, for each phase that I identified I will present the main agenda of the phase as well as the levels of intervention. For analytical purposes, I will distinguish between three levels of interventions: the micro, the meso and the macro levels. Micro interventions deal with individuals. A training project deals with individual capacity and is therefore a micro-level project. The meso level is the level of the organization. A reorganization project dealing with the internal structure of a police force for example is considered here to be a meso-level project. Macro-level projects are projects that deal with organizations at the state level and with inter-organizational projects. A "restructuring project" as long as it redistributes competencies between the various levels of government is a macro-level project.

This distinction will be useful to structure the phases of the CIVPOL mission in Bosnia. I will argue that after a first phase during which the CIVPOL classically monitored the situation during the first year of implementation of Dayton, reforms in the police commenced with micro-level programs. In the second phase, the mission became increasingly concerned with the meso level of the law enforcement

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[3]   The PIC is a group of 55 countries and international organizations that "sponsor and direct the peace implementation process" and the HR is nominated by the steering board of the PIC.

[4]   See   the   conclusions   of   the   Bonn   Conference   of   the   PIC (http://www.ohr.int/pic/default.asp?content_id=5182)

agencies while, in the last phase, starting on 1 January 2003 with the transfer of the mission to EUPM, a large program commenced at the macro level. There is, however, nothing natural or nicely planned in this evolution from the micro to the macro. Instead, it has been mostly the result of the evolution of a combination of factors that were peculiar to the BiH situation. Three factors seem to have had a crucial importance to "explain" the evolution of the CIVPOL mission: the changing local political alliances or local power configuration, the interpretation of the Dayton mandate by the main international actors, and what I will call the "mission cycle".

The local power configuration mattered since the IPTF received only a weak mandate and, according to annex 11 of the Dayton Agreement, the enforcement of the rule of law rested entirely upon the local actors. We will see, for instance, that a power struggle within the nationalist party in the RS during the years 1997-98 and the results of the November 1997 special elections in the RS and the 1998 general elections opened a window of opportunity for the UNMIBH to negotiate with the local authorities an agreement to reform the Republika Srpska police in December 1998.

The interpretation of their mandate by the main international actors of the security sector reform – the NATO troops (IFOR/SFOR), the UN-IPTF/EUPM, and the Office of the High Representative (OHR) – mattered also regarding the type of intervention taken by them. During the mission, there were considerable changes made by all actors in the interpretation of their own role and a change in one actor's posture obviously had an impact on the other actors involved in security sector reform. One example is certainly the support granted by the Peace Implementation Council to the High Representative's stronger interpretation of his own mandate, moving from a coordinating role to a "final decision" function in December 1997. This decision allowed the OHR to remove from public office officials who violated the law and the implementation of the DPA as well as to impose "laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so."[5] This led to

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[5] See OHR description of its mandate: http://www.ohr.int/ohr-info/gen-info/#pic

many authoritative decisions by the HR and opened the door for a more assertive program by the IPTF in the internal reorganization of the police forces.

The interpretation by an actor of its own mandate is partially determined by what I would call an "agency style" or "agency culture". Under the United Nations leadership, the IPTF has remained "legalist", looking at the Dayton Peace Agreement as a ceiling, and focused on local "ownership" when it came to negotiating reform programs. It is less clear if one speaks of an agency style in the case of the EUPM. We will see that legalism, or, Daytonism and ownership issues have become less important in the latest stage after the EUPM took over the policing mandate and that the source of power of the OHR seems today to be represented less in the legal agreement of Dayton than in the politics of the great powers of the European Union which he started to represent officially on 1 January 2003.

Finally, an equally important factor is what could be called the "mission cycle". The agenda varies depending on the position within the mission cycle. When the IPTF, as we will see, begun to accredit the 14 Law Enforcement Agencies in Bosnia, many observers believed that this move, which they considered came too early, was intended to crown the IPTF mission with a final glorious success before its handing to the European Union (Palmer 2004a). Even more to the point, I will argue that the recent changes in the agenda of the police reform at the macro level, which is dominant during the EUPM phase of the mission, is due in large part to the search by all actors for an exit strategy and a general sense that the implementation of Dayton is approaching an end. The notion of financial viability or sustainability in a mission cycle end is becoming almost obsessive and it has had a considerable influence on the current reforms under way in the public security sector in Bosnia and Herzegovina.

The First Phase: the Public Order Security Gap[6]

In the immediate post-Dayton Agreement period, a number of events (elections, transfer of authority of 5 Serbian suburbs to the Federation side of Sarajevo, the resettlement of Moslems to strategic locations in the Zone of Separation between the Entities, the return of refugees) were planned with a critical potential for escalation and other, unplanned, such as roadblocks mainly at the inter-entity line but also in the Croat controlled areas contravening Dayton, were going to seriously challenge the civilian police force – the IPTF.

An additional risk factor was the fact that the pace of the IPTF's deployment was relatively slow and that only 392 monitors were deployed in the first week of March 1996 when the transfer of the Serbian suburbs was starting (the problem has been identified as the "deployment gap"). The potentially escalating events, combined with the deployment gap and the fact that the CIVOL was unarmed and not entrusted with law enforcement capacities posed an extraordinary challenge to a CIVPOL mission. Indeed, the mandate received by the IPTF from annex 11 of the DPA only stipulated a mission with monitoring/inspection, training and advisory functions whereas the entire enforcement of the rule of law was maintained within the functioning police forces of the Parties.

A public order security gap arose clearly from the fact that the NATO troops and the IFOR also received a weak mandate. The "U.S. military wanted a crisp clean mandate which could be fulfilled within a year and could allow them to avoid either "mission creep" or involvement in any policing function." The first phobia stemmed from the 1993 debacle in Somalia and the second from disquiet over the otherwise successful intervention in Haiti in 1994." (ICG, 2002, p. 5). During the first months of the mission it became clear to the IPTF that the IFOR would indeed interpret their mandate as weak and deny being the "911" for IPTF emergencies, as put by Dziedzic and Bair (1998:24).

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[6] This section is based mainly on the account by Dziedzic and Bair 1998.

Even if there were formal mechanisms of information exchange between the IFOR, the Office of the High Representative and the IPTF with the Joint Civilian Commission and a Joint Consultative Committee, the High Representative, which under annex 10 of Dayton had the mandate to coordinate all civilian aspects of Dayton, had "no authority over the IFOR nor could he or she interfere in the conduct of military operations or the IFOR's chain of command." (Annex 10).

The public order gap was narrowed down in size with the subsequent SFOR and the routinization of support to the IPTF. After a few months into the mission, the IFOR became more supportive of the IPTF and important events, such as the 1996 election, were jointly planned by the OSCE, the IPTF and the IFOR. The elections were a crucial test for the IPTF and the mission in general.

The task of the international community was facilitated by the fact that the nationalists were supporting the electoral process looking for legitimization by the electoral victory they expected.

Later on, as previously mentioned, support mechanisms would be routinized with the IFOR follow-up NATO mission, the Stabilization Force (SFOR), to ensure freedom of movement and the dismantling of police roadblocks for instance. Roadblocks and checkpoints were in general forbidden by the IPTF, but were nevertheless often conducted along the inter-entity line. The SFOR provided assistance to the IPTF to dismantle them when persuasion did not work. The SFOR also conducted regular inspections on the special police forces in the RS confiscating illegal weapons and equipment. Later in the mandate, the SFOR also conducted operations to search criminals wanted by the International Tribunal for War Crimes.

Two innovations established during the mission were significant in closing the public order security gap. Dziedzic and Bair stress the importance of the civilian affairs specialists in the early phase who were detached to the IPTF by the IFOR to plan contingencies, assure the link between the two agencies and insure the logistical support the IPTF cruelly needed in its deployment phase.

The second linkage was the creation on 2 August 1998 of the Multinational Specialized Unit (MSU) within the SFOR. The MSU is an innovation of the Bosnian peacekeeping mission. It consists exclusively of police forces with armed force status (gendarmerie, carabinieri, guardia civil, etc.), is an integral part of the SFOR, and was conceived to take on large public order tasks. The MSU was originally deployed in preparation for the second national elections of October 1988 and was believed to be the best tool to bridge the public order gap identified during the first phase of the mission. Lutterbacher mentions that the MSUs seem to have been used relatively rarely, but their significance was considered to be important since they were adopted by the Kosovo mission and, with the transfer of the SFOR to the European Union by the end of 2004, the MSU would become an integral part of the new force under the new name of Integrated Police Unit. Currently, it has 600 personnel from Italy, Hungary, Romania, and Slovenia.[7]

The Second Phase: Democratization Phase, Confidence-Building, and Personal Integrity

As IFOR's one-year mandate of implementing peace came to an end on 20 December 1996, the follow-up NATO organization, SFOR, took over the implementation of Dayton military aspects with a new emphasis on peace consolidation. The SFOR mandate is anchored in the UN Resolution 1088 of 12 December 1996. The number of troops was cut by almost half to arrive at 32,000. At the same time, the same UN Resolution 1088 reinforced the mandate of the IPTF by the significant task to investigate or assist investigation on human rights abuses committed by local law enforcement personnel. This resolution, and the subsequent UN resolutions that increased the number of IPTF personnel from an initial 1,721 to about 2,057, manifested in fact an important change of focus of the IPTF mission after one year of mainly monitoring activities.

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[7]   http://www.nato.int/sfor/factsheet/msu/t040809a.htm

The second phase did not start at the same time in both Entities. In the Federation, it was facilitated by the signing of the Bonn-Petersberg agreement between the UNMIBH and the Federation on 25 April 1996. The December 1988 Framework agreement with the RS allowed the program to start in the RS over two years later.

During the war, the lines between the police and the military were fluid. The police forces had contributed to the protection of cities throughout the conflict but were also involved in ethnic cleansing. They had grown to an estimated force of 45,000 altogether, corresponding to about 1 police officer per 75 inhabitants. Police forces were entirely mono-ethnic. The Bonn-Petersberg agreement's strategic objective was to transform the police in the Federation into a force trusted by the public. Its approach was mainly a bottom-up approach via measures that would bring democratic practices to the police patrol level. The Agreement entailed provisions for a significant reduction of the forces (from 32,750 to 11,500), minority quotas based on the 1991 census and recruitment, one uniform for the whole police force in the Federation, the adoption of a code of conduct, and the initiation of a vetting process.

The core issue throughout this phase was the vetting process of the police forces. UNMIBH created a certification process with three stages: the first stage was the registration of all personnel with law enforcement power; the second stage was the screening of personnel which were to pass a number of conditions in order to be provisionally authorized; provisionally authorized personnel were issued a UNMIBH ID card which they were required to wear on duty; in the last stage for final authorization personnel were required to meet a number of standards in order to qualify for service in a democratic police force.

This process of increasing the quality of the authorized officers and removing inappropriate personnel was accompanied by numerous training courses organized by the IPTF and other agencies with bilateral programs. Despite the fact that the IPTF created a function of donor aid coordinator, bilateral programs, including those of the Council of Europe, were mostly uncoordinated. Moreover, while a database was created to register authorized personnel, this database was not used to

register the courses that each police officer attended. Still in 2003, no such database existed. A survey conducted by the police academy of Sarajevo, at the occasion of a short course on the new penal code that all authorized officers of the Federation were attending during 2004, gave the following results: about 50% of all officers in the Federation had overall less than one month in training while only 10% had received basic police academy training.[8]

The Third Phase: Democratization of the Police Organizations

During this phase, which started in 1999 and lasted until the end of the IPTF mission on 31 December 2002, the emphasis of democratic reform shifted from the individual level to the organizational level and, this time, included the Republika Srpska. Two events were of critical importance in explaining the ability of the IPTF to commence the reform in the Republika Srpska on the one hand and to shift the emphasis of its core programs on the other.

In the RS, the internal political struggle within the nationalist party, SDS, between 1997 and 1998 offered an opportunity for the UNMIBH to overcome the years-long resistance to cooperation with the IPTF and broke an agreement with the moderates on 9 December 1998 that was similar to the April 1996 agreement with the Federation.[9] The access to the Presidency of the RS by Biljana Plavsic opened a conflict with the hard-liners around Radovan Karadzic which culminated with the sacking of the Minister of the Interior, Kijac, in June 1997. Plavsic was supported by the international community. After the holding of special elections in November 1997 to replace the dissolved National Assembly of the RS, Plavsic was able to constitute a thin majority government. Dodik, who was regarded as a moderate by the international community, became prime minister in January 1998. This led the international community and the financial institutions to release the fundings to the RS that had been held back under the conditionality clause and,

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[8] These are unofficial figures from the survey.
[9] This paragraph is partially based on the account by ICG report ("The Wages of Sins", 2001 p. 9).

importantly for the police reform, the Framework agreement with the RS in December 1998.

The second event that was of crucial importance for this new phase was the change in power configuration at the High Representative level. The High Representative's function in the implementation of the DPA was, indeed, significantly strengthened by the Peace Implementation Conference held in Bonn on 9 and 10 December 1997, in which the Peace Implementation Council welcomed the High Representative's intention to use his final authority in theatre regarding the interpretation of the Agreement on the civilian implementation of the Peace Settlement in order to facilitate the resolution of any difficulties as aforesaid "by making binding decisions, as he judges necessary." This new authority was significant in its ability to exercise pressure on the local authorities to adopt far-reaching reforms and set the basis for the start of an important reorganization of the police forces according to democratic principles.

In January 1999, the IPTF published a strategy document clarifying what it meant by democratic policing. The strategy contained three axes: 1) more post-communist, post-paramilitary restructuring; 2) more rigorous training, selection, certification and de-certification procedures; and 3) more democratization by establishing de-politicised, impartial, accountable, and multinational police forces dedicated to the principles of community policing (ICG, 2002:7). While there was a continuation of the training efforts and the certification process,[10] the emphasis of this phase was the reorganization of the police force in order to adjust it to the principles of democratic policing. The centre of gravity of the programs shifted from the individual level of integrity to the organizational level of integrity. The reform efforts that were at the forefront during this period were mainly concerned with the internal reorganization of the LEAs even though some projects were clearly also restructuration projects, the most important of these being the

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[10] By the end of 1997, the provisional certification process was finished for the Bosniak police in the Federation; beginning in 1998 it started with the Croatian side (ICG, 2002, 6) and, in 1999, commenced in the Republika Srpska.

establishment of the national State Border Police imposed by the High Representative.

The change of the IPTF's focus was reflected in the creation of the position of senior co-locators in the Ministries of the Interior at Entity, canton and PSC levels in 1999 (Palmer 2004b:4) and reinforced in 2001 with the new "manage the managers" project. The central piece of the democratization program at the organizational level was the so-called "police commissioner project". The idea was to create the position of police chief or police commissioner, within the police organograms, who would be responsible for all operational aspects of the police force while the role of the Minister of the Interior would be confined to the policy-making process. To ensure this depoliticization process, a mechanism of selection of the commissioners for a four-year period was set up marginalizing the influence of the Minister of the Interior. The police commissioner project obviously targeted the nationalists who traditionally "owned" the Ministry of Interior, and exercised considerable influence in the operational aspects of the police force. In addition, the project served in the canton of Mostar to integrate into a single chain of command the police which were still operating under separate ethnic lines of command.[11]

A second important project was the complete reorganization of the forces and their formalization in rule books. The project was conducted mainly by the US Agency for Cooperation in the field of Justice (ICITAP). All LEAs were restructured according to one basic scheme and rule books were issued for each LEA specifying and describing the ToRs of all functions, the number of staff in the various functions, as well as the ranks of the personnel in each function.

The third significant project that commenced as the mission was closing, probably with the intention of sending a signal to the public that significant progress had been made towards the democratization of the forces, involved the IPTF's launching of an accreditation program of the 14 LEAs. The recommendation for improvement and the final

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[11] Another project along this line involved the physical separation of the intelligence services and the police which often worked on the same premises.

accreditation were issued within one year in 12 areas of policing. The audit team, which was composed of organizational and financial specialists, commenced its work in the District of Brcko. The other 13 LEAs were subsequently audited individually and successively.

At the end of the democratization process initiated by the IPTF, there had been many palpable successes, especially in terms of impact. The level of street crimes and burglaries in BiH was lowered, particularly in comparison to regional levels; subjective security was relatively high, despite cases of ethnic riots. These cases remained exceptional. The Property Law, a fundamental basis for the return of refugees, was enacted and nearly completed in 2003 with its responsibility transferred to local governments. Refugees started to return at a high pace in 2000 and this continued in subsequent years. According to the UNHCR, over 1 million externally and internally displaced persons returned to their original place of residence in 2004. The democratization of the police has contributed to this process.

The Fourth Phase: Between State-Building and Sustainability under EU Influence

Despite all the achievements attributed to the EUPM's takeover of the police mission on 1 January 2003, many weaknesses in the police organizations and the police structure remained and came under increasing scrutiny. The 23-24 May 2000 meeting in Brussels of the PIC was the first to call for structural reforms with a clear state-building agenda.[12] This "national" agenda, as well as the search for an exit strategy, prompted the European Police Mission (EUPM) to bring the sustainability issue and state-building reforms centre-stage. In addition, this fourth phase which started on 1 January 2003 with the transfer of the CIVPOL mission from the United Nations to the European Union and the EUPM, brought a radically new logic with it. Dayton no longer constitutes the main source of power of the OHR; Brussels and the EU

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[12] See ESI paper "Turning Point. The Brussels PIC Declaration and a state-building agenda for Bosnia and Herzegovina", 7 June 2000

do. The HR is at the same time High Representative of the PIC but also Special Representative of the EU in Bosnia and Herzegovina. This change opened the door to a new era of *realpolitik* in Bosnia by the EU and a departure from the "Daytonism" that had been predominant during the first three phases.

Stated in general terms, a major weakness that became obvious after the departure of the IPTF was the strong underdevelopment of all so-called support processes of the police forces. While the capacity-building cooperation programs had focused for many years on strengthening the operative police functions (traffic police, community policing, criminal investigation, public order, crowd control, etc.), almost nothing had been done to rehabilitate and develop the support functions of the police. Indeed, in comparison, little had been done in areas such as policy-planning, budgeting and human resources (carrier plans, selection, etc). Training had been an exception, with a large investment by the IPTF and other donor communities. Police academies had been entirely remodelled and courses were adapted to international good practices. However, typically, training for managers and other support functions had not been promoted by the IPTF.

This issue was recognised during the preparation phase of the EUPM mission. Consequently, the EUPM decided to keep the successful co-locator program but move it this time from the patrols to the senior officers' positions. Thus, co-locators are currently positioned at the management level of police headquarters. Various kinds of specialists – such as financial officers - are also co-located within the respective function of the Ministries of the Interior. The profiles for CIVPOL officers required for the EUPM mission have been modified accordingly. An investment in these support processes is likely to bring with it productivity gains and will stimulate contributions to the current lack of sustainability of the police in BiH and, as I will discuss below, the importance of the problem and the size of the sustainability gap.

These managerial weaknesses are important, but they are "fixable". They do not point towards a fundamental flaw in police reform in Bosnia. It is debatable as to whether they could or should have commenced earlier in

the mission. However, the next two weaknesses that I will stress are more structural in nature. By "structural", I mean that they underline the fundamental limits of a reorganization strategy that is exclusively concentrating on democratic principles and the professionalization of the police. They probably also show the limits of the confederal model that was instituted by the Dayton Agreement. These weaknesses are made visible by two issues that are pregnant in the fourth phase: a) the current reorganization of the state-level judicial court (with a Chamber on organized crimes) and the perspective of a domestic trial capacity for war crimes are likely to be functional only with the full cooperation of the local police forces which, up to now, have had their limitations, b) the police forces in the country are a long way from being financially sustainable, they currently consume a very high percentage of the public budget, and part of the problem lies in the absence of binding coordination mechanisms that guarantee, for instance, interoperability between the LEAs, communication and exchange of information.

The limit to the police commissioner project or, more generally, to the democratic model of policing, lies in the politics itself of the confederal constitution. The "territorialisation" of policing that was instituted by Dayton constitutes a fundamental obstacle, given the local political realities, to the success of a fully professional model of police. In 2002, the nationalists made significant electoral gains and became the dominant party in their respective ethnic group. Despite the constant vigilance by the IPTF and EUPM and the pressures they exercised and continue to exercise on the various Ministers of the Interior to "keep" independent commissioners, it is obvious that police commissioners cannot always resist political influence.[13] The ICG notes that "the apparent incompetence of the police is often a strategy to mask the influence of well-connected individuals and nationalist agendas."[14] What puts additional pressure on the need to strengthen the independence of police has been the recent creation of the State Court with Special Panels dealing with organized crime, economic crime and corruption

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[13] In addition, the organizational reform of the police and the Ministry of the Interior led by the IPTF failed to put the support services under the police commissioner's authority. Instead, they remained under the direct authority of the Ministers of the Interior.

[14] ICG, *Policing the police in Bosnia,* p. 2

(reinforced by the appointment by the OHR of an "international judge" supposed to bring competencies but also "independence") as well as the plans to create a state-level domestic capacity for prosecuting war crimes.[15] In order to avoid the nightmare of empty benches in these courts and given the obvious lack of enthusiasm of local police to arrest war criminals, the initial response by the OHR was to strengthen the State Information Police Agency (SIPA).

Indeed, it quickly became clear to the initiators of the SIPA project that this national Agency needed to have investigative capacity to investigate the crimes of the competence of the State Courts. The SIPA was later renamed State *Investigative* Protection Agency and its target strength is about 1,500 officers. The intention of this project is clearly to de-territorialize the investigative capacity as a way to circumvent the nationalists' control of the Ministries of the Interior and the police at Entity or cantonal levels. This is the recognition of the limit of the strong version of the confederal model contained in the DPA. It might be the beginning, as I will argue below, of the recognition that policing cannot be territorialized or at least not entirely territorialized and a sign of a fundamental change of strategy by the OHR and the CIVPOL mission. An additional motive that is probably behind the deterritorialization of the fight against organized criminality is the belief that nationalism and organized crime nurture each other and only a non-nationalist-based institution can cut into the food chain.

In addition to this, the very fragmented policing structure in BiH and the current organization of the crime-fighting process within the LEAs are negatively affecting the performance of the fight against serious and organized crime. In BiH, the fight against crime is currently performed by 15 different agencies; tasks and competencies are distributed at 5 different administrative or governmental levels; there is currently no single police database - all this while the personnel is operating with very little training and poor salaries. There are many very important

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[15] See the program "state-level criminal justice institutions" of the 2004 Implementation Plan of the OHR. The War Crime Chamber is expected to hear cases as soon as in January 2005 and will be composed by local and international judges (see: "War Crime Chamber Project", OHR publication, November 2004).

projects that have the potential to and will technically improve the situation. National databases are established for passports, residency permits and driving licenses (the OHR and ICITAP sponsored the so-called CIPS project). National police databases, allowing searches for vehicles and persons, are currently being built as well as the necessary electronic communication network. The latter project is financed by ICITAP and the EU CARDS program. But with all these projects which will aim at "integrating from below", the crime-fighting process in Bosnia will be no guarantee that the relevant data will be input into these bases or that action will be taken when vital interests might be at stake in the respective territorial units of Bosnia and Herzegovina.

The other independent issue that is currently affecting the agenda of the EUPM is the lack of financial sustainability of the police forces. The financial viability of the Bosnian State has moved to the center of the agenda of the donors and financial institutions as they look today for an exit strategy after almost a decade of assistance. The financial viability of the police forces is a prime concern of the EUPM, who has a 3-year mandate, and is one of the four strategic areas of intervention in its strategic plan. It is also a prime objective of the OHR as stated in its mission statement: "To ensure that Bosnia and Herzegovina is a peaceful, viable state on course to European integration."[16] There are additional pressures for a viable state in Bosnia exercised by the EU who opened the door to Bosnia for a European future in its meeting in Feira in June 2000. Virtually all financial institutions and international organizations have set the goal of financial viability as the primary objective for Bosnia in the years to come.

The state, indeed, is not sustainable in BiH. The state budget accounts for 47% of GNP in 2002, which is a high figure in regional comparison. The police forces concur to this high spending situation by consuming 9.2% of the public budget (all levels of government aggregated). Again, in international comparison, this share is extremely high. In relative terms, this is three times higher than in Slovenia and about five times higher than in Europe on average. There are several additional features

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[16] OHR Mission Implementation Plan 2003/2004

to this financial problem that point towards the necessity of a radical restructuring of all police forces in BiH to make them more productive and less costly.

One of them is the unjustifiable disparity of police density in the various cantons of the Federation. The rural cantons, in general, have a higher police density than the urban cantons. This is not justifiable either with regard to the levels of criminality or with regard to the otherwise very weak financial capacity of the rural cantons. In several rural cantons,[17] the police consume as much as 20% of the cantonal budget while in others they consume less than 10%. The police density for a mostly rural country is very high in regional and European Union comparison. There is currently 1 authorized officer per about 220 inhabitants and 1 officer per 150 if the support process personnel are included in the calculation.

A second crucial problem is that currently the quasi totality of the police budget is consumed by salaries (80%) and operating costs. There is no room in the already very high current budget for investment in the necessary technology to increase the performance of the police. Without a heavy restructuring program and a reduction of police officers, the international community will have to continue to finance virtually all investments in the police force for many years. Finally, the autonomy of the cantons and entity in procurement issues creates situations that are unacceptable in this financial context as well as for the performance of the fight against crime. Cantons purchase communication material or develop softwares for instance that are not compatible or interoperable with their neighbors' creating the conditions for a continuing weak performance of policing functions.

The prospect of empty benches in higher courts and the recognition that the territorial approaches to policing in Dayton have meant that there are many policing problems yet to be solved in this nationalist political environment. The limits experienced with the democratic and professional model of policing and the search for an exit strategy have prompted the High Representative to totally and fundamentally

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[17]   Livno, Gorazde, Orasje, see EU Police Assessment Report, p. 87

reconsider the country's policing structure. On 2 July 2004, a Police Restructuring Commission (PRC) was established with the mission to propose "a single structure of policing for Bosnia and Herzegovina under the overall political oversight of a ministry or ministries in the Council of Ministers." The PRC is guided by 12 principles in its work. Most prominently among these principles appear four goals: efficiency, sustainability, multiculturalism, and accountability. The preliminary results of the PRC were made public on 15 December 2004. The new model proposed is a single structure model with two levels of policing: central services (SIPA, State Border Service, central support services) are regrouped at the central level while groupings of municipalities will be served by local polices supervised by a national director for local police.[18]

At this point, it should be reiterated that no federal countries in Europe have delegated the competencies to fight organized crimes to their territorial units and most of them, with the exception of Switzerland, have kept a public order operational capacity at the national level. The PRC proposal, however, goes more into the direction of a national police which is at odds with the current confederal institutional model of the country. The fate of the proposal remains to be seen, knowing that the HR can no longer rely on its powers granted by Dayton and the Security Council to impose a new law and that the national police model is likely to trigger strong resistances in the Republika Srbska and the Croat cantons. As special representative of the European Union, the HR has a powerful bargaining power if the adoption of the new model is declared to be a condition for advancing a European future in the current negotiations with the EU.

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[18] Bosnia and Herzegovina Police Restructuring Commission, Executive Summary, 15 December 2004

Conclusion

What has emerged from the CIVPOL mission in Bosnia and Herzegovina as a major paradox is the apparent contradiction between local ownership and state-building. The IPTF democratization strategy conceived Dayton as a ceiling. Its initiatives were constrained by the limits set by the DPA and its reform program has remained largely legalistic in this sense. Building on an agency style, the IPTF under the UN leadership has also often negotiated its reform programs. An example of this negotiation style is the fact that the IPTF initiated the reform in the Republika Srpska in 1998 only after the moderates gained influence in the RS government and agreed to negotiate with the international community. It is, however, true that this negotiating style lessened as the High Representative became more dominant in the process and as the state-building objective moved center-stage. Even so, however, Dayton remained viewed as the "ceiling" and the negotiated police reforms have continued to enjoy reasonable local support.

Since 1 January 2003, a new dynamic has been instilled into police reform in Bosnia and Herzegovina. The disappointment with progress in police reform, the continuous politicization of the police, the lack of successes and police cooperation in arresting war criminals and in curbing organized crime, the lack of financial sustainability, all these considerations have radicalized the approach of the OHR to police reform. Restructuring rather than reorganizing became the master frames of the OHR. State-building and rationalization became the panacea. They are the driving principles of the reform proposal issued by the Police Restructuring Commission that was commissioned by the OHR to design a new model of the policing system in Bosnia and Herzegovina. This reform is unlikely to be imposed by the OHR since it cannot be reasonably framed anymore as an implementation of Dayton and an authoritative decision in this respect would therefore lack a legal basis. Instead, the reform will need to be debated in the public sphere and the law will need to be passed by the national parliament. Since it is likely that it will be opposed by the Serbs and the Croats who will lose their traditional grip on policing, the fate of this proposal in the national parliament is uncertain. The police reform will, however, almost

certainly be included in the catalogue of conditions of the EU for advancing in the pre-negotiations over an adhesion. The police reform is likely to become a crucial test for the future of Bosnia and Herzegovina. It will also be a test of the capacity of the local actors to deal with the state-building agenda in a post-Dayton era.

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Chapter 6

Consolidating the Security Sector in Post-Conflict States: Polish Lessons from Iraq

Rafał Domisiewicz[1]

1   Introduction

The growth in the number of weak or failing states around the world raises the risk that the frequency of conflicts will remain on the rise. Collectively or through individual states' efforts the international community will be forced to take a stand in defence of the principles on which the UN Charter is based. Consequently, interventions are likely to become more common. Whether a post-conflict state falls back into violence will depend foremost on how effectively the security sector has been consolidated.

The tasks associated with re-establishing lasting security are often subsumed under the concepts of nation-building or post-conflict reconstruction. James Dobbins, a former U.S. special envoy for Somalia, Haiti, Bosnia, Kosovo and Afghanistan, currently at RAND, has defined nation-building as "the use of armed force in the aftermath of a conflict to underpin an enduring transition to democracy." Such a definition implies a key role performed by the military in ensuring a return to "normalcy". Another term - post-conflict reconstruction – may, however, better reflect the nature of the engagement of an intervening power and international organisations. Robert Orr, Assistant Secretary for Policy and Strategic Planning at the US State Department considers this to be "efforts by the United States and other actors to help local actors build

[1]   The author is a security policy expert in the Polish Ministry of Foreign Affairs, Department of Strategy and Foreign Policy Planning. *The views are expressed in personal capacity.*

up a minimally capable state in four key areas: governance; social and economic well-being; and justice and reconciliation." In essence then, it is an effort to assist and empower local stakeholders so as in time they may reclaim ownership of the security sector.

States in post-conflict situations suffer from a shortage or lack of effective uniformed personnel required in order to maintain security. Where there are local security forces these often necessitate re-building, transforming or reforming. This is usually the case when an intervention heralds a regime change. The security sector includes all organisations authorized to use, or order the use of force to protect the security of the state and its citizens. As defined by a leading authority in this field, Nicole Ball, the security sector encompasses the following elements:

i)   the security forces (armed forces, police, paramilitary and intelligence services);
ii)   the relevant ministries and offices within the executive branch charged with managing and monitoring the security forces (such as ministries of defence, finance, internal and foreign affairs, national security councils, as well as budget and audit offices);
iii)   informal security forces;
iv)   the judiciary and correctional system;
v)   parliamentary oversight committees
vi)   private security firms;
vii)   civil society.[2]

Security sector reform (SSR) is a systematic, multi-faceted process whereby the mission and organisation of the various components of the security sector are adjusted in such a way as they conform to the principles of security sector governance (SSG). These principles entail that: (1) responsibility for security policy must remain in the hands of democratically-elected civilian authorities; (2) security providers should

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[2]   Nicole Ball, "Transforming Security Sectors: The World Bank and IMF Approaches" in *Journal of Conflict, Security and Development*, vol. 1, no. 1, pp. 45-66.

be controlled by these authorities and a division of institutional competencies should be set by the constitution; (3) security policy ought to be transparent; (4) the national security arena should be inclusive, and shaped, in addition to government officials, also by civil society actors such as NGOs.[3] Although some norms, principles and standards in SSG have been agreed upon and codified (*vide* the OSCE Code of Conduct), no universal or ideal-type paradigms exist, which can be applicable in all post-conflict situations. The main transmitters of norms and values in this area have been multilateral institutions. These have been the UN at the global level and, regionally, organisations such as NATO, OSCE or the EU.

Recent years have witnessed a spate of interventions – including actions taken in Bosnia-Herzegovina, Haiti, Kosovo, Sierra Leone, East Timor, Afghanistan, Iraq and Congo. Although the mandate of the mission in each case has differed, they all sought to rectify a situation that threatened the security not only of the population within a war-torn country, but also regional security. Because a durable reestablishment of security tends to be measurable in at least a decade rather than years, finding a definitive answer to the question whether the international community has succeeded in SSR should be left to the future. This particular study will be limited largely to the challenges of security sector reform in Iraq as viewed on the basis of the experiences of the Polish stabilisation forces. Because the stabilisation and reconstruction of Iraq is an on-going challenge, an attempt to draw conclusions as to what are the ingredients and means of handling a comprehensive security sector reform would be too ambitious. Instead, this study will seek to extrapolate some Iraqi lessons for future security sector reforms in post-conflict states.

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[3] Rafał Domisiewicz, "The Challenges of Reconstructing the Security Sector in Iraq", paper presented at the 16th meeting of the PfP Consortium Euro-Atlantic Security Study Group in Cracow, 22 September 2003.

2 Polish Contribution to Stabilisation and Reconstruction in Iraq

2.1 A Point of Entry

On the basis of UN Security Council Resolutions 1441 (of 8 Nov. 2002), 678 (29 Nov. 1990) and 687 (3 April 1991), Poland, as a member of the US-led "coalition of the willing", participated in Operation "Iraqi Freedom" aimed at ousting the regime of Saddam Hussein.[4] After the end of major combat operations in April 2003, Poland agreed to the US request to help stabilise and rebuild Iraq. The then Polish Minister of Internal Affairs, Krzysztof Janik expressed interest in taking on this mission, pointing out that Polish experts "*could support the Iraqi police force logistically, organisationally, we could train them, help them take advantage of modern equipment and teach them ways of functioning in a democratic society."*[5] Arriving in Iraq to assume command of the Multinational Division-Central-South (MND) on 3 September 2003 Poland learned quickly that it faced an atypical post-conflict scenario. The first commander of the Multinational Division, Gen. Andrzej Tyszkiewicz admitted: "*we were going in to enforce peace, however upon arrival in Iraq, we realised that there were offensive activities still taking place, for which we were unprepared and in which we were prevented from participating by nature of our mandate."* Therefore - to use an expression employed by Walter Slocombe – the Coalition confronted the challenge of "security sector reform 'under fire."[6]

To be fair, the allies shared much of the responsibility for failing to prevent the collapse of law and order which accompanied transition from combat to post-conflict reconstruction. Polish Minister of Foreign Affairs at the time Włodzimierz Cimoszewicz said candidly, "*The current level of terrorist activity is higher than we had anticipated. It is*

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[4]   Around 200 Polish soldiers took part in combat, including GROM (Mobile-Operational Reaction Group) and FORMOZA (Naval Frogmen Group) special forces, a chemical decontamination unit as well as ORP *Kontradmirał X. Czernicki* logistical ship.

[5]   "Rumsfeld prosi Polskę", AOL.PL (16 April 2003).

[6]   Walter B. Slocombe, "Iraq's Special Challenge: Security Sector Reform 'Under Fire'" in A. Bryden and H. Hänggi, *Reform and Reconstruction of the Security Sector*, Lit Verlag, Münster, 2004.

partly caused by mistakes made by the coalition shortly following the end of military operation in Iraq." Not only was there no integrated planning to effect seamless transition from combat to stabilisation, but the Allies also lacked the capabilities needed to address a panoply of reconstruction tasks.

Undaunted by the challenges Poland was determined to help stabilise and rebuild Iraq, which it saw as a potential model of democratic reform that would be attractive to other nations in the region. Poland embarked on a stabilisation mission with the following objectives in mind (see Fig. 1):

    i)   to assist in rebuilding a stable and secure Iraqi statehood, modernising and democratising Iraqi state and society;

    ii)   to pave the way for rebalancing Polish presence in the future by reducing the military component and, correspondingly, strengthening Polish political, economic and cultural activities;

    iii)   strengthening the image of Poland as a reliable ally, playing an active and effective role in areas outside of Europe.

Figure 1   The main responsibilities of the Multinational Division-Central-South (MND)
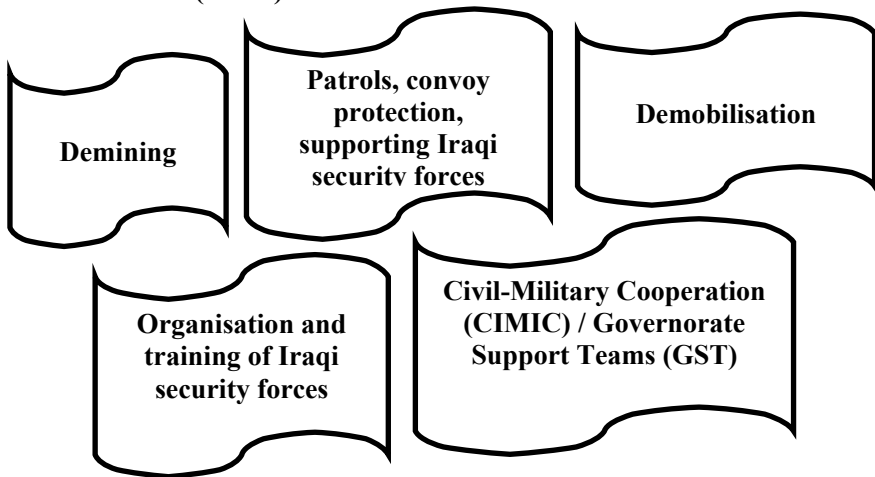
The Polish Foreign Ministry has maintained a political-coordinating role in overseeing Polish efforts in Iraq. The terms of reference for Polish activities were spelled out in the *The Concept of the Participation in the Rebuilding and Reconstruction of Iraq*, adopted by the Council of Ministers on 1 July 2003. Operational details of the mission had been agreed to by Poland and the US in a MoU negotiated between the US CENTCOM and the Polish MoD. As the political transformation in Iraq got underway, Poland made sure it had agreement from the new Iraqi authorities to conduct activities in the country. Consequently, the Polish provision of training and equipment for the Iraqi military was regulated in a bilateral agreement on cooperation signed in October 2004 by Polish MoD and the Iraqi Defence Ministry represented by Secretary-General of the Ministry, Dr. Bruska Shaways.

As a primary objective of Polish activities in Iraq the *Concept* saw the consolidation of Iraqi statehood and the establishment of democratic governance. For this goal to be achieved, security, public order and the safeguarding of Iraqi territorial sovereignty would have to be ensured. Once these goals had been met, power could be transferred to the Iraqis. The preferred outcome of this transfer would be the consolidation of democratic governance, based on the rule of law, democratic institutions as well as the development of a cooperative policy by Iraq towards its neighbours. Such a *finalité politique* would facilitate the accelerated modernisation of Iraqi polity, society and economy. These have been the benchmarks for progress.

2.2 *The Role of the Multinational Division – Central-South in Security Sector Reform*

Poland commands the Multinational Division – Central-South (MND), based in the central-south-western part of Iraq. Prior to Spain's troop withdrawal in 2004, which left open the space they had occupied to US control, the Polish zone of responsibility was 80,000km^2 in size and occupied by 5.2 million Iraqis - 80% of them Shia Muslims - living in 5 provinces (Karbala, Babil, An Najaf, Al-Qadisiyah and Wasit). The division originally consisted of 25 national components. The biggest of these were the Polish, Spanish and Ukrainian units. The withdrawal of

Spanish forces, together with troops from nearly all Central American states, then forces from Thailand and the Philippines, reduced the size of the MND from approx. 8,300 to 6,000 troops from 15 states.[7] The MND had been tasked with conducting stabilisation operations in the central-southern zone aimed at creating conditions conducive to transferring military and civilian authority to the Iraqis. The main tasks of the division involved:

- maintaining security and public order within the area of MND responsibility;
- assisting in the delivery of essential supplies and rebuilding infrastructure (e.g. electricity, water, sanitation equipment and medical aid);
- collecting and safeguarding military equipment that belonged to the former Iraqi Army;
- assisting in the setting up and training of the new Iraqi security forces;
- assisting in the process of establishing new local governance authorities.

In order to help the commander of the MND fulfil such a broad mandate, the relevant Polish ministries sent senior advisers in charge of the respective political affairs (a representative of the Foreign Ministry), economic matters, cultural and social issues.

The core of the Multinational Division had been formed by the Polish Military Contingent (*Polski Kontyngent Wojskowy* – PKW*)*, responsible for 2 provinces. Its size has evolved in response to the assessment of how much progress has been made in transferring security to the Iraqis. While maintaining order and stabilisation (*stabilisation mission*) has been the main focus of the mission of the first PKW contingent (fall 2003-spring 2004), the 4th rotation has concentrated on assisting and training Iraqi security forces *(stabilisation-training mission*). Following Iraqi elections in January 2005, Poland pulled out 800 soldiers, leaving a force of 1,700 with additional reserves at a stand-by readiness at home.

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[7] Several MND member states have announced their intention to pull troops out of Iraq in 2005. They include Ukraine, Bulgaria, Lithuania, Czech Republic and El Salvador.

The contingent will probably be reduced by hundreds more troops by the end of the current year, marking the expiry of the UN mandate (UNSCR 1546), or, withdrawn after the conclusion of the 6th rotation in 2006. Polish Defence Minister Janusz Szmajdziński contemplated such a move in April 2005. However, the Polish government left the decision for a new government, which will assume power following the 2005 Polish parliamentary elections.[8]

2.2a   Training the Iraqi Security Forces

Poland as a Lead Nation (LN), together with other countries participating in the Multinational Division, has trained thousands of Iraqi National Guard, Police and Border Guard personnel.[9] For this purpose, the Division runs a Regional Academy of Iraqi Security Forces in Al-Kut. In 2003-2004, the MND helped organise, train and equip three battalions of the Iraqi Civil Defense Corps (ICDC; renamed the Iraqi National Guard) – 2,700 troops; two battalions of the Border Police (BP) - 535 officers; the Facilities Protection Service (FPS) – 12,000 guards posted at some 1,200 installations in Iraq; as well as the New Iraqi Police (NIP) – 15,000 officers in 79 police stations. In all, 16,000-30,000 soldiers and officers of the new Iraqi security structures have been trained under the watch of the MND.[10]

Designated officers from the MND HQ are currently training officers as well as nurses, communications and logistical experts, drivers and mechanics who make up the 8th Division of the new Iraqi Army's Land Forces. They hone such skills as patrolling, servicing convoys, search

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[8]   The withdrawal of Polish troops from Iraq will not mark the end of Polish involvement in SSR in post-conflict states. Warsaw has made a commitment to NATO that in August 2007 it will deploy the HQ of the Multinational Corps North-East to Afghanistan in order to assume a half-year command of the 9th rotation of ISAF. To date, the activities of Poland in Afghanistan have been limited largely to cooperation with US forces in Operation "Enduring Freedom" (90 soldiers at a base in Bagram near Kabul).

[9]   "Mniej polskich żołnierzy w Iraku", BBC Polish Service, 14 Dec. 2004.

[10]   Andrzej Tyszkiewicz, "Przebieg Misji, Realizacja Zadań, Współdziałanie z Sojusznikami", *Trudna Stabilizacja: Doświadczenia i Wnioski z Sojuszniczego Współdziałania Pierwszej Zmiany Polskiego Kontyngentu Wojskowego w Działaniach Pokojowych w Iraku*, Akademia Obrony Narodowej, Warszawa, 2004, p. 61. Please note that the precise quantitative data on the results of training is not available.

and rescue missions as well as rapid reaction. Assistance given to the Iraqi military is also based on the partnership concept. Units at the battalion level of the Iraqi army are paired with MND units, which give advice and monitor their progress. Further opportunities for Poland to conduct training in a bilateral framework are being discussed. The Iraqi Defence Ministry, for example, has expressed an interest in training fighter jet and helicopter pilots in Polish air force academies as well as military engineers at Warsaw's Military Technical University (WAT).[11]

The Multinational Division has also devoted attention to organising the new Iraqi police and training judicial and correctional services. It has helped repair and equip police stations, building some from scratch. The new police units have been equipped with vehicles, communications devices and other standard issue equipment.[12] The MND forces have taught the police officers anti-terrorist techniques as well as rapid response skills. The first PKW rotation oversaw training of 150 correctional services personnel and repaired prisons as well as detention spots. It also organised six programmes of instruction in human rights and budgeting for judges, prosecutors and investigators.

The quality of much of the newly-trained Iraqi security personnel is admittedly rather poor. That is because the priority has been to shape recruits quickly so they may be put on the street as soon as possible, so as to free up foreign troops. The performance of policing by Iraqis was also intended to help win the confidence of the Iraqi people and, thanks to increased security, to ensure their loyalty to the new Iraqi authorities. Lt.-General Waldemar Skrzypczak, commander of the 4th PKW rotation pointed out that the selection of Iraqi officers to military command posts does not seem to have been well thought-out.[13] Recruitment of unreliable individuals, despite the best efforts of MND intelligence personnel who conduct background checks (with the help of the Iraqi police and the use of Coalition databases) will remain a problem. The

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[11] According to Roman Baczyński, chairman of Poland's biggest exporter of military equipment to Iraq, "Bumar" in Irak – Dziś, Irak – Jutro, Prognozy Przemysłowej Współpracy z Polską", *Irak 2004: Ku Normalności,* Akademia Obrony Narodowej, Warszawa, 2004, p. 90.

[12] Mieczysław Bieniek, "Stabilizacja II – Osiągnięcia i Porażki", *Irak 2004*, p. 36.

[13] "Co słychać w Iraku", *Polska Zbrojna* (20 March 2005), p. 30.

newly-trained police have often proven ineffectual. During the uprising of Muktada al-Sadr some police officers joined his ranks while others deserted their posts.[14] Others have been accused of human rights abuses. In a situation where Saddam Hussein's former functionaries, including his fedains, as well as officers of the dreaded Mukhabarat (the secret police), have joined the terrorist and criminal underground, it takes courageous young Iraqi men to enlist in the new security services. Officers and recruits are targeted by the insurgents and terrorists who seek to disrupt the formation of the security sector. No immediate solution to this problem may be at hand. Security will only be improved once the overall political situation stabilises.

The MND has made substantial contribution to demining as well as explosive ordnance disposal (EOD). Polish engineers have helped remove thousands of unexploded ordnance (UXO) and landmines, dismantle arms depots and destroy old ammunition stocks. They have set up a central arms depot in An Najaf, where weaponry could be stored safely. In 2003-2004, the engineering units of the MND removed mines in an area covering $30,000km^2$ (including clearing access routes across the minefields laid on the Iraqi-Iranian frontier), destroyed about 640 thousand pieces of UXO and secured approximately 1,400 tons of ammunition. Polish soldiers found protecting about 18 sites, some $30,000km^2$ in area, a very manpower-intensive operation. Left unattended, however, materials from these depots would sooner or later fall into the hands of terrorists or Baathists who use them to produce Improvised Explosive Devices (IED). Some arms caches had been looted before the Coalition forces arrived. The MND has also coordinated the buy-back weapons program to encourage Iraqis to hand in their guns and ammunition and conducted search missions confiscating weapons in private hands. The saturation of the country with weapons ("a gun culture") will, nevertheless, remain a serious problem for the new authorities in the future.

The MND personnel, on their own or jointly with Iraqi security forces, have conducted thousands of round-the-clock patrols as well as

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[14] Raul A. Kosta, "Operacja Pokojowa w Iraku w Kontekście Wojny z Terroryzmem", *Trudna Stabilizacja*, p. 196.

checkpoint runs. Thanks to the joint patrols more troops were out on the streets, therefore enhancing confidence of the locals. Officers from the division have supervised the arrests of suspects and units of its military gendarmerie have guarded temporary detention centres. The MND has closely assisted Iraqi security forces during times of heightened security alert, especially during religious holidays and other important events (for instance, recent elections or the introduction of new currency), and has checked for illegal migrants. The division troops have assisted in deporting thousands of individuals who were found to be illegally crossing the border from Iran, Syria or Saudi Arabia.

Porous borders complicate SSR in Iraq. Many parts of the Iraqi frontier with Syria, Saudi Arabia, as well as Iran, are disputed.[15] While the Saudi-Iraqi border in the central-southern zone (130 km) sits largely on a desert and does not include any transportation lanes, requiring simple monitoring, the border with Iran (140 km) is, for the most part, a wide-open expanse of land. In effect, Shia extremists, terrorists, including suicide bombers, have been able to enter Iraq this way. In order to address this situation, the MND forces have helped train the Iraqi Border Guard, restore its infrastructure and assisted it in managing checkpoints on roads leading from the Iranian-Iraqi border as part of "Operation Border".

2.2b Rebuilding the Institutional Infrastructure and Fostering Local Ownership

The MND has been involved in rebuilding the institutional infrastructure of the security sector. This has been the task of *Civil-Military Cooperation* (CIMIC) units, and within them – *Governorate Support Teams* (GST, also known as Government Support Teams), headquartered in each of the provinces under division control (see Fig. 2). These units have also been running Humanitarian Assistance Coordination Centers (HACC) and Civil Military Operation Centres (CMOC) tasked with coordinating the delivery of humanitarian assistance. Humanitarian work has been important for strengthening the

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[15] Raul A. Kosta, "Operacja Pokojowa w Iraku w Kontekście Wojny z Terroryzmem", *Trudna Stabilizacja*, p. 193.

bond with the local stakeholders (a struggle to "win hearts and minds"). As an example, the division has assisted in the rebuilding of schools, construction of roads and other civilian infrastructure, as well as the purification of water for drinking.

Figure 2   An Organisation of the Governorate Support Team (GST)
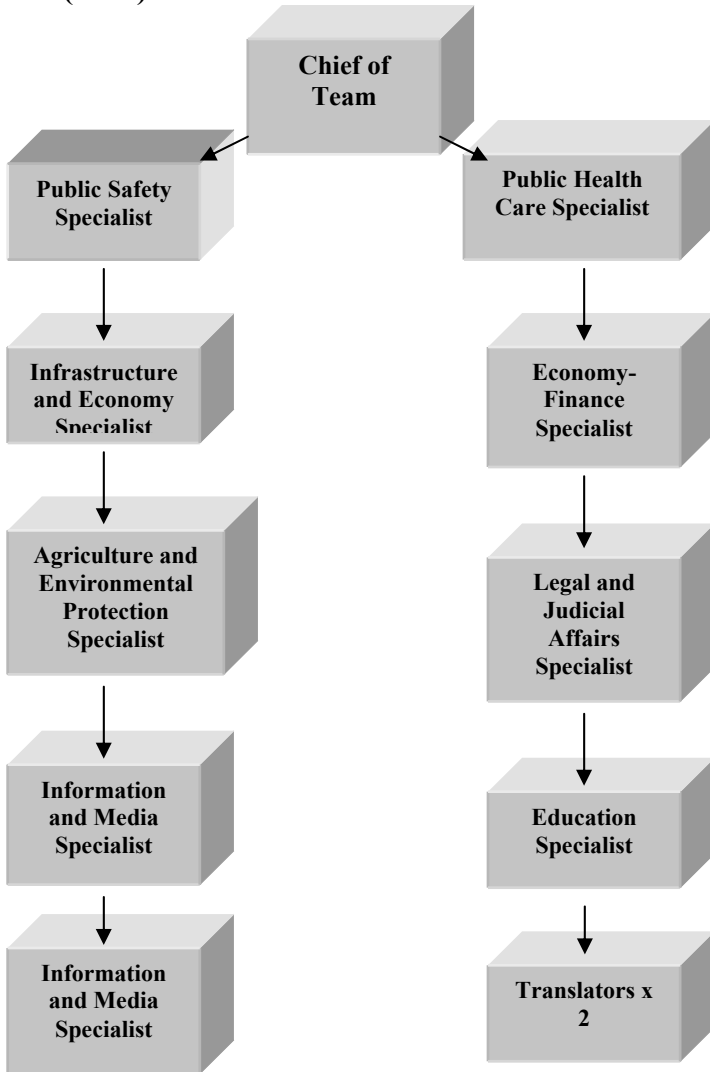
Source: Multinational Division CS.

According to the testimony of a former Polish liaison officer attached to the Coalition Forces HQ, the enormous challenges facing CIMIC took the Polish military by surprise. It has been forced to constantly adjust the CIMIC structures and their activities.[16] Thanks to this adaptation process, together with the experience accumulated along the way, CIMIC could expand and better perform tasks essential for anchoring security sector governance. The CIMIC and GST personnel have been meeting regularly with officials from the municipal and provincial councils as well as with religious leaders. Maintenance of open channels of communication and an emphasis on transparency helped convey the MND objectives to Iraqi elites, building up good will. In the long term, entrenching ties between SSR donors and local stakeholders would help to empower the latter. In a society as divided into ethno-religious groups, tribes and clans as Iraq, good links with the political leaders would also harness public support for the work of the MND, including security sector reform. As an example, after the first PKW commander had paid a visit to Great Ayatollah Mudaresim, an authority figure for Shia Muslims, the cleric issued a public statement, in which he praised the work of Polish troops. The Shia leader spoke also of the unique opportunity Iraq faced of becoming a democracy.[17] Armed with such a "mandate" from a local leader, the Polish forces could go on about their daily business confident of the support of the local population.

MND has contributed to rebuilding structures of local governance. It has on-staff specialists in public administration, customs, health care, education, judicial system, energy, economy, banking and finance, agriculture and irrigation, housing and infrastructure, environmental protection, as well as conservation of the antiquities and archaeology. The GSTs have been helped by personnel seconded from the Research Triangle Institute (RTI), an American NGO, which advises on public administration and trains civil servants. A bottom-up buttressing of local governance complemented the attention and resources the US has

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[16] Dariusz Saletra, "Wykonywanie Zadań Współpracy Cywilno-Wojskowej i ich Wpływ na Strukturę oraz Działalność Dywizji Centralno-Południowej w Iraku", *Trudna Stabilizacja*, p. 186.

[17] On the basis of a personal recollection by Gen Marek Ojrzanowski, "Współpraca Dowództwa Brygady z Władzami i Miejscową Ludnością", *Trudna Stabilizacja*, p. 94.

lavished on re-establishing central government institutions. It has brought other benefits for Iraq. The reversal of the decades-long pattern of centralised rule in favour of greater provincial autonomy has not been welcomed by everyone; much less has it proved workable in all places. Some of the disillusionment with decentralisation may be traced to the paternalistic nature of Iraqi society, which sat well with a concept of a unitary state. Other reasons have to do with meanders of democratic politics. Some provincial authorities, for instance, have complained that no money has flowed from Baghdad which would help pay for the services they were now responsible for delivering. Other local leaders simply claimed power without much support among the local public. Of course, decentralisation aimed at fostering more regional and local autonomy may be the only solution available for an Iraqi society marked by sectarian cleavages. However, as experience outside Baghdad has shown for such a remodelling of the political system to work there must first be effective local structures to take up governance challenges. Unfortunately, many local Iraqi structures of public authority would not have weathered the storm of changes without the capacity-building assistance provided by the MND.

Much of the work the CIMIC and GST has been doing may be regarded as helping familiarise the Iraqi people with democratic accountability. Some CIMIC centres, for instance, became known as "complaint centres", for they were places where ordinary Iraqis could come, voice their concerns expecting a hearing, if not immediate help from their interlocutors. The attention they received from the MND staff and local aids helped tame people's inflated expectations as to the ability of the new authorities to ameliorate a difficult livelihood. The CIMIC and GST brought some grievances to the Iraqi authorities, in this way accustoming them to the need to respond to popular concerns. The liaison function of the GST vis-à-vis the polity and the citizenry was an effort to introduce a new political culture to Iraq. The lesson local politicians learned that they ought to respond to the concerns of citizens would bear fruit in a future system of accountability and civilian oversight of the security sector.

The majority of Iraqis appreciated the work done by the Governorate Support Teams. As a matter of fact, some locals found it useful that foreigners kept in check local officials, some of whom were accused of incompetence, nepotism or corruption. Certain issues brought to the attention of the CIMIC/GST required legal aid. Fortunately, there was usually a legal officer at hand based in each of the provincial CIMIC HQ. Again, without exaggerating the effects of the MND grassroots work, one could regard legal assistance as helpful for anchoring the rule of law in Iraq.

Transparency of public bureaucracy, public access to information – is a fundamental value in security sector governance. The GST and CIMIC have cultivated extensive contacts with the Iraqi media providing journalists with news and information about the work of the Coalition. Even though such a move was dictated by operational contingencies – psychological operations (PsyOps) and intelligence collection (HUMINT) – it has facilitated media oversight of the security sector. Iraqi journalists have jumped at the opportunity to cooperate with the MND staff. They received basic radio equipment, printers and other gadgets essential to the trade from the MND. The division has also disseminated information directly to the public. For example, the first PKW rotation set up a free internet café at a local venue. MND representatives have sat in meetings of the municipal and provincial councils. In view of the old saying that "information is power", public outreach via Iraqi media or directly contributes to the creation of a civil society. SSR can be successful if there is a civil society that can track developments in the security sector, and voice its views on security matters.

Poland has also sought to address one of the trickiest issues in SSR, namely recruitment and staffing in the new security sector. Polish civilian and military commanders in Iraq, taught by Poland's experience of overcoming the heritage of a communist past have reacted critically to the inflexible, wholesale manner in which the US has applied the de-Baathification policy. The US decision to disband the former Iraqi army has also been greeted with criticism in Poland. With a stroke of a pen, the US created a large pool of angry, unemployed young men – ideal

fodder for insurgents or terrorists. Polish analysts have also taken a more holistic, longer-term view of Shia radicalism, preferring political as opposed to military means to deal with it. In fact, deputy Polish foreign minister, Bogusław Zalewski remarked candidly that mistakes the Coalition had made account in large part for Shia radicalism and their resort to violence.[18] As a corrective to dangerous sectarian strife, Polish analysts have put hope in the moderation that will come about as radical clerics are integrated into the political mainstream. A policy of deliberate exclusion would remove any hope that Iraq's ethnic groups reach consensus on the future shape of Iraq, its political system or security policy.

2.3   Polish Contribution to Reforming the Security Policy Framework

Consolidation of security sector reform will prove difficult for Iraq, which lies in a region, where only two fully-fledged democracies exist (Turkey and Israel), which has witnessed many wars in recent decades and where the "security dilemma" has not been ameliorated by any worthwhile platform of institutionalised cooperation. For Iraq to become a democratic state it has to shape a democratic security policy, upholding the principles of the inviolability of borders, good-neighbourly cooperation, as well as a sensible armaments policy. Poland has sought to transfer some of its own experience with recalibrating security and defence policies in the wake of systemic change. As an example, Warsaw has been hosting 3 Iraqi students who study at the Diplomatic Academy of the Polish Foreign Ministry. They attend courses on international relations, security cooperation, the apparatus and mechanisms of foreign policy-making in a democratic system and other issues pertaining to foreign policy. They attend lectures together with Polish students – future adepts of diplomacy. Such an experience, plus the networking benefits, will prove valuable for young Iraqis, especially those who desire a diplomatic career. They are able to learn from the experiences of a country that has not only become a consolidated

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[18]   Bogusław Zaleski, "Meandry Irackiej Współczesności", *Irak 2004*, p. 43.

democracy but has joined in the security of a community of like-minded states – the North Atlantic Alliance which guards against the renationalisation of security, as well as a democratic community *sui generis* - the European Union, where security policy is becoming more and more a subject of supranational cooperation. This example, although at present not possible to emulate in the Middle East, may hold the key to guaranteeing peace in that region. The Iraqis learn at the MFA Diplomatic Academy a fundamental tenet of security sector governance – that security policy is shaped and run by civilians. This is yet another novelty for Iraqi people. They had grown used to seeing strong men in uniform guide Iraqi security and defence policy. An outcome of this has been well-known – the wars Iraq waged with neighbours, Iran and Kuwait, as well as organised terror against minorities, including the Kurds.

Poland had seconded policy experts in Iraq to work in the structures of Coalition Provisional Authority (CPA) – until its dissolution in June 2004. After the expiry of contracts, some experts have turned to advising Iraqi government institutions. Poland plans to maintain s*enior advisors* at the Foreign Ministry, Ministry of Defence (at least 6 MoD officers seconded to the Senior Advisor's office in the Iraqi MoD), Ministry of Internal Affairs as well as Ministry of Finance. It also has plans for the secondment of advisors to ministries dealing with economic affairs, including communication and construction.

2.4. NATO Training Mission

In an ideal post-conflict scenario, international organisations, best suited to specific areas of security sector reform, would pool their comparative advantages and pilot reform programmes. This has not happened in Iraq. The intervention was contested by countries denying that there had ever been authorisation for the use of force. Although Poland had maintained that there were legal-normative grounds for intervention, it nevertheless saw that the reconstruction of Iraq would not succeed if countries, other than those that had participated in the intervention, along with multilateral organisations, shrunk from the responsibility to stabilise and

rebuild the country. Especially so since the UN Security Council endowed UN member states with that responsibility by virtue of resolutions 1483[19] and 1511.[20] Apart from relevant UN agencies, Warsaw saw NATO as the most useful vehicle for carrying out tasks related to security sector reform. However, convincing all NATO members to contribute to reinforcing security in Iraq has proved arduous. The main difficulty lay in assuaging the concerns of those Allies, who feared that the entry of NATO to Iraq would constitute an ex-post facto legitimisation of the intervention, which some of them had opposed in the first place, or worse – drag the Alliance into combat. The green light for bringing NATO to enter Iraq[21] came at the North Atlantic Council summit in Istanbul on 28 June 2004. The terms and details of NATO assistance in training Iraqi security forces were ironed out at the North Atlantic Council on 30 July 2004. After further difficult and lengthy negotiations over the form of NATO aid, chain of command as well as financing, the Alliance agreed to initiate the NATO Training-Implementation Mission in Iraq (NTIM), transformed - according to 9 December 2004 NAC decision - into the NATO Training Mission – Iraq (NTM-I). It has been tasked to support Iraqi authorities in rebuilding national security institutions and training security forces personnel.

One of the main projects the Alliance has considered for SSR is the establishment of NATO Training, Education and Doctrine Centre in Iraq (TEDC). It will be mandated with coordinating Iraqi security, personnel training as well as assisting Iraqis in the preparation of military doctrines. Around 300 NATO instructors are supposed to train more than 1,000 Iraqi officers annually, including those employed at the Ministries of Defence and Interior. Members of the General Staff are

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[19] UNSC *1483* "… appeals *to Member States and concerned organizations to assist the people of Iraq in their efforts to reform their institutions and rebuild their country and to contribute to conditions of stability and security in Iraq...*" (1).

[20] UNSC 1511 "*... determines that the provision of security and stability is essential to the successful completion of the political process as outlined in paragraph 7 above and to the ability of the United Nations to contribute effectively to that process and the implementation of resolution 1483 (2003), and authorizes a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq...* " (13).

[21] It must be pointed out that in June 2003, NATO agreed to assist Poland in the logistical, force-generation and intelligence aspects of forming the Multinational Division-CS.

also supposed to be trained at the TEDC due to open its doors officially in September of this year. In addition to NTM-I, Alliance members have been conducting training for Iraqi officers at NATO facilities in Germany and Norway as well as schools located on member states' territory or in third states (Jordan, Qatar and the United Arab Emirates). This activity is supposed to be financed through a special fund totalling approximately 3.5 million euros.

The Alliance, moreover, is supposed to help provide equipment for the Iraqi security forces. The Training and Equipment Coordination Group set up at NATO HQ will be responsible for this. It will have at its disposal a special fund of between 50 and 100 million euros.

The Multinational Division has declared readiness to provide protection for NATO assets, if and when they would be operating in the zone of MND responsibility. Poland participates directly in NTM-I. The Polish Military Contingent has deployed a transport platoon, a force protection unit as well as a medical team (32 soldiers in total) in support of the TEDC. Poland has also dispatched an advance team of 6 instructors to help in the work of TEDC. From February to May 2005, Polish general Bronisław Kwiatkowski served as deputy head of TEDC.

Like other Alliance members, Poland has also conducted training for Iraqi security officers outside the NATO/NTM-I framework. In February 2004, the Polish Ministry of Interior sent a 10-member strong (unarmed) contingent of police officers to train Iraqi police officers at the International Training Centre within the International Police Academy in Amman (Jordan). The police officers deployed to Jordan had participated in peacekeeping missions in the past. They were given lectures as well as practical training in defence tactics, intervention techniques, driving skills, firing, as well as riot control.

2.5   EU Training Mission EUJUST LEX

Much of the same acrimony that stemmed from the Iraqi crisis, handicapping post-conflict cooperation in NATO, has also inhibited the EU approach towards Iraq. For a long time, to Poland's dismay, it steered clear of any engagement in the country. Eventually, the need to bridge the transatlantic divide and prevent a regional spillover of violence pushed the EU into action. On October 2004, the European Commission dispatched a fact-finding mission to Baghdad. The Commission recognised that Iraq faced a critical need for assistance in security sector reform, especially in recreating an effective judicial system backed up by strong law enforcement. Acting upon its recommendations, the European Council in November 2004 presented the then Iraqi Prime Minister Ilia Allawi with an offer of EU assistance, mainly financial, developmental and also in terms of support for UN activities in Iraq, as well as training Iraqi personnel. After difficult negotiations, mainly over where to conduct proposed training - in Iraq, as preferred by Poland among others, or, in the EU states – an option supported by France - on 21 February 2005 the EU Council agreed to deploy the EU Integrated Rule of Law Mission for Iraq (EUJUST – LEX).

The Political and Security Committee (PSC) has decided to treat the rule of law program as part of the ESDP mission dedicated to reforming the penitentiary system in Iraq. It envisages organising 13 courses for approximately 500 high and mid-level management staff representing the judicial and the penitentiary security sectors, as well as seven courses in criminal law to be offered to 250 people, mainly senior criminal investigators, annually. Iraqi officials will be taught methods of running the judicial and correctional system, as well as the workings of internal affairs systems in general. Thanks to EU assistance, Iraq may reach the goal of having 10,000 Iraqi Correctional Service personnel employed by 2005. For security reasons, as well as a lack of appropriate infrastructure in Iraq, the EU has decided to conduct training in facilities located in EU member states. Europeans have opted for a so-called gradual approach, meaning that once the security situation in Iraq improves, it may be possible to organise some of these programs in-theatre. The operational

phase of the mission is supposed to start in July this year and is expected to last one year. The common costs of running the Liaison Office in Baghdad and the Coordination Office in Brussels as well as transport will come to 10 million euro paid out of the CFSP budget. A retired British police officer, Steven White, was nominated on 8 March 2005 as Head of the EU Integrated Rule Law Mission.

Poland has decided to organise and finance a course in criminal law to be given at the Police Training Centre near Warsaw (Legionowo). The course would be addressed for senior rank police officers as well as investigative judges. The Ministry of Internal Affairs has assumed the lead role in organising the course.

3 Winning the Peace – Lessons from Iraq

The activities Poland has pursued in the area of Iraq that is under MND responsibility (see Fig. 3) have had to be coordinated with the nation-wide security sector reform which is under the auspices of the US-led Multinational Security Transition Command (MNSTC).

Figure 3   Polish contribution to security sector reform in Iraq

Mission	Activities	Institution in Charge
▪ Establishment of Iraqi defence ministry	▪ Secondment of 6 officers to the CPA Military Advisory Team at the Office of the Iraqi MoD Senior Advisor	▪ MoD
▪ Rebuilding and training the police	▪ Training by the Polish Military Contingent (PKW) as well as Ministry of Internal Affairs and Administration (MIAA) instructors in Jordan and Poland (as planned)	▪ MoD, MIAA
▪ Training the Civil Defence Corps	▪ PKW training	▪ MoD
▪ Training the Border Guard	▪ PKW training, in cooperation with MIAA (also plans to train staff in Poland)	▪ MoD, MIAA

▪ Training the Antiquities Protection Service	▪ PKW training	▪ MoD, Ministry of Culture
▪ Transformation of Iraqi armed forces	▪ DDR, training of lower rank officers ▪ PKW training	▪ MoD
▪ Supporting the reconstruction of the educational system	▪ Rebuilding schools and vocational institutions, ensuring security of educational facilities as well as expanding the curriculum of Iraqi schools; ▪ Participation of Civil-Military Cooperation (CIMIC) units and Governorate Support Teams (GST) in coordination with Iraqi Civilian Defence Corps and the Facilities Protection Service	▪ MoD, Ministry of Education
▪ Rebuilding the financial system	▪ Participation of PKW units in coordination with the Iraqi Facilities Protection Service; ▪ Assistance by the Polish Ministry of Finance representative at the Iraqi Finance Ministry ▪ Plans to train finance and banking staff in Poland	▪ MoD, Ministry of Finance and the Polish National Bank
▪ Rebuilding the judicial system	▪ Conducting repairs and supplying equipment for courts, prisons and detention centres ▪ Participation of CIMIC and GST	▪ MoD
▪ Supporting law and order	▪ Expansion of infrastructure, reinforcement of police stations ▪ Participation of PKW units as well as CIMIC and GST experts	▪ MoD, MIAA
▪ Protection of NGO and other international organisation's convoys	▪ Participation of PKW combat and logistical units	▪ MoD
▪ Civilian expert support for the Coalition	▪ Secondment of civilian specialists, including political advisors, to CPA structures	▪ MFA, MoD

Provisional Authority		
▪ Advisory role of Polish specialists attached to Iraqi government institutions	▪ Secondment of Polish specialists to Iraqi ministries	▪ MFA, MoD, Ministry of Economy, MIAA as well as Ministries of Finance, Infrastructure, Agriculture, Environment and Culture
▪ Training Iraqi diplomatic cadres	▪ Training of 3 junior diplomats at the MFA Diplomatic Academy	▪ MFA
▪ Training of the Fire Service	▪ Plans under consideration	▪ MIAA

Source: Polish MFA

This does not mean, however, that the experiences of the Americans, British and Poles, each of whom has administered a certain part of Iraq, were the same. Particularly for the US forces, which managed areas affected strongly by the Sunni insurgency as well as Shia violence the job involved, in addition to SSR, leading counter-insurgency offensives. The Polish forces had different Rules of Engagement (ROE) as its mandate revolved around stabilisation tasks. Therefore, the following lessons for consolidating SSR (see Fig. 4) derived from the Polish experience in Iraq may or may not be the same ones which other Coalition members would necessarily come up with.

Figure 4   Consolidating Security Sector Reform: Lessons from Iraq

	Actions required for consolidation of SSR	Rationale
1.	SUPPORT OF THE INTERNATIONAL COMMUNITY	When conditions warrant it, the intervening coalition should conduct military operations mandated by a legitimating international authority (e.g. UN SC or the North Atlantic Council). Post-conflict transformation, also sanctioned by an international authority, should be

		subject to its oversight. Multilateral institutions should be directly involved (e.g. UN agencies, NATO, EU, World Bank).
2.	INTEGRATED, COHERENT STRATEGIC PLANNING AND RESOURCE MANAGEMENT	Peace enforcement operations or any other type of intervention require an a priori comprehensive planning. The strategy should encompass all phases of military activity as well as post-conflict reconstruction. Relevant government and/or international organisation's agencies should take part in planning. This will make it possible to direct best resources to the most appropriate ends.
3.	FILLING THE POST-CONFLICT SECURITY VACUUM. DISARMAMENT AND EXPLOSIVE ORDNANCE DISPOSAL.	The intervention forces, trained in advance in law enforcement, and backed up by proper civilian capabilities, should take control of security once combat operations have come to an end. Irregular forces must be reigned in. Mines and unexploded ordnance need to be cleared.
4.	INITIATING THE PROCESS OF ESTABLISHING SECURITY SECTOR GOVERNANCE	The rule of law needs to be re-established promptly. This requires a speedy reestablishment of governance structures, including interim political authorities – initially supervised by the coalition staff. Officials of the discredited regime need to go through a vetting process before re-employment. Some institutional continuity, however, would be an asset. Such a unifying force could be an army, though purged of officer cadres convicted of human rights abuses.
5.	BUILDING NEW DEFENCE STRUCTURES AND SECURITY SERVICES	A stabilisation force, although essential for deterring challenges to the new authorities, cannot remain in the country indefinitely without risking the wrath of local population. It should at once begin training defence and security personnel that would be able to relieve foreign troops, thus moving forward the timeline for withdrawal.
6.	ENSURING REGIONAL STABILITY AND PROMOTING NEIGHBOURLY COOPERATION	If the borders are porous they need to be tightened up against incursions by foreign saboteurs, terrorists, intelligence agents as well as other subversive elements. In order to limit the damage from destructive, self-serving interference by neighbours, the intervening states should engage them in dialogue and cooperation. SSR donors should make their intentions transparent as well as ask for any help possible to re-establish security (e.g. keeping in check radicals opposed to intervention

		in neighbouring countries and tightening control of illegal transfer of weapons as well as money used to fund insurgent or terrorist groups.)
7.	PUBLIC EDUCATION AND INFORMATION CAMPAIGN	Systemic transformation should enjoy support of the local population. For this to bear fruit, the intervention coalitions should focus on communication, empowerment of a fledgling civil society, as well as consult each major step undertaken with the local stakeholders. The aim would not be to impose western solutions upon the post-conflict state. Changes should be brought in preferably in an evolutionary manner, in such a way as they do not clash with local ways, but affect gradually and over the long term a transformation of the indigenous political culture.
8.	TRANSFER OF OWNERSHIP TO THE LOCAL STAKEHOLDERS	Consolidation of the security sector would be complete once sovereign decision-making rests in democratically-elected authorities and security sector governance becomes entrenched.

Source: R.D.

3.1 Advance Strategic Planning

The starting point for security sector reform is planning for post-conflict reconstruction as part of the intervention strategy. Both civilian and military departments should be involved. Even though conditions in a post-conflict state will likely force changes in the SSR blueprints, one cannot proceed with reform in a conceptual vacuum. Hence, there is a need for integrated strategic planning (pre-conflict, intervention and post-conflict phases of intervention); information management (transparency of information, public relations); as well as resource management (capacity building as a priority, capabilities drawn from diplomatic, military and development quarters);

3.2 Nature of the Post-Conflict Security Environment

The more volatile the post-conflict security environment, the longer and the more difficult the consolidation of SSR becomes. The end of the

combat phase of Coalition intervention in April 2003 did not generate a permissive environment in which security sector reform could be initiated. Obstacles to reform have come from terrorism, insurgency and civil disorder. The list of enemies of the new proto-democratic order is long and includes inter alia:

- Saddam Hussein loyalists as well as Sunni neo-nationalists, most of whom come from the former dictator's stronghold in the Sunni triangle around Baghdad and Hussein's birthplace Tikrit;
- terrorists liked to Al-Qaeda, especially jihadists taking orders from Jordanian terrorist Abu Musab al-Zarqawi;
- Shia militants (e.g. members of the Mahdi's militia) who seek establishment of a theocratic regime;
- criminal gangs, including weapons smugglers, carjackers and kidnappers.

These security spoilers share one thing in common: they use intimidation and violence in order to destabilise the situation in the country and turn the wrath of ordinary Iraqis, angered by insecurity, against the new Iraqi authorities, thus undermining support for Coalition policies. Common criminality has, de facto, become a strategic "force multiplier" in Iraq.[22]

3.3   Filling the Security Vacuum

It is necessary for the intervention forces to fill the security void by assuming basic law and order functions as soon as military activities cease. Lawlessness cannot be justified under any circumstances. The tolerance the US showed towards looters at the start of post-conflict transition, which it justified as a welcome release of pent-up frustration with the old regime, instead of predisposing the population to the new political masters actually alienated it. Personal safety is the most important value for an individual, whether he/she lives in the prosperous West or in a country emerging from war.

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[22] Christopher Aaron, "Kidnappings endanger reconstruction in Iraq", *Jane's Intelligence Review,* March 2005, p. 9.

3.4   Disarmament, Demobilisation and Reintegration

It is important that SSR be sequenced properly. Disarming and demobilising combatants and restoring security services are the priority tasks. The Iraqi experience, albeit not comparable with other peace enforcement situations, showed that a simple demobilisation may cause more harm than good. The former US administrator in Iraq, Paul Bremer, dissolved the 400,000-strong Iraqi Army in order to remove the central pillar of the Iraqi regime. However, the Army had also been the only unifying force in a society riven by sectarian factions. Dismantling it deprived the Coalition of a potentially useful tool with which to reimpose order and security. Other effects have already been described: causing pauperisation of hundreds of thousands of Iraqis, contributing to their political alienation and, in effect, forcing former serviceman to join the criminal underground. Effective reintegration would likely be very difficult under these circumstances.

Another contentious issue relates to ensuring central monopoly over the use of force. Disarming paramilitary groups is one avenue, in which this can be achieved. In Iraq, the strongest paramilitary forces have been the Kurdish Peshmergas and the Shia religious militias. An attempt simply to disarm these groups would invite serious political backlash as well as violent resistance. A better alternative approach might be to try co-opting these groups and integrating them into the new security sector. An analysis of the conditions in a post-conflict state should determine the best solution. For it would be simplistic to assume that, as a rule, all paramilitary forces constitute a threat to SSR.

3.5   Host Country Capabilities

The multi-ethnic, multi-religious nature of Iraqi society complicates SSR. Even though Saddam Hussein resolved to enforce national unity, persecuting those who resisted (e.g. the Kurds) his overthrow revealed how fragile the Iraqi state had been and how total its subordination to the dictator had become. As soon as the regime unravelled the self-identification and loyalties of the Iraqis reverted to their most enduring,

elemental forms – the family, the clan or tribe. To compound problems religion, taking on fundamentalist shades, now permeates Iraqi political culture.

On the "plus" side, however Iraq has a fairly large educated population (a literacy rate of 58%), which could facilitate the introduction of security sector governance. In spite of gross socio-economic problems, the abundance of oil and gas should help yield resources necessary for consolidating SSR.

3.6   Regional Support

Security sector reform in a post-conflict state needs the support of neighbouring countries. With the exception of Turkey, Iraq is surrounded by non-democratic states. Each has reasons to be suspicious of efforts to anchor democracy in Iraq. For Iran, this would equal the consolidation of US – and – by extension – Israeli influence at its gates. For Syria - a military dictatorship - the overthrow of the Baath regime has removed its ideological ally. While Kuwait may well be interested in the transformation of Iraq, the baggage of the past will delay normalisation of bilateral relations. Turkey appears preoccupied by the Kurdish question. What is worse, according to media accounts citing US intelligence sources, some of Iraq's neighbouring states have either turned a blind eye or actively supported the flow of agents, weapons and other means in support of the Iraqi insurgency.

Aware of the complexity of the regional situation in 2003, Polish Foreign Minister at the time, Włodzimierz Cimoszewicz, visited regional capitals for meetings with the leaders of Iran, Kuwait and other countries in order to explain the reasons why Polish forces would be sent to Iraq. While this has helped smooth the take-over of Polish responsibilities in the Shia part of the country – most exposed to Iranian influence, the best of diplomatic finesse could not secure the long-term support of the whole Middle East.

The post-conflict state can, however, not welcome regional support. The Iraqis have been weary of any neighbour's offer of assistance for fear this would be tantamount to interference. That is why, a proposal, the Saudis once made, to lead a Muslim stabilisation force in Iraq was rebuffed by the new Iraqi authorities. The same fate met a similar suggestion from Turkey. In contrast, the offers of training of Iraqi security personnel on foreign territory, for example, in Jordan, have been accepted.

3.7   *Legitimacy and Clarity of Mission*

If regional conditions are not propitious for SSR, it becomes all the more important to obtain the support of the international community. Poland lobbied hard to get the UN involved in Iraq's reconstruction. It welcomed the establishment of the UN Assistance Mission for Iraq as mandated by the UN Security Council Resolution 1483 of 22 May 2003. Although the bombing of the UN HQ in Baghdad on 19 August 2003 had dealt a devastating blow to the mission, the UN has recovered returning to the country as the United Nations Assistance Mission for Iraq – UNAMI. In Resolution 1483, the UN also recognised the contribution of the United States and the United Kingdom, deemed the occupation powers[23] – to restoring security and stability in Iraq and urged non-Coalition countries to help in this endeavour. The UNSC upheld the mandate of stabilisation troops in Resolution 1511 of 16 October 2003. Thus, the mission undertaken by Poland enjoyed international legitimacy and had a clear mandate – to help stabilise Iraq, in particular through helping build security sector capacity.

3.8   *Civil-Military Cooperation*

CIMIC units play an indispensable role in spearheading SSR at the end of combat operations, before the deployment of substantial non-military

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[23]   Under the terms of the 1907 Hague Conventions, the Geneva Conventions of 1949 and the two Additional Protocols of 1977 the Occupying Power should be responsible for - *inter alia* - restoring and ensuring 'public order and safety'.

capabilities.[24] In the view of Polish Defence Minister, Jerzy Szmajdziński, one of the most important lessons the Polish military picked up from Iraq is that the Armed Forces have to be able to take on non-military tasks.[25] These are mainly providing "security and support to institutions and organisations as well as local authorities, giving medical and humanitarian aid, engineering as well as reconstruction of facilities and infrastructure destroyed during the war."[26] According to Gen. Józef Flis, commander of the Warsaw-based National Defence Academy, CIMIC units should be staffed by specialists in local culture and religion, architects, construction engineers, restorers of antiquities, doctors, advisors in self-government, as well as experts in drawing business plans. The availability of expertise and the speed of entry and assumption of interim security sector responsibilities make CIMIC a tool of first resort at the end of the military phase of intervention.

3.9   Cooperation with the NGO's

Cooperation of the military with NGOs is an important aspect of SSR. Polish officers have admitted candidly that army-NGO relations in Iraq have not always been smooth. Neither side can bear full blame as there have been many reasons underlying the friction. Probably the biggest of these involved the clash of cultures. The military operates on the basis of strict hierarchy, with top-down decision-making, while NGOs operate far more flexibly in the field. In addition, the NGO mission leaders may be quite young, which could be cause for tension when in communication with military counterparts, often in the rank of general.[27] These problems must be addressed in future situations. In general terms, there has not been a great deal of NGO-military interaction in Iraq, since

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[24] In an interesting note, Polish commanders observed that the rationale for Civil-Military Cooperation is not well understood by countries outside of NATO. Ukrainian battalions deployed in Iraq, for instance, did not contain CIMIC units. Neither did Latin American states. Polish experts had to fill the CIMIC needs in areas under the responsibility of troops from these countries.

[25] Jerzy Szmajdziński, "Wprowadzenie", *Irak 2004*, p. 11.

[26] Gen. Józef Flis, commander of the National Defence Academy, "Wystąpienie Komendanta AON Otwierające Konferencję", *Trudna Stabilizacja*, p. 8.

[27] Saletra, "Wykonywanie Zadań...", *Trudna Stabilizacja*, pp. 186-191.

violence has deterred most NGOs save for the most determined organisations.

3.10 Transfer of Experience

What has been unique about the assistance Poland gave to Iraq in building up security sector capacity is that that, as a donor country, it has itself gone through security sector reform accompanying transition from communism to democracy. That transition was certainly of a different magnitude, taking place under far more conducive internal and external circumstances than those faced by Iraq. Nevertheless, thanks to this experience, Polish troops could take on the Iraqi challenge with what many Polish commentators emphasized was a feeling of empathy for the Iraqi people.

Polish military and civilian personnel brought up the issue of experience in meetings with Iraqi officials. This experiential, "human factor" has turned out to be a valuable asset, easing communication problems, building up trust, and plainly showing the Iraqis that the donor state does not seek to impose simply textbook solutions, but solutions that have helped it traverse the path to democracy.

3.11 Avoiding a Clash of Cultures

An intervening state has to try to adjust its perceptual lenses and methods taking into account local culture. One of the difficulties the US has faced in Iraq was that the intervention, as the Foreign Policy Centre study suggested, "signified the forcible intrusion of Western power and Western values into an Islamic country with its own proud cultural and religious history."[28] It was conceivable that a climate of mutual estrangement would mar post-conflict recovery.

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[28] Correlli Barnett, "Post-Conquest Civil Affairs: Comparing War's End in Iraq and in Germany", *Foreign Policy Centre*, February 2005.

Poland has been keen to avoid mistakes resulting from a clash of cultures. Before the deployment of Polish troops to Iraq, on 12 June 2003, the Polish Foreign Ministry invited scholars from the Middle East and the Arabic world and experts in Islamic studies to take part in a consultative meeting. The participants agreed that a respect for the traditions, culture and religion of the Iraqis is a decisive factor that will determine the success or failure of the mission.[29] Poland also had conducted a much-publicised recruitment of experts in Arabic culture.[30]

3.12 *Accountability for Human Rights Abuses. Recruitment and Staffing.*

Accountability for past human rights violations is an integral element of transition. It may be facilitated either through the justice and reconciliation committee model, as in South Africa, or formal court proceedings before national or international tribunals. The Iraqi Special Tribunal for Crimes against Humanity has been established. The process of accountability, although it may have a short-term corrosive effect on public life, deserves the support of the international community as it marks a sharp break with the past and creates a better atmosphere for democratic politics.

The reconstruction of government institutions in a post-conflict state is bound to run into personnel policy problems. Iraq has proved no exception. A restrictive vetting process based on a "debaathification" policy may conflict with the intention to transfer ownership to the Iraqis ("Iraqi-isation"), because it restricts a pool of expertise. Reliance on members of the Iraqi émigré community to address human resource shortages is no substitute. While Iraqis who had spent time in the West bring with them a body of experience, Western know-how and a progressive mentality, they also run the risk of alienating the local

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[29] „Doświadczenia i wnioski z przygotowania i udziału pierwszej zmiany dywizji międzynarodowej w misji stabilizacyjnej w Iraku", *Przegląd Wojsk Lądowych,* Warszawa, 2004, p. 8.

[30] Gen. dr Józef Flis, "AON wobec Irackich Doświadczeń", *Irak 2004*, p. 118.

population through close association with the intervening powers. There is no easy way to square this dilemma.

Another issue complicating SSR may be a preferential treatment of one ethnic group or clan over another in the recruitment into the security forces. Saddam Hussein promoted fellow Sunni Arabs, who were in a minority in Iraq, to higher officer ranks. If the Shia Arabs now institute policies of reverse discrimination this may spell trouble for the new Iraqi security sector. A great degree of flux in personnel policy may likewise undermine SSR. According to Gen. Kwiatkowski, deputy head of NATO`s training mission in Iraq (TEDC), many officers who went through training are uncertain as to whether they will retain their positions within the security structures if elections affect a purge of personnel.

3.13   Embedding the Post-Conflict State in a Regional Security Framework

A future democratic Iraq may have a difficult time persuading its neighbours that it is not simply an agent of US influence in the region. Regional "status quo" powers, fearful of the domino effect of the "democratic contagion" might try to restrict the room for Iraq's diplomatic manoeuvre. In order to address this issue the international community, with the United Nations in lead, should support initiatives designed to fill the institutional void in the Middle East, in particular by 'locking' in Iraq's neighbours in an effective security cooperation network. The OSCE might be a model for such a framework of cooperation. In practice, realising this objective may be extremely difficult in the short or even medium-term. Outstanding issues concerning the Israeli-Arab conflict, as well as Iran's nuclear ambitions, would first have to be resolved before any progress could be made in institutionalising regional security.

In the face of these obstacles, a long-term commitment to Middle East security is, however, required of multilateral organisations. Thanks to the Istanbul Cooperation Initiative (ICI), designed to "contribute to long-

term global and regional security and stability," a dialogue with the countries of the Gulf Cooperation Council (GCC) as well as enhanced Mediterranean Dialogue (MD), NATO appears well-suited for this role. Depending on progress in democratic consolidation Iraq could emerge as one of the most important strategic partners of the West in the Middle East. In the meantime, NATO, preferably in tandem with the EU, which has signed cooperation agreements with the GCC members as well as other Mid-East states and with UN's patronage, should help ensure that regional conditions are conducive to reforming Iraq. The challenge will be to use the combined weight of NATO and the EU on the one hand to provide a regional security blanket, enabling seamless transition in Iraq, and on the other to share Euro-Atlantic experiences (OSCE) in order to engender cooperative security in the Middle East.

3.14 Addressing the Capabilities Gap on the Donor Side

Speaking before the parliamentary Committee for National Security and Public Security on the 50th anniversary of Polish participation in peacekeeping (22 October 2003) the then Deputy Foreign Minister Sławomir Dąbrowa noted that: "*contemporary peacekeeping missions have a very complex range of tasks to fulfill. These require not only the capabilities necessary to end the conflict as fast as possible and maintain stability, but also to engage in the civilian sphere of activities, such as the reestablishment of state institutions and economic infrastructure, the rebuilding of local self-government as well as promoting good governance at all levels.*"[31] Awareness of the complexity of tasks has not led to any serious augmentation of capabilities for SSR. The prevailing "ad-hocism" in the planning for post-conflict reconstruction impedes a sustained post-conflict recovery. The military, despite having received little training, are asked to take over law enforcement functions;[32] there are shortages of policing

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[31] Transcript no. 958 of the 102 session of the Committee of National Defence and Public Security (22 October 2003).

[32] As an example, at the beginning of the Iraq mission the Polish Military Police found supervision of the detention centres where Iraqi suspects were held a difficult chore. NATO procedures (STANAG 2085 - NATO COMBINED MILITARY POLICE and NATO MILITARY POLICE DOCTRINE AND PROCEDURES) could not substitute for

capabilities and civilian-military interaction falters. As a result, it has been estimated that 40% of post-conflict countries fall back into fighting.

Major contributors to peace enforcement have started addressing the capabilities gap. The UK, for example, is establishing the interdepartmental Post Conflict Reconstruction Unit. It will include about 40 core staff and a deployable capacity of 400 from the Foreign and Commonwealth Office, the Ministry of Defence and the Department for International Development. The mixing of civilian and military cultures should help match respective planning capacities. Influenced no doubt by its own experiences in Iraq, in July 2004, the US State Department founded the Office of the Coordinator for Reconstruction and Stabilization (S/CRS). Canada, a traditional contributor to peacekeeping, has enhanced cooperation between the Department of National Defence, Foreign Affairs and International Trade and the Canadian International Development Agency (CIDA) in light of the concept of the interlinked 3Ds: defence, development and diplomacy.

Because Poland is a relative newcomer to the post-conflict reconstruction, institutional reform of similar magnitude has not yet taken place. However, the country's increased activity within the EU and NATO has forced a lot of conceptual work together with some institutional innovations. The Ministry of Foreign Affairs will this year set up a department for development assistance. The establishment of a department solely focused on developmental aid should augment policy coordination in this field, raising its profile, as well as strengthen links with major actors in post-conflict reconstruction, the ministries of defence, finance and internal affairs. The MFA experts have been giving thought to the best ways of integrating security sector reform into developmental assistance, in part inspired by increased interest in this issue within the OECD.[33]

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specialised training. Waldemar Gut, "Doświadczenia i Wnioski z Udziału Żołnierzy Żandarmerii Wojskowej w Pierwszej Zmianie PKW w Składzie Sił Stabilizacyjnych w Republice Iraku", *Trudna Stabilizacja*, pp. 168-171.

[33] See, for example, *Security System Reform and Governance: Policy and Good Practice.* OECD. DAC Guidelines and Reference Series, 2004.

Regarding the UN as an organisation potentially best adept at post-conflict reconstruction, Poland has supported reinforcement of UN capabilities in this field. Focus on UN reform is well-justified. *The Report of the High-Level Panel on Threats, Challenges and Change*, released on 29 November 2004, has observed that *there is no place in the UN system to assist countries in their transition from war to peace* (XV.261). In light of the Report's recommendation that "The United Nations should establish a robust capacity-building mechanism for rule-of-law assistance" (VII.177), Poland has championed a proposal for the establishment of a Peacebuilding Commission. It would be entrusted with a responsibility i.a. "to assist in the planning for transitions between conflict and post-conflict peacebuilding; and in particular to marshal and sustain the efforts of the international community in post-conflict peacebuilding over whatever period may be necessary*"* (XV.263-264). Polish Foreign Ministry welcomed the fact that UN Secretary General Kofi Annan backed up the proposal in his report of 21 March 2005 *In Larger Freedom: Security, Development and Human Rights For All*.

Poland has also supported strengthening EU capabilities in 'post-conflict rehabilitation'[34] and state capacity-building after conflict. The *European Security Strategy* has set as one of the strategic objectives of the Member States "putting failed states back on their feet.*"* The EU has been meeting this commitment in the on-going operations in the Balkans, Afghanistan and the Republic of Congo. Because "civilian crisis management helps restore civil government", as the European Security Strategy noted, the EU Member States have been building up a pool of rapidly deployable civilian capabilities to assist post-conflict states. They have already established rapid reaction capabilities in the following four priority areas: police, rule of law, civil administration and civil protection, the EU. Since effective policing is essential in the post-combat phase of intervention, in which the boundaries between military operations and law enforcement tend to be blurred, France, Netherlands,

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[34] EU defines it as: *"an overall, dynamic and intermediate strategy of institutional reform and reinforcement, of reconstruction and improvement of infrastructure and services, supporting the initiatives and actions of the populations concerned, in the political, economic and social domaines and aimed towards the resumption of sustainable development."*

Italy, Spain and Portugal have started forming the European Gendarmerie Force (EGF).

The Force should be made up of 800-900 officers, deployable within 30 days, with a pool of 2,300 reinforcement reserves on standby. Poland has expressed an interest in joining the EGF. For this purpose, it intends to create four Special Units (*Oddziały Specjalne*) of the Military Gendarmerie, composed of 2,000 officers in total, all fully professional by 2006. Two of these units have already been set up, though they are scheduled to be operationally ready by the end of the current year. One Special Unit will be designated for the EGF, and another will join NATO's Multinational Gendarmes Force Brigade. Although the Special Units have been trained primarily for counter-terrorism and in supporting military operations, they will also take part in stabilisation and police training missions, which the EU has assumed will form part of European Security and Defence Policy (ESDP). The European Gendarmerie Force should help fill a gap, which, as the conclusion of the "Iraqi Freedom" operation showed, opens up when the military ceases combat operations before the stabilisation force arrives.

Since NATO is the main platform for Polish defence collaboration, Warsaw has naturally been interested in the development of a full range of Allied military and non-military capabilities. The centre of gravity for NATO operations has been shifting out-of-area. Yet, even though the Alliance has taken on responsibilities in Iraq and Afghanistan it has been judged ill-equipped to handle post-reconstruction tasks.[35] Two studies published recently have addressed the issue of augmenting NATO capabilities in this field. In its January 2003 report *Play to Win*, the Commission on Post-Conflict Reconstruction,[36] set up by the Centre for Strategic and International Studies (CSIS) recommended that a multinational Integrated Security Support Component (ISSC) should be created within NATO. The ISSC would structure, train and equip selected units within the NATO Response Force for discharging tasks

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[35] See, for example, Vladimir Socor, "Raising NATO's 'Relevance' Question in Afghanistan", *The Wall Street Journal Europe*, Oct. 15-17, 2004.

[36] It included such renowned experts as i.a. Walter Slocombe, John Hamre and Richard Holbrooke.

related to post-conflict reconstruction. Authors of the report also suggested that the ISSC should complement European efforts to create a European Rapid Reaction Force.[37]

Hans Binnendijk and Richard Kugler of the National Defence University, in a September 2004 study titled *Needed – A NATO Stabilization and Reconstruction Force* recommended a build up of the NATO Stabilization and Reconstruction Force (SRF). It would complement NATO force structures in so far as the NATO Response Force would be deployed in rapid, forced-entry missions, major combat operations would be handled by high readiness forces such as the Allied Rapid Reaction Force, leaving the SRF in charge in a post-conflict phase of operations. The SRF would be equipped with capabilities in military policing, psychological operations, civil affairs, judicial expertise, election monitoring, public administration and civil engineering. Whichever solution is accepted by the Alliance Member States, an augmentation of NATO capabilities in post-conflict reconstruction, particularly security sector reform, would enable it to better face the challenges of the new strategic environment.[38]

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[37] See "Play to Win: Final Report of the bi-partisan Commission on Post-Conflict Reconstruction", CSIS and the Association of the U.S. Army, Washington DC, Jan. 2003. At http://www.csis.org/isp/pcr/playtowin.pdf.

[38] Hans Binnendijk and Richard Kugler, "Needed – A NATO Stabilization and Reconstruction Force", *Defense Horizons,* No. 45, Center for Technology and National Security Policy National Defense University, Sept. 2004.

Chapter 7

Public Security Management and Peace Operations.

Kosovo and UNMIK: Never Land.

Edward Rees[1]

Introduction

> *"I liken our experience with UNMIK to being in a plane in which the windows are closed, we do not know who the pilot is and we have no idea where we are going, let alone how long it will take to get there."*
>
> A senior KPS Officer - March 2004.[2]

From the point of view of "local ownership" the international intervention in Kosovo has been laid upon a foundation of fantasy. Without a defined strategy or objective it is similar to Peter Pan's fairy tale Never Land.

This report serves to introduce, and address the issue of, developing appropriate indigenous political authority over the management of public

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[1] Edward Rees is Security Expert in the Office of the Prime Minister, Kosovo as provided by the UN. He has held a number of security sector related positions with the United Nations Transitional Administration in East Timor (UNTAET), the National Democratic Institute (NDI) and the United Nations Development Program (UNDP). He has acted as consultant to King's College London, the International Crisis Group (ICG), the Geneva Centre for the Democratic Control of Armed Forces (DCAF), the US State Department, and the Best Practises Unit, UN Department of Peacekeeping Operations.

[2] UNDP, "The Rise of the Citizen, Challenges and Choices", *UNDP Human Development Report – Kosovo 2004*, September 2004, p. 72.

security structures and processes in Kosovo between 1999 and 2005 under the aegis of the international intervention led by the United Nations and NATO. It is neither an exhaustive study nor the final word on the matter.[3] However, this report is designed to:

i)   Illustrate the political backdrop against which such efforts have taken place;

ii) Describe the progress made in developing appropriate indigenous political authority;

iii) Articulate the nature of the tools and processes used in such efforts;

iv) Identify shortcomings and lessons learned and propose new approaches in "getting it right";

v)   To point the way towards further research.

The international community has developed irrefutable expertise and credibility in the provision of emergency relief, post-war stability and early peace enforcement, the delivery of democratic elections, and as a neutral arbiter and monitor of peace agreements. Yet in increasingly complex peace operations it has not achieved any standard of consistent success, and especially so in attempts to engage with the indigenous security sector in the host environment. This report will illustrate that while this may be true generally, it is a fundamental cause for the mediocre results so far produced by UNMIK in Kosovo. Despite a host of "bad practice" there are increasingly some "best practice" initiatives being developed in the security sector in peace operations around the world – some of these are belatedly being pursued in Kosovo. Whether or not it is too little too late is a matter for debate.

Definition

Public security management sector is a key component of security sector reform. The notion of a security sector is relatively new and is plagued

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[3]   Due to space limitations the in depth review of study of justice reform/development has been omitted. However, as is evident, many of the broad principles that apply to security sector reform in public institutions in general apply equally to the judiciary and its auxiliary elements.

by discordant definitions. Borrowing heavily from DFID, the security sector is defined, for the purposes of this report, as including the below institutions, state and non-state alike (see below).[4] It embraces a variety of unarmed and non-uniformed actors beyond the traditional understanding of armed and uniformed security practitioners in a broad interpretation what is security, who is affected by it, and who provides for it. The overlap and interdependence of the illustrated security sector actors is obvious and without requirement for further definition.

Core Security Actors
- defence forces
- police services
- intelligence services
- coast guard
- border guards
- customs services
- police / military reserves
- paramilitary units
- militias

Non Statutory Security Forces
- Liberation / guerilla armies
- Private bodyguard / security companies
- Organized criminal elements
- Political Party Militas

Justice and Law Enforcement Institutions
- Judiciary
- Justice ministry
- Criminal investigation and prosecutorial services
- Human rights commissions and ombudsmen
- Customary and traditional justice systems

Security Management and Oversight Bodies
- The Executive, Ministries Defence, Interior, Foreign Affairs
- National Security Coordination and Advisory Bodies
- The Legislative, Parliament and its Committees
- Traditional and Customary Authority
- Financial Management bodies ie Ministry of Finance
- Civil Society Review Boards, Complaints Commissions

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[4]   Department for International Development, "Understanding and Supporting Security Sector Reform", London, 2002, p. 7.

The Issue

There is a growing preoccupation with developing sustainable local ownership of the management and oversight of the public security apparatus in international interventions. It is the contention of this paper that the term "local ownership" is too vague to be meaningful and what is actually being sought is robust, effective and legitimate indigenous political authority over the public security apparatus. It is in essence less an operational matter than it is a political and governance issue. While peace operations have demonstrated a somewhat successful track record at operationally disarming ex-combatants, or establishing police services, they have to date illustrated little talent for setting up the indigenous civilian structures designed to oversee and manage the public security apparatus. It is here that the peacekeeping community meets the development community, and it is proving to be a confused partnership.

The merging of the interests and priorities of the peacekeeping and development communities is prominently displayed in the debate regarding security sector reform. However, there is as yet no concept of operations or doctrine in this area. The actors charged with driving peace operations and international development are often at odds on how to best achieve lasting reform. As a result inadequate, inappropriate and at times incompetent actions appear to be the rule rather than exceptional. In the case of Kosovo, UNMIK has yet to, 5 years into its mandate, adequately grapple with this issue.

The complex and inter-related processes in security sector reform, be they defence/police/judicial or executive/legislative oversight sectors, require separate concepts of operations integrated into a general rule of law concept of operations. As in any constitutional democracy, these issues are too important to be addressed by the technicians in defence forces, police services or judiciaries alone but require the integration of planning and operations under the direction and cooperation of qualified civilians. It is here that the greatest risks and opportunities lie and the most urgent reform is required. UNMIK and Kosovo are a stark example of this dynamic.

Political Background

Set against the backdrop of a major war in Croatia and Bosnia and Herzegovina, the 1990s witnessed a growing sense of disenfranchisement in Kosovo. There was increasing disillusionment with the governance arrangements between the dominant regime in Belgrade and the majority K-Albanian populace in Kosovo.[5] Large numbers of K-Albanians fled the country to avoid military service and many were persecuted for trying to do so. A shadow government was established. This was combined with an increasingly repressive regime headed by Slobodan Milosevic. Hitherto, the K-Albanian leadership had pursued a pacifist policy in the hope that would result in concessions both from Belgrade and/or the international community. However, once the Dayton Peace Agreement was concluded in 1995 and the Bosnian war came to an end Kosovo did not reap any rewards. Rather, it remained very much under Milosevic's thumb, with K-Albanians being almost totally excluded from local government, the police, the courts, the university and other public institutions.

This was the setting for the early development of a new generation of younger and radicalized K-Albanians who established the Kosovo Liberation Army (KLA) in the mid-1990s. The socio-economic collapse of Albania in 1997 gave the KLA immediate access to a large supply of cheap weaponry in close proximity to many of its rear supply areas. While KLA's early actions were limited in number and ambition they were met with heavy handed Serbian police and military counter measures. This played into KLA's political objectives of creating the conditions for a broad collision between the Albanian population and the Belgrade regime. In March 1998 the Serbian police and military virtually eradicated the Jashari family in the Drenica region of Kosovo in retaliation for a perceived KLA attack on local Serb police. This action created the first broadly accepted and recognised KLA martyrs in the search for an independent Kosovo. The results were a substantial increase in Serb police and military presence in Kosovo, a massive rise in recruits into the KLA and a major escalation in the conflict.

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[5]   It is a contentious subject but prior to 1999 Serbs numbered approximately 20% of the population and in 2005 they number less than 10%.

Despite the efforts of the United Nations, NATO, the OSCE and the EU the Milosevic regime demonstrated complete disregard for the rights of K-Albanians and broadened the conflict in a manner which saw the wholesale persecution of the Albanian majority. This culminated with the systematic and forced deportation of hundreds of thousands of K-Albanians from Kosovo in what was a largest ethnic cleansing operation in the history of the modern Balkans. With diplomatic efforts having failed, on 4 March 1999 NATO launched an air offensive on police, military and strategic targets throughout Kosovo and Serbia proper. By June 1999 Milosevic conceded defeat and NATO ground forces officially entered Kosovo on 9 June 1999.

Much of Kosovo had been looted and destroyed. Thousands of K-Albanians were killed and many went (and remain) missing. The immediate response of some K-Albanians upon their return to Kosovo was to begin a retaliatory campaign of murder, arson and low level ethnic cleansing. The majority of remaining K-Serbs in turn were cleansed from Kosovo.

Under UN Security Council Resolution (UNSCR) 1244 UNMIK was created to administer Kosovo as a part of Serbia and as a United Nations protectorate. UNMIK was slow to deploy throughout Kosovo and there was a politico-security vacuum in which general public security broke down and KLA established zones of control in which it provided a highly politicised form of law and order. Well over a hundred thousand Serbs and other non-Albanians fled Kosovo as a result.

The development of the current transitional administration in Kosovo is founded upon the Constitutional Framework of 2001 in which the Kosovar Provisional Institutions of Self Government (PISG) were created in an effort to devolve many functions of government to indigenous political interests derived from the elections of October 2001. The most notable factor in this political compromise between K-Albanians and UNMIK was the division of government functions into those which are known as "reserved powers" versus "transferred powers". Broadly the transferred powers include education, health, some public services, spatial planning, trade and industry, finance and

economy, the environment and transport/telecommunications. After the 2005 election energy and mines, local administration and minorities/returns were transferred to the PISG. Significantly however, those institutions in which the legal power to use coercive force and/or with the remit to inhibit, thwart, and prohibit the illegal use of coercive force remained "reserved powers" within the sole remit of UNMIK and its UNMIK Pillar One (Police & Justice) and NATO's KFOR.

At the direction of UNMIK-Pillar One (Police & Justice) the UNMIK – Police (UNMIK-P) and the OSCE are responsible for training, "standing-up" and managing the Kosovo Police Service (KPS). It is also responsible for all executive policing duties with KPS acting as a junior partner. At the direction of UNMIK Pillar One the Department of Justice (DoJ) is responsible for overseeing Kosovo's judiciary and prison service. The oversight and management of the Kosovo Protection Corps (KPC) is the shared responsibility of the UNMIK Special Representative of the Secretary General (SRSG) and the KPC Coordinator in addition to that of the Commander of KFOR (COMKFOR). In essence the PISG is almost completely de-coupled from Kosovo's public security apparatus, and in effect as to date had almost no responsibilities for public security management in Kosovo. Furthermore, the KPC is placed in the ambiguous political territory between NATO and the UN, and is heavily subsidised by bi-lateral agreements and finances – well beyond the remit of the PISG.

UNMIK has primary responsibility for managing law and order within Kosovo as well as policing the border. KFOR has a mixed external defence and internal security role as it provides a deterrent to any irredentist sentiment in Serbia, secures parts of the border (although this is being transitioned to the police), provides static and mobile protection to K-Serb communities as well as acts as a potential back up to UNMIK-P and KPS in the eventuality that Military Assistance to Civil Power (MACP) is required during large disturbances (man made or natural).

The single most important positive or negative determinant to internal security in Kosovo is UNSCR 1244. It is essentially a cease-fire mechanism designed to provide for a period of mixed UN and local

administration until such time as a political settlement can be made between Belgrade and Pristina. However, the vast majority of K-Albanians viewed UNMIK and NATO's intervention as a stamp of approval for their independence struggle from Belgrade. Meanwhile, Belgrade and the K-Serb minority have consistently asserted that any eventual settlement will require that Kosovo being re-absorbed into Belgrade's orbit. It is this political tension which is at the root of all of most of Kosovo's current public security problems.

Challenges to Public Security

"On 17 March 2004, the unstable foundations of four and a half years of gradual progress in Kosovo buckled and gave way."[6]

"The recent outbreak of violence that resulted in 19 deaths, over 800 injured numerous acts of aggression against personnel and the wholesale destruction property is a window into the real status of Kosovo: <u>that of a stalled transition</u>."[7]

The March 2004 ethnic riots were initially centred on the controversial and ethnically divided town of Mitrovica, but within a few short hours UNMIK-P, the KPS and KFOR (a combined force of over 30,000 personnel) lost control and public security in Kosovo disintegrated wholesale.

How is it that the likely accidental drowning of three K-Albanian children at the hands of K-Serbian youth could have such disastrous effects after such a lengthy and comprehensive peace operation? Quite simply, UNMIK is in some respects the ENRON of peace operations. Large and high in profile it has a range of shareholders and executives who know the truth

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[6] ICG, "Collapse in Kosovo", International Crisis Group, Europe Report No. 155, Pristina/Belgrade/Brussels, 22 April 2004, p. i.

[7] UN Document, "Justice and Security Sector Advisory Mission Report - Kosovo", UNDP (BCPR), March 2004. This point is seriously hindered by the lack of a final status end state, which begs the question – transition to what?

but have been engaged in playing a shell game with the future of Kosovo, unable and unwilling to address it until disaster strikes.

The March 2004 riots attest to this, although many may not as yet recognise or publicly articulate it. Largely built upon the artificial and temporary foundations of "reserved powers", portrayed as a success and beyond the remit of effective oversight – UNMIK is in fact a house of cards. The collapse of this house of cards is not a foregone conclusion but should the development of indigenous and appropriate public security management structures and processes fail in Kosovo, collapse it will.

While many observers, Serb and otherwise, simplify the events of March 2004 into an anti K-Serb pogrom, and it certainly had many of the characteristics of such an operation, it was more complicated. With a stagnant economy, hundreds of thousands of unemployed young men look to UNMIK to know what the future holds. The Kosovar political elites lost faith in UNMIK once it was realised that the Constitutional Framework of 2001 was less a plan than a holding pattern. Aloof and directionless UNMIK was perceived to be leading Kosovo to a future without positive prospects. This provided fuel for the fire. While some efforts have been made at substantively enfranchising K-Albanians, there had been an increase in the distrust in the eventual intentions of the international community vis-à-vis Kosovo's final status.[8] One year after the riots it is now clear that they were an opportunistic and coordinated response to what was viewed to be a political impasse between K-Albanians and the international community. The frustrations of tens of thousands of rioters were simply directed in a manner to make a political point.

A review of security reform undertaken in the wake of the March riots articulated that:

> *Kosovo in some ways best exemplifies the pitfalls associated*
> *with peacekeeping operations that mutate into state-building*
> *exercises: the failure of the international community to shift in*
> *a timely or early enough manner its mindset from operational*

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[8] See UNDP Kosovo's Early Warning Reports between 2002 and 2004 (www.ks.undp.org).

fire fighting to transition planning. Driven by the dominant imperative of securing the peace, peacekeeping missions are forced to put aside considerations of participatory governance mechanisms and long-term institution building. While this strategic choice makes sense in the immediate aftermath of violent conflict, transition planning requires that a new framework for engagement be adopted. ...the focus [should] be on engaging the local population in institution building with the view of promoting democratization, good governance, and sustainable development.[9]

While UNMIK is similar to UNTAET in Timor Leste (as only other DPKO executive peace operation that assumed wholesale jurisdiction for a post-conflict territory secured by a coalition), it is there that the similarities end. Regional issues primarily associated with the former Yugoslavia, organised criminal elements in convenient alliances with extremists, a general lack of rule of law in the Western Balkans, altogether create a far less benign environment for DPKO than was the case in Timor Leste. Furthermore, the international community's inability to determine upon a road map for Kosovo's future status, be it independence, reintegration into Serbia, or a middle way has grossly complicated UNMIK's task in Kosovo.

One security sector reform practitioner has observed that a key starting point in security sector reform is the constitutional end state.[10] The primary, and seemingly intractable, dilemma facing UNMIK is how to build institutions closely associated with sovereignty without actually giving sovereignty. The security sector comprises at its heart the institutions which act as the instruments of coercive power in a sovereign state. Due to the lack of an end state, UNMIK is constrained in how much local participation it can solicit, or political power it can cede in the development and reform of Kosovo's security sector. Thus hampering and skewing the entire process.

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[9] UN Document, "Justice and Security Sector Advisory Mission Report - Kosovo", UNDP (BCPR), March 2004.

[10] Powerpoint presentation provided to the author by Graham Day, Deputy High Representative, OHR, BiH, November 2004.

As noted above the guiding and constraining documents governing Kosovo's political equation, and therefore the development of indigenous public security management, are the UNSCR 1244 and the Constitutional Framework of 2001 and the Kosovo Standards Implementation Plan. In Kosovo, over five years after being placed under international stewardship, the security sector remains the sole preserve of international actors. This severely limits both the privileges and responsibilities of Kosovo's people in the development of their security sector.

Significantly, Kosovo's public security apparatus consumes approximately 16% of the Kosovo General Budget FY 2004 – 2005; however, Kosovar civilians have almost 0% of political authority over how these funds are allocated either in policy or operations. It is in essence a totally exclusive arrangement, which divorces Kosovar civilians (Serb and Albanian alike) from their public security apparatus in a manner which is antithetical to the rule of law and constitutional democracy. It is in effect "taxation without representation".

The peace operation in Kosovo is in itself something of a confused Tower of Babel as compared to other peace operations. UNMIK and its partners are answerable to a disjointed combination of interested capitols, UN Headquarters in New York, NATO Headquarters in Belgium, OSCE Headquarters in Austria, and the EU in Belgium. This has created disconnects with detrimental effects on the development of Kosovo's security sector. The confusion that reigned between UNMIK-P, KPS and KFOR during the riots of March 2004 highlighted the gaps between these organisations.

Some major operational challenges to public security management in Kosovo are the presence of large numbers of illicit small arms, organised criminal groups mixed with proto-Albanian nationalists in Macedonia and South Serbia, and a geographically dispersed K-Serb community. However, it is the contention of this paper that the almost complete dearth of indigenous civilian oversight of the public security apparatus poses the greatest structural threat to public security in Kosovo now and into the future.

Providing Public Security

Public Security Policy and Coordination

There is little or no public security policy or management coordination in Kosovo, especially as it concerns coordination between UNMIK and indigenous structures. This is largely driven by the political equation which structurally separates "transferred" and "reserved powers" but there are other shortcomings.

The divisions between the UN, NATO, OSCE and EU make it virtually impossible to create mission coordination. How this will eventually translate itself onto PISG institutions is unclear, as they are currently not substantively involved. Although confused threat assessments and crisis responses leading up to and including the March 2004 riots suggest coordination mechanisms are sorely needed.

In the wake of the March 2004 riots it was deemed timely, some five years after arriving, to establish a high level politico-security consultative group comprising UNMIK, KFOR, the PISG and other interested parties. Established in April 2004 the Kosovo Security Advisory Group (KSAG) lacked an operational purpose, vision and political will. It prematurely ceased to function after just two meetings once K-Serb parties boycotted the process. More appropriately the KSAG was an initiative which should have occurred several years earlier as a mechanism to prevent and manage conflict, rather than react to it. An earlier edition of the KSAG could have acted as a political compass for both UNMIK and the PISG to gauge political mood and determine policies designed to reform and develop the public security architecture in an appropriate manner. It is understood that the Office of Public Safety in the OPM is seeking to resurrect a more comprehensive version of the KSAG in the form of a more structured "public security council" designed to both manage the transition from UNMIK to the PISG in 2005 and 2006, as well as provide policy advice and coordination in the guidance and reform of the public security apparatus.

Attached to UNMIK's Office of SRSG is the Advisory Unit for Security (AUS). It was a creative idea designed to attempt coordination between NATO and UNMIK in the security sector, but it is understaffed, dominated by technicians and centred on operational crisis management much more than prevention through coordination. It has traditionally avoided substantive working relations with the PISG as it either had no counterpart or was politically restrained from such engagement.

However, since the March 2004 riots a number of positive developments have occurred. Firstly, as a result of promulgating Administrative Directive 2004/16 on 30 June 2004 the SRSG's office has approved the appointment of a Kosovar to act as Director of the Office of Public Safety (OPS) within the Office of the Prime Minister (OPM).[11] The OPS is a step forward to developing a mechanism not only to coordinate the transfer of "reserved powers", but also in developing the indigenous capacity to provide advisory and coordination services for public security management to the Prime Minister and the Cabinet. It is a step that more correctly should have been taken in 2001 or 2002.

Overall the neglect of policy has left both international public security structures, and indigenous (such as they exist) with little useful guidance.

Secondly, in early 2005 and at the initiative of the AUS and the O/SRSG the Government of the United Kingdom dispatched a Security Sector Development Advisory Team (SSDAT) to Kosovo to assist in plotting out a security sector reform and development strategy for UNMIK. Its remit will be to examine (through consultations with both UNMIK and Kosovars) broad public security policies, legislation, executive/legislative oversight as well as developing a process by which political authority, and thereby, ownership of/for the "reserved powers", is devolved to the PISG and Kosovars as a whole. As one senior UNMIK official remarked "this initiative is three years too late".[12] In

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[11] Mr. Enver Orucaj, an ex-KLA commander from the Drenica region. He was KLA Brigade Commander during the conflict, a senior police officer in Kosovo in the 1980s and a close confident of previous PDK Prime Minister Bajram Rexhepi – with whom he served in KLA.

[12] Conversation between the author and a senior O/SRSG officer in March 2005.

April 2005 the SSDAT obtained approval to conduct a 12 month Internal Security Sector Review. This process will likely be supported by the Office of Public Safety and the OPM acting as secretariat.

Thirdly, a major element of the political process in Kosovo is the Kosovo Standards Implementation Plan (KSIP). The KSIP sets out wide and varied range of "standards" that Kosovo and the PISG must attain in mid-2005 to be able to be considered a trusted partner in establishing a forum for the negotiation of final status with Belgrade in late 2005. Any cursory review of the Standards will reveal that they are less a technical guide than they are a political instrument whereby the international community can open and close the door towards final status negotiations. The KSIP would be difficult to achieve in its entirety in Canada and Sweden let alone Kosovo. One of the KSIP priority standards which must be achieved by mid-2005 is the development and promulgation of a Police Act for the KPS – which has to date, existed in a legal limbo as attachment to UNMIK-P. Initially UNMIK solicited the participation of the OPS in the process of drafting the Police Act, and this was expanded to include a larger Police Act working group. However, in the final version of the Police Act few Kosovar attitudes or recommendations will be included and it will not be debated and passed by the Kosovo Assembly but will be promulgated by a SRSG decree. In UNMIK's haste to exit Kosovo it is simply interested in creating paper structures and processes. The future Kosovo will have a Police Act which is neither representative, nor sustainable. It will also leave a powerful executive presence in charge of the police services, assuming that the SRSG is directly replaced by a Ministry of the Interior.

As of April 2005 tentative initiatives are underway to develop Ministries of the Interior and Justice. It is not clear how much substantive policy coordination will occur between UNMIK and the PISG let alone between the PISG executive and legislative on this key policy issue. For example the highly politicised decision on where or not to create a Ministry of Public Order (with stand-alone police responsibilities) versus a Ministry of Interior (binding the police services to local administration) will likely be made by UNMIK in isolation. If this process is to be legitimate and therefore sustainable and a stabilising

factor the political authority to make this decision should rest with the PISG.

Executive Oversight and Management of Civil Defence/KPC

UNMIK has yet to provide for a Ministry of the KPC. KPC exists in a management, oversight, budgetary and policy vacuum which is dangerous in the extreme. While its role as a civilian emergency service falls partially within the remit of the Ministry of Public Services', Department of Emergency Services, as a "reserved power", its chain of command extends upwards to the SRSG and COMKFOR. Hence, it is beyond the control of Kosovan civilians. NATO and UNMIK have created a quasi-military civil emergency service and have yet to give it the management and oversight apparatus necessary to keep it within civilian control – nearly six year after arriving in Kosovo. The Office of the KPC Coordinator, dominated by foreign military observers comprises the sole substantive oversight mechanism for the KPC.

Symptomatic of UNMIK and NATO's problems with the KPC and its future are the fact that they have failed to place the KPC in Kosovo's broader development matrix. It is securely tucked away from the Kosovans and the development community alike. As a result it is almost impossible for serious development and reform of the KPC to occur. The political and financial resources are not forthcoming because these constituencies are excluded from the decision-making process regarding KPC's future. By way of example the first donor conferences related to KPC held in December 2003 were an unmitigated failure, with UNMIK and the Office of the KPC Coordinator (OKPCC) presenting donors with a shopping list of equipment and training requirements without offering space for any indigenous civilian participation in the development of a strategic plan for the KPC.

There are some useful practices to be gleaned from the KPC experience. For example, the creation of the Office of the KPC Coordinator (OKPCC) was a creative way to provide for initial guidance and technical assistance in establishing and managing the KPC. Secondly,

the first KPC Donors Conference in December 2003 was a major leap forward in placing KPC inside the public security debate.

However, more mistakes have been made with KPC than otherwise. The OKPCC is poorly configured and resourced to provide for the civilian oversight and management required for the KPC. As a result it is a poor instrument for the development of indigenous and appropriate public security management of the KPC. The international community has created and organised thousands of former Kosovo Liberation Army (KLA) personnel into a coherent, efficient, and motivated organisation without giving it any civilian management and oversight apparatus. UNMIK has failed to generate any publicly articulated policy or legislation governing the KPC, a strategic development plan for the KPC. Finally, it was a serious error to wait 4 years to hold a KPC Donors Conference.

The KPC is typical of the reality and perceptions gap that exists between UNMIK and the K-Albanian community, while its English acronym refers to the "Kosovo Protection Corps", its Albanian version, TMK, is translated into "Kosovo Defence Troops". The international community has successfully managed to maintain the façade that the KPC is a civil emergency service, with responsibilities for assisting the civil power in times of natural disaster or other civil emergencies. KPC answers directly to UNMIK and NATO, with no civilian management or oversight functions being performed by Kosovo civilian authority. However, Kosovo Albanians are almost entirely of the opinion that regardless of some unsavory ex-KLA in the KPC that it will form the future defence force of an independent Kosovo. Whether or not this will eventuate is entirely a different matter – but it is difficult to explode the myth one or the other when the community is so far removed from the oversight and management of the KPC. At the March 2005 ceremony marking the Jashari family tragedy KPC was on display in what only could be described as a military demeanor.

While internationals view the KPC as a civil emergency service, K-Albanians view it as an army in waiting, and Serbs both inside Kosovo and Serbia proper consider it a criminal organisation with streak of

terrorism running through. The distance between these positions is enormous and will only be resolved once the KPC is properly placed squarely inside the security sector reform process in Kosovo.[13]

Executive Oversight and Management of Public Security

Nearly six years after NATO ejected Serbian security forces from Kosovo, UNMIK has yet to create Ministries of the Interior or Justice. While a seemingly obvious requirement, these structures have been viewed by some as being too close to "sovereignty" and thus too sensitive to establish. UNMIK Pillar One (Police & Justice) has acted as the executive oversight and management body for the police services and judiciary, both foreign and indigenous. Comprising of a handful of international staff, with little or no contextual experience or understanding of Kosovo, UNMIK Pillar One is an inadequately designed and under resourced structure. Tasked with providing for the strategic guidance, policy and broad operational direction, and management and oversight of nearly 10,000 police officers (UNMIK Police and KPS), hundreds of court officials, and a combined budget of over 70 million euros, UNMIK Pillar One has proved unequal to the task. Consequently, the institution building which is a fundamental part of establishing indigenous political authority over public security management in Kosovo has been left to the amateurish attentions of international police officers, prosecutors and judges.[14]

However, since 2003 UNMIK Pillar One has taken some tentative steps towards developing plans for the creation of Ministries of the Interior and Justice. In 2003 UNMIK Pillar One engaged the UK's Department for International Development (DFID) in designing a strategy for the establishment of a Ministry of Justice. DFID's private sector sub contractor established the Justice Sector Experts Group (JSEG) in late

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[13] In the run up to the KSIP review in June-July 2005 the Government of Serbia released an inflammatory anti-Albanian website in April 2005. K-Albanian responses have been dismissive, seemingly unaware of the security implications such a wide gap in thinking present. See http://www.srbija.sr.gov.yu/kosovo-metohija

[14] It was only in 2003 that UNMIK Pillar One appointed a single officer to be responsible for donor coordination in police and justice sector institution building.

2003 and through a limited series of consultations dominated by UNMIK directions it arrived at what was considered to be local ownership of the process and the product. However, while Kosovars appreciated being consulted they realised that it was largely an act of window dressing as they were not being allocated any measure of political authority to ensure that any of their recommendations on a Ministry of Justice would become reality. The final strategy document (some 100 pages) was presented to UNMIK Pillar One in April 2004 and was immediately dismissed as being too large to be "useful". The JSEG was reconvened and the Ministry of Justice remains elusive. It is useful note that as late as 2005 Kosovar judges and prosecutors remain almost entirely divorced from being operationally entrusted with serious crimes; it still being the purview of foreigners.

With regards to a Ministry of the Interior and the KPS, UNMIK is also only in the early stages of development. With public disenfranchisement viewed as being potentially a major cause of the March riots UNMIK has accelerated the transfer of power in the "reserved powers". No where is UNMIK being more ambitious than in the police sector. By September 2005 it is envisaged that UNMIK-P will have transferred operational responsibility of all police stations and regional commands over to KPS. Furthermore, UNMIK-P is also intending to hand over all executive policing responsibilities with Main Headquarters in Pristina to KPS with the exception of the four most senior positions (Commissioner, Deputy Commissioner (Operations), Deputy Commissioner (Crime) and Deputy Commissioner (Administration)). It is important to appreciate that much of the impetus for this rapid downsizing has emanated from New York where member states (especially the US) are no longer happy with carrying the financial burden for a peace operation without a plan. So it has forced a plan on the mission by slashing budgets. CIVPOL being expensive felt the pinch first, as early as 2003.

In late 2004, recognising that the accelerated operational handover of police responsibilities required some consideration regarding civilian oversight, UNMIK Pillar One engaged the European Agency for Reconstruction (EAR) in designing a strategy for the establishment of a

Ministry of Interior. EAR engaged the services of a private subcontractor from Slovenia who drafted a strategy paper notable for its similarity to the Slovenian model and an almost complete lack of attention of the context in Kosovo. Initially discouraged by UNMIK Pillar One to consult with relevant Kosovar organisations it was allowed to seek the opinion of the OPS in February 2005. However, the obstacles hindering the development of a representative and participatory process and product require that Kosovar political interests become broadly involved. For example the decision as to whether or not to create a Ministry of Public Order (stand alone police body versus a Ministry of Interior comprising police, local government, and possibly emergency services and domestic intelligence) is a decision which only the highest political authorities can undertake. However, due to the perceived political sensitivities surrounding these issues UNMIK has yet to engage the Kosovo Assembly, political party leadership, the Prime Minister's Office let alone the broader community.

UNMIK has created core public security sector institutions without crucial executive civilian oversight and management. Nor is there any explicit plan for such bodies. To date UNMIK and NATO have created institutions without credible participation from local authorities, thus calling into question their sustainability in the post peace operation environment. There is no publicly articulated public security policy or legislation for Kosovo's police services and judiciary. Given that Kosovo's final status will likely be on the table by September 2005 UNMIK's efforts appear to be too little to late, and are more an exercise in appearances than substance.

The Kosovo Police Service (KPS)

One of UNMIK's core functions as mandated by the UNSCR 1244 has been the development of the KPS. The KPS has been DPKO's largest and most expensive police development and reform initiative ever undertaken. The challenges facing UNMIK in the early days of 1999 and 2000 cannot be overstated. The KPS was created from thin air. Due to the exigencies of the emergency period such as the varying standards

and deployment rates of UNMIK Police, UNMIK had to draft indigenous personnel into the KPS faster than what was desirable, an example being the absorption of certain ex-KLA into the KPS. It was unable to properly vet the admission of ex-KLA and others into the KPS. Poor vetting procedures have potentially resulted in a small class of undesirables (both from the point of view of Kosovars as well as UNMIK) entering the KPS with negative effects now and into the future. A survey of the public attitudes towards the KPS undertaken in 2003 shows that a significant portion of the K-Serb community view the KPS as an extension of Albanian nationalist organisations.[15]

Largely with the assistance of the OSCE Pillar Three (Institution Building) the KPS School was established and KPS recruits were provided basic training and rapidly put on the streets, by the hundreds, in a remarkable display of basic police institution building.

However, UNMIK Police held responsibility for police field training and the development of KPS as a public service institution. In these roles UNMIK's record has been poor. The events of March 2004 highlighted this fact when KPS found itself without a comprehensive communications system in a time of intense public security crisis. As a result KPS's response to the disorder was *haphazard and ad hoc*. Between 1999 and 2004 UNMIK Pillar One and UNMIK Police assumed an *ad hoc and haphazard* approach to building KPS as an institution. That Kosovo's premier public security organisation was unable to talk to itself is stark evidence of this fact.

As indicated above, UNMIK Pillar One has been poorly configured and resourced to provide for the executive management required to drive and guide the institution building so crucial to setting the KPS on solid foundations for the future. Not only has the external oversight and management not been forthcoming, but due to this the internal mechanisms for such activity have been left to international police officers, with little or no interest in, or ability to create the systems necessary to build the KPS.

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[15] Rees, E., *Light Blue: Public Perceptions of Public Security and Police Performance in Kosovo*, UNDP Kosovo, June 2004.

Between 1999 and 2003 UNMIK Police was responsible for the operational provision of its own key public administration functions ranging from, but not limited to;

    i)   strategic planning;
    ii)   finance;
    iii)   budget;
    iv)   procurement;
    v)   human resources;
    vi)   IT and communications;
    vii) data/statistics management;
    viii) and logistics functions.

Additionally, UNMIK Police provided these functions to KPS, but was also responsible for building capacity inside the KPS itself as a public service institution in its own right. Police officers are properly deployed in policing functions and are generally not well suited to performing these functions; as the lack of a communications system in 2004 confirmed. These functions are equally, or more, critical to successful security sector reform than the provision of equipment, police training and even human rights training and yet have traditionally been ignored by civilian police in peace operations.[16] Planning and budgetary transparency are key political functions, the manipulation of which can result in actions which undermine the police services. These functions are too important to be left to police technicians. Between 1999 and 2003 UNMIK Police's record in building this capacity inside KPS was abysmal.

In 2002 UN HQ announced a staged reduction in UNMIK's budget. Faced with the prospect of cutting the numbers of police officers in traditional policing roles UNMIK made a decision to begin the process of handing over back office roles in the above public administration functions to the KPS. UNMIK Pillar One made the groundbreaking decision to engage the services of a development partner in an Institutional Capacity Building Program for the Kosovo Police Service.

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[16]   O'Neill, W., "Police Reform and Human Rights", a Hurist Document, New York, July 2004.

With the assistance of UNMIK Pillar One and UNMIK Police UNDP designed a programme of technical assistance.[17] UNMIK Police was directed to engage with and coordinate with UNDP in the reorientation of these functions. UNDP's remit has been to, at UNMIK and KPS's direction, build a civilian administrative division in the KPS with capacity to perform the necessary strategic planning, finance, budget, procurement, human resources, IT and communications, data/statistics management, and logistics functions.[18]

The above cursory view of UNMIK-P raises an important question. Has DPKO received value for money from the 1,000s of expensive Civilian Police posts that have been allocated to UNMIK in the past 6 years? It would appear that the answer is clearly no – especially as it pertains to institution building.

UNMIK only recognised that the key to building successful public security management processes and structures is institution building, one in which authority is ceded to indigenous parties in a judicious and staged manner. The building of the KPS Administration Division is a case in point. It will not be coincidence that the Ministry of the Interior will be largely born from practices developed in the KPS Administration Division. It is hoped that DPKO will not attempt to use Civilian Police in institution building roles for which they are poorly suited in the future.

Legislative Oversight and Management

Under the Constitutional Framework the Kosovo Assembly has no role in the security sector and the design, oversight and management of Kosovo's public security management apparatus. Despite the fact that the Kosovo General Budget FY 2004-2005 allocates 16% of the budget to public security the Kosovo Assembly has no input into how these funds are allocated. As noted above it is in effect "taxation without

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[17] http://www.ks.undp.org/Projects/KPSICB/kpsicb.asp
[18] As noted above, this program acted as the model for the PNTL Institutional Capacity Building Program in Timor Leste.

representation" – an inherently destabilising condition. As King George III would no doubt attest to. UNMIK has therefore divorced Kosovars from having the privilege of guiding their security sector, while at the same time enabling Kosovars to formally abdicate their responsibilities for it. Notably, the promulgation of a Police Act which is a priority standard to be attained by June 2005 will likely be passed by an SRSG decree thus bypassing the Kosovo Assembly. It is a standard that will essentially be fulfilled not by Kosovars but by UNMIK – thus exposing some of the hypocrisy of the process.

While there are a range of actors led by the OSCE, EAR, NDI and UNDP engaged in parliamentary development in Kosovo, none are conducting programmes in areas of "reserved powers". The international community is in essence setting up Kosovo for a heavily executive dominated system.

Non-Governmental Organisations

Civil society in Kosovo is marked by a virtually complete lack of interest in, and or capacity to appropriately engage the security sector. Kosovo's civil society is not interested primarily because it has not been given an "interest" by UNMIK.

Consequently, four years into the transitional administration there is in fact NO Kosovar civilian (governmental or non-governmental) management and oversight of the security sector. While this may have been satisfactory for the past four years it is potentially dangerous and destabilising if the status quo is allowed to remain entrenched.
The inability of officials in the PISG, let alone Kosovar citizens to influence policy in the security sector has eroded the legitimacy of UNMIK and the new institutions it has tried to build, e.g. the Department of Justice and the KPS (KPS). Behind closed doors, some Kosovars call UNMIK "ARMIK" or "enemy" and compare the mission to a foreign occupier. If Kosovo is to make a successful transition to democratic rule, Kosovar attitudes will need to change. Kosovars will need to gain a sense of civic duty that includes participating in policy

debates and exercising a watchdog function over government institutions. Non-violent lobbying and advocacy must riot. But for this to occur, civil society must be taught how to play a constructive role in policy formulation and how to exercise an oversight function. The first step towards this objective is creating channels through which citizens can have their voice heard.

While the civil society scene remains bleak there are some positive steps being taken. Largely on the initiative of DFID, OSCE and UNDP in 2003 the notion of substantive engagement with communities beyond the simple mantra of "community policing" was urged upon the largely international dominated Kosovo Community Based Policing – Steering Group. In early 2004 the UNMIK-P Deputy Police Commissioner (Operations) recognised the importance of active and preventative engagement and assumed responsibility for pushing the Community Safety Agenda through the KCBP-SG. Subsequently, in late 2004, UNMIK Pillar One established Local Community Safety and Crime Prevention Councils (LCS&CPC) designed to strengthen public security management at the lowest level of government in Kosovo. Furthermore, while the LCS&CPCs remain immature in nature they are increasingly receiving the interest and participation of local communities and public security providers as forum for communication and conflict prevention/management.

In 2003 UNDP (in partnership with UNMIK and KFOR) attempted to implement an ambitious 'weapons in exchange for development', weapons collection as part of a broad weapons amnesty. Only 100-200 weapons were returned despite the presence of well over 100,000 illicit small arms in Kosovo. While the reasons for failure are multifaceted, lingering K-Albanian fear of Serbia and K-Serb fear of K-Albanians caused by the lack of a political settlement to Kosovo's status are a root cause of results. Also due to the "reserved powers" UNDP was forced to use UNMIK and KFOR as their primary interlocutors in what should have in essence been an initiative in which the Kosovar gun holder is the centre of gravity. Rather, a massive amount of time and energy was directed towards international security providers.

In short - UNMIK is withdrawing, but has yet to articulate plans for the handover of responsibilities for civilian oversight and management of Kosovo's public security apparatus. A haphazard and wholesale devolution of power could lead to a dangerous and destabilising vacuum which would generate unregulated and unhealthy levels of competition within Kosovo's community, and leave the public security apparatus wide open to corrupting and politicized interests.

Options for the Future

The Under Secretary-General for UN Peacekeeping recently wrote that: "In 17 operations around the world peacekeepers are working to create a halfway house of stability between the chaos of war and the rule of law."[19] However, in the war to rule of law continuum, UNMIK and other foreign interventions need to focus their efforts on developing civilian oversight and management of the security sector, if rule of law is ever going to take root.

The delivery of successful indigenous public security management in peace operations is thwarted by the existence of a fundamental tension. As a fundamentally developmental activity, based upon institution building, it requires planning, sustained energy, timelines, resources and considerable political courage to achieve results. Traditionally, peace operations do not have much of these. Peace operations are responses to crisis. Long term peace operations operate in the 5+ year bracket, but remain dependent on six or twelve month mandate extensions. To date they have found it difficult to corporately and culturally bridge the gap from crisis to development.

As a result, the crisis managers in peace operations make decisions in the early planning and operational stages that provide weak political, legal and structural foundations for development initiatives in the security sector in general and public security management specifically. As the above study highlights security sector reform is often viewed as

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[19] Guéhenno, J-M., "Giving Peace a Chance", *The Economist – The World in 2005*, December 2004, p. 83.

part of a peace operations' exit strategy rather than entrance strategy. Peace operations tend to treat the shift from crisis response to developmental state building as the end point rather than the starting point. This is a conceptual understanding that has yet to fundamentally inform and guide foreign interventions, and its Senior Managers in addition to the Military and Civilian Police Divisions – and key member states. In order for security sector reform to properly take place it needs to be part of the planning matrix from day one. The decisions made in the planning stages and early days of a peace operation have lasting impact on the likelihood of success.

"Just as the absence of conflict is not peace, imposition of order is not the provision of [public] security."[20] Peace operations often fail to recognise this. Set against the backdrop of the headquarters (both in New York and at mission level) strategic configuration, short term horizons and resources of the largely crisis oriented DPKO, security sector reform is seriously hampered from the outset. If the DPKO and its partners are to appropriately engage with and conduct successful security sector reform it needs to radically adjust its thinking, planning, operations and assessments/evaluations.

The DPKO and partners needs to embrace the holistic challenge of restoring peace and security through to building lasting security sector institutions, across a range of inter-related and complex governmental and non-governmental institutions and processes. It is not about the armed and uniformed services alone. Be it the operational security providers, the executive, legislation, judiciary, corrections, combatants, NGO's or the average citizen – they all comprise, together, the security sector. Security sector reform is increasingly more about processes, policies, institutions, legislation and political will as it is about police training, equipment, human rights seminars, and military to military education. Furthermore, should DPKO and its partners accept this evolution in thinking they will then have to consider becoming a more proactive actor in the prosecution of security sector reform?

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[20] Feil, S., "Building Better Foundations: Security in Post Conflict Reconstruction", *The Washington Quarterly*, Autumn 2002, p. 99.

A more aggressive prosecution of security sector reform will necessitate an acceptance of an increasingly politicized activities in peace operations, and the challenge of "getting its hands dirty" with the business of sanctioning those spoilers who would undermine the rule of law and subsidizing those positive agents for change who are interested in upholding the rule of law. The determination of which is a highly politicized act, but not beyond the scope of an objective assessment. This concept of activist and principled intervention is highlighted in the ground breaking 2001 report *The Responsibility to Protect*[21] as well as the recent report by the High Level Panel on Threats, Challenges and Change *A more secure world: Our shared responsibility*.[22]

DPKO's military assets are clearly the necessary backbone of any intervention, while police, judicial and corrections staff form necessary subsidiary elements. Some have argued that "In post conflict society the transition to democracy follows a social continuum of three phases order, law and order, and finally law and order with justice."[23] However, to properly address security sector reform peace operations require civilians with complex skill sets traditionally suited to oversight bodies, institution building, and contextualizing the security sector. It is not just about law and order, it is about the rule of law, and crucially, how the security sector plays a role in undermining it or upholding it.

To achieve successful security sector reform requires that the DPKO and others realise it is not solely about the cessation of hostilities and the imposition of order. It is about the provision of a sense of long term security for communities. This entails a level of political engagement with indigenous structures which is both fraught with risk as it is with rewards. Successful security sector reform is premised on engaging with the power relations of host communities be they the executive, legislature, judiciary, civil society and importantly ex-combatants. In

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[21] Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001.

[22] UN Document, *A more secure world: Our shared responsibility*, Report of the High Level Panel on Threats, Challenges and Change, 1 December 2004.

[23] Day, G. and Freeman, C., "Policekeeping is the key: Rebuilding the Internal Security Architecture of Post War Iraq", *International Affairs*, 79 (2), 2003, p. 341.

this process DPKO and others need to practice the fine art of activism and restraint in pursuit of its goals.

This process is necessarily complicated and requires an integrated and comprehensive program of activities across a broad spectrum of institutions from the very outset of the peace operation. Bad decisions in the early days of a peace operation will have deleterious and expensive effects in later years. Due to the wide range of interests and complexity of the tasks involved, security sector reform is necessarily the business of a host of stakeholders. In situation where DPKO has a lead role in crisis/conflict prevention and management it will necessarily be primus inter pares. However, in order to successfully execute its tasks in security sector reform it needs to dramatically reconfigure and retool itself. It also needs to improve the planning and coordination of its security sector reform activities before and during peace operations with partners such as development agencies, regional organisations and the broader UN family.

The golden rule in any development activity is that the host country/organisation/individual must feel a legitimate sense of ownership of the process. Ownership is ultimately about political control, and the ability of the host to participate in making political decisions about the development activity. No where is this more pronounced than it is in the area of the security sector and the instruments of a state's coercive power. Therefore, if DPKO is to embark on a peace operation with major elements of security sector reform it needs to accept the fact that the sharing of political control of the process must occur early in the process and must be substantive in order to have lasting effects. Furthermore, while DPKO must be willing to share control of the process it must have the practical resources and political will to thwart and/or sanction spoilers both inside and outside the process.
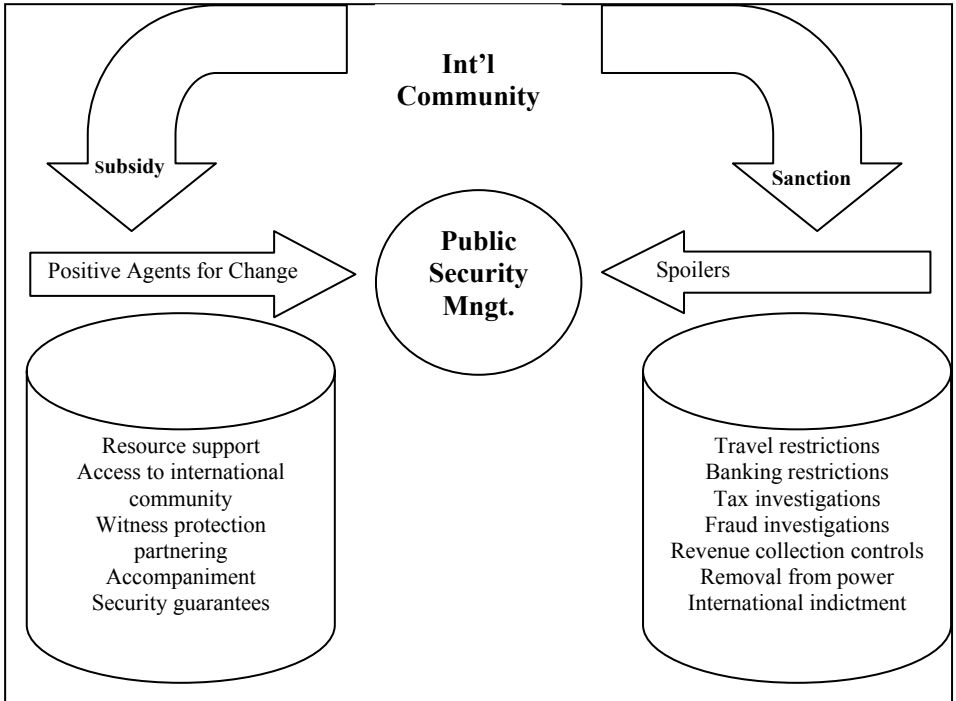
Once these concepts are accepted the planning for peace operations will necessarily have to evolve. Currently, the DPKO is largely designed for the engaging with the security sector as determined by a 1995 definition as opposed to a 2005 definition. As a result of a growing and more

complex constituency the strategic planning for security sector reform in peace operations requires greater integration between a growing host of stakeholders and partners. Beyond the wider UN family, particularly its development arm, DPKO should consider establishing fixed means for integrated planning that spans the UN family, member states, "interested" states, development agencies, international financial institutions, relevant NGOs, corporations and others.

Local Ownership (Building Appropriate Indigenous Political Authority for Public Security Management)

If local ownership is just another way of stating indigenous political authority, or control, then foreign interventions require a mandate and a concept of operations designed to cede political authority to indigenous structures early on but retain superior executive and legislative privileges, and a set of instruments designed to both sanction the spoiler and subsidize positive agent.

The experience of the limited foot print and robust executive powers of the Office of the High Representative in Bosnia and Herzegovina may provide inspiration. Despite some serious obstacles it is a foreign intervention which not only provides political space for building "local ownership" but it retains the powers necessary to remove public officials from office should they be deemed to be undermining the rule of law and thus healthy public security management. Colloquially, OHR gives the spoiler "the rope to hang himself" and the positive agent for change enough room to develop truly sustainable and representative public security management processes and structures. Given the major war that was conducted in Bosnia and Herzegovina and particular circumstances of UNPROFOR UNMIBH and OHR versus such expansive interventions as UNTAET, UNMIK, the Solomon Islands and Iraq, what is lacking is a concept of operations which maps out a more sophisticated set of transfer mechanisms from foreign to indigenous public security management. Current transfer mechanisms consist of a rapid handover in which foreign and indigenous partners have all or nothing. This is an inadequate equation.

Int'l Community

subsidy

Sanction

Positive Agents for Change

Public Security Mngt.

Spoilers

Resource support
Access to international community
Witness protection partnering
Accompaniment
Security guarantees

Travel restrictions
Banking restrictions
Tax investigations
Fraud investigations
Revenue collection controls
Removal from power
International indictment

Furthermore, if international interventions are to progress beyond war-fighting and the imposition of law and order and move towards the development of appropriate indigenous political authority over public security management an integrated concept of operations for the prosecution of security sector reform is required – encompassing but not limited to:

1) Development of Executive Civilian Oversight and Management Concept of Operations:
   - National/Public Security Coordination
   - Line Ministries
2) Development of Legislative Oversight and Management Concept of Operations;
3) Development of Defense Force Development Concept of Operations;
4) Development of Police Service Development Concept of Operations;

5) Development of Judicial Services Concept of Operations;
6) Development of Corrections Development Concept of Operations;
7) Development of Intelligence Development Concept of Operations;
8) Development of DDR Concept of Operations;
9) Development of Sanctions and Subsidies Concept of Operations

Acronyms and Abbreviations

AUS	Advisory Unit on Security (UNMIK, O/SRSG)
COMKFOR	Commander KFOR
DDR	Disarmament, Demobilisation and Reintegration
DFID	Department for International Development
DPKO	Department of Peacekeeping Operations
DSRSG	Deputy Special Representative of the Secretary General
EAR	European Agency for Reconstruction
IOM	International Organisation for Migration
JSEG	Justice Sector Advisory Group
K-Albanian	Kosovar Albanian
KCBP-SG	Kosovo Community Based Policing Steering Group
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
KPS	Kosovo Police Service
KSAG	Kosovo Security Advisory Group
K-Serb	Kosovar Serb
LSC&CPC	Local Community Safety and Crime Prevention Council
LDK	(Democratic League of Kosovo)
MACP	Military Aid to the Civil Power
NATO	North Atlantic Treaty Organisation
PDK	(Democratic Party of Kosovo)
PISG	Provisional Institutions of Self-Government (Kosovo)
OPM	Office of the Prime Minister

OPS	Office of Public Safety
SRSG	Special Representative of the Secretary General
SSDAT	Security Sector Development Advisory Team
UNDP	United Nations Development Programme
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIK-P	UNMIK Police

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Part III

Building Local Ownership in Public Security Management

Chapter 8

Unknotting Local Ownership

Eric Scheye and Gordon Peake[1]

Introduction

When two sentences are equally true and contradictory, it raises vexing conceptual questions and for development practitioners and policy advocates almost insurmountable practical difficulties. Such a paradox looms large in security sector reform (SSR) with respect to the concept of "local ownership" given that the following two assertions possess comparable veracity: (1) SSR initiatives need to be "locally-owned" if reform is to succeed and (2) the previous actions of "local owners" are among the reasons why a need for SSR exists in the first place.[2] The validity of the first claim is unquestionable as reform efforts must be those that "local owners" not just passively accept, but actively support and endorse. At the same time, reform is required because conflict has broken out and/or crime and violence has reached unacceptable levels due to the failure of "local owners" to ensure a safe and secure environment in which the rights of the citizenry are respected. Given this Gordian knot, it appears prudent to begin to revise and rethink the SSR notion of "local ownership" in order to untangle paradox so that the concept may serve a useful function in policy formulation and pragmatic field programming.[3] More time and care may need to be devoted to

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comprehending what kind of "ownership" is being advocated, who do those alleged "owners" represent, and to whom and how are they to be held accountable.

To unravel SSR's contradictory understandings of "local ownership," this paper argues that the first step is to identify who is SSR's customer. An SSR program may have many potential "customers," but it is imperative to come to an agreement as to who the ultimate customer may be. Without knowing with precision "for whom" a SSR program or project is to be designed and implemented, the enterprise may be little more than an expensive game of "blind man's bluff" and the question of "local ownership" rendered largely irrelevant.[4] Once the question "SSR for whom?" is, at a minimum, addressed, it may be possible to determine who the appropriate "local owner(s)" may be, at what phase of an SSR program those "owners" may come to the fore, and to whom they are accountable.

Second, SSR policy may need to recognize, rather than ignore, the fact that "local owners" of security institutions are, in the main, skeptical and resistant to reform. In fact, it may often be the case that the "local owners" are not only resistant to reform, but also inherently anti-democratic in ideology and practice. The current policy and practice of wishing away these realities is untenable. It may be appropriate, therefore, for SSR policy to acknowledge that "local owners" may not be beneficent stakeholders, but rather ought to be conceived to be a collection of actors, many of who regard reform as a direct challenge to their power, livelihoods, and practices. Additionally, it may behoove

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Ownership an Operational Concept? IMF Working Papers, WP/02/72 (2002). The paper claims that the concept is ambiguous and vague for a number of reasons, among which are (1) it cannot be observed; (2) evidence for its existence is indirect and incomplete at best; (3) the concept is dynamic and hence a continuously changing target; (4) for any one policy there are dozens of disparate potential owners, not all of whom can or will agree to any single outcome; and (5) governments are rife with heterogeneity even given the assumption that there is only a single level of government that is relevant. Each of these conclusions taken separately suggest that the ability to pin down "local ownership" is problematic at best. When taken together, it would seem that the idea of "local ownership" cannot be conceptually resurrected.

[4] There is a direct relationship between knowing who the customer of an SSR program is and the ability of devising an adequate method of measuring a program's success.

SSR policy analysts to acknowledge that resistance to reform may also be institutional, deriving from the organizational cultures, structures, and the daily routines embodied in institutions. Moreover, it appears necessary to concede that the "official" institutions undergoing reform often co-exist in an environment with competing "informal security sectors/institutions" that enjoy greater popular fealty and "ownership." Having arisen because of a perceived failure or partiality on the part of the formal security sector, these informal actors may resist attempts at reform.

The third section of the paper suggests that it may be necessary for field practitioners to gain a better appreciation of "local owners" needs, recognizing that their required pace of reform may not coincide with what international organizations are actually prepared to support. Although it may be expedient to ignore these "local owners" and subsequently impose reform, the shallow and unsustainable yields of much internationally led SSR programs may be partially attributable to this divergence of need and expectations.

The fourth part of the paper delves into the thorny question of what to do when the wishes and desires of "local owners" does not correspond to what the international community can or should accept. There are instances when the requests of "local owners" may be unreasonable and the international community should not accede to them or when "local owners" possess the capacities to pursue a SSR program for which they have asked. Circumstances may also arise when "local owners" actively impede a reform tensions because it threatens their own interests, making it an open question as to what the international community can and should do.

The fifth and final section presents a number of intermediate SSR projects to illustrate methods by which "local ownership" has been and can be operationalized. Through patient and detailed analysis of organizational culture and the cadences of the environment and combined with an understanding that accepting "local ownership" may mean deviating from prior planning, these examples suggest show that SSR projects that accord with reality can produce positive results. The

cases described look at starkly different types of reform processes, although all have one common element: they are significantly more modest, slower paced, and markedly less ambitious than originally conceived. In one case, the project was even rejected because of its prudent moderation!

Customers and Owners: SSR for Whom?

There are many different possible customers for SSR - the various security agencies individually or taken together, executive branch ministries, regional organizations, international donors, civil society writ large, the personnel employed in the security sector, vulnerable demographic minorities, refugees and internally displaced persons, individual citizens, etc. What SSR is fundamentally depends upon who its primary customer(s) is. Each SSR customer will have different needs and interests and, therefore, will call forth a different SSR program. For each there will be different political considerations, different strategies and approaches. Although each may be a legitimate customer, the interests of the international donor primarily concerned with terrorism or drug trafficking, for example, may not coincide with those of a democratically elected government of a developing country, nor with those of the associated multi-national regional grouping. None may correspond to the wishes of a parent living in a violent and crime-torn neighborhood who seeks safety and security of her and her children. The perceived reform needs of the leadership of an entrenched security agency seeking to maintain or reassert control after reluctantly acquiescing to a peace agreement with its political rivals, for instance, may not match those of the former demographically based liberation movement that had sought territorial autonomy nor that of the ruling party.

Who the customer(s) are, in turn, determines the "local owner(s)," given that only the primary beneficiary(or beneficiaries), first, can identify and know what his/her needs and interests are and, second, can decide whether the reform has been successful or not dependent upon whether those needs and interests were reasonably satisfied. This is not to

presume a one-to-one relationship between customer and owner, although such a relationship may exist quite frequently. The correspondence between customer and owner is significantly complicated when secondary and intermediate SSR clients are included into the equation, as is inevitable. It becomes even further obscured when the institutions (and their organizational dynamics), which are mediums through which the beneficiary's needs and interests are to be satisfied, are taken into account.

The difficulty and complexity of working out who the ultimate customer of an SSR program may be does not belie the need to identify that customer. Regrettably, most SSR discussions remain silent on the question "for whom" SSR programs are being designed.[5] In fact, it is difficult to find in the literature a cogent analysis of "for whom" SSR is intended to be and, thus, an intellectually sound method for identifying "local owners" is similarly absent.

Even more problematically, there appears to be a significant *de facto* divergence between the international purveyors of SSR and its recipients on the question of who SSR's customer may be. The OECD/DAC recently completed a review of non-OECD countries perceptions of SSR and its findings are highly instructive.[6] The survey concludes that in most recipient countries SSR is perceived to be "a foreign-driven, often political process."[7] In many of these cases, reform appears to be more concerned with "spreading Western norms and practices of how security institutions should be governed"[8] contrary to the priorities of the "local populations" who desire concrete improvements of security in the

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[5] A welcome change is the recent DFID publication, *Fighting Poverty to Build a Safer World: A Strategy for Security and Development* (March 2005), in which it is stated that "well-run security and justice sectors are essential 'services' that responsible states should provide to their citizens" (p. 11). Despite this claim, DFID alternates between identifying SSR as a governance program and one intended to improve the physical well-being of the citizenry. When a list of SSR objectives is offered, for instance, "security as a basic entitlement of the poor" is only the third of eight objectives.

[6] OECD/DAC, *A Survey of Security System Reform and Donor Policy: Views from Non-OECD Countries*, Paris, 2004.

[7] *Ibid*, p. 3.

[8] *Ibid*, p. 11.

"physical sense."[9] This finding not only questions the international community's adherence to the concept of "local ownership," an observance apparently more honored in the breach than in practice, but also suggests that, from the perspective of the recipient nation, the ultimate customer for SSR are those citizens living and working in neighborhoods and communities desirous of concrete, tangible improvement in their physical safety. If the residents of neighborhoods are to be the customers of SSR, they also need to be recognized, at the very least, as one of the principal "local owners" of an SSR reform process.

Local Ownership: Policy Rhetoric Absent Substance

Despite difficulties arising from resolving the question of "for whom" SSR are being designed and implemented, the veracity of the statement - SSR initiatives need to be "locally-owned" if reform is to succeed - holds and the central importance of "local ownership" to the SSR agenda is beyond dispute. What remains open to debate, however, is how reform programs can operationalize the concept in meaningful and productive ways. Unfortunately, "local ownership" as currently conceptualized is much more a rhetorical device than an actual guide for implementers.[10] Critics also claim that "ownership is frequently asserted in both political and economic processes of transition, though its meaning is often unclear" and may have more psychological effect than political.[11]

There are at least six conceptual and practical reasons why "local ownership" as currently explicated in SSR policy documents,

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[9] *Ibid*, p. 12. The survey also concludes that the current SSR agenda and the programs it generates, despite theoretical assertions to the contrary, do not "reflect local needs, priorities, and circumstances", p. 4.

[10] See Wilfried Schärf, *African Security via Police, Justice, and Intelligence Reform*, In *Providing Security for People: Enhancing Security through Police, Justice, and Intelligence Reform in Africa*, in Chris Ferguson and Jeffrey Isima (eds.), Global Facilitation Network for Security Sector Reform, 2004.

[11] Simon Chesterman, *You, The People: The United Nations, Transitional Authority and State-Building,* Oxford University Press, Oxford, 2004.

frameworks, and guidelines does not tally with reality. First, clarifying their use of the phrase, "local ownership," by calling for a "participatory process" in which "all stakeholder" needs are "addressed," SSR policy advocates assume that "local owners" will implicitly welcome a SSR process.[12] Under many circumstances, however, "local owners" are more likely to be resistant to reform than to welcome it, as "local owners" control the institutions that are being subjected to change.[13] Although the benefits of change may appear indisputable to outsiders, those controlling or within the sector's institution may not perceive it as such. Local owners' within military, police and other institutions may and often do regard change as a direct challenge to their power, livelihoods, and practices.[14]

Second, the SSR agenda assumes unanimity of intent, beneficence and selflessness on the part of "local owners" in the belief that a consensus of political opinion regarding the future of the security sector can be attained in post-conflict, conflict-afflicted, and/or crime and violence plagued countries.[15] That such a consensus has never been reached in any Western or democratic country does not dampen the optimism with which policy advocates promulgate their utopian vision. Similarly, it may be idealistic and impractical to address the needs of "all stakeholders," let alone believe that they can come to an "agreement" as to what SSR means or will be, particularly as a number of those stakeholders may hold decidedly anti-democratic beliefs.[16]

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[12] See OECD/DAC, *Security System Reform* (p. 13), "a participatory framework through which the needs and views of all stakeholders can be articulated and addressed."

[13] Thomas Carothers, *Promoting Rule of Law Abroad: The Problem of Knowledge*, Democracy and Rule of Law Project, No. 34, 2003, p. 9. For concrete examples of resistance to change by the "local owners," see International Crisis Group, *Central Asia: The Politics of Police Reform*, December 2002.

[14] The leaderships of the Federal Police in Argentina or the various military state police in Brazil have consistently and continue to oppose police reform.

[15] OECD/DAC, *Security System Reform,* (p. 12): "Principles behind SSR programmes should be transparent and agreed with all stakeholders."

[16] This idealistic strain in the SSR agenda may be due to its understanding of SSR as primarily a set of policy recommendations rather than as a political enterprise, addressing basic questions of who holds power and how is it wielded, see Otwin Marenin, *Restoring Policing Systems in Conflict Torn Nations: Process, Problems, Prospects*, DCAF Occasional Paper 2005, p. 14.

The deeply political nature of SSR, its role in changing and redistributing the dynamic balance of power that exists, creating winners and losers, is also conveniently overlooked in policy documents. Reform "will always be assessed, by internal actors (civic groups, political leaders, managers [of the sector's institutions], domestic and international reformers) by how much reforms will redistribute control and power as well as by criteria of justice and effectiveness."[17] This may be especially true when "control" of the institutions of the sector is perceived to be a zero-sum game between and among competing interests and/or a question of personalized politics. A perceived gain for one group, party, or individual would inevitably be considered a loss for any other.[18] In such cases, the ability to engineer a "consensus" is more than illusionary.

Third, SSR policy assumes that the official "local owners" operate as masters of the security environment. Convincing the citizenry of the sincerity, longevity, and probable effectiveness of a SSR process is a major undertaking. It is even more difficult when the security sector has long been associated with occupation and repression and non-institutional and non-formal security mechanisms have sunk strong and effective roots, often to mitigate against the invasiveness of the formal security sector. Informal security systems are especially robust in instances where the official sector's infrastructure is non-existent, extremely weak and fragilely institutionalized. In either case, many environments in which SSR takes place, long histories with deep traditions exist in how to resolve disputes without reference to official bodies.[19] Reform initiatives to alter the balance of power between the

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[17] Marina Caparini and Otwin Marenin, "Process and Progress in the Reform of Policing Systems," in Marina Caparini and Otwin Marenin (eds.), *Transforming Police in Central and Eastern Europe: Process and Progress,* Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2004, p. 329.

[18] In this context, it is interesting to take into account that one of the implicit goals of DDR programming is to denude a defined set of "local owners" of their acquired power.

[19] In Africa "80-90% of all disputes are processed through customary court processes in villages" Wilfried Schärf, *African Security* (p. 62), leading to the conclusion that significant elements of African civil society might be extremely hesitant to support judicial reform regardless of how deeply the process were to be "owned" by national governments as it would profoundly undermine their grasp of power. Brynjar Lia discusses similar difficulties faced by the Palestinian security forces – created as part of the Israeli-Palestinian Oslo

formal and informal sectors by strengthening police, military, and/or court systems may be strenuously opposed. There may be much more local adherence and fealty to alternate security providers and little real enthusiasm to alter current power relations, resistances that could undermine reform efforts regardless of the "ownership" of the process by the official "national" authorities.

Fourth, the current SSR agenda ignores the difficulties in instantiating and sustaining change within existing security organizations and institutions.[20] Even should reforms be formally adopted and thus "locally owned" by the ostensible leadership of a security sector institution and their civilian political masters, percolating meaningful change through an internally differentiated and non-uniform organization is an arduous and time-consuming endeavor, necessitating a comprehension of intra-organizational dynamics, namely "the pattern of value commitments, dissatisfaction with interests, power dependencies, and capacities for action" existing within any institution.[21] All of these interests and power dependencies within an institution imply the existence of a series of "local owners," many of whom may be hidden within an organization and some of whom may compete one with another. To presume that each "owner" within a security sector institution can be readily identified, let alone the assumption that there is a uniformity of interests within an organization, is idealistic and naïve.

process in the 1990s. As they assumed progressive security responsibility for the territories transferred to the Palestinian Authority, they ran up against entrenched and community-supported informal security mechanisms. Often they had to work with those mechanisms and tried to co-opt them in order to embed their own legitimacy. Brynjar Lia, *Building a Police Without a State,* Faculty of Arts, Oslo, 2003, pp. 121-142.

19 Simon Chesterman, *You, The People: The United Nations, Transitional Authority and State-Building,* Oxford University Press, Oxford, 2004.

20 To complicate the situation further, security sector institutions throughout the world tend to be conservative, hide-bound organizations distrustful of reform initiatives and resistant to change. See Michael Brzoska, "The Concept of Security Sector Reform," in Wulf (ed.) (2000), p. 11.

21 See R Greenwood and C.R. Hinings, "Understanding Radical Organizational Change: Bringing Together the Old and New Institutionalism*",* *The Academy of Management Review*, Vol. 21, No. 4 (Oct. 1996), p. 1042. For a presentation of three methods of change management, see Anthony Mento, R. Jones, and W. Dirndorfer, "A Change Management Process: Grounded in both Theory and Practice", *Journal of Change Management*, Vol. #, No. 1 (August 2002), pp. 45-59.

Fifth, the SSR agenda does not give sufficient weight to the informal culture of security sector institutions. In many circumstances, the SSR agenda seems to call for a fundamental cultural change in the values and principles embedded in and animating the sector's institutions, an alteration that is easier said than done and one that may be years in the making.[22] In this sense, reform is not solely a question of laws, rules, regulations, and formal institutional arrangements, but a thorough transformation of minds and patterns of behavior; the adoption of different rationales and modes of thinking; and, finally, the creation of new values and habits. The difference between whether security sectors are "democratic and authoritarian.... will not be found in their organizational set-ups which will be bureaucratic in form and function… but in their informal cultures, their commitments to forms of decision-making and behavior which reflect democratic norms."[23] Consequently, the existence and rationales of the informal organizational culture(s) cannot be underestimated. Furthermore, to assert within analysis that there is a direct relationship between an organization's informal culture and any given set of "local owners" is highly problematic at best.

Sixth, even if "local owners" can be readily identified, the SSR agenda assumes that these "owners" have the managerial capacity and capability to see reform through. The difficulty with this presumption is that reform often takes place in environments in which the security sector is weakly institutionalized, if it even exists in the first place. In virtually ever instance of SSR, the sector's institutions are under-funded and poorly equipped, no match for the myriad challenges with which they are confronted, let alone capable of undergoing and/or managing a systemic reform process on their own. Assuming, for argument's sake that the security sector operates with well-articulated administrative rules and regulations grounded on clearly enunciated laws, trained personnel in sufficient numbers capable of animating those institutional skeletons are often lacking.[24] Missing are not only personnel skilled in

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[22] Otwin Marenin, "United States Police Assistance to Emerging Democracies," *Policing and Society*, No. 8, 1996, pp. 154.

[23] Otwin Marenin, *Restoring Policing Systems*, p. 64.

[24] Andrew Cottey, Tim Edmunds and Anthony Forster, "The Challenge of Democratic Control of Armed Forces in post-communist Europe," in *Democratic Control of the Military in Post-Communist Europe,* Palgrave, London, 2002, pp. 4-6.

managing the daily operations, but also the human capital required to direct the reform effort to develop a strategic vision within delineated budgetary restraints. How an SSR program is to be "locally owned" when the presumptive "owners" do not possess the requisite skills is a question that SSR policy advocates have yet to address.

Implementation Imposition Rather Than Local Ownership: Tales from the Field

The claim that SSR policy's comprehension of "local ownership" does not seem to coincide with the complexities of real SSR situations also pertains to the models by which SSR is implemented. Although it is touted that implementation must adhere to the principle of "local ownership," as the recent OECD/DAC survey indicates, SSR practitioners often pay little attention to policy prescriptions.[25] This approach and the results it produces, however, appear to be as untenable, hubristic and thinly rooted in reality as the policy prescriptions that the practitioners rightly criticize and ignore.

Recognizing that policy guidelines may not conform to the reality with which they are confronted, field practitioners are left to their own devices and all too often bypass and ignore "local owners" in an attempt to impose security sector architectures on recipient countries. Unfortunately, this type of reform often inflicts a formal security sector architecture on the recipient state that is based upon an understanding of governance and public service from the country of the practitioner's origin rather than on the realities of the histories, cultures, traditions,

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[25] See OECD/DAC, *A Survey of Security System Reform:* "Very few countries have comprehensive SSR programmes that conform with the definition in the OECD-DAC policy statement… Reforms are rarely governed by an overarching strategic framework, informed by a wide-ranging and integrating public security concept, or effectively linked to wider government planning and budgeting processes in ways that help to strengthen governance" (p. 6). Given the finding that programming does not coincide with policy pronouncements, it seems to be an open and debatable question whether SSR policy prescriptions correspond to reality.

practices, and finances of the country whose sector is being reformed.[26] In trying to create or re-assert the prerogatives of formal security systems reflective of their own countries, practitioners too often slight and/or disregard extant formal and informal structures and methods by which order and security are being provided. Oftentimes, practitioners even undermine existing structures without substituting them with functional equivalents, thus, leading to deteriorations in safety, security, and law and order.[27] In either case practitioners' failure to reconcile how "local owners" conceptualize and operationalize their security structures and systems with how the international community would like the security sector to be conceptualized and operationalized results in an unsustainable - operationally and financially - security sector, one that is out of sync with reality.

It is understandable that international models of implementation are frequently characterized by a leeriness to engage "local owners." After all, there might not have been any need for international intervention in the first place if "local owners" were effective, public spirited, and rights respecting. Given that a notable percentage of these "local owners" may hold seemingly anti-democratic sentiments only reinforces that international skepticism. Knowing that the failures of the "local owners" hastened international intervention, security sector practitioners would require a healthy leap of imagination coupled with a political appreciation of the situation and knowledge of development practices to be able to turn around and rely on, in many cases, those same "local owners" who caused the initial problem. Given that security sector practitioners are, in the main, skilled technicians in their security

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[26] In Belize, for instance, the international community recommended and forced through a multi-year strategic plan for the national police, one predicated on conducting periodic surveys and measurement exercises, for a police service where the concept of a statistically valid random sample meant opening the telephone book and picking names off the page. The Australian efforts to restructure the police services of the Solomon Islands seems to be another case in point.

[27] This was the case, for instance, in Bosnia and Herzegovina during the first years of intervention when the international community ignored the existing remnants of Bosnia's police academies in its single-minded drive to rebuild the country's police services, thus delaying the possibility of real reform for a number of years. A much more serious situation arose in Iraq, when the United States disbanded the Iraqi Army, precipitating a serious deterioration in the security environment.

specialties and subfields, it is unlikely that they possess the requisite political or developmental talents. Nor should it be presumed that they should possess such political skills. Additionally, assuming that a significant percentage of the "local owners" may exist below the surface, it would be exceedingly difficult to identify them, even if practitioners possessed the requisite language, cultural, managerial, and organizational behavior skills, which are almost uniformly absent from the cadre of personnel who execute most SSR projects. Finally, as practitioners are thrown into volatile, unstable situations without relevant policy guidance, it is not surprising that they revert to practices, systems, and habits with which they are most familiar - those of their home countries.

There are other larger reasons why the concept of "local ownership" has been frequently jettisoned by practitioners. Embracing the concept would mean that the pace of SSR implementation would most likely be slow, hesitant, and episodic. Being true to the concept might risk having the progress of SSR stall or impede other ongoing peacebuilding initiatives, given the current belief that there is an intimate relationship between security/law and order, on one side, and sustainable development and democratization, on the other. Lastly, accepting the rigors of "local ownership" might also imply that donor countries would have to seriously rethink their agendas, timelines, and funding mechanisms, as the first signs of sustainable reform would occur progressively over a period of seven or more years rather than in less than two or three, the customary deadlines of much international donor assistance. For all of these reasons, SSR practitioners are under pressure to produce "results" that might be infeasible to attain if they were to adhere to the strictures of "local ownership."

In implementation, therefore, SSR programs regularly sideline or bypass "local owners." Some peacekeeping mandates have seemingly legislated against integrating "local owners" into its operations. Indeed, recent attempts to bolster international peacekeeping capacity and leverage in SSR programming have been prompted by the limited mandates under which peacekeepers had been constrained and, consequently, the limited "leverage" they possessed to actualize SSR. The thin yield of much of

this first generation of SSR was often explained as being the result of "local and national actors" residing within the institutions to stymie the wider processes of SSR that was being proclaimed and pursued in their name. Often, too, it was claimed that "local actors" do not exhibit the requisite depth and strength of "political will."[28] As a result, there has developed a perception that in order to implement robust reforms international and regional organizations needed to be endowed with the political ability to push changes through, compel, and/or impose reforms regardless of the wishes of the "local owners." The extent to which international authority reached its apex was with the creation of transitional administrations in Kosovo and East Timor, each empowered to create local security sector institutions and architecture without significant recourse to any local actors or participation.

Although peace operations of such range appear less likely in the immediate future, other cases exist where international organizations have been assigned sweeping powers to create or re-fashion security sectors.[29] A prominent example is the Office of the High Representative in Bosnia and Herzegovina. There, the international community possesses the ability to take decisions - such as firing Ministers of Interior or other lower ranking police officials, rewriting codes of criminal procedure; imposing new law enforcement agencies such as border police; and creating new levels of executive oversight of cantonal police agencies - irrespective of the desires of "local owners." The Australian-led "police-first" missions in Solomon Islands and Papua New Guinea are comparable examples. The latter two examples are predicated upon handing international police officers executive authority with the concomitant resources so that they can transform and restructure national law and order services.

Though less immediately apparent, the community of international consultants that conduct assessments, design, and then implement SSR

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[28] There appears to be a confounding and confused relationship between "political will" and "local ownership," although it is one that lies beyond the purview of this paper.

[29] The mere existence of a peace operation often encourages peacekeepers to arrogate to themselves the prerogatives of authority even when the ostensible mandates have not awarded them that privilege.

programs on behalf of international and regional organizations, not to mention donor countries, often overlook the needs and wishes of the "local owners." Consultants can even leverage the political capital of their paymasters and pressure the recipient nation to accept a reform program despite active or passive opposition from "local owners."[30] Thus, it is not an uncommon sight to have SSR working groups intended to steer the reform process be comprised of representatives of international donors and organizations, but be bereft of a single "local owner." Often these working groups are organized in the name of international coordination, but the effective result is the same.

The history of SSR, therefore, seems to suggest that there is a widespread perception among field practitioners that in order to move ahead with and lay the foundations for a SSR process it is necessary and/or convenient to bypass the "local owners." The question arises, however, whether this method of implementation creates sustainable institutions, let alone ones that are effective and rights respecting, and the answer is more often than not "no."[31]

The reasons why recipient countries are often unable to sustain SSR initiatives are manifold. Financial considerations are the first and foremost explanation for unsustainable SSR reform endeavors, closely followed by a lack of managerial and technical capacity to absorb the

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[30] In one recent example, the Deputy Minister of Interior of a Central American country complained that the ministerial planning office reported not to the Ministry, but to the police advisors of a major international donor.

[31] Although there are notable exceptions, the SSR record with regard to sustainability is not a positive one. Only a few examples are needed to illustrate the theme. After years of building up the police services of Bosnia, Kosovo, and East Timor, for example, one of the first results has been the need to reduce the number of serving police officers because public budgets could not sustain the large police service payrolls. In many cases, equipment foisted upon these countries by bilateral donors lies unused and is unusable because of a lack of funds and/or maintenance budgets. In Kosovo, for example, the dogs donated for a canine unit had to be rescued and evacuated because the government had tabled a contract for their "liquidation" because the dogs could not affordably be housed and fed. In the Democratic Republic of Congo, it has recently been reported that the latest electronic video equipment is being installed in police training centers. In Honduras, a series of training programs initiated by the Spanish government produced no results because the police did not possess the equipment on which they had been trained. Interviews with DPKO and UNDP staff members, March 2003, April 2004.

proposed and implemented reform. It is difficult to conceive how many of the recipient countries will be able to maintain the various elements of their reformed services - forensic laboratories, GPS-based crime mapping, Ombudsmen's Offices, free or low cost legal aid, etc. - once the spigot of international funding is turned off. It is equally difficult to understand how a country can successfully sustain certain institutional reforms - establishment of career development processes, criminal statistic databases, or promotion and evaluation systems, for example - when the basic managerial skills required to utilize the systems are woefully lacking and no international support is offered to develop or strengthen those capacities.[32]

There is also the related issue as to whether the imposition of international SSR solutions and the bypassing of "local owners" have created Potemkin institutions, security sectors that may appear robust and effective but are, in fact, facades of varying natures.[33] This concern is reflected in the woebegone refrain (or variant of it) often heard in these environments by field staff: "as soon as we pull out, it'll be back to square one." Concern has been expressed in Sierra Leone as to whether its security sector - often heralded as being one of the most successful instances of SSR - will collapse once international assistance disappears.[34] The same holds true for the "police-first" interventions in Solomon Islands.[35] As a result the international community stays longer and longer, often with no end in sight. Ten years after the Dayton Peace Accords, the edifice of the Bosnian security sector continues to be propped up and imposed by the Office of the High Representative and

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[32] This lack of sustainability raises the uncomfortable question whether the expectations of the international community with regard to what it can achieve were and are realistic in the first place. The hubris of the international community is most evident in peacekeeping operations where the presumption seems to exist that a systemic "rule of law" can be erected from the cinders of years of war in less than 3-5 years.

[33] The post-independence riots in East Timor that the Timorese police could not quell suggest that the years of training provided created the semblance of a police service absent comparable substance.

[34] See International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*, Crisis Group Africa Report N° 87, 8 December 2004 *and Sierra Leone: The State of Security and Governance,* Africa Report N° 67, 2 September 2003.

[35] Sinclair Dinnen, "Lending a fist? Australia's new interventionism in the Southwest Pacific", State Society and Governance in Melanesia Project, Canberra, 2004.

the EU.[36] Eight years of international police assistance in Guatemala has produced virtually no tangible results and in East Timor the formal structures of the security sector are being systematically eroded by the actions of the newly independent government, in part because they had been largely excluded from participating in the decisions concerning the development and formation of their police and security services.[37] The same holds true for Kosovo, six years after UN Resolution 1244 where only the faintest first hints of a Ministry of Interior exists, despite the fact that executive policing authority is in the process of being handed over.[38]

When Local Ownership Becomes Problematic

At the same time, there is an entirely different side to the question. Although the imposition of international SSR recipes without due reference to "local owners" is untenable and the results unsustainable, the reverse problematic also arises when the capabilities, plans, intentions, and objectives of "local owners" are or should be deemed to be unacceptable by international donors.[39] There should be no supposition that because a "local owner" desires and/or demands a particular form of assistance that that support is either appropriate or should be forthcoming. One of the first requests of many "local owners" is for new equipment, ranging from vehicles for police to computer systems for courthouses; from one-off training programs to "look-and-experience" foreign travel, fulfillment of which may have little functional value and produce few tangible results. The history of criminal justice training programs is replete with requests for assistance that should never have been heeded.[40] Unless these requests are

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[36] David Chandler, "Imposing the 'Rule of Law': The Lessons of Bosnia-Herzegovina for Peacebuilding in Iraq", *International Peacekeeping*, Vol. 11, No. 2, 2004, pp. 312-333.

[37] Edward Rees, *Under Pressure- Falintil: Forcas De Defensa De Timor Leste Three Decades of Defence Force Development in Timor-Leste 1974-2004*, Geneva Centre for Democratic Control of Armed Forces, 2004.

[38] See the chapter by Edward Rees in this volume.

[39] The International Crisis Group has broached this issue with respect to revenue collection in West Africa, see International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*.

[40] In Guatemala, for instance, of the hundreds -- if not thousands -- of police personnel "trained" in criminal investigations, fewer than 15 remain in positions for which their

embedded in systematic managerial reform processes and the requisite maintenance budgets exist, it may often be better not to satisfy the demands.

Two recent requests from the authorities of Liberia and Sudan, respectively, illustrate the argument that not all SSR plans of "local owners" are reasonable nor should be accepted by the international community, although in these two instances the requests are regrettably being honored. The 2003 Accra peace accords that have brought a semblance of stability to Liberia authorize the creation of a 4000-person army, although there may not be a substantive need for a Liberian military given that the military is a non-productive sector possessing a particularly dire historical legacy in the country. In fact, the re-establishment of an army may have more to do with finding positions for members of Liberia's various political factions - and the political leverage that affords - than anything else. Despite the opposition of the United Nations Mission in Liberia (UNMIL), arguing that there are many more immediate priorities and needs and that what many African armies do is "sit around playing cards and plotting coups," a Liberian army is being formed at the cost of $35 million over three years.[41]

What is being undertaken in Liberia appears likely to be repeated in Sudan, at an even higher cost. An international appeal for funding is currently being organized to support the establishment of a unified Sudanese army that will incorporate and integrate the current predominantly northern military force with rebel groups from the south. Again, the decision by the "local owners" who negotiated the terms of the peace agreements may have as much to do with their desire to retain political relevance and leverage through the control of "men with guns" as it does in the belief that a national military is a public good for Sudan.[42]

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training can be put to use. Of the more than 145 instructors "trained" in community-based policing, none currently serve as instructors in the Guatemalan Police Academy.

[41] Statement made by Jacques Paul Klein, Special Representative of the Secretary General, UNMIL, November 5, 2003.

[42] The above discussion prompts another issue which beyond the purview of this paper, but which needs to be addressed in any re-thinking of SSR policy: should a military be an inviolate component of all security sectors? Currently the military is placed as a central

In East Timor, on the contrary, a request by local owners for SSR support was appropriately rejected. In 2003, in response to a prison disturbance, in which a large number of the incarcerated escaped, UNDP was asked by the Ministry of Justice to support the construction of a new penal facility a few miles outside of the capital, Dili. To evaluate the request, UNDP organized a visit to East Timor of a team of prison, who unanimously advised against international support for the new construction. The reasons for rejecting the request were numerous, including, among others, budgetary costs for the building and maintenance of a new prison; prohibitive expenses for transporting prisoners to their court appearances; the inability of families of the incarcerated affordably to travel to the proposed site of the new prison; and the deterioration of social services (not to mention legal representation) prisoners would receive because of the distance of the site from Dili. Instead, the UNDP team of penal experts recommended that the existing Dili prison be renovated, especially as it was not running at full capacity; that its security provisions be enhanced; and that social services received by the incarcerated improved, all at a lower cost than would be called for by constructing a new prison, recommendations that were politically unpalatable to the Ministry of Justice.[43]

A much more difficult and tendentious issue arises when "local owners" may not capable of pursuing elements of a SSR program. Above and beyond questions of managerial competence that have already been raised, there may be situations when the criminal justice system is sufficiently dysfunctional and corrupted that impunity rates exceed 95% of reported crimes. To address these situations there are a number of possible reform scenarios, one of which is the placement of international prosecutors into the system in line functions. These foreign prosecutors

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institution of the security sector. However, in a world in which inter-state wars are diminishing in number and the role of national armies in Africa, for instance, have been notoriously detrimental for national peace and development, there may be more good reasons for nations not to have a standing army than there are for countries to possess armed forces. Given limited financial resources, a corollary question is whether a well-trained and managed national police service -- with the appropriate border and custom units -- serve as a viable substitute with regard to questions of sovereignty and statehood?

[43] UNDP Mission Report 2001-2002.

could be allowed to conduct high-profile investigations into selected types of cases, such as allegations of official malfeasance, bribery, and prominent human rights violations. Such usurpation of "local ownership" may succeed in "jumpstarting" reform and, thus, prove to be beneficial over the long haul, with the caveat that the foreign prosecutors are in place for limited duration and, while performing line functions, mentor their national colleagues.

An even more troubling occurrence is when powerful anti-democratic alliances have been forged during the period prior to the initiation of an SSR program between national political leaders and parties, private business, and criminal enterprises. These partnerships frequently occur and typically run diametrically counter to the recreation and/or strengthening of the criminal justice institutions, exerting powerful, malignant, and subterranean influences that perpetuate the former civil strife by other means. In such cases, the establishment of a sturdy rule of law regime threatens to erode the ability of the partnerships to manipulate or exercise power and control.[44] The implications of these tripartite alliances are even more deeply problematic for SSR, if and when these networks wield significant popular support through formal electoral processes and within free-forming civil society organizations, as they often do. How to initiate a SSR program under these conditions and what strategies to adopt are difficult to determine when such a tripartite alliance gains elected office, but a need exists to confront the issue directly in policy fora.

Illustrations of Intermediate and Modest SSR Reform

As has been suggested, neither bypassing and ignoring "local ownership" nor giving free rein to the whims of "local owners" is tenable to developing sustainable and effective SSR. It may be possible

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[44] Graham Day and Christopher Freeman, *Operationalising the Responsibility to Protect: Proposals for Leadership through a Policekeeping Approach*, p. 3. It should also be noted that this unholy alliance need not necessarily be limited to post-conflict environments. For a discussion of how this alliance has been assembled in southern Africa, see Peter Gastrow (ed.), *Penetrating State and Business: Organized Crime in Southern Africa Volumes One and Two,* Institute for Security Studies, 2003.

to negotiate a middle ground that privileges local knowledge, traditions, and capacities and, only when necessary, is tempered by international intercession. An intermediate reform process is more realistic and will have lower expectations of what can be achieved, but also will be more likely to produce tangible results that are more reflective of the organization(s) undergoing reform and the political/cultural environment in which it is being conducted.

Examples of relatively successful SSR programs receive sparse attention in the literature, in part because autopsying failure is sexier than diagnosing success, garnering more attention for the analyst, particularly when he/she has little "hands-on" operational experience and less awareness of the particularities of field conditions. Understanding the intricacies and dynamics of "ownership," how it has and can be positively been utilized, also tends to be overlooked in favor of citing egregious errors and missteps because of the care it requires to tease out and its often being confused with the elusive concept of "requisite political will." Additionally, while a large program may be characterized by an absence of "local ownership," elements of best practices can often be uncovered in the conception, delivery, and nurturing of "discrete projects" within bigger programs. Finally, those intimately involved in successful implementation tend not to write down their accounts of "what they did and how," thereby allowing instances of real "local ownership" to be lost, if they are not shared orally. Consequently, this paper offers three such unheralded or obscured SSR "projects within programs," two actual and one that had been proposed, as examples of how "local ownership" can be used to produce tangible, positive results.[45]

One case of a successful deployment of "local ownership" was in Bosnia and Herzegovina with the development of the multi-ethnic Brcko Police Service from 1998 through mid-1999. A disciplinary commission had been created on which all three ethnic groups - Serbs, Croats, and

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[45] Needless to say there are many more positive examples that could have been chosen. The cases were selected because of their geographic variety, the mechanisms of "local ownership" and its relationship to international intervention are dissimilar, and, lastly, the reform undertaken or proposed was on decidedly different levels of intensity.

Bosniaks – were represented by one or more senior police officials. No single ethnic group could outvote the other two.   International representatives also sat on the commission and possessed veto power over the commission's decisions, but could not make decisions independently without the concurrence of the representatives, at least, one ethnic group. Beginning with disciplinary issues, the commission evolved over time to become the mechanism by which the competing ethnicities could build trust while transforming the police service into a truly multi-ethnic agency while learning how to exercise managerial control over all strategic and operational policing issues.

The success of this model of "local ownership" was tested when the two senior Serb police officials had to be removed because of breaches of the police code of conduct. First, the Serb Chief of Uniformed Police was accused of participation in a car theft ring when money marked in a sting operation organized by the Croat police of a neighboring area was found in his possession. When the decision to suspend him and refer the case for prosecution was taken, the Chief of the Brcko Police Service, a fellow Serb, voted in favor and participated in the selection of his Serb replacement. At the same time, however, it was revealed that on the night of the sting operation, the Chief of the Police Service had tried to cover up his ethnic colleague's involvement. Over the course of the next couple of weeks, more evidence of his misconduct was disclosed and he too was suspended, this time with the concurrence of the new Serb Chief of Uniform Police.   The result of these two suspensions was the accession of a Bosniak to Acting Chief of the Brcko Police Service at a time when the populace he was responsible to was approximately 80% Serb.[46]

At no time during this period or subsequently was there an outbreak of civil unrest.   Neither were daily police operations or the continued strategic development of the police affected in the slightest. Quite to the contrary, the removal of the two Serb officials enabled the police service to perform its activities more effectively and within short order a

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[46] It should be noted that at this time period, the cantonal police of the Federation and the Republika Sprska police were not only virtually segregated, each ethnic group with its own police services, but unable to speak with one another to conduct joint operations of any kind.

consensus was reached by all concerned on who the new Serb Chief of the Brcko Police Service would be. It should also be pointed out that the international representatives on the commission, albeit active participants, never seized control of the process, functioning primarily as mediators. In retrospect, it turned out that this period of time was pivotal in the development of Bosnia first and still only truly independent and multi-police service.

In contrast to Brcko, the ownership question in Belize was of an entirely different status. In 2004 a UNDP study of police performance was undertaken during which a wide spectrum of individuals and organizations involved in the security sector were interviewed: senior police officials, middle police managers, patrol officers, prosecutors, representatives of civil society organizations, and religious leaders. The study disclosed that despite three international police assistance programs of varying degrees of intensity having been conducted over the past seven years, the Belize police were exceptionally ineffective.[47] One of primary findings during the UNDP interviews was that police ineffectiveness was partially the result of the inability of a vast percentage of police officers to write a literate police report, resulting in, according to prosecutors, police reports of less than no value. Representatives of civil society organizations concurred, complaining that reporting a crime was meaningless given that the police officer could not write down a coherent summary of what a witness told him/her. Listening to what the "local owners" testified, UNDP proposed a literacy program as the basic building block of a police reform initiative.

Simultaneously, the major issues within the police were a severe communications problem between and among the ranks and the highly stressful nature of police work in Belize, which combined to cause an attrition rate averaging over 9% over the past three years. Within seven

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[47] Though it is difficult to ascertain the reliability of criminal statistics in Belize, it appears that of the 95 rapes that occurred in 2001 and 2002, no one was convicted in either year for their alleged crime. Only one murder investigation reportedly resulted in a conviction in those two years and the combined burglary and robbery convictions rates were only 5.1% and 3.8% respectively.

years, almost the entire personnel of the Belize police service could be turned over, thus relegating most training programs to irrelevance. Although the problem was known and had been persistently intractable over time, the review revealed that no one had investigated the causes of the problem, let alone understood them.   UNDP, consequently, recommended that, coupled to a literacy initiative, the attrition problem be immediately addressed, prior to the commencement of more traditional forms of police reform. Unfortunately, the Belize police leadership having grown accustomed to international assistance - the supplying of equipment, vehicles and forensic capabilities, for instance - rejected UNDP's approach despite what the lower levels "owners" were saying.

One of the classic problems in SSR is to rebuild basic law enforcement services where there is an ingrained distrust of the police and an already existing informal system that is legitimate and "locally owned."   The designers of a new police for Bougainville chose to work with the "locally owned" structures rather than try to supplant them while restructuring the police. The result is a system of financially sustainable policing that links the informal with the formal and is perceived to be effective and legitimate.[48]

During the conflict with Papua New Guinea over the island's status (1989-2000) the illegitimacy, ineffectiveness, and heavy handedness of the formal security sector caused Bougainvilleans to return to and give greater fealty to informal systems of policing and customary forms of justice.[49]   At the village level, chiefs deputed community members to conduct policing functions, with some of the more weighty matters beyond their discretion adjudicated at the village court, resulting in a more legitimate and speedier criminal justice system, albeit informal.

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[48]   Emmart Tsimes and Wayne Stringer, "The Relationship Between Formal Policing and Traditional Justice in Post-Conflict Bougainville". Paper presented at *Securing the Rule of Law: Assessing International Strategies for Post-Conflict Criminal Justice* International Peace Academy conference, New York, 14-15 March 2005.

[49]   Anthony Regan, "Bougainville" in Karen Ballentine and Jake Sherman (eds), *Beyond Greed and Grievance: the Political Economy of Armed Conflict,* Lynne Reinner, Boulder CO, 2002.

The peace agreement of 2000 provided wide-ranging autonomy for the island including policing. Instead of dispensing with the informal system, the international donors - predominantly Australia and New Zealand - recognized the informal justice methods and weaved the formal elements of the new police around them. A major element of the process was to deputize the already working "police" as "community auxiliary police," empowering them with the discretion to (continue to) deal with everyday offences and refer, where necessary, matters to the village courts.[50] If the matter deemed sufficiently serious, they were to refer it to the newly created (uniformed) Bougainville police stationed in the island's towns.

This hybrid system has obvious value. It is "locally owned" in that it formalizes an already extant form of legitimate and accepted informal justice. It is politically savvy because it quickly extends the geographic and institutional reach of the new police. Finally, it is resource friendly in that it does not require the money for infrastructure and salaries that creating a fully formal sector would entail.

Conclusion

The paper began by positing a SSR paradox: the need to ensure that reform is "locally owned," coupled with the awareness that the actions of often the same "local owners" necessitated the intervention of the international community in the first place. The dilemma is how to chaperone a process that incorporates "local ownership," but that does not permit either international actors or the compromised "local owners" to dictate programming choices. Unfortunately, intelligible and useful SSR policy guidance to those charged with implementation is in short supply, portraying "local owners" in an idealistic, apolitical light that does not correspond to reality. It is scarcely surprising, therefore, that policy prescriptions are so roundly ignored by field practitioners. Although practitioners may cloak their programs in the rhetoric of "local ownership," all too often the SSR programs they enact are effectively

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[50] Each Community Auxiliary Police officer is paid 60 kina (approximately $20) a month for his services.

imposed. SSR programs that inflict a solution through bypassing local owners rarely produce an effective, sustainable, and rights respecting security sector (or even parts thereof).

Given the apparent failure of current SSR policy and practice to address the questions raised by the "local ownership" Gordian knot, it appears necessary to re-think the paradox. On the one hand, policy advocates may need to tease apart the various elements of "local ownership" and thereby recognize that less reform may, in fact, be more effective. Lowered levels of ambition may produce more durable reform. Practitioners too may need to decrease their expectations, searching for what is practical and affordable rather than what is optimally desired, lengthening their timelines and moderating the pace of reform.

The paper's illustrations of SSR programs in which "ownership" was activated to produce positive outcomes appears to suggest that the most useful reservoirs of knowledge from which policy re-formulation can and must be grounded exist at the micro level, lodged in the minds of field practitioners and the "local owners." Going beyond the tendency to look at programs as a totality, there may need to be greater in-depth investigation of discrete projects and the approaches adopted by them. The small vignettes presented suggest that when patient and detailed analysis of the recipient institutions and environments is combined with a preparedness continuously to re-think and re-tailor plans SSR projects can yield results. The approaches profiled may appear more modest in goals and circumspect in ambitions but they may stand a greater chance of gaining traction within "security sector" institutions, harnessing public support, and thus attaining actual and sustainable "local ownership" for those for whom SSR is intended to be.

Chapter 9

Transitional Justice in Post-Conflict Societies – Approaches to Reconciliation

Eirin Mobekk

1   Transitional Justice and Sustainable Peace

The issue of transitional justice in post-conflict societies has taken on increasing importance in the last few years. In many cases where there has been external intervention, there has also been some effort towards establishing different forms of transitional justice. The international community will, in peace operations and during post-conflict reconstruction, begin to assist and supply transitional justice, in a space where some forms of justice mechanisms already exist, but also where there is a void of such mechanisms. These transitional justice mechanisms are essential to stability and sustainable peace.

Transitional justice mechanisms are created to deal with crimes that were committed during a conflict period, at a stage where that society is at the cusp of transition from a society of conflict to one of democracy and peace. There are wide-ranging options available, to the transitional governments and the international community assisting them, to tackle these crimes – not only a dichotomy of punish or forgive, and local ownership of these processes is paramount.

Transitional justice mechanisms may take a number of forms. Most prominently these include the international criminal court, international tribunals, special courts, truth commissions, local courts and traditional methods of justice. This paper will address the latter three; truth commissions, local courts and traditional methods of justice.   The international criminal court, international tribunals and special courts for

past crimes will not be addressed, because these tend to be further removed from local ownership and this paper will focus on what can be termed local forms of transitional justice.

What this paper seeks to do is to examine the forms of transitional justice, where local ownership can be more easily established. It will analyse different methods of transitional justice in post-conflict societies, drawing on a number of cases, building on the assumption that some form of transitional justice is essential for reconciliation, future stability and peace, and moreover that it can serve to increase the sense of local ownership of the whole process of post-conflict reconstruction.

1.2   Reconciliation

It is impossible to discuss transitional justice without reference to certain key concepts, which are all interrelated – one of which is reconciliation.[1] Reconciliation is the ultimate objective in all post-conflict societies and post-conflict reconstruction processes, however, is often very vaguely defined, if at all. It has been referred to as acknowledgement and repentance from the perpetrators and forgiveness from the victims,[2] as non-lethal co-existence,[3] as democratic decision-making and

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[1]   The discourse surrounding reconciliation is vast and cannot be detailed in this paper. This only serves to briefly outline the concept and establish how it will be used here. Please also note that there is an on-going debate regarding the terms victim or survivor. To simplify for this paper, the term victim will be used throughout, however, it is important to emphasise that not all are victims of crimes against humanity, but survivors. It is important that this distinction be acknowledged.

The concept of healing is also frequently applied in the discourse on transitional justice. However, in this paper it will only be referred to in the context of Mozambique. Healing is a very individual complex psychological objective after conflict and will not be addressed.

[2]   Monteville in K.Avruch & B.Vejarano, "Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography", *The Online Journal of Peace and Conflict Resolution*, Issue 4.2, Spring 2002, p. 4.

[3]   David Crocker in J.D.Tepperman, "Truth and Concequences", *Foreign Affairs*, March/April 2002, p. 7.

reintegration,[4] and as encompassing four concepts namely truth, mercy, peace and justice,[5] concepts which in themselves are difficult to define.

In this paper, a distinction will be made between national reconciliation and individual reconciliation. National reconciliation is achieved when societal and political processes function and develop without reverting to previous patterns or the framework of the conflict. Individual reconciliation is the ability of each human being to conduct their lives in a *similar* manner as prior to the conflict without fear or hate. This distinction is crucial because it is possible to achieve national reconciliation without achieving individual reconciliation. National reconciliation may come at the expense of reconciliation at the individual level, although political processes may proceed and progress individuals may find greater difficulties in dealing with their experienced traumas. However, reconciliation at the individual level is also independent of reconciliation at the collective level.[6] Moreover, some transitional justice mechanisms can promote one type of reconciliation more than others.

Although there is currently a growing consensus of the nexus between peace and justice, for example the UN Secretary General has emphasised the importance of integrating justice into the peace process,[7] reconciliation is still frequently described as incompatible with justice. The justice versus reconciliation, justice versus peace, justice versus truth debates all emphasise that justice is retributive and reconciliation is restorative and that there is a trade-off involved.[8] Hence inferring that justice, in the meaning of criminal proceedings of one type or another against individuals to attain individual guilt followed by punishment,

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[4] Denis Thompson in ibid, p. 7.

[5] John Lederach in A.Odendaal, "For All Its Flaws. The TRC as a Peacebuilding Tool", *CCR*, vol. 6, no. 3/ 4, December 1997, p. 1

[6] See also Winslow in Avruch & Vejarano, "Truth".

[7] Draft report Wilton Park Conference, "Transitional Justice and Rule of Law in Post-Conflict Societies: The Role of International Actors", 24-26 January 2005, p. 2.

[8] See e.g. L. Huyse, "Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past", *Law and Social Inquiry*, vol. 20, no. 1 Winter 1995; C. L. Sriram, "Truth Commissions and the Quest for Justice: Stability and Accountability after Internal Strife" in A. Adebajo & C. L. Sriram*, Managing Armed Conflicts in the 21st Century,* Taylor and Francis, 2001, pp. 92-93.

will not lead to reconciliation, stability or peace. However, as will be discussed this paper does not support this notion, but underlines that certain mechanisms of retributive justice, as well as restorative justice, can support reconciliation in particular contexts. It is the complementary characteristics of transitional justice mechanisms in conjunction with local ownership that will be emphasised, and how this can lead to sustainable long-term peace.

2 Truth Commissions

In the last two decades, establishing a truth commission in a post-conflict society has become increasingly popular. The demand for truth and truth-telling after conflict has grown and the international community has sought to strengthen the emphasis on truth commissions. Hence, since 1974, at least 25 such commissions have been established around the world, and often the first thing that newly elected politicians in a transitional democracy cry out for is the establishment of a commission. Truth commissions, as are currently perceived, stem from the numerous Latin American commissions held in the 1980s,[9] however, they have changed somewhat, particularly in the context of a post-conflict society, which has experienced international intervention.

A wealth of literature has grown as a result of this expansion, which includes detailed analysis of a number of cases.[10] However, it is

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[9] For details of the Latin American commissions see e.g. USIP, *Truth Commissions Digital Collection,* http://www.usip.org/library/truth.html and P. Hayner, *Unspeakable Truths. Facing the Challenges of Truth Commissions*, Routledge, London, 2002.

[10] In addition to the other references for this section see also, e.g. R. Rotberg, D. Thompson, (Eds.), *Truth v. Justice: The Morality of Truth Commissions*, Princeton University Press, 2000. D. Shea, The *South African Truth Commission: The Politics of Reconciliation,* United States Institute of Peace Press, Washington DC, 2000. P. Hayner, "Fifteen Truth Commissions - 1974 to 1994: A Comparative Study", *Human Rights Quarterly*, Vol. 16, 1994. N. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes,* Volumes 1-3, United States Institute of Peace Press, 1995. M. Popkin & N. Bhuta, "Latin American Amnesties in Comparative Perspective: Can the Past Be Buried", *Ethics & International Affairs,* Vol. 13, 1999. P. Ball & A. R Chapman, *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, The Urban Morgan Institute, John Hopkins University Press, 2001. J. L. Gibson, "Truth, Justice, and Reconciliation: Judging the Fairness of Amnesty in South Africa.", *American Journal of*

significant that a large proportion of this literature focuses on a few key cases only, in particular the South African Truth and Reconciliation Commission (TRC) and the various Latin American commissions, and advice on how to design and operate a truth commission.[11] There is an underlying assumption that truth commissions are a path to reconciliation and peace for all post-conflict societies, and that they are to be preferred to other transitional justice mechanisms. However, as with all transitional justice mechanisms, a truth commission's aim, mandate and what it can achieve is context dependent.

2.1   Truth and Reconciliation in Truth Commissions

Its very name establishes that what a truth commission seeks is the 'truth'; however, the truth is a very complex concept that must be treated with caution. Truth, in the form of narratives, is never simply uncovered, but is partially constructed and affected by numerous processes and actors. At best it is subjective. Not all truth commissions acknowledge the complexities of 'truth', which is exacerbated even more in the after-math of conflict. The TRC was one commission which recognised this problem and, consequently, outlined four different types of truths that could exist, namely, factual, personal, social and healing.[12] Although this acknowledged the complexity of 'truth', it may not have made it less problematic when applying it in the TRC's process. Unfortunately, numerous commissions have not even acknowledged the problematic nature of 'truth', but assumed that one truth could be established, and must be established so that reconciliation could ensue. Defining the truth as merely factual may be one method of circumventing the complexities of truth. However, 'shared facts do not necessarily conduce to shared truths.'[13] This makes it vital that the problematic nature of truth is acknowledged and addressed when constructing a truth commission.

Political Science, Vol. 46 Issue 3, 2002. D. Gairdner, *Truth in Transition: the Role of Truth Commissions in Political Transition in Chile and El Salvador*, Chr. Michelsen Institute Development Studies and Human Rights, 1999.

[11]   For creation and design of truth commissions see, e.g. http://www.truthcommission.org, which details setting up such commissions.

[12]   Tepperman, "Truth", p. 6.

[13]   Avruch & Vejarano, "Truth", p. 3.

Reconciliation, as truth, is central to truth commissions. Numerous truth commissions have the very concept in their name and nowhere perhaps was it as strongly emphasised as in South Africa where forgiveness and *ubuntu* was underlying the whole process.[14] Here the distinction between national and individual reconciliation becomes important. Truth commissions, because they are bodies where individual testimonies are heard can indicate to the individual victims that individual reconciliation is the objective. However, because a truth commission tracks the overall general pattern of human rights abuse and investigates the social and political factors leading to abuse, the focus and outcome is more that of national reconciliation. In East Timor, the political elite, headed by Xanana Gusmao, underlined the importance of reconciliation, and discouraged trials, but supported the work of the Commission of Reception, Truth and Reconciliation.[15] There was an underlying assumption that trials would lead to instability rather than justice and that the truth commission was the best mechanism for reconciliation. However, on an individual level people felt aggrieved and wanted not only local trials, but also an international tribunal.[16] This underscores the point made above that national reconciliation may come at the expense of individual reconciliation.

Truth commissions are established to investigate human rights abuses, perpetrated in a specific time period, usually during conflict and civil unrest. The human rights abuses investigated can vary in range from assault to mass killings. They investigate abuses usually perpetrated by military, government or other state institutions. They are non-judicial bodies, which do not have the authority of the courts and cannot punish – they give recommendations, however, whether or not these are implemented is entirely dependent upon political will. Truth commissions allow victims and their relatives to disclose human rights abuses; some commissions also let the perpetrators give their account of

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[14] *Ubuntu* is a concept which encompasses and emphasises healing, not vengeance, restorative justice and the nurturing of social relationships.

[15] "Xanana Gusmao's Views on Justice", http://www.easttimor-reconciliation.org/Gusmao_Justice_E.htm, V.Hearman, "Leaders Reject International Tribunal", *Green Left Weekly*, 25 June 2003.

[16] Interviews by author of representatives of East Timorese civil society, Winter and Spring 2001.

events. They are established and given authority by the local governments or international organisations, in some cases by both. They only exist for a specified time period, but can have a multitude of different procedures and organisational arrangements. The focus is not so much on the individual, but on establishing the pattern of human rights abuse committed within a timeframe.[17]

A truth commission cannot determine culpability of the individual, and it cannot punish or sanction perpetrators of human rights abuses. It can give recommendations for broad reforms of state institutions based on its findings and suggest reparations for the victims, which a court cannot. It is a vehicle for truth-telling, and for establishing and voicing the victims' stories, which may otherwise remain untold.

The aims and objectives of truth commissions are broadly to determine and create a historical record of human rights abuses, whilst giving the victims an opportunity to be heard and instituting by its process an official acknowledgement that these acts took place and must not be forgotten, and ultimately leading to or assisting in reconciliation of the post-conflict society.

2.2   The Significance and Limitations of Truth Commissions

The main strength of a truth commission is that it gives a voice to the voiceless, to the people who for years have been persecuted by abusers, but have never been recognised for the trauma and pain they suffered. The acknowledgement that this took place and what effect it has had on the people testifying is crucial. In addition, truth commissions have the potential of having complete local ownership of the process of transitional justice and, in fact, this is crucial to their success.[18] However, the limitations of a truth commission must be recognised not

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[17] For definitions see also e.g. USIP, *Truth Commissions Digital Collection, Background*, http://www.usip.org/library/truth.html and P. Hayner, "Commissioning the Truth: Further Research Questions", *Third World Quarterly*, vol. 17, no. 1, 1996, pp. 20-21.

[18] M. Freeman & P. Hayner, "Truth-Telling" in D. Bloomfield, T. Barnes, L. Huyse (eds.), *Reconciliation after Violent Conflict. A Handbook,* IDEA, Stockholm, 2003, p. 129.

only by its founders but also by the victims. The key limitations and variations lie in the different mandates that these commissions have and the political will surrounding the commissions and transitional justice in general.

In some cases, truth commissions have had broad mandates, such as in South Africa and Sierra Leone. In South Africa, the mandate and resources of the TRC were extensive and, at the time, it was the largest truth commission ever undertaken. When the report was submitted 21,297 victims had given statements, over 8,000 perpetrators had applied for amnesty and the report was contained in five volumes covering abuses over 34 years.[19] It had the power to grant amnesties from prosecution to perpetrators in return for giving testimonies to the commission. The question of amnesties is a controversial issue, particularly because the perpetrators may tell their stories without remorse and with impunity. It also violates the rights of victims to redress and is *'inconsistent with a states' obligation under international law to punish perpetrators of serious human rights crimes.'*[20] The result of a truth commission structure, which incorporates amnesties, is that the perpetrator immediately walks free after testifying, whereas the victims are left waiting for reparations which may never come.[21] This can delay or hinder individual reconciliation. It can reinforce impunity by establishing the idea that actions will not have consequences. The UN Human Rights Committee has stated that *'blanket amnesty and pardons are inconsistent with the ICCPR because they create a climate of impunity and deny victims their right to a remedy.'*[22] This, in turn, can increase fear, instability and insecurity.

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[19] For further reading and facts on the TRC see: USIP, *Truth Commissions Digital Collection,* http://www.usip.org/library/truth.html and Hayner, *Unspeakable Truths*, pp. 40-45, and also http://www.truthcommission.org

[20] Freeman & Hayner in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, p. 137.

[21] See also T. Ash in M.Minow, *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998, p. 61.

[22] R. Mosier, "Impunity, Truth Commissions: Peddling Impunity?", *Human Rights Features, Voice of the Asia Pacific Human Rights Network*, Special Weekly Edition for the Duration of the 59th Session of the Commission on Human Rights, Vol. 6, no. 5, 14-20 April 2003, p. 2.

Amnesties can serve the larger national reconciliation process; however, on an individual level people may still feel wronged. This has been indicated in a poll in South Africa, which reported after the end of the commissions work that two-thirds felt the TRC had fuelled their anger and contributed to a deterioration in race-relations. Only 17 percent predicted that forgiveness would result from the TRC.[23] Yet importantly, there were no revenge killings reported in the period of the TRC.[24]

If amnesties are not incorporated in the mandate, the findings of the commission can potentially lead to criminal prosecutions after the end of its mandate. However, there are numerous problems with this – primarily an absence of political will or ability to conduct such trials and the question of due process, a truth commission does not have to follow the strict evidence procedures as a court of law hence the evidence gathered might be inadmissible. Irrespectively, commissions which have not included amnesty provisions have rarely led to trials, in El Salvador five days after the report of the commission was published full amnesties were given to the perpetrators.[25]

A major shortcoming of truth commissions is that their recommendations, for example, reparations, can be ignored and often are. It is fundamental that victims have a forum in which to tell their story, but if the recommendations put forward by the commission are ignored then disillusionment, not reconciliation, can ensue. In Haiti, all the recommendations of the National Truth and Justice Commission were ignored. It was deemed sufficient that such a process had taken place. This led to profound disillusionment among the population who had expected far more from the commission and follow-up.[26] There will always be a discrepancy between expectations and outcomes in many of the processes in post-conflict societies. Limiting those expectations to what can ultimately and realistically be achieved from a truth commission process is one way to circumscribe disillusionment.

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[23] Tepperman, "Truth", p. 4.
[24] Ibid., p. 9.
[25] Hayner, "Truth", p. 3.
[26] Interviews by the author with representatives from civil society in Haiti, 1998.

The potential for disillusionment can be exacerbated by a lack of media attention. For a truth commission to ensure a modicum of success there must be a high level of national media focus. The TRC had extreme media attention national, as well as international, where testimonies were often shown on television. However, this level of attention has been rare. More often, attention is limited. In Haiti, only 75 copies of the commission's final report were published. It was not until much later that 1,500 copies were published. In addition, the reports in the media were nearly non-existent.[27] Media and government attention is dependent upon the circumstances surrounding the conflict, and international pressure and interest. However, it is a crucial ingredient to ensure the success of truth commissions.

Limited government and media attention can be a deliberate strategy in the post-conflict setting. Due to the truth commissions' non-ability to punish, they are much less politically sensitive than trials and tribunals. Their limited power serve no direct threat to the out-going authoritarian regime and because they serve a limited threat truth commissions can often be used by new governments as the only process of dealing with the past. For some governments, it is not so much about wanting to set the historical record straight, but more of an acknowledgement that this is the least disruptive process and its findings and recommendations can be ignored. Furthermore, the government cannot then be accused of inaction because they have done their duty.[28] It can become a method in which to avoid the issues of transitional justice.

In truth commissions, as in all transitional justice mechanisms, there is also the issue of re-victimisation and reliving the trauma of horrific human rights abuses, whether the testimonies are conducted in public or given in confidential statements. Although there is an underlying assumption that telling is healing in the context of truth commissions, the extent of the trauma is often profound and reliving it through truth-

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[27]   *Si M Pa Rele* (If I Don't Cry Out) Preface, Mot du Ministre la Justice, March 1997. Moreover, it was until the end of 1998 only published in French - a language inaccessible to the vast majority of the population.

[28]   See also Hayner, "Truth Commissions: Exhuming the Past", *North American Congress on Latin America*, Sep/Oct 1998, p. 2.

telling can serve to slow down the healing process,[29] particularly in a setting where there is little if any resources available for individual support to victims of violence. This is a problem in any type of transitional justice mechanism. However, it is important to highlight it in this context because truth commissions are emphasised as being restorative in nature. Still, they also can re-traumatise. Healing is perhaps a too vast goal for truth commissions or any transitional justice mechanism to seek. Yet, telling and acknowledgement by a truth commission of what was experienced by the victim is undoubtedly, for many, part of a process that leads to reconciliation.

There is also an assumption that by documenting past abuses it will deter abuses in the future. By recording abuses these can be acknowledged thereby ensuring that what happened will not be forgotten, but documented for all to see. The deterrence effect of such a process can, nevertheless, be questioned. There is no inherent deterrent within the framework of a truth commission in a post-conflict society. Moreover, accountability is a pre-requisite for a transition to democracy, accepting the lack of accountability that a truth commission *on its own* offers may in certain circumstances undermine the transition to a system of accountability in the rule of law.

2.3 The Demand for Truth Commissions

Truth commissions are a positive contribution to the overall reconciliation process of a post-conflict society. Knowing and establishing the truth is a right in such societies, however, the question is whether or not it is a duty. Should all post-conflict societies have truth commissions, is it the best solution for all? Not all states have found this to be so – both Mozambique and Cambodia declined, for different reasons, from establishing truth commissions because they did not want

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[29] This has found to be particularly so in relation to women and rape, see forthcoming, Josi Salem-Pickartz, "Psychosocial Interventions in Post-War Situations" in M. Vlachova & L. Biason (eds.), *Women in an Insecure World – Facts and Analysis on Violence against Women,* DCAF, 2005, pp. 279-280.

to relive the historical facts, fearing in part what the consequences of such a process might be.[30]

Truth-telling is often seen as a first step in the process of achieving justice and reconciliation on an individual level. Yet, truth commissions without any other process of justice, as evidenced by numerous cases, will not be sufficient for many of the victims.[31] Moreover, although they are, in effect, established for the victims of abuse it can be questioned as to whether or not they have helped them.[32] For example, the Commission of Reception, Truth and Reconciliation in East Timor facilitated reconciliation between East Timorese very well. However, the key opponents in the conflict were Indonesia and East Timor. It is doubtful that the commission's work will be able to influence reconciliation between these two key parties to any significant extent. Conducting reconciliation between East Timorese is made easier by the fact that Indonesia is seen as the key perpetrator of human rights abuse and that in many instances the militias were trained by them and that they have less responsibility than Indonesians.[33]

There is a right for all to know the past and have human rights abuses documented; however, it should not be an obligation or duty to establish a truth commission in a post-conflict society.[34] The decision of what types of transitional justice mechanisms should be applied must be related to the specific context. A truth commission may not necessarily be the answer in all cases. Truth commissions undoubtedly contribute, and can contribute significantly to reconciliation and stability, but they are not the only mechanism and if they are conducted with the absence of other justice mechanisms they are, on their own, unlikely to lead to national *and* individual reconciliation. Reconciliation is too large a task

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[30] For details on each case see Hayner, *Unspeakable*, Mozambique, pp. 186-195 and Cambodia, pp. 195-200.

[31] See also Hayner, "Truth", p. 3.

[32] See also R. Bacic, "Truth Commissions: One option when Dealing with the Recent Past in Countries that Have Endured War or Dictatorships", *Committee for Conflict Transformation Support*, Newsletter 18, http://www.c-r.org/ccts/ccts18/trucomm.htm

[33] Interviews with representatives of civil society in East Timor, 2001.

[34] See also P. Hayner, "International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal", *Law and Contemporary Problems*, vol. 59, no. 173, Autumn 1996, pp. 177-178.

to be obtained by only a truth commission. It is not an issue either, as some argue, that truth commissions 'could well be a better option than prosecutions.'[35] It is a combination of different mechanisms, which together may lead to reconciliation. What combination is better for each particular post-conflict society is dependent upon several factors. Three of these factors are: First, the context, history and background of the conflict, which includes peace agreements and political will and ability to co-operate. Second, the international community, its support for transitional justice and how it influences the processes in the country. Third, the culture of the country, how this affects rule of law norms and the way in which perpetrators are dealt with in general. These three factors are essential when discussing all transitional justice mechanisms. The discussion on truth commissions must therefore be viewed with these factors in mind. It is not possible to say that a truth commission is or is not the right tool in all circumstances. The solution to dealing with past crimes in one post-conflict society will vary significantly from that of another. A holistic approach to reconciliation, which may or may include truth commissions, must be applied.

3   Local Trials

Holding local trials in post-conflict societies is another transitional justice mechanism to deal with past crimes and human rights abuses. These types of trials can be conducted with or without the direct assistance of the international community. They can include the participation of international judges, for example, judging panels where two out of three judges are local, and one is international, or they can consist entirely of local judges and prosecutors. They can apply local law only or they can apply a transitional form of law, which may include international human rights law or UN laws and treaties. In a transitional period, if local trials are chosen as a vehicle for justice for past abuses, a multitude of combinations may be employed during this period in a court of law. There are numerous positive and negative outcomes and effects of applying local trials to deal with the past in a transitional

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[35]   Minow, *Between Vengeance*, p. 57.

period. However, the key issue which need to be addressed prior to even contemplating the potential of local trials to deal with human rights abuses is the state of the judiciary and the judicial system in post-conflict societies.

3.1   The Judicial System and Judiciary in Transitional Societies

In many post-conflict societies that have been marred by conflict for years, it is not only the military, police and other government agencies that need extensive reform, but also the judicial system. The judicial system may have stopped functioning during the conflict or it may not have functioned even prior to the conflict. It may have been entirely corrupt, encouraging or supportive of human rights abuse conducted by government agents, or simply close to non-existent. An authoritarian regime is always reflected in its judicial system and by its judiciary. The extent of its corruption and/or non-functioning is entirely variable depending on the state and can be found along a continuum from non-existent/non-functioning to fully functioning containing minor cases of corruption. It is extremely unlikely, almost certainly impossible, that any post-conflict society will immediately upon the cessation of hostilities be able to conduct fair and impartial trials. This is not necessarily only the result of corruption and abuse, but also due to the fact that judges or prosecutors might no longer exist. Even the infrastructure, such as a court room, where trials are held might have disappeared.[36]

It is futile to discuss the positive and negative effects of locally held trials, with or without the support of the international community, if the judicial system is completely flawed. Irrespective of whether or not local trials are chosen as a means of addressing past crimes, the judicial system must be a priority in post-conflict settings – reform must be at the top of the agenda, because the rule of law is the underpinning of security and stability. If judicial reform is undertaken as part of a holistic approach towards the rule of law in a post-conflict setting then the

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[36]   In, for example, East Timor not even the most basic infrastructure was available, let alone judges and prosecutors.

primary obstacle towards applying local trials to redress past crimes is dealt with.

Judicial reform cannot be obtained within a short timeframe. It requires an extended period of time as well as extensive resources. However, prior to obtaining full reform of the judicial system interim solutions can be established. In a transitional period, the international community plays a crucial role in supporting not only the development of the judicial system to ensure a stable transition to democracy, but also to ensure fair trials in local courts should the state choose this mechanism to deal with human rights abuses. There have been several examples of these types of ad hoc solutions. In East Timor, special panels were created which consisted of both international and East Timorese judges.[37] This is a hybrid type solution which is cheaper than a fully-fledged international tribunal and it can be of more value because of the inherent local ownership of such a process. Additionally, civil society will see the effects of this mechanism. It involves their own government taking control of the process, signalling a change towards accountability. This hybrid can be a solution in transitional countries, which seek to prosecute perpetrators during the transitional period. It is not without its problems. In East Timor, it suffered from a lack of resources and under-staffing. The pressure to conduct such trials without having had sufficient judicial reform was severe and it was observed that 'the Dili District court fails to meet even minimal standards for a fair trial',[38] which undermines justice and accountability rather than serving them.

Local trials have been criticised for conducting emergency justice and for their potential violation of rule of law norms.[39] This should not be an argument for never using local trials, only that before such trials are conducted, a certain level of reform must have taken place. For this to be possible international assistance is crucial. In a transitional society, it can

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[37] For more on these special panels see e.g. E. Mobekk, "Truth, Justice and Reconciliation in East Timor", in report on East Timor by the Geneva Centre for the Democratic Control of Armed Forces (DCAF), November 2003, http://www.dcaf.ch/publications/Working _Papers.128.pdf

[38] Charles Scheiner in "East Timor Still Awaits Justice One Year after UN Call for International Tribunal", East Timor Action Network, 31 January 2001.

[39] L. Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, p. 105.

be problematic deciding which laws to apply – the laws that the previous abusive regime applied might have been against human rights law and retroactive penal reform which cover such abuses is then technically violating rule of law norms, because they cannot be punished if it was not covered in the law when they committed the act.[40] There are two points, which must be emphasised in this connection. First, international human rights law concerning crimes against humanity and genocide is considered binding on all states, so that regardless of local law during the conflict or authoritarian regime, the perpetrators can be tried for these crimes. Second, this is why it might be pertinent, particularly where there is an international mission, to establish a transitional law for post-conflict societies which can be applied until such time as the new regime has been able to determine and legislate on new laws, which include criminal codes and penal law. This transitional law and its application must be accepted in full by the local government, and not enforced by the international community. Perpetrators can then be tried under such law, which would be based on customary human rights law and any treaty that the country is a signatory to which protects human rights.[41] This is similar to the Justice Rapid Response (JRR) initiative, which argues for short-term assistance until long-term assistance can be given.[42] This may also limit the chances of 'victor's justice', which is often raised as an argument against local trials. The risk of victor's justice is greater unless there is a reformed judicial and penal system or a hybrid transitional court in place.

Ensuring that minimal standards for a fair trial are in place is not an impossibility in a post-conflict setting, but it must be prioritised from the beginning. Resources and adequate support must be given. It is only in such a context that it is even relevant to discuss whether or not local trials can be a mechanism for reconciliation and stability or whether it heightens instability, vengeance and anger.

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[40] Minow, *Between Vengeance*, p. 30. On retroactivity in trials in general. Ibid., pp. 30-38.
[41] United States Institute for Peace is developing such a transitional law, which aims to be published by the end of 2005.
[42] Draft report, "Transitional", p. 9, #18.

3.2 A Question of Retributive Justice

Prosecution in a court of law is termed retributive justice and is often linked to a westernised way of seeking to right wrongs, where the punitive element is crucial. Yet, civil society in numerous post-conflict societies in the developing world have demanded trials and argued that without them impunity reigns.[43]

Numerous objections have been raised against the use of trials in post-conflict societies. One of these is that the political situation may be such that trials are not a possibility[44] – it may destabilise the peace agreement or obstruct the transition to democracy. Many new regimes avoid using retributive justice because they do not want to jeopardise their positions by angering the outgoing regime and its supporters, which in turn can incite to violence if they feel persecuted, and this must be acknowledged as a very real possibility. However, the new regime and stability may be threatened if no action is taken. In post-conflict societies, particularly in a transition to democracy, civil society expects change. Accountability for acts of torture and violence is a crucial underpinning of a democratic society. If this is not forthcoming, it may threaten stability and reconciliation, whilst fostering disillusionment. Furthermore, it can send a signal to the perpetrators that impunity and not the rule of law reigns, indicating that there has been little real change. Accountability for human rights abuse must be established from the very beginning in a transitional society. This does not necessarily mean that it has to be established through local courts of law, but the significance of the change from authoritarianism to democracy is one of accountability and the importance and symbolism of this shift is not to be underestimated or ignored.

Retributive and punitive justice is often equated with vengeance. However, vengeance can be avoided if trials are properly conducted. Instead of heightening the chances of vigilante justice and a spiral of vengeance and violence, a judicial process can reduce it, because civil society conceives that the judicial system is dealing with the alleged

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[43] For example, in South Africa, East Timor, Haiti, Rwanda, Sierra Leone.
[44] Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, p. 97.

perpetrators. In other words, it 'transfers the individual's desires for revenge to the state or official bodies.'[45] Vigilante justice has a higher chance of increasing when there are few or no attempts at dealing with past crimes by any transitional justice mechanism.

It might seem that a punitive mechanism will provide a higher deterrence effect than a non-punitive mechanism. However, the level of deterrence in trials for human rights abuse during conflict and war is very questionable. As Justice Jackson stated, *'personal punishment, to be suffered only in the event the war is lost, is probably not to be a sufficient deterrent to prevent a war where the war-makers feel the chances of defeat to be negligible.'*[46] The deterrence effect of local trials may lie, not in deterring future conflicts or wars, but in deterring further acts of violence in a transitional post-conflict society, not by members of an armed force, but by individuals and former combatants recognising that there is a transition to another type of regime, where accountability is the rule not the exception.

Another criticism against trials is that local judicial systems are not able to handle the potentially vast number of cases and hence only a few cases will be heard and the process will seem arbitrary and unfair.[47] The *gacaca* courts attempted to circumvent this problem by dealing with nearly all perpetrators of the genocide through this process of criminal justice.[48] After the genocide in 1994, over 130,000 people were detained in prisons, eight years later 125,000 were still in detention. There are

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[45] Minow, *Between Vengeance*, p. 26.

[46] Justice Robert Jackson, opening statement to Nuremberg tribunal, The Trial of German Major War Criminals, the International Military Tribunal at Nuremberg, 1945 in Minow, *Between Vengeance*, p. 25.

[47] See e.g. Minow, *Between Vengeance*, p.45 and L. Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, p. 105.

[48] The *gacaca* courts are mentioned here under local trials rather than traditional methods, since they are in fact a hybrid of the two. Particularly since they have had people in detention for long periods of time whilst determining the pace of trials, which is not something, which is usual in general for traditional methods. There are numerous problems with the *gacaca* courts and for futher discussion see, e.g. R. Webley, *Gacaca Courts in Post-Genocide Rwanda, Report*, UC Berkely War Crimes Studies Center, 2003, P. Uvin, *The Introduction of a Modernized Gacaca for Judging Suspects of Participation in the Genocide and the Massacres of 1994 in Rwanda*, a discussion paper prepared for the Belgian Secretary of State for Development Cooperation, 2000.

over 10,000 courts established and 250,000 judges to deal with the crimes committed during the genocide.[49] There is a reported consensus among Rwandan government leaders and the international community that the process is flawed, in particular it does not incorporate international standards guaranteeing a fair trial.[50] Putting a whole country on trial, in effect, leads not only to immense practical and ethical problems, but also to questions of how useful such an approach is and what can be achieved.

It is not necessary to deal with all the perpetrators of a conflict in one mechanism of justice. Rwanda indicates that using local trials in this manner may exacerbate problems rather than solve them. However, prosecuting a number of key perpetrators, which ordered numerous violations of human rights - which may include, the chief of police, head of militia movements, military commanders – will serve as a significant symbol that impunity no longer reigns. A combination of methods is necessary for reconciliation to occur in any post-conflict setting. One method of transitional justice will rarely suffice to bring about reconciliation and sustainable stability and peace. It is the combination of different forms of justice that will have a greater probability of achieving the rather large objective of reconciliation, at both the national and individual levels. The so-called arbitrariness of prosecuting a few rather than all can serve a purpose, namely that key individuals are dealt with in this manner, others by means of traditional methods, and some only referred to in the context of a truth commission. What must be stopped in the discourse on justice in post-conflict societies is the setting up of dichotomies; peace versus justice, reconciliation versus justice and trials versus truth commissions. It is not a choice between one or the other. It is a plurality of complementary ways of reaching continued stability, peace and reconciliation.

Additional criticisms against local trials emphasise that they focus on the perpetrator not the victim, they can lead to re-victimisation and they

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[49] Webley, *Gacaca*. Note that estimates on the number of courts, judges and alleged perpetrators vary according to different sources.

[50] IRIN, "Gacaca Courts Get under Way", 21 June 2002.

focus on individual guilt not patterns of widespread abuse.[51] Unfortunately, there is little doubt that trials can lead to re-victimisation and the reliving of trauma and, therefore, complicate the process of individual healing. Truth-telling is always a risk, a risk as discussed, which is also present in giving testimony to truth commissions. Whether the risk is greater in local trials than in truth commissions is something that must be further researched in countries that have had both a truth commission and local trials to establish the extent of re-traumatisation in both groups. However, in both instances there are advantages with finally being able to tell the truth to a body of authority, which may change the victim's own situation and, in the case of a trial, punish the perpetrator. It is not necessarily negative that trials focus on the perpetrator. It may be what the victims want. Courts are not able to deal with the traumas experienced by the victims but they are, however, a vehicle to reduce fear. If perpetrators are punished, it may reduce the general fear in civil society which is always present, particularly when perpetrators of past crimes roam the streets freely and live in the neighbourhoods of their victims. Reconciliation can come about as a result of seeing the change in society, when impunity is no longer present and by the fact that violations have been acknowledged by a court of law. Local trials in post-conflict societies are hampered by many shortcomings; however, their positive effects should not be ignored.

3.3 Plagued by Shortcomings or Strengthening Reconciliation?

It has been stated that *'retributive justice, especially in the context of a post-conflict society, is at best plagued by certain shortcomings and at worst may endanger reconciliation and democratisation processes.'*[52] All mechanisms of transitional justice are beset by shortcomings and are by their very nature not flawless and in certain contexts they might all endanger reconciliation and democratisation. However, these mechanisms are in many respects complementary; the court's job is to establish individual guilt. Truth commissions are there to establish patterns of abuse. The primary objective of a trial in any context is not

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[51] Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, pp. 104-105.
[52] Ibid, p. 106.

reconciliation. However, this is not to discount that individual reconciliation can come about as a result of trials. Victims often feel the need to establish individual guilt, which can help to foster individual reconciliation more than establishing patterns of abuse. The acknowledgement of violations, the public record of abuse, recognition that certain actions were wrong and should not have been perpetrated, as well as the individualisation of guilt can all serve as tools in the complex process of individual reconciliation. In addition, individualising guilt eradicates the perception that whole ethnic groups or communities are responsible for the abuse,[53] which serves reconciliation on a national level. If communal responsibility can be eradicated it limits the chances of promoting segregation and vilification of ethnic groups.

Local trials should not be a measure to deal with past abuses in all post-conflict societies. However, contrary to what many currently argue, in particular circumstances when certain criteria are fulfilled, local trials can be one of the many ways of redressing crimes committed during conflict. Local trials and to what extent they can promote stability and peace is dependent upon, as with truth commissions, the three factors mentioned above: the context of the conflict, the international community and the culture of society. There is no single best way for *all* post-conflict societies to deal with past crimes – it must be tailor-made for that specific context and country with local ownership as the crucial ingredient. However, the extent of the symbolism of prosecution in a society where accountability has been absent should not be ignored or minimised. Using ad hoc solutions, hybrid courts and a combination of justice mechanisms may seem arbitrary to well-established democracies with long traditions of rule of law. However, a transitional society must be recognised for its differences and the work must be undertaken within the restrictions that this framework ultimately provides.

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[53] Ibid, p. 98.

4   Traditional Methods of Justice

Traditional methods of justice can take many different forms, and vary extensively from community to community. They are generally considered restorative justice, but they can also have punitive functions. However, on a broad and general level they are mechanisms for solving disputes, conflicts and crime at the community level. It is where a village or tribal council, community meeting or council of elders is held to deal with crimes perpetrated towards the community or individuals, or it can focus on resolving conflicts such as marital disputes and domestic violence. The council, elders or group then decide on the punishment for the perpetrator. The punishment can vary extensively depending upon not only the seriousness of the crime or transgression, but also on the culture of the country and community. It can include public humiliation of the perpetrator, paying fines, community labour, physical punishment or what the community or council determines to be the best solution for the transgression. It is often focused on the fact that the perpetrator is part of the community and although he/she can be punished for the crimes committed, it is not in the sense of incarceration. The perpetrator may serve the community and repay for his/her crimes. This serves the greater good of the community rather than separating the perpetrator from the community.

Different variations of traditional justice mechanisms are used all over the world in developing countries. Where there have been long periods of conflict, authoritarian regimes or where the judicial system is perceived to be unfair and corrupt, they are sometimes used more extensively, because of a lack of trust in the system.

Unlike truth commissions and the type of ad hoc/hybrid local trials discussed above these mechanisms are in constant use for present crimes and conflict resolution, they are not a mechanism created or developed to deal particularly with past crimes of human rights abuse in a post-conflict setting. They can, because of their focus on reconciliation and their both restorative and retributive nature, be a valuable mechanism to use in the context of post-conflict transitional justice. However, several cautionary notes must be struck before unequivocally embracing all

traditional mechanisms in all their forms as ways of dealing with past crimes.

4.1   *Dealing with Past Crimes*

There are several arguments for both applying and being cautious with promoting traditional mechanisms to past crimes in a post-conflict setting. In the last few years, traditional mechanisms to address past crimes have been increasingly promoted, particularly in a UN peace operation context.[54] Internationally, they have therefore taken on a greater importance, but without establishing what it is they can achieve. They are often purported as a means of reconciliation and tools of conflict resolution and it is in this role that they are promoted as a vehicle for dealing with human rights abuse in post-conflict societies. There are, however, a number of issues that must be raised.

Traditional mechanisms frequently deny the perpetrator the rights of a fair trial, as the African Commission on Human and Peoples' Rights has pointed out, *'it is recognised that traditional courts are capable of playing a role in the achievement of peaceful societies and exercise authority over a significant proportion of the population of African countries. However, traditional courts are not exempt from the provisions of the African Charter relating to a fair trial.'*[55] Not only the trial, but also the punishments meted out can be against international human rights law and standards. They may, in particular, not respect women's rights. For example, frequently in numerous countries a man accused of raping a woman will, by traditional justice, be forced to marry the woman and pay her parents. This means that the crime committed against the woman will continue for the rest of her life. In other countries, the woman will be blamed for the rape and killed by a male relative for dishonouring her family.[56] In East Timor, a man who

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[54] For example, the UN Secretary General mentioned traditional mechanisms in the Introductory Statement at the Security Council meeting on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 6 October 2004. In practice, in for example East Timor, the international civilian police were encouraged to support it.

[55] Huyse, "Justice" in Bloomfield, Barnes, Huyse (eds.), *Reconciliation*, pp. 113.

[56] Honour killings are particularly rife in Arabic countries.

had raped a woman was caught and sentenced by the village council – he was chained to her bed as punishment.[57] Arguably, the victim in this case suffered more from this punishment than the perpetrator. She had to endure the trauma repeatedly until he was no longer chained to her bed. In Rwanda, one of the judges of the *gacaca* trials was accused of having used a machete to cut the thigh of a young woman because she had refused to sleep with him, the judge admitted this act and explained that 'it was ok' because she then 'agreed' to live with him.[58] The level of agreement versus that of enforcement is here questionable at best. The ability of some traditional mechanisms to deal with large-scale human rights abuse, because of their own non-adherence to international standards of human rights, is extremely problematic.

Applying mechanisms whose punishments may contradict international human rights laws, to deal with breaches of those very same human rights laws should not be encouraged by the international community. This is not to argue against using traditional mechanisms, however, blanket support of *all* justice mechanisms termed 'traditional' should not be given just because there is an assumption that these, by their very definition, will be superior to any other mechanism due to local ownership and culture. Assessments of not only the mechanisms in each case and country, but also when and to what crimes it can best be put to use in a post-conflict setting must be made.

Traditional mechanisms must not only be assessed as to their ability to deal with past crimes, but there must also be awareness that they can undermine the new judicial systems that are being reformed in transitional societies. During times of conflict and authoritarian regimes traditional mechanisms often become more relied upon because of the abuse perpetrated by such regimes. Hence, during reform of the judicial systems extensive international support for traditional systems may induce a lack of belief in the new judicial system. Civil society is understandably more comfortable using these types of mechanisms because the courts have tended to work against them during periods of conflict and authoritarianism. Heightened support for these mechanisms

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[57] Interview by author of the police officer who found him in East Timor, 2001.
[58] IRIN, 21 June 2002.

by the international community can have the undesired side-effect of undermining the very rule of the law system that is being established.

If a new judicial system is to function, a balance must be created. Education as to what the new judicial system entails, what it can do for the community, the change and fairness and unbiased nature of it must be explained. It can easily revert to a system where the traditional mechanisms are applied more constantly. This is not only a problem for the reformed judicial system but also for the public security forces, both international and local. If international and local public security forces tend to use traditional mechanisms arbitrarily, without guidelines as to when they should be applied, it can undermine the role of the public security forces. In East Timor, the local police force (PNTL) have had to face the existence of these structures without having any policies of their own to establish when and where it would be right to support such mechanisms. In turn, it has led to a situation where, due to the absence of police accountability structures, some of the complaints against PNTL officers have been solved by traditional methods.[59]

These criticisms must be carefully evaluated before implementing traditional justice mechanisms in post-conflict societies as a tool to deal with large-scale atrocities. Numerous problems can arise by unequivocally supporting these mechanisms without knowing what exactly they entail in each case and how they may affect and interact with the other types of justice mechanisms present in the country. Once this has been established, in certain contexts, traditional justice mechanisms can positively contribute to reconciliation and sustainable peace.

4.2   *Promoting Reconciliation*

Traditional mechanisms can, undoubtedly, promote reconciliation in certain circumstances. In the case of Mozambique, which rejected both trials and a truth commission, traditional methods of healing in the post-

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[59]   Amnesty International, *East Timor Police*, 2003, p. 36.

conflict context were used with great success.[60] The combatants of the conflict returned to their communities and went through traditional healing and justice mechanisms. Reasons for Mozambique's success included the particular context of the conflict, the focus on not reawakening the traumas of the war and society's desire for healing.[61] It is important to underline that as with trials and truth commissions the extent of the potential for success of these mechanisms are dependent upon numerous factors including the context of the conflict, the culture of the country and the international community's role.

Traditional mechanisms are designed, in general, to deal with minor altercations and crime – if they are to be applied in a post-conflict society dealing with past crimes it may be better to utilise them at this level, for example, house burning, assault and minor altercations and violence on property and person. For larger crimes, including crimes against humanity, other mechanisms may serve the purpose of reconciliation more effectively. In East Timor, traditional mechanisms were used for militia members that had burned houses and conducted minor assaults. They were asked by the community to rebuild houses and perform community services and thus were reintegrated into the community. However, frequently the community did not want people who committed major human rights violations to return and they were transferred to other parts of the country.[62] However, again, it is entirely dependent upon context, since in Mozambique the healing rituals worked even in more severe cases. The reintegration of boy soldiers was particularly successful.[63]

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[60] For more on Mozambique and use of traditional methods see e.g. A.Honwana, "Sealing the Past Facing the Future: Trauma Healing in Rural Mozambique", *Conciliation Resources*, http://www.c_r.org/accord/moz/accord3/honwana.shtml, J. Chissano, "Healing Wounds of Past Conflicts: Mozambique Opts for a culture of Peace", *UN Chronicle*, Winter 1998. C. Thompson, "Beyond Civil Society: Child Soldiers as Citizens in Mozambique", *Review of African Political Economy*, vol. 26, issue 80, June 1999.

[61] Interview by author of UN representative who had been working in Mozambique, November 2004.

[62] Interviews by author of East Timorese civil society and international civilian police in East Timor, 2001.

[63] Thompson, "Beyond", p. 192.

Traditional methods have additional advantages. They are entirely the ownership of the local population. It is not something that is enforced from the outside, and they decide how to deal with the perpetrator without external interference. In this way, they can start reconciling with each other, the past and with the crimes committed. Moreover, the local population see an immediate and direct effect of the justice procedure. It is taking place in their midst. Both truth commissions and local trials take place either in capitals or in the larger cities and are, therefore, removed from large parts of the population. Traditional methods have an immediacy of which importance should not be ignored.

4.3   *International Operations and Traditional Mechanisms*

There has been a tendency in international peace operations of equating the concept of 'traditional' with 'fair', 'good' and 'impartial', particularly in situations where international interveners are sensitive to trampling over the culture and customs of the mission country. Accusations of cultural imperialism and the enforcement of western values in such missions have been rife for years and, in several instances, these criticisms have been valid. Nevertheless, care must be taken so that during a peace operation, in the pursuit of supporting and protecting the mission country's cultural norms and values, international human rights standards are not sidelined or obliterated all together.

Although traditional mechanisms can be an invaluable part of dealing with past crimes in post-conflict societies, where there is an international mission, several factors should be taken into consideration, assessed and dealt with. First, what the traditional mechanisms are must be established prior to supporting them unconditionally, so that human rights, public security forces and the rule of law will not be undermined. Second, the mechanisms must be implemented in a consistent way throughout the mission area. They may vary according to community, but they should not deliver punishments which are a violation of international human rights. Third, it must be decided as to what crimes can be dealt with in this manner. This must be decided through a consultation process with the local government and not enforced by the

intervener, thus ensuring local ownership. Fourth, it should be run in conjunction with the court system. They can be and are complementary. Fifth, education in the new type of judicial system must be established so trust can be created. It must not be because of a lack of trust that the judicial system is not used, but rather because it is a choice in terms of certain times and crimes to apply traditional mechanisms.

It is always difficult for an international mission to find the right balance between supporting and encouraging local justice mechanisms and not enforcing their own particular version of justice, while simultaneously ensuring that international standards of human rights are followed when dealing with past crimes in transitional justice. However, to achieve this balance is crucial for stability and security of post-conflict societies.

5 Complementary Mechanisms of Justice – a Means to Sustainable Peace

Addressing the issues of human rights violations and crimes against humanity in a transitional society trying to recover from years of conflict and violence amidst numerous international actors attempting to support the different processes in the post-conflict reconstruction phase is far from a simple task. There are several factors that must be weighed, assessed and determined before starting the process of transitional justice. What must first be acknowledged is that each transitional society is unique, although it contains numerous similarities to other post-conflict societies, the way in which to approach past crimes must be specifically designed for that country. There cannot be a 'one size fits all' approach to transitional justice.

Among the factors influencing the choices and outcome of any process of transitional justice is the context of the conflict, which incorporates all aspects of the conflict from its inception to its end. This, in large part, determines what types of transitional mechanisms can be applied, but also leads to greater societal reconciliation. The level of international involvement and willingness to contribute also affects these processes and cannot be ignored. Lastly, the culture of the country and how it deals

with issues of human rights violations will significantly impact upon the outcome.

What is crucial is that local ownership is not only promoted, but ensured throughout the implementation of transitional justice mechanisms – without local ownership, the success of the processes will be diminished. Truth commissions, local trials and traditional mechanisms all commonly share a greater potential for local ownership.

There must be an awareness of the distinction between national and individual reconciliation, particularly since different types of transitional justice mechanisms can advance one type of reconciliation more than another. This underlines the importance of implementing more than one type of mechanism to address past abuses. If reconciliation is reached on one level, but not on another, instability and insecurity can result.

The prevalent tendency to promote one type of mechanism over another to deal with past crimes endorsing a dichotomous approach to transitional justice, which stresses restorative versus retributive justice must be abolished. Although there has been some progress in this area in international operations, greater emphasis must be placed on the complementary nature of the transitional justice mechanisms so that they might serve the different needs of reconciliation in the mission country.

No transitional justice mechanism is flawless and considering that they have to address gross human rights violations in a context of turbulent post-conflict settings whilst trying to achieve reconciliation this is not surprising. However, reconciliation cannot be obtained by transitional mechanisms alone, it takes more time and effort than any time-restricted trial, truth commission or traditional process can achieve. Transitional mechanisms are steps towards reconciliation, not its achievement. Nevertheless, there are certain factors that could improve transitional justice mechanisms and the chances of stability, security and sustainable peace.

5.1   Recommendations

Irrespective of what type(s) of transitional justice mechanisms are implemented three factors must be ensured in a post-conflict society with an international mission:

- Local ownership must be assured throughout the processes.
- Needs assessments must be conducted prior to establishing or recommending any or several types of transitional justice mechanisms for dealing with past crimes to establish the best option(s).
- The international community should make several options available to the mission country and make clear that it is not a choice between commissions or trials, but that these can be implemented in a complementary manner, should they so choose.

Truth Commissions

Detailed recommendations have been made elsewhere regarding truth commissions in post-conflict societies.[64] What will be emphasised below are recommendations of particular importance in a post-conflict setting with an international mission.

- 'Truth' must be acknowledged as a difficult concept, and its use in the particular context clarified and defined.
- Distinguish between individual and national reconciliation, and emphasise that truth commissions have a tendency to focus on national reconciliation.
- Cover the process extensively in the media, both nationally and internationally. In peace operations, the international community can assist with dissemination of both the process of the truth commission and its findings and recommendations.

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[64] See in particular all of P. Hayner's work, e.g. "Commissioning", p. 25.

- Assess the use of amnesties and its consequences – lessons learnt from other amnesty processes should be made available to the local decision-makers by the international community.
- Local political willingness to implement the recommendations of the truth commission must exist for its success – international pressure to ensure co-operation from the local government in a transitional society during peace operations to fulfil its obligations in relation to the truth commission can be applied.
- Inform and educate civil society as to what a truth commission can achieve and what its objectives are – this can limit expectations so as to limit disillusionment – the international community can play a role in this information process.

Local Trials

- Reform the judicial system and the judiciary from the beginning in a post-conflict society with international assistance.
- Rebuild the judicial infrastructure.
- Establish international ad hoc or hybrid solutions to address perpetrators of past human rights abuses and crimes against humanity.
- Develop an international transitional law based on international human rights standards, norms and laws and the human rights treaties the country is a signatory to, to be applied in all transitional post-conflict societies until the local authorities can legislate on the appropriate laws – local variations and additions should be included.
- Acknowledge the significance that trials can have as a symbol of accountability in a transition to a new democracy and regime.
- Acknowledge that local trials under certain conditions can promote stability and security in a country.

Traditional Mechanisms

- Assess what these mechanisms are before encouraging their implementation.
- Be aware that they frequently do not respect international human rights law, both in relation to a fair trial and in their punishments.
- Establish what level of crimes they can be applied to in a post-conflict transitional society.
- Acknowledge the vast variations between these mechanisms and assess their applicability to deal with vast numbers of human rights violations.
- Be aware of their potential effects on the judicial regime and the public security forces – educate civil society in the new system so that the traditional mechanisms will be complementary and not undermine the reformed judicial system.
- Implement the mechanisms consistently throughout the mission area – variations between communities will exist, but should not deviate in reference to human rights standards when applied to deal with past crimes.

Chapter 10

Building Local Capacity for Maintaining Public Security

Annika S. Hansen

1   Introduction

There has been a growing recognition that crisis management operations must address issues of law and order from the outset and that establishing the rule of law is a critical requirement for long-term security and stability. The breakdown of the rule of law and the inability of a state to provide security for its citizens is regarded as perhaps the clearest symptom of state failure, which is at odds with its formal sovereignty as an internationally recognised state.[1] Therefore, an increasing number of actors at an increasing number of occasions have taken it upon themselves to (re-)establish the rule of law as a critical requirement for successful state-building after conflict. The concept of Security Sector Reform is the most comprehensive effort to date to chart and systematise all the elements that need to fall into place for a functioning rule of law and how an international intervention might contribute to a reform process. As the field is both young and sweepingly comprehensive, there are still a number of gaps that will have to be filled with more refined approaches. One of these gaps concerns implementing local ownership through institution and capacity building at the back end of a police organisation.

Before stepping into the analysis, it is helpful to clarify central terms as they are used in the context of this paper. I take the rule of law to mean adherence to a specified set of rules that govern society and that

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[1]   Stephen D. Krasner (2004), "Sharing Sovereignty. New Institutions for Collapsed and Failing States", *International Security*, Vol. 29, No. 2 (Fall 2004), p. 88.

embodies human rights. The rule of law is a wide notion that encompasses several elements. First and foremost, it entails public security, which is provided by the police. The rule of law also presumes a functioning, fair and predictable judicial and penal system. Together with the police these two dimensions make up the triad of the administration of justice. A reform of police forces alone is of little value if it is not matched by similar efforts to create an impartial, effective and trusted judicial system, where criminals – once caught – can be brought to trial and justice. The need to deal with these two dimensions for the rule of law to be meaningful has been generally acknowledged and is referred to as security sector reform. While I fully accept the imperative of addressing the triad, this paper nonetheless focuses on police forces. The final element of the rule of law – and a key factor for the success of a security sector reform effort – is what I term a rule of law culture among the population, which implies that the rule of law has been generally accepted as the guiding principle for the organisation of relations between the state and society and for interaction within society. In addition, the rule of law culture is demonstrated through the specific oversight function that it performs over public security and the judicial system.

Within public security, it is useful to distinguish institution and capacity building from law enforcement and public order.[2] Regardless of whether the responsibility for law enforcement rests with local or international police forces, the international effort will have to engage in or support capacity and institution building from the outset. Only by putting these long-term pieces of the puzzle in place, will the rule of law be sustainable. Unfortunately, none of the international contributors appear to have a clear understanding of how to resurrect the institutions of

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[2] For the purposes of this paper, institution building is distinct from capacity building in that the former focuses on organisational structures and the latter on the skills required of the staff to make the organisation work effectively. The Collins Dictionary of Sociology defines an institution as "an established order comprising, rule-bound and standardised behaviour patterns" and institutionalisation as "the process, as well as the outcome of the process, in which social activities become regularised and routinised as stable, social-structural features." Collins Dictionary of Sociology (1991), p. 324f.

public security, especially in a post-conflict setting.[3] Efforts to build capacity, as well as most research to date, have gone into developing and later assessing operational police personnel. There is, however, a growing understanding that police forces require effective management and administration to be functional and sustainable. The present paper reviews different institutional functions for both operational police personnel and the administration and management of the police organisation and the capacity needed to fulfil these functions. What makes institution building even more difficult is that the demands of public order may be in direct contradiction to the principles that underlie local ownership.[4] This paper will not discuss issues related to providing public order in the immediate post-conflict phase, but concentrate on the long-term question of institution and capacity building.

Perhaps the most crucial element in the establishment and maintenance of the rule of law after conflict – local actors – has been neglected further. Local ownership is acknowledged as crucial to effective peace-building but there has been little exploration of what this means in practice for international efforts in post-conflict situations. In the context of this paper, local ownership is both process and outcome. As an outcome, building local capacity and the institutions in which capacity will be applied is the equivalent of implementing local ownership by providing the means to sustain the rule of law. However, local ownership is meaningless, if one builds local capacity and institutions that are wholly inappropriate for the society in question. Therefore, local ownership must also be seen as a process that determines the outcome. The question then is how and when local input is secured in the process of building institutions and the concomitant capacity to run them.

The paper first explores the determinants of the international-local balance by reviewing the factors that affect the degree to which international actors assume authority. It goes on to illustrate varying degrees of international intervention, i.e. from support to substitution

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[3]   James D. Fearon and David D. Laitin (2004), "Neotrusteeship and the Problem of Weak
        States", *International Security*, Vol. 28, No. 4 (Spring 2004), p. 37.
[4]   Renata Dwan and Annika S Hansen (2005), "Public Order, Rule of Law and Local
        Ownership – Precondition or Paradox?", (forthcoming).

missions. The paper then briefly introduces different strategies for implementing the principle of local ownership and sketches some critical dilemmas that arise during implementation. In the second half of the paper, three main areas of institution and capacity building in which local actors will have to engage are identified and the paper suggests how and when a transition to local leadership takes place. It should be noted at the outset that I do not imply that there will be a transition from international to local authority in each and every case. On the contrary, it will become clear in the discussion of strategies that a more differentiated view is necessary and that, in many instances, there should be local leadership. At the same time, it is obvious that the context, which is being examined in this paper, i.e. a crisis management operation in a post-conflict setting, presupposes an international presence of some sort that is engaged in institution and capacity building.

2   The International - Local Balance

2.1   Factors in Determining Degree of Intervention

The main factors for determining the degree of intervention – from monitoring to substitution – are the status quo at the outset, the conflict situation, the local political context and the international political commitment.

A relatively straightforward factor is the condition of local structures and forces, reflected in the following questions: is there a police force? What is its legacy? What is its relation with the population/how does the population perceive the police force? What are the material conditions, i.e. what kind of equipment does it have? To what extent is it being paid? For contributors of police assistance it is always worth considering whether existing structures can meet the public security needs, before launching new ones.[5] The security forces, including the police, the military, special forces, border police, intelligence services, and other

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[5]   International Alert (2002a), "Supporting and Enhancing Community-based Peacebuilding", *Global Issues Policy Notes,* No. 1, November 2002.

professionals in the justice and penal system, including judges and other court staff, prosecutors, corrections staff, administrators, are the guardians of public security and the rule of law. They are the counterparts of the international presence when it comes to joint policing, training and institution and capacity building. Other armed groups are important where they rival the rule of law, i.e. where the population prefers to pursue justice through informal mechanisms. In addition to the degree of international involvement, the conditions of public security also affect the scope of institution and capacity building required and the process of how and when to engage local actors.

Details of the particular conflict area and situation will also influence the intrusiveness of the international operation. These, of course, will also be decisive for the condition of local structures as described above. The level of violence in the preceding conflict, as well as the causes and the duration of fighting are naturally important factors. The existence of rival armed groups – including their size, armament and popular support – will affect the public order situation, but will also affect the design and strategy for (re-)establishing a local police force: will there have to be a demobilisation and reintegration effort that affects recruitment and structure of the nascent police? In the same way, an important question is what legal or judicial traditions exist and how they affect, for instance the structure of a court system. In addition, other factors, such as size and accessibility of the territory, degree of urbanisation and economic situation have to be taken into account. Clearly, deciding whether to enforce law and order in the Democratic Republic of Congo (DRC) raises different issues than the same deliberation does in the context of Kosovo.

With respect to the social and political context of public security, the term local ownership is often used very generally without a clear understanding of all the actors that may usefully be involved in a peace process and establishing both public order and the rule of law. A differentiated view is necessary, since the existing capacity and 'maturity' to assume responsibility – as they are perceived by the international intervention – are factors in determining the degree of intrusiveness. Among local actors we can distinguish between (1) the

population in its various organisational forms, i.e. the citizen, civil society and the business community, and (2) the authorities, i.e. the political leadership, the civil service and local government mechanisms.

Interacting with the population will be most important with regard to developing an understanding of the rule of law. The individual citizen is a prime target for any effort to maintain public order and to rebuild public security capacity, in that it is the citizen's perception of his/her security situation and his/her willingness to use the formal judicial system that is the foundation for the system's viability. This extends to members of the business community who will be making investment decisions based on their assessment of the security situation. Civil society, including NGOs (human rights and other advocacy groups), media, religious groups, labour unions, accordingly, can play many different roles, most importantly in creating awareness, voicing public preferences and in holding the security system accountable.

The political context is, of course, critical to public security. At the level of the state or central government, political leaders, including the government and political parties, are the primary points of contact for an international intervention. Except in extreme cases, such as humanitarian interventions or similar operations, consent is still the guiding principle for international efforts. This is both a question of principle and practicality. If genuinely pursuing local ownership, it is counterproductive to completely disregard the principle of sovereignty. Moreover, in the face of opposition at the highest political levels, it is unlikely that any international effort to maintain public order or build sustainable public security arrangements can succeed.

The traditional requirement of consent becomes qualitatively different, when the government is weak or dysfunctional. Jarat Chopra and Tanja Hohe therefore suggest moving away from consent as something exclusively bestowed by government authorities, but to view it as a question of broad local support. They argue in favour of taking local government mechanisms, such as Council of Elders, warlords, chiefs or

mayors, into account.[6] As the mechanism for governance, they have a critical role to play in developing and applying public security policies at a local level. However, the hallmark of a society governed by the rule of law is that the rules are independent of politics and that the same rules apply to all. While it is important to bring on board local government mechanisms, they should not be allowed to weaken these basic principles. In deciding the degree of authority that the international presence should assume, one should ask whether there are representative/effective political authorities and to what extent they control their territory or wish to control it.

Within all and any of these groups of actors, there may be "spoilers" that seek to derail the stabilization process.[7] Spoiler activity may be triggered by different issues or may take place at different stages of the process. In the same way, reform constituencies – that international interventions are frequently called upon to support – can be fluid and cut across the categories of actors identified above.

A final factor – and most likely the decisive one, regardless of the objective needs of a conflict area – is the international political commitment translated into the willingness to take on full substitution and to provide the resources necessary to carry out the mandate. In those cases, where the international intervention gradually slides into a state- and thereby institution building role, the lack of bureaucratic capacity to run the country, is an important factor.[8] Krasner adds that the collapse of state functions may take place precisely because of an international invasion, as witnessed in Afghanistan and Iraq.[9] Besides other obvious factors of national interest in assuming authority, such as a concern for Weapons of Mass Destruction (WMD) or transnational organised crime, there is a debate in principle on the need for local ownership versus the benefits of imposition.

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[6]   Jarat Chopra and Tanja Hohe (2004), "Participatory Intervention", *Global Governance* Vol. 10, Iss. 3, Jul-Sep 2004, p. 290f.
[7]   See Stephen J Stedman (1997), "Spoiler Problems in Peace Processes", *International Security,* Vol. 22, No. 2, pp. 5-53.
[8]   Fearon and Laitin (2004), p. 23f.
[9]   Krasner (2004), p. 90.

The debate centres on the usefulness and desirability of the international authority. The development towards greater international authority in transitional societies arose with the recognition that the underlying political concerns rather than the symptoms of a conflict would have to be addressed to consolidate peace. Due to the fact that the local governments were not representative, weak or dysfunctional, the international intervention assumed greater responsibility.[10] Simon Chesterman, who has written extensively on transitional administrations, argues that local conditions necessitate a temporary override. He describes the approach to state-building as a "mix of idealism and realism: the idealist project that a people can be saved from themselves through education, economic incentives, and the space to develop mature political institutions; the realist basis for that project in what is ultimately military occupation."[11] He further claims that "it is both inaccurate and counter-productive to assert that transitional administration depends upon the consent or 'ownership' of local populations."[12] Similarly, Michael Dziedzic maintains that local police forces are often incapable of restoring public order, participate in the violence, or threaten the international intervention force and must therefore be temporarily replaced by international security providers.[13]

In contrast, Lakhdar Brahimi has promoted an approach commonly known as the 'light footprint' which entails an emphasis on capacity building and the use of local staff and a limitation of the international presence.[14] The international intervention in Afghanistan closely followed the 'light footprint' model. Brahimi argues that "it is precisely through recognising Afghan leadership that one obtains credit and

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[10] Chopra and Hohe (2004), p. 290.

[11] Simon Chesterman (2003), *You, the People. The United Nations, Transitional Administration, and State-Building,* Project on Transitional Administrations Final Report, International Peace Academy, New York, November 2003, p. 1.

[12] Chesterman (2003), p. 3.

[13] Dziedzic, Michael J. (2002), "Policing from above: executive policing and peace implementation in Kosovo" in Renata Dwan (ed.), *Executive Policing. Enforcing the Law in Peace Operations,* SIPRI Research Report No. 16, SIPRI/Oxford University Press, Oxford, p. 35.

[14] See for example Richard Ponzio's Afghanistan case study in this volume.

influence."[15] That, of course, renders the approach wholly dependent on the political willingness of the local actors and their ability to even formulate political preferences, which may well be non-existent in a post-conflict or collapsed state setting.[16] Along the lines of Brahimi, Amitai Etzioni believes that international interventions underestimate the costs and long-term investments involved in state-building. Instead, he proposes a more modest approach – that recognises local cultural and social preferences and that would be far more beneficial in promoting the capacity of the society in question to help itself.[17] In their critique of the OHR in Bosnia-Herzegovina, Gerald Knaus and Felix Martin go even further, arguing that the High Representative in fact undermines the budding local democracy through his use of imposition to force reform.[18] Others, such as Stephen D. Krasner, have tried to formulate a middle ground reflected in his notion of 'shared sovereignty,' which entails that a state voluntarily transfers its authority to an international guardian on specific issue areas, where it lacks the capacity to fulfil central functions itself (see more 2.4).[19]

2.2   Degrees of Intervention

The nature of local ownership and the effort that has to go into securing it vary with the extent to which the international intervention has taken on responsibility for the rule of law. The figure below illustrates the relative distribution of responsibility in different types of activities in an intervention, roughly identified as law enforcement, reform of the security sector and monitoring the performance of the security sector.

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[15] Simon Chesterman (2002), "Walking Softly in Afghanistan: the Future of UN State-Building", *Survival*, Vol. 44, No. 3 (Autumn 2002), p. 40 (emphasis given); see also Michele Griffin (2003), "The Helmet and the Hoe: Linkages Between United Nations Development Assistance and Conflict Management", *Global Governance*, Vol. 9, Iss. 2, Apr-June 2003, p. 212f.

[16] Chesterman (2003), p. 4.

[17] Amitai Etzioni (2004), "A self-restrained approach to nation-building by foreign powers", *International Affairs*, Vol. 80, No. 1, January 2004, pp. 1, 4, 17.

[18] Gerald Knaus and Felix Martin (2003), "Travails of the European Raj", *Journal of Democracy*, Vol. 14, No. 3, July 2003, pp. 60-74.

[19] Stephen D. Krasner (2004), "Sharing Sovereignty. New Institutions for Collapsed and Failing States", *International Security*, Vol. 29, No. 2, Fall 2004, pp. 85-120.

Note that the classification is merely a tool for illustration. These are not watertight categories and these activities might well be taking place simultaneously within one international operation. If the international intervention takes on law enforcement, their responsibility for upholding the rule of law is high. In moving towards reform and monitoring, international responsibility diminishes and local responsibility increases. Somewhere in the course of a reform process, a transition takes place where the authority of the local actors outweighs that of the international presence.

At one extreme, law enforcement as a broad category entails everything from patrolling the streets, investigating crimes and arresting suspects and processing them through the judicial and correctional chain. In addition, international activity at this end of the spectrum might include designing and issuing legislation or interpreting existing laws and setting priorities for the rule of law, such as combating organised crime or reducing drug related crime. While there is a clear distinction between having executive authority and not having it, there are a growing number of examples where the international security forces share the responsibility with local forces and institutions. Haiti set the precedent for including armed international civilian police and Kosovo is an example where the international police enforced the law in joint patrols with newly educated local police officers. At the same time, the Multinational Specialised Unit (MSU), in the NATO-led Kosovo Force (KFOR), was involved in gathering information on and investigating instances of organised crime. In several other cases, courts have featured a mixture of international and local staff. As the example of Iraq demonstrates, the picture becomes slightly blurred, when severe public order challenges arise or when counterinsurgency operations are taking place at the same time.

Figure 0.1 Degrees of Intervention
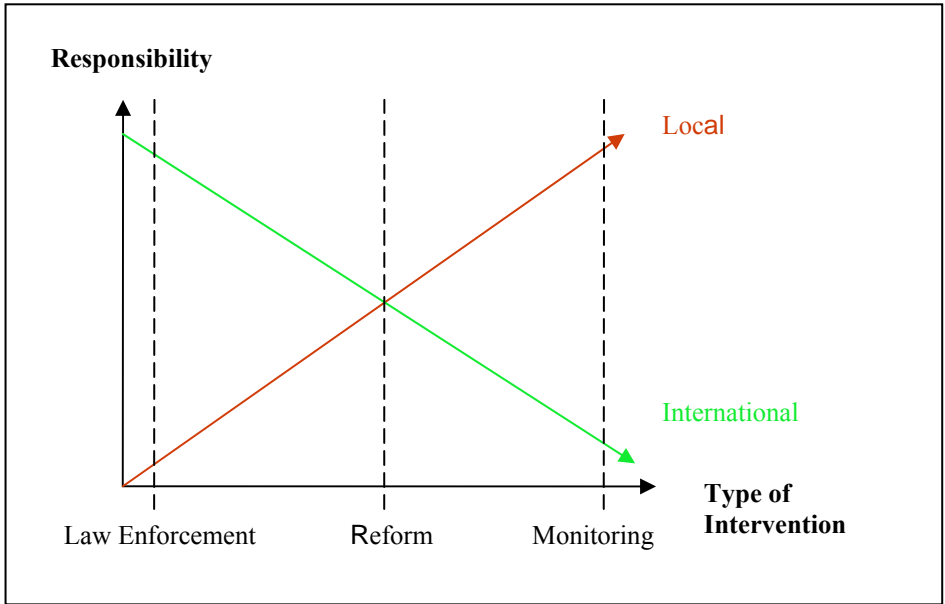
Reform of the security sector entails a reform of the organisations that have the authority to use, or order the use of force, or the threat of force, as well as those civil structures that are responsible for their management. The components of the security sector are military and paramilitary forces; intelligence services; national and local police forces, including border guards and customs services; judicial and penal systems; and the civil authorities mandated to control and oversee these agencies.[20] The level of international involvement in security sector reform ranges from establishing and/or running educational facilities, conducting training, advising on restructuring of security forces and their administrations and developing an understanding of their appropriate contributions to the security sector.

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[20] Jane Chanaa (2002), *Security Sector Reform: Issues, Challenges and Prospects,* Adelphi Paper No. 344, International Institute for Strategic Studies/Oxford University Press, London/Oxford, p. 7.

As security sector reform can entail a large measure of organisational development and design, local preferences have to be reflected and local buy-in is essential. Local ownership is particularly important as security sector reform is a highly political undertaking. The security sector is at the heart of a state's sovereignty, in that the state has a legitimate and exclusive role to exercise coercive power in order to deal with external and internal threats to the security of the state and its citizens. Reform will directly affect the distribution of power within the state and, therefore, be highly sensitive.

Whereas the international presence may still be heavily involved in setting the agenda in reform and thereby bear partial responsibility for the rule of law, they are clearly reduced to a supporting role when engaged in monitoring. The phraseology used in the European Union Police Mission in Bosnia-Herzegovina (EUPM) distinguished between 'mentoring' and 'monitoring' as two separate activities.[21] This illustrates the different degrees of involvement in the outcome of a given process: While 'monitoring' entails objective observation – and usually subsequent reporting, 'mentoring' means that the international police officer actively guides the performance of his local colleague.

2.3   *Local Ownership Dilemmas*

While there is general agreement that local ownership is essential to bringing about any kind of sustainable change, there is far less insight into how the principle is best implemented. There are a number of dilemmas that the international effort will face: (1) the dilemma of process versus outcome; (2) the dilemma of capacity and finding appropriate partners; (3) the dilemma of opposing time frames and (4) the dilemma of dependency.

The first thorny question in local ownership is the dilemma of involving local stakeholders in the process of implementing institutional reform versus allowing local actors to determine the objectives and outcome of

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[21]   Council Joint Action, 11 March 2002.

the process, especially where the desired outcome may be contrary to international standards and human rights. While lip service is often paid to the need for local involvement, in practice "Ownership […] is usually not intended to mean control and often does not even imply a direct input into political questions."[22] This dilemma becomes virtually insurmountable where there is no agreement on the overall outcome. Kosovo is perhaps the clearest example where the failure to resolve the issue of the province's status severely hampered progress in the state-building exercise. Even where transitional administrations disempower local actors, the goals of efforts to strengthen the rule of law need to be clearly defined at the outset. Chesterman suggests that the population has to accept "that power is being exercised for ends that are both clear and achievable."[23] Once agreement has been reached on a 'bottom-line,' local decision-making is unlikely to derail the reform process as a whole.[24]

Second, the international interveners have consistently struggled with identifying appropriate local partners. In many cases, this may involve a choice between effectiveness, i.e. working with those that wield the most power, and legitimacy, i.e. working with those that have either the best international standing or the greatest public support. The capacities to undertake reforms may simply be non-existent. As Gordon Peake and Eric Scheye point out elsewhere in this volume, the lack of capacity may indeed be what triggered the intervention in the first place. Or those with the most capacity to cooperate with international agencies may not be the most appropriate partners.[25] Chopra and Hohe point to two possible courses of action, namely to "either reinforce the status quo and build on it, further empowering the already strong; or replace altogether what exists with a new administrative order."[26] In the latter case, one risks embarking on an endeavour that lacks local footing, is irrelevant to actual social and political developments. It is also likely to be so comprehensive, as to be too ambitious for international funds and

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22 Chesterman (2003), p. 4.
23 Chesterman (2003), p. 3.
24 Krasner (2004), p. 104f.
25 International Alert (2002a).
26 Chopra and Hohe (2004), p. 289.

commitment over time. Or, as Eric Scheye points out, "those wielding power may well have gained ascendancy because of the war; their continued enjoyment of the prerogatives of power may be dependent on the unsavoury and often illegal methods by which they acquired it, and the legitimacy of their exercise of political authority may be at best tentative."[27]

Identifying appropriate local partners is especially problematic where different local parties disagree amongst themselves with regard to preferred outcomes.[28] Ironically, the more disagreement and potential for renewed conflict, the greater is the need for external guidance – and imposition. In his report to the Security Council, the UN Secretary General Kofi Annan identifies a particular role for 'outsiders' in ensuring the inclusion of groups that are marginalized or traditionally excluded, such as minorities or women, and that may not have made it to the table had local dynamics been left to their own devices.[29] At the same time, heavy external involvement might relieve local parties of taking responsibility and ownership for proposed solutions. Dependency becomes a matter of decision-making, when external actors make difficult decisions on behalf of their local partners.[30]

The third dilemma concerns the disconnection between the timeframes of donors and those required for institution and capacity building. Building sustainable and locally driven rule of law institutions is a long-term endeavour and often at odds with more short-sighted donor cycles. The scope of the undertaking of building capable institutions goes far beyond the limited timeframes of most interventions.[31] At times, this may also involve disharmony between 'developers' and 'peacekeepers,'

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[27] Eric Scheye (2002), "Transitions to local authority" in Renata Dwan (ed.), *Executive Policing. Enforcing the Law in Peace Operations,* SIPRI Research Report No. 16, SIPRI/Oxford University Press, Oxford, p. 104.

[28] Krasner (2004), p. 100.

[29] United Nations Security Council (2004), *The rule of law and transitional justice in conflict and post-conflict societies,* Report of the Secretary General, S/2004/616, United Nations, New York, 23 August 2004, p. 6.

[30] Richard Caplan (2002), *A New Trusteeship? The International Administration of War-torn Territories,* Adelphi Paper No. 341, International Institute for Strategic Studies/Oxford University Press, London/Oxford, p. 11.

[31] Chopra and Hohe (2004), p. 289; Scheye (2002), p. 106f.

in that the latter traditionally have much shorter timeframes for their mandates. The dilemma of timeframes also links back to the issue of identifying local partners. As Krasner points out, where there is disagreement "about the distribution of power and the constitutional structure of the new state, […] the optimal strategy for their political leaders is to strengthen their own position in anticipation of the departure of external actors. [At the same time,] local leaders who become dependent on external actors during a transitional administration, but who lack support within their own country, do not have an incentive to invest in the development of new institutional arrangements that would allow their external benefactors to leave at an earlier date."[32]

The dilemma of opposing timeframes is linked to the fourth dilemma, which has to do with the difficult balance between assistance, dependency and affordability. While international funds are needed to enable a reform process, there is a danger of creating a dependency on international assistance and creating structures that are not affordable for the society in question. Also, international military operations, especially in the UN context, are reliant on funding produced by donor conferences and other ad hoc financing mechanisms. This type of financing is inherently unsuitable for long-term institution building processes that require future funding to be reasonably predictable in order to be credible and to succeed.[33] To alleviate the implications of ad hoc'ery, the creation of a trust fund has been suggested, to be administered jointly by international and local actors.[34]

2.4   Strategies for Transition

Transitions will vary with the degree to which the international intervention has assumed responsibility for public security. There have only been two cases – Kosovo and East Timor – in which international transitional administration had full executive authority, which then

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[32]   Krasner (2004), p. 100f.
[33]   Fearon and Laitin (2004), p. 26; Krasner (2004), p. 100.
[34]   Chesterman (2003), p. 6.

needed to be handed back to local security forces and their 'back end' organisations. In most other cases, international and local actors shared responsibility in a variety of ways. Various strategies have been applied to the transition process, where local stakeholders have been brought in at different stages of the reform process, on different issues or in different geographic areas. Often, several of these transition strategies can be applied simultaneously and in the same conflict area.[35] Whatever degree of intrusiveness the international intervention enjoys, it is critical to be clear in each case as to what the term 'local ownership' means. In practice, local ownership can range from local leadership, where decision-making is squarely in the hands of the local political authorities, to local acceptance, where there is at the very least no resistance to international efforts.

Timing of Participation

The international strategy for transferring authority to local hands has – by coincidence rather than design – differed widely in different cases with regard to when local stakeholders have been approached and integrated into the process of institution and capacity building. The UN International Police Task Force (UNIPTF) in Bosnia-Herzegovina retained key decision-making power, while strengthening local capacity. When the European Union Police Mission took over in January 2003, it explicitly emphasised that local police and political authorities were now responsible for further developments – a mere seven years after the Dayton Agreement. In contrast, Afghan leaders had a much greater say in the formation of public security arrangements from the outset. Accordingly, what local ownership looks like in practice and how truly it reflects local perceptions, is a function of the stage in which local actors enter the reform process. I have identified four main stages: (1) Fact-finding and 'diagnostics;' (2) planning and design (setting parameters and priorities); (3) programme development (developing projects and ensuring that efforts are cohesive); and (4) project implementation and

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[35] Writing exclusively about an executive policing context, Eric Scheye developed a similar approach, where he distinguishes between three types of transition: Cocoon-Butterfly model, a functional transfer and a geographic transfer. Scheye (2002), p. 109-117.

sustainability (implementing reform projects and building institutional capacity).

It has been recommended but seldom implemented that local organisations take the lead in the 'diagnostics' phase, i.e. are involved in the process of defining the problem. For instance, the Secretary General's report to the Security Council emphasised the need to integrate local views in the early stages when a 'reform vision' is developed.[36] Others have argued that comprehensive engagement at the earliest possible stage prevents politicisation of the reform process.[37] Ideally, the diagnostics phase should begin before a conflict has ended. This entails, however, that the process of identifying needs and charting preferred options for the rule of law is likely to be linked to ongoing negotiations towards a peace agreement. Even while a conflict is ongoing, international organisations and potential bilateral contributors now more frequently establish contact with the diaspora communities. While laudable in principle, these consultations also have limitations, in that the diaspora community may no longer have the same perception of a given conflict situation as the population in the conflict area.

Local involvement in a phase where strategy and priorities are determined implies that local actors define solutions and outcomes for the diagnosed problems. This points back to the dilemma of process versus outcome and the need for clarity on an overall strategy and outcome.[38] At the same time, the debate surrounding the affirmative stance versus the light footprint returns, in that strong international leadership reflects its perception that the society in question is not capable – in terms of skills or maturity – of defining and leading its own reform process. As indicated above, the diagnostic phase is likely to be influenced by ongoing peace negotiations and the peace agreement might well include specific provisions that stipulate structure, size and composition of the new or reformed police. Depending on the degree to which an outcome is stated in an agreement, the focus of participation might shift to developing the programmes necessary for implementation.

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[36] United Nations Security Council (2004), p. 6, 7.
[37] Chopra and Hohe (2004), p. 292.
[38] Krasner (2004), p. 105; Caplan (2002), p. 18.

When local stakeholders are only brought in at the stage of programme development or actual implementation, i.e. defining how to bring about the proposed solutions and outcomes, there is a danger that the main parameters have already been set by outsiders. There may still be room for reflecting local preferences in the precise implementation of the overall strategy, but the role of local actors may also be reduced to fine-tuning. In the worst case, integrating local stakeholders into the reform too late produces frustration and undermines the sustainability of a reform process.

Issue of Participation

Another strategy for transition may be for the international intervention to assume responsibility in specific issue areas only. Stephen D. Krasner launches the notion of "shared sovereignty" which he sees as a legitimate and practicable compromise between the 'light footprint' and full-scale transitional administration. He suggests "arrangements under which individuals chosen by international organizations, powerful states, or ad hoc entities would share authority with nationals over some aspects of domestic sovereignty."[39] In other words, sovereignty can be transferred to external actors in certain areas or on certain issues. There have been examples of this in several state-building operations, such as the mixture of international and local police officers in Kosovo or the 'office by office' transfer from international police to the East Timor Police Service (ETPS).[40] Another example is Sierra Leone where a British Police Commissioner headed the local police forces in a transitional period. The European Commission uses a twinning model in its capacity building efforts. In this model, professionals from the EU are assigned to work side-by-side with, for instance, a high-level ministerial official and advise the official on the execution of his/her duties.

A difficulty that has become apparent in the strategy of transferring responsibility by issue is getting the balance right between local and international authority. The political frustration and subsequent lack of participation in Kosovo must be seen in light of the fact that UNMIK

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[39] Krasner (2004), pp. 89, 108, 113, 119.
[40] Scheye (2002), p. 120.

retained control over key areas thereby 'emasculating' the Kosovo government.[41] Relying on individuals or small contingents in strategic positions where they guide the young organisation also requires coordination, so as to ensure that the various parts of the organisation follow a cohesive approach. Scheye warns of the inconsistency that can arise when multinational staff rotates frequently.[42] In order to counteract these fluctuations, it would be beneficial for the international presence to rely more on civilian staff, who may have greater expertise in management and administrative functions and who can be hired with longer contracts than seconded police personnel. This is particularly true for institution and capacity building, which are typically processes that extend over longer periods of time.

Geographic Areas

Finally, another strategy that has been applied to transferring authority is based on a regional approach. In addition to low levels of crime and other forms of violence, Scheye lists the following variables that influence decisions to transfer responsibility in certain geographic areas: "(a) the ability of the international community to control the area in question, (b) the development of local political structures to ensure balance in the creation of local governance, and (c) political agreement by the local parties on the suitability of chosen sites."[43] An inherent danger in the geographic transfer approach is that of promoting uneven developments within a territory. This danger acquired a whole new dimension in the security arrangements as they have evolved in Afghanistan. The UN mission to Afghanistan is limited to Kabul, so that national contributors have taken on various tasks elsewhere in the country on a voluntary basis. Some of the different Provincial Reconstruction Teams (PRTs) engage in varying forms of police and judicial reform and run a serious risk of creating a disjointed and dysfunctional judicial system. In the case of Afghanistan, the motivation for choosing this particular strategy is in part based on security concerns, but more so on the willingness of individual contributing countries to

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[41] Report by Kai Eide (2004).
[42] Scheye (2002), p. 113.
[43] Scheye (2002), p. 116.

assume that particular role in the PRTs. ARTEMIS, the EU operation in Bunia (DRC), is another example of a security role in a small and clearly delineated geographic area. ARTEMIS was, of course, concerned with public order and not involved in institution or capacity building.

3 Areas of Institution and Capacity Building

3.1 Law Enforcement Versus Institution Building

Police assistance has evolved dramatically in the last fifteen years. Most importantly, it takes place in a variety of different contexts and is led by different donors: The classic approach was through agents of the security sector, such as, law enforcement agencies and Departments of Justice provided training in law enforcement skills to their colleagues in other countries. It is still this kind of assistance that receives the majority of US funds in the field of police assistance.[44] The approach was mainly motivated on the grounds of stemming the tide of crime, drugs or terrorism flowing in from unstable neighbourhoods. This was also a driving force behind the heavy involvement of European police agencies in the Balkans and beyond.

Since the end of the Cold War, civilian police have increasingly been deployed as a component of an international peace operation. From being a haphazard addition, civilian police have become a strategic tool in pursuit of a sustainable peace process.[45] The desire to build effective and democratic local police forces has become an increasingly central goal in peace operations. In the context of peace operations then, the contributors were motivated by a desire to enhance stability and prevent future or recurring conflict by building or reforming local security structures.

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[44] Robert M. Perito (2002), *The American Experience with Police in Peace Operations,* The Lester B. Pearson Canadian International Peacekeeping Training Centre, Clementsport, Canada; David H. Bayley (2005), *Changing the Guard. Developing Democratic Police Abroad,* Oxford University Press, New York, forthcoming.

[45] Annika S Hansen (2002), *From Congo to Kosovo: Civilian Police in Peace Operations,* Adelphi Paper No. 343, International Institute for Strategic Studies/Oxford University Press, London/Oxford, p. 9.

With the rise of the notion of security sector reform and its inherent links to questions of good governance, the development community has also joined the police assistance game. Their starting-point was very much linked to questions of human rights and democratisation. Therefore, their predominant concern has been to prevent abuses by police forces and – to a more limited extent – promote police forces as a central component, indeed as guardians, of a democratic state.

All these approaches meet at the question of building sustainable capacity and institutions, and yet, this area has been shamefully neglected. Most assistance has targeted the front end of the security forces, i.e. the cop on the beat, through training, equipment, restructuring and subsequent performance assessments. The front end of policing is critical for the local perception of the rule of law, in that it is in the police forces that the population encounters the rule of law on a daily basis. However, in order to be sustainable in the long-run, police organisations need an administrative and managerial apparatus.

The reasons for the past focus on the front end are manifold. The visibility and immediacy of impact is one reason. The police are the face of the rule of law and, therefore, have a primary role in driving forward a transition to a society governed by the rule of law. More importantly, though, donors have long considered technical assistance, such as training in specialised skills, as easy and non-political. This is far from the truth, in that any assistance to police or other security functions of the state affects a state's internal distribution of power and is thereby highly political. In the past, international contributors to police aid have been wary of tying normative conditions to their assistance. This is especially true of cooperation between professional law enforcement agencies, where abstaining from political messages bought access to local security forces, and in the context of peace operations, which were traditionally based on impartiality.

In contrast, democratic governance is now accepted and promoted as an absolute requirement for any assistance to security forces in a third

country.[46] A contributing factor to this development has been the evolution of peace operations towards more forceful and more intrusive interventions since 1990, culminating in the transitional administrations in Kosovo and East Timor. In addition, the collapse of the Soviet Union and the proclaimed 'end of history' removed any competition to democracy, as the preferred, the most viable and the most humane system of governance. The trend was reinforced by the arrival in the security field of the development community, which also promoted democratisation programmes and grass roots approaches that emphasised the needs of the population.[47]

Reform and institution building, then, involves taking a stand on normative issues, such as the need for the rule of law as the governing principle for social interaction within a democratic framework and the strong role of the population in the rule of law. This demonstrates how pivotal the question of local ownership is to the success of public security arrangements. While the importance of the public support for effective front end policing has been recognised,[48] the need to build local capacity to run the institutions of the security sector has received far less attention. Although it is recognised, such as in official UN documents that highlight the need for "laws, processes (both formal and informal) and institutions (both official and non-official),"[49] little international effort has been directed specifically at creating or strengthening such institutions.

There are three main areas of institution and capacity building in which local counterparts will have to take an active role in order to make the rule of law sustainable: reforming the security forces (the 'front end'),[50]

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[46] An exception is still the 'classic' approach that is more of an extension of domestic law enforcement abroad, such as assistance provided by the US to Colombian authorities in their fight against drug cartels.

[47] Griffin (2003), p. 201f., 207f.

[48] David H Bayley (2002), *Police for the Future,* Oxford University Press, New York/Oxford, Ch. 2.

[49] United Nations Security Council (2004), p. 12.

[50] The description of the reform of the 'front end' builds on: Annika S Hansen (2005), *Supporting the Rule of Law in War-torn Societies. Tasks and Comparative Advantages of Civilian Police and Military Forces,* FFI-Report 2005/01308, Norwegian Defence Research Establishment, Kjeller, Norway, forthcoming, pp. 32-38.

building administrative and management capacity (the 'back end') and developing a rule of law culture (the context).

3.2   Reform of Operational Police Forces

The reform of police forces includes training, equipping and issues of community policing, accountability and responsiveness. The main local counterparts here are the security forces, including the police, the military, special forces, border police, intelligence services and other (rival) armed groups. When it comes to accountability and responsiveness, the local police forces interact with the individual citizen and civil society. This is dealt with in more detail in sections 3.3 and 3.4.

There are two main dimensions of a reform process: a structural and a behavioural dimension or what has been called 'capacity building' and 'integrity building.' This applies to both the front and the back end of the police. The structural reform of the operational part of local police forces entails a reorganisation of police forces, including geographical deployment patterns and separation from military functions. The behavioural or integrity building reform involves changing the way in which police forces relate to the public and how they understand these relations. Behavioural training consists of human rights training, courses on democratic standards of policing and not the least field training and monitoring. The tasks that make up operational police reform can be subdivided into three stages: (1) selection, recruitment, vetting; (2) academy and field training; and (3) performance assessments, promotion and accountability. Although these stages appear chronological, they are more correctly cyclical. In a 'healthy' police organisation, all processes will be taking place simultaneously at any given time.

The first step towards establishing a new police force is to select its staff. Clearly, the type and scope of recruitment will vary according to whether a police force is being built from scratch or being revamped. Which strategy is the most appropriate depends on the specifics of each case, as each strategy – revamping versus starting from scratch – has its pros and cons. In either case, criteria need to be established for selecting or vetting personnel. It would appear natural that each population should

have a say in defining what qualities they seek in the people with whom they entrust their personal safety. However, local ownership of the selection process has seldom been implemented. In part, this was a function of timing, in that the international intervention would be under pressure to begin the process of establishing a police force due to demands of public order, but also due to donor schedules that called for immediate implementation of reform programmes. In part, the decision arose from a lack of trust in the ability of a local population emerging from a – usually divisive – conflict to be able to objectively assess who was suited as a guardian of law and order. Similarly, allowing leaders of existing security forces to select personnel for the new and improved police was feared to lead to favouritism or considered incompatible with shedding the legacy of the old force(s). Still, in cases where the prior conflict was marred by excessive violence and abuse, the public may well have a clear notion of what previous behaviour should not be tolerated and weeded out in a vetting process and its views should be reflected in the selection criteria.

Police training is a comprehensive issue and can only be sketched very briefly here. Training takes place both in academies and in the field and differs in different cases with respect to duration, frequency/repetition and content, in accordance with the extent to which recruits have prior police training and with the legacy of police-public relations.

A basic component of training is the establishment of educational institutions. They are juxtaposed between the institutional back end and the operational side of policing. Examples of training elements that serve to build capacity at the front end of the police are forensics, human rights training or weapons training and there is no reason why these technical subjects cannot be transferred to local teaching staff. Where the police have a history of oppression, there may be cause to partner the local teaching staff with international trainers in a transition period. The same is true for curricula development.

The classroom education is of limited value without subsequent field training, which gives recruits an opportunity to adjust and apply theoretical knowledge. Field training offers an opportunity for the

international staff to gauge whether the recruit is indeed suitable as a police officer. If an international intervention has been deployed to lead a reform of local police forces, it is unlikely that the local police will be left to monitor themselves in the initial field training period. It is, therefore, all the more important that efforts to set internal accountability and disciplinary mechanisms begin early on (see 3.3 below). In order to allow field training to be transferred as soon as possible, a mentoring approach by an external observer that can involve advice, co-location and joint patrols through which he/she can guide cadets and train trainers would be useful. A similar kind of oversight function is necessary in later stages when cadets have graduated and are deployed in difficult circumstances "on the beat". But the primary corrective mechanism should be mechanisms that allow for public complaints, such as are presented below (section 3.4).

The duration of training has diverged widely in the past. It can range from a few weeks, such as some courses in Haiti or Namibia, to several months in the academy and subsequent field training, such as in Kosovo. One may argue that some police forces require less training than others, but in reality the length and frequency of training courses have been entirely arbitrary or products of available funding rather than actual training needs. Clearly, the duration of training should not be subject to fluctuations and should be defined in accordance with the needs of a given local police. This is another reason why dependency of training on international funds should be reduced and instead authority handed over to local hands as soon as the necessary capacity has been created. Here, the important distinction between technical and behavioural aspects recurs: while it is possible to convey technical skills in a short period of time, conveying an understanding of the police as a public service institution takes time.

3.3   *Building Administrative and Management Capacity*

The administrative and managerial capacity for running security forces and for policy and strategy development needs to be strengthened in virtually every case. In countries transitioning from authoritarian rule,

police forces were instruments of the state and, therefore, highly politicised. In a post-conflict setting, due to a prolonged conflict or due to a lack of democratic policing traditions, the capacity to run a police organisation is often limited or non-existent. Even where there is fledgling capacity, international staff often has little faith in the organisation's ability to perform adequately.[51] When transforming itself into an organisation that serves the public rather than a particular government, the back end of the police needs to develop the capacity to define security needs and aims, as well as to identify the resources and structure required to meet the needs and aims and implement that strategy through budgetary and personnel management. Defining priorities is, of course, a recurring activity and a police organisation has to engage in regular review processes to adjust strategies to changing needs or to assess if strategies have been effective in meeting those needs. In addition, as David H. Bayley underlines, the police forces have to be responsive to the needs of the public and be held accountable through oversight mechanisms.[52] Oversight takes place within the police organisation and through external mechanisms. The external mechanisms are discussed in section 3.4 below.

The first step towards designing a strategy consists of collecting and analysing information on the public security challenges that the police face. The end result should be an assessment of the crime challenges that threaten the rule of law and/or are of concern in the opinion of the public. Crime statistics are one source of information, but statistics already require a relatively sophisticated approach to planning and assessment. In most cases, assessments of the public security situation will be more haphazard. Rather than a once in a lifetime approach, police organisations should constantly engage in or be open to dialogue, for instance through town hall meetings, with local government mechanisms, such as Council of Elders, warlords, chiefs and mayors, and with the general public. In a post-conflict context, the fact-finding

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[51] Scheye (2002), p. 104, 109.
[52] David H Bayley (1997), "The Contemporary Practices of Policing: A Comparative View" in *Multinational Peacekeeping – A Workshop Series. A Role for Democratic Policing,* National Institute of Justice, Washington DC, 6 October 1997, p. 3f., 5; Otwin Marenin (2001), "Approaches to Police Reform", Paper presented at the *IISS/DCAF Workshop on Managing the Context of Police Reform*, Geneva, 24-25 April 2001.

and strategic planning part of the process may have partly been usurped by deals made in the course of peace negotiations, in which the parties to the conflict have agreed on the nature and organisation of security arrangements.

Based on the above assessment, the management of a police organisation will have to set strategic priorities for how it wants to tackle crime and safeguard the rule of law. At a national level, political leaders, including the government and political parties, are likely to play a role in determining national policies and priorities for the police and other justice institutions. What makes setting priorities and devising strategies so difficult is the fact that priorities have to be in accordance with certain economic parameters. This is likely to involve "trade-offs between salaries, equipment, professional development and institutionalisation."[1]

Every police organisation has a limited budget that will force it to make difficult choices on priorities. This situation is exacerbated in the context of a post-conflict situation or in countries in transition. The initial post-conflict phase is often characterised by higher than normal levels of crime and instability, which in turn lead to calls for a larger police force (or more heavy-handed tactics). Even in transitions from authoritarian rule, the reform process is usually more costly than running an established shop. At the same time, the government is unlikely to have a significant tax income to even afford a police force of a more limited size. James D. Fearon and David D. Laitin therefore suggest "international support for developing local tax-collecting capability" in order to accelerate the process towards self-sufficiency in governance.[2] Moreover, governments might be under pressure from donors to cut expenses for security, especially where a country is saddled with a bloated security sector in the wake of a conflict. A major dilemma arises when it comes to the sustainability of local public security arrangements: while international funding might temporarily bridge the expense gap, there is no point in building institutions that the country in question cannot afford in the long run and it is difficult to predict the future income that will be available to finance the police.

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[1]   Scheye (2002), p. 105.
[2]   Fearon and Laitin (2004), p. 9, 37ff.

Strategic planning is a demanding job and any highly developed police organisation features its share of incompetent administrators. In a transitional period both replacement by international staff or twinning projects, which are based on the 'learning-by-doing' principle, are an option – which alternative is the better one will depend on the specific circumstances of each case.

Once an overall strategy has been decided upon, it needs to be translated into specific programmes and actions. Besides programme and project development skills, implementing the strategy involves managing budgets and personnel and providing administrative support. Budgetary management is a question of planning and accounting. At the same time, it is important to recognise that control over budgets is a key area in which political power holders can unduly influence operational police matters. While the positions of independent heads of police were put in place by the IPTF in Bosnia-Herzegovina, the ministers of the interior retained control over the budget, granting them effective control over operational police matters.

On the personnel side, the structure of the police force and its deployment patterns will have to be adjusted to match the approaches chosen. In addition, incentive structures and rules for promotion should reflect the basic values of a public service institution, but should also reinforce the priorities stipulated in the strategy. Another channel through which priorities will be promoted is education, such as in police academies. In some cases, academies may exist, but require reform and restructuring. In others, they may need to be created from scratch. Academy training requires the international staff to develop curricula and teaching materials, teach classes and hold exams. With regard to curricula development, there is an argument to be made – similar to the limited local input in the selection process – that the existing local capacity is limited and lacks an established understanding of the rule of law, which is fundamental in order to define learning objectives and class content. Academies themselves need to be administered and managed, but can also include training for senior management positions.

The internal oversight mechanisms have two different functions. The most dramatic is perhaps investigating and addressing police misbehaviour though disciplinary measures. Police reform will not have succeeded until a police organisation can correct itself. Tasks in this area include developing standards to assess the performance of police officers and mechanisms for reprimanding human rights violations or other misconduct. In war-torn societies, the population is often left with the impression that police and other security forces can act with impunity. In order for the reformed police to be accepted as the legitimate enforcer of the law, the cycle of impunity must be broken as soon as possible. In the same way that international staff and local managers can select, certify and promote police officers, they must have access to countermeasures, such as recourse to disciplinary procedures. Ultimately, a functioning police organisation has to have mechanisms for promotion review, auditing and accountability, in relation to police conduct, as well as to budgets and resource management.

International police officers can assist in establishing mechanisms and procedures to hold the police accountable. Still, the legitimacy and credibility of local police forces will be enhanced the greater the extent to which they are self-sufficient. In the initial stages after the local forces have taken on full responsibility for accountability mechanisms, an international oversight capacity should remain to ensure the correct and consistent application of the mechanisms, but as early as possible those processes have to be owned by local police institutions.

Another form of internal oversight is a performance review in relation to the strategy and priorities identified and the progress that has been achieved towards them. This requires mechanisms and capabilities that can make accurate assessments and analyse implications for strategy. This internal review process is necessary to reassess priorities, but also to reassess the programmes and approaches through which the police organisation sought to implement the priorities. The overall objective may still be valid, but the means may have proven ineffective.

At a lower level, performance assessments are used to review how effective police forces have been at fighting crime and at promoting the

rule of law. As above, performance assessments are all the more credible when the organisation can constructively criticise itself. This is a double-edged sword: enabling local police forces to correct themselves as soon as possible is likely to reinforce the process of internalising the values of responsiveness, fairness and respect for human rights. Transferring responsibility for self-correction can empower local police and serve to boost professional confidence. On the other hand, given the war-related or authoritarian legacy that police forces frequently embody, it may be premature to allow them to monitor their own adherence to principles of democratic policing, when they have no firm grasp of these principles and have not applied them in their police work over time. Performance assessments are also linked to external oversight mechanisms, such as independent review commissions or the like (see below).

3.4   *Developing a Rule of Law Culture*

The final area of institution and capacity building focuses on involving local civil society in fostering a rule of law culture. Returning to the distinction between structural and normative elements, the structures that need to be in place for a rule of law culture to develop are a clearly defined law that outlines the functions of the police and other justice institutions and the role of specific oversight bodies. The normative dimension then breathes life into the legal foundation. An established rule of law culture requires that the population fulfil three functions: (1) to internalise and pass on respect for the rule of law; (2) to engage with operational police forces; and (3) to act as an oversight mechanism over police behaviour and strategic priorities.

First, the population needs to internalise the values inherent in the rule of law. In other words, the population has to be convinced to enter into a new social contract with the government, in which it surrenders its right to defend itself in return for a guarantee of personal safety and equal treatment before the law from the government and its representatives – the police and justice institutions. Each citizen has to accept and promote the rule of law – and the human rights that are inherent in it – as the fundamental organising principle for society. As David Bayley points

out, the public is the most potent force in reform, in that it ensures its fulfilment in practice and passes on respect for the rule of law to its children.[55]

Efforts to spread an understanding of the rule of law will have to address the disconnection that often exists between central or national authorities and local communities. Local communities may be detached from central authorities in their daily life and function according to an independent set of rules. Promoting an understanding of a common set of rules that is to apply for the country as a whole and is the practical application of the rule of law, therefore requires that "communities have to be integrated into the process of institution building, where they live and at higher levels, in order to foster a sense of identification with the greater whole and a feeling of ownership of the alternative structure."[56] The leap of faith that is required should not be underestimated.

In the same way, institution and capacity building require a leap of faith on the part of the central authorities. The UN Secretary General describes this as "securing political space for reformers"[57] and points to the need to cultivate political support for strengthening the rule of law. For authoritarian regimes, this effectively means a reduction in power and control over central instruments of government. The attempts to wrest political control away from political parties and power holders in Bosnia-Herzegovina are cases in point.

When the public engages directly with operational police forces, it does so in order to report a crime, to assist in law enforcement, such as coming forward as a witness, and to voice its view as to the priorities of police work and the manner in which it is conducted. With regard to the former, there is clear evidence that the police are entirely dependent on the cooperation of the public in their efforts to solve crimes.[58] This, in turn, presupposes that the public believe the police to be the most effective mechanism through which breaches to the rule of law should be

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[55] Bayley (2005).
[56] Chopra and Hohe (2004), p. 292.
[57] UN SC (2004), p. 8.
[58] Bayley (2002), Chapter 2.

addressed. Responsiveness, then, is a key trait of a democratic police force, in that the police rely on being regarded as relevant to public concerns.[59] Again, the international intervention and not least the local rule of law professionals need to be in a continuous dialogue with individual citizens, civil society, local government mechanisms and the business community. And yet, a word of warning is in order: the public may well call for heavy-handed responses to high levels of crime, such as are common in the wake of civil wars, but that may be disrespectful of human rights. Therefore, while the police must reflect public concerns, their primary role remains that of the guardian of the rule of law. In that way, the police play a critical role in creating the space in which democracy can play out and thereby allow for public debates, etc., that form part of the external oversight function.[60]

Finally, the public fulfils a clearly specified function through external oversight mechanisms. These can range from parliamentary oversight, independent review commissions, through public complaints bureaus and crime hot lines to issue-specific advocacy groups. It has been argued that a functioning political system requires an active and free media. As an oversight mechanism, the media certainly plays an important role in publicising examples of police behaviour, in some cases acting as a check on methods used and providing a space for public debates on the rule of law. When proposing taxation schemes to strengthen local governance, Fearon and Laitin also suggest that taxation would be a useful tool to awaken public scrutiny and kick-start its role in holding police organisations accountable.[61]

4   Conclusions

In many societies emerging from conflict or from authoritarian rule, there is clearly a role for international involvement in capacity and institution building on both the front and the back end of a police organisation. This involvement can be intrusive to varying degrees and

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[59]   Bayley (1997), p. 3f., 5.
[60]   Bayley (2005).
[61]   Fearon and Laitin (2004), p. 39.

range from designing a police force and determining its operational priorities to mere guidance and advice. While the lack of local capacity in the immediate aftermath of a conflict may demand an international role, a few caveats should be mentioned. First and foremost, the purpose of this paper has been to underline the need for local stakeholders to take over responsibility for running their public security arrangements as soon as possible. An appropriate axiom for international assistance is therefore always the 'train-the-trainers' and 'train-the-managers' principle. International Alert lists "investing in institutional learning" as one of their principles for community-level peacebuilding.[62] Therefore, the twinning and the shared sovereignty concepts appear to be suitable approaches for building the institutions and the capacity necessary for managing a police organisation, in that they marry the benefits of local responsibility with international guidance. An added benefit of these approaches is that they are more likely to be sustainable over longer periods of time, as they require less manpower – if more specialised – and financial resources.[63] A precondition for these approaches to succeed, however, is an insistence on high-quality, experienced international staff that can credibly communicate management skills.

A second caveat arises from the inevitably flawed nature of international interventions. Despite the best intentions, there will never be a 'perfect' assistance effort. Therefore, oversight mechanisms that can ensure the consistency and appropriateness of the international contribution are critical. As the rule of law is so central to the successful functioning of a society, oversight over international direction of the rule of law is especially important. As Klaus and Martin point out – in their discussion of the powerful OHR – "[a]ny post-conflict mission that aims to establish democratic governance and the rule of law must institutionalise checks and balances on the use of extraordinary powers at the very outset."[64]

Thirdly, in addition to oversight over the international contribution, there is a need to evaluate progress. An evaluation in turn presupposes clearly

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[62] International Alert (2002a).
[63] Krasner (2004), p. 119.
[64] Knaus and Martin (2003), p. 73.

defined goals at the outset. These have been lacking in many efforts to strengthen the rule of law after conflict. Too often, the concepts of rule of law, democratic policing or community policing are used vaguely without a clear understanding of what they entail – or even as a way in which to avoid defining a specific outcome. But specifying a desired outcome and identifying the structures and the skills required to put it into practice, are preconditions for being able to measure progress in a reform effort. International organisations have internal procedures to assess the effectiveness of their assistance but, more importantly the public in the former conflict area, such as through the media and other oversight mechanisms can conduct their own 'assessment.' This is where local stakeholders can play a decisive role in determining whether the rule of law is shaping up in accordance with their vision. Ultimately, one could argue that local ownership has been 'achieved' when formerly limited reform constituencies encompass the majority of the population in the post-conflict area. After all, the normalisation process that the term 'conflict transformation' invokes takes place predominantly in the minds of public, whose security and justice is at stake.[65]

Acronyms

CIDA	Canadian International Development Agency
DfID	Department for International Development
DRC	Democratic Republic of Congo
ETPS	East Timor Police Service
EU	European Union
EUPM	European Union Police Mission in Bosnia-Herzegovina
KFOR	Kosovo Force
MSU	Multinational Specialised Unit

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[65] International Alert (2002a); Conflict Transformation Working Group (2002), *Building Peace from the Ground Up: A Call to the UN for Stronger Collaboration with Civil Society,* CTWG, New York, August 2002.

NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organisation
OHR	Office of the High Representative (Bosnia-Herzegovina)
PRT	Provincial Reconstruction Team (Afghanistan)
SIDA	Swedish International Development Agency
UN	United Nations
UNDP	United Nations Development Programme
UNDPKO	United Nations Department for Peacekeeping Operations
UNITPF	United Nations International Police Task Force (Bosnia-Herzegovina)

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Chapter 11

Rule of Law Programs in Multidimensional Peace Operations: Legitimacy and Ownership

Agnès Hurwitz

Introduction

For the last fifteen years, the international community has engaged in unprecedented efforts to stabilize and rebuild countries that have been torn by violent conflict. Starting in the early 1990s in El Salvador, Cambodia and Mozambique, UN peace missions have become ever more complex, integrating various components, including the rule of law, which comprises judicial and penal reform, transitional justice mechanisms and human rights monitoring.

Re-establishing the rule of law in war torn societies is no doubt a commendable objective, yet these initiatives still suffer from a relative lack of legitimacy amongst UN membership and in the very countries where UN missions are deployed. The recent UN SG Report issued in 2004 made a strong case for the development of meaningful consultation and participatory approaches by UN peace missions, but two other fundamental principles, responsiveness and accountability are not granted comparable attention. At the multilateral level, in spite of declarations supporting comprehensive approaches that integrate socio-economic dimensions, rule of law programs are still perceived as a Western initiative, in which developing countries have little interest.

How are the multilateral and the country levels connected? While it would be far-fetched to argue that enhanced legitimacy at the multilateral level would necessarily impact upon popular perceptions of

international programming at the country level, the reverse, - enhanced legitimacy and effectiveness at the country level leading to greater support at the multilateral level, with the financial and human resources implications that would ensue, - definitely holds some truth. Another way in which the global and the local are connected is through the presence of law enforcement agendas driven by external considerations, such as counter-terrorism and illegal immigration, which further undermine international commitments to local ownership, and reinforce developing countries' apprehensions. At a time where there are unprecedented attempts at reinforcing rule of law expertise and strategic planning at headquarters, the interconnectedness of the two levels should definitely be granted further consideration.

In this paper, I will analyze the current dichotomy between rhetorical statements supporting comprehensive approaches and local ownership, on the one hand, and the state of the multilateral debate and of operational approaches in UN peace missions, on the other. The paper will start with a brief historical overview of the emergence of international support for rule of law institutions and their progressive inclusion into conflict management strategies. I will then proceed to examine why rule of law programs still suffer from a lack of legitimacy at the multilateral and operational levels.

1 Historical Background on the Rule of Law and Conflict Management

Most of peace studies literature traces the emergence of rule of law programs to the end of the cold war and the increasing involvement of the international community in the resolution of internal conflicts.[1] Yet, support for rule of law institutions has been part of development policy tools for much longer than is usually acknowledged, under the guise of public sector reforms or good governance and democratization.[2] Erik

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[1] Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War*, Polity Press, 2002, p. 54.

[2] E. Jensen, "The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers' Responses" in E. Jensen and T. Heller, *Beyond*

Jensen identifies three waves of rule of law reforms starting after WWII until the end of the cold war: the first wave focused on the reform of bureaucratic machineries, the second wave known as the law and development movement promoted both economic and democratic development; the third wave was the first to apply in post-conflict countries and limited its reach to legal institutions *per se*. At the United Nations, the end of the 1960s saw the progressive integration of human rights into the development discourse, as reflected in the methodology of the UNDP human development reports, the adoption of the 1968 Proclamation of Tehran and the 1986 UNGA Resolution on the right to development, and culminated with the mainstreaming of rights-based approaches into development policies.[3] The World Bank also took notice and adopted specific standards on internal displacement and the protection of indigenous people in the 1980s.

It was only after the end of the cold war that the rule of law 'became the big tent for social, economic, and political change generally – the perceived answer to competing pressures for democratization, globalization, privatization, urbanization, and decentralization.'[4] Rajagopal argues that the term 'rule of law' appeared as a malleable alternative to the human rights discourse, which had become increasingly used as an advocacy tool by social and political activists in developing countries.[5] Unlike human rights, the rule of law discourse did not seek social and political change, but rather, was focused on processes and a more positivistic understanding of the law. In this sense, the rule of law proved particularly handy for security and development actors, a relatively hollow concept, at least in the international context, which could be used and interpreted in many different ways.[6] A different, yet not unrelated interpretation would highlight the move from

Common Knowledge: Empirical Approaches to the Rule of Law, Stanford University Press, 2003, pp. 336, 345-6.

[3] 1968 Proclamation of Tehran, para.13 http://www.unhchr.ch/html/menu3/b/b_tehern.htm; UN Declaration on the right to Development, UNGA Res. 41/128, 4 December 1986.

[4] E. Jensen, (note 2) p. 347.

[5] B. Rajagopal, "Rule of Law and Security, Development and Human Rights: International Discourses, Institutional Responses" in Agnès Hurwitz (ed.) *Rule of Law and Conflict Management: Towards Security, Development and Human Rights* Forthcoming 2005.

[6] Ib.

an approach based on individual rights and human dignity, to one focused on institutional processes, coinciding with the emergence of a state-building or nation-building discourse, which has also received its share of criticisms.[7]

This emphasis on the rule of law was particularly evident with USAID, one of the most active development agencies in the field. Its involvement started in the 1980s in Latin America, including countries such as El Salvador and Guatemala, in the wake of the peace settlements brokered with the support of the international community. USAID programs focused on criminal justice and judicial reform and were implemented by subcontracted consulting firms.[8] By 2001, it was reported that almost half of US development assistance was designated to rule of law programming.[9]

While Washington-based institutions unequivocally shifted emphasis from human rights to the rule of law, other organizations recognized and insisted upon the organic relationship between the two. As early as 1990, some regional organizations, in particular the Organization for Security and Cooperation in Europe (OSCE) whose participating States declared in 1990 that:

> *'the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the*

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[7] See R. Paris, *At War's End: Building Peace After Civil Conflict*, Cambridge University Press, 2004; "International Peacebuilding and the 'Mission Civilisatrice'", *Review of International Studies*, 28:4, October 2002, pp. 637-56.

[8] Funding for USAID's Latin American programs totaled roughly $200 million between 1983 and 1993. Between 1994 and 1998, another $196 million was obligated in the region. Between 1994 and 1998, another $196 million was obligated in the region, L. Hammergren, 'International Assistance to Latin American Justice Programs: Toward an Agenda for Reforming the Reformers' in: T. Heller and E. Jensen (ed.) *Beyond Common Knowledge, Empirical Approaches to the Rule of Law*, Stanford University Press, 2003, pp. 295-6; see also C. T. Call, "Democratization, War and State-Building: Constructing the Rule of Law in El Salvador", *Journal of Latin American Studies*, Vol. 35, 2003, pp. 827, 849.

[9] C.T. Call, Introduction, in: *Constructing Justice and Security After Wars*, forthcoming, on file with the author, p. 1.

human personality and guaranteed by institutions providing a framework for their full expression.'[10]

The United Nations, which had been particularly successful in its support for the adoption and implementation of international human rights norms since the end of WWII, somehow used both concepts in conjunction, but with less clarity as to the respective scope and differences between the two.[11] In 1993, the General Assembly acknowledged that 'the rule of law is an essential factor in the protection of human rights' and supported the role of the then Human Rights Centre in strengthening rule of law institutions at the national level.[12] This original resolution was followed by 7 other ones until 2003, which reiterated *mutandis mutandi*, the statement included in the earlier instrument and further emphasized the high priority granted to rule of law activities.[13]

The integration of these new approaches in conflict management policy came up at a similar time, as evidenced by the two founding documents of the early 1990s that drove policy development in the peacebuilding area, the *Agenda for Peace* and the *Agenda for Development*. The *Agenda for Peace* mentions improved policy and judicial systems and human rights monitoring among the manifold activities of post-conflict peacebuilding,[14] while the rule of law is mentioned as part of democratic practice.[15] Similarly, the second document includes a series of 'typical' rule of law activities as part of UN work on good governance, such as

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[10] Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, p. 3, http://www.osce.org/docs/english/1990-1999/hd/cope90e.pdf.

[11] For an analysis of the relation between human rights and the rule of law, see Rama Mani, *Beyond Retribution, Seeking Justice in the Shadows of War*, Polity, 2002, p. 29.

[12] UNGA Res.48/132 on strengthening of the rule of law, 20 December 1993.

[13] Resolutions of 1994, UNGA Res. 49/194, 23 December 1994; UNGA Res.50/179 of 22 December 1995; UNGA Res. 51/96, 12 December 1996; UNGA Res. 52/125, 23 February 1998; UNGA Res. 53/142, 8 March 1999; UNGA Res. 55/99, 1 March 2001; UNGA Res. 57/221, 27 February 2003.

[14] An Agenda for Peace: Preventive Diplomacy, peacemaking and peace-keeping, UN Doc. A/47/277-S/24111, 17 June 1992 para. 55; See also Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, UN Doc. A/50/60-S/1995/1, 3 January 1995, para. 47

[15] Ib., para. 59.

constitution drafting, support to domestic human rights laws, enhancing judicial structures or training human rights officials.[16]

The progressive integration of rule of law activities into peace missions started with the deployment by the department of political affairs of field operations that were mandated to monitor the implementation of the peace agreements in El Salvador, Haiti, and Guatemala.[17] In all these cases, the UN included human rights monitoring as part of its operations, which consisted in compiling information on the human rights situation in the country, drawing up reports on human rights, and making recommendations towards their enhanced protection and promotion. This approach, mostly reactive in nature, eventually moved towards more proactive assistance on human rights and institutional reforms. Kosovo and East Timor were characterized by the central role of institution-building and institutional reform, in particular in the rule of law area, in the mission's mandate and the executive authority granted to them,[18] even though the UN transitional authority established in Cambodia constituted an important precedent, since it had effectively taken charge of the administration of the country until the holding of elections in 1993.[19]

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[16] An Agenda for Development, Report of the Secretary-General UN Doc. A/48/935, 6 May 1994, para. 124.

[17] United Nations Observer Mission in El Salvador (July 1991- April 1995) established under UNSC Res. 693 (1991), 20 May 1991; United Nations Mission in Haiti (UNMIH) (1993-1996) was established under UNSC Res.867 (1993), 23 September 1993; it was followed by the United Nations Support Mission in Haiti (UNSMIH) (1996-1997) established under UNSC 1063 (1996), 28 June 1996, the United Nations Transitional Mission in Haiti (UNTMIH) (1997) established under UNSC 1123 (1997) 30 July 1997, and the United Nations Civilian Police in Haiti (MINOPUH) (1997-2000) established under UNSC Res. 1147 (1997), 28 November 1997; finally the Mission for the Verification of Human Rights and of Compliance with the Commitment of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA) was established under UNGA Res.48/267, 28 September 1994.

[18] William O'Neill, "Comparative Advantages? UN Peacekeeping Operations and Rule of Law Programs" in Agnès Hurwitz (ed.) *Rule of Law and Conflict Management: Towards Security, Development and Human Rights*, forthcoming 2005, p. 9.

[19] United Nations Transitional Authority in Cambodia (1992-1993), UNSC Res.74 (1992), 28 February 1992; Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building*, 2004, Oxford University Press, p. 74.

Kosovo and East Timor were the first interventions that placed institutional reform as the centerpiece of their mission.[20] The Brahimi report eventually formalized existing practice by emphasizing the importance to reestablish the rule of law, opening the way for express recognition in Security Council Mandates and inclusion of rule of law components into multidimensional peacekeeping operations:[21]

> '39. (…) Where peace missions require it, international judicial experts, penal experts and human rights specialists, as well as civilian police, must be available in sufficient numbers to strengthen the rule of law institutions. (…)
> 40. (…) In short, a doctrinal shift is required in how the Organization conceives of and utilizes civilian police in peace operations, as well as the need for an adequately resourced team approach to upholding the rule of law and respect for human rights, through judicial, penal, human rights and policing experts working together in a coordinated and collegial manner.'

This policy and institutional developments have now been almost fully digested. The recent Security Council Resolution on Haiti, for instance, details the task of MINUSTAH in the support for rule of law institutions, including the police, the judiciary and the prisons.[22] As noted by Call, 'the rule of law is not only a framework for post-war state-building, but also an exit strategy for peacekeeping troops.'[23] The most recent institutional developments in this area have seen the greater involvement of regional organizations in civilian crisis management, such as the African Union and the European Union, the latter having deployed over 200 rule-of-law specialists in its various operations.[24]

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[20]   Ib., p. 9.
[21]   Report of the Panel on UN Peace Operations, UN Doc. A/55/305, 21 August 2000.
[22]   SC Resolution 1542/2004 on Haiti establishing the UN Stabilization in Haiti. See also SC Resolution on Afghanistan, Burundi, DRC, Liberia.
[23]   C T. Call, Introduction, note 9 above, p. 3.
[24]   Security Council Open Debate on Civilian Aspects of conflict management and peace-building, UN Doc. S/PV.5041, 22 September 2004, p. 5.

The organization's role in supporting transitional justice mechanisms constituted another major element in the UN debate. The establishment of the *ad hoc* tribunals in 1993 and 1994[25] was the first stage in a process that led to the recognition of the international community's responsibility in holding accountable those responsible for war crimes, crimes against humanity and genocide, and culminated with the entry into force of the Statute of the International Criminal Court in 2002. Since then, the United Nations has been involved through its various agencies and programs in supporting transitional justice mechanisms established at the national level.[26]

The last year has seen major developments in the greater visibility of the rule of law on the international agenda. Upon request by the Security Council in 2003, the Secretary-General issued a report on rule of law and transitional justice in conflict and post-conflict societies, which was then discussed in an open debate at the Security Council in October 2004.[27] Both the report and the debate reflected on the progress achieved while highlighting the need for further improvement in policy and practice. Several important themes emerged from this process. First, the necessity to develop better methodologies on strategic planning, including conflict analysis and needs assessments, mission planning, selection and deployment of specialized staff and provision of guidance and support to rule of law components of peace missions, in sum, supporting integrated and comprehensive rule of law strategies.[28] Second, the need to devote more consistent resources to rule of law work within the UN and to streamline rule of law activities within the Secretariat.[29] The final and most important theme of the report for this paper's purposes is the call for local ownership, expressed through adequate assessment of national needs and capacities, support for

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[25] UNSC Res. 808, 22 February 2003; UNSC Res. 955, 8 November 1994.
[26] C. T. Call, Introduction, note 9 above, p. 9; see Report of OHCHR's Transitional Justice Workshop "Rule of Law tools for Post Conflict States", 27-29 September 2004, on file with the author.
[27] Justice and the rule of law: the United Nations role, UN Doc. S/PV.5052, 6 October 2004.
[28] SG Report on the rule of law and transitional justice in conflict and post-conflict societies [hereinafter Rule of Law Report], UN Doc. S/2004/616, 3 August 2004, para. 12-13, para. 23-26.
[29] Ib, para. 65.

domestic reform constituencies based on a thorough understanding of the political context, with a view to fill a 'rule of law vacuum' and develop national justice systems:[30]

> *(...) peace operations must better assist national stakeholders to develop their own reform vision, their own agenda, their own approaches to transitional justice and their own national plans and projects. The most important role we can play is to facilitate the processes through which various stakeholders debate and outline the elements of their country's plan to address injustices of the past and to secure sustainable peace for the future, in accordance with international standards, domestic legal traditions and national aspirations. In doing so, we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.[31]*

The recent report of the Secretary-General on UN reforms was the last and crucial step in the progression of the rule of law on the UN agenda.[32] The report is structured around four main sections: freedom from want, freedom from fear, freedom to live in dignity, and the strengthening of the United Nations. Under the penultimate section, the report deals with the rule of law, human rights, and democratization. Most noteworthy is the call to improve human rights mainstreaming throughout the organization's work, including in the deliberations of the Security Council.[33] Briefly put, the report did not really announce any major changes in current UN thinking on the rule of law, but confirmed the prominence of the issue, and proposed the creation of a rule of law unit, which would be established within the peacebuilding commission also recommended in the report.[34]

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[30] Rule of Law Report, para. 14-22, para. 27-37.
[31] Rule of Law Report, para. 17.
[32] Report of the Secretary-General, "In larger freedom: towards development, security and human rights for all", UN Doc. A/59/2005, 21 March 2005.
[33] Ib, para. 144.
[34] Ib., para. 137.

This brief overview demonstrated that the rule of law agenda has been guided for the most part by external considerations, rather than domestic demands, and that the notion that rule of law processes should be demand-driven, is a relatively recent principle in UN circles. These preliminary considerations bear particular importance in understanding the limitations of the current efforts to adopt strategies and follow processes that ensure genuine participation and ownership by the populations of post-conflict countries.

2 Enhancing the Legitimacy of Post-Conflict Rule of Law Programs at the Multilateral Level

In spite of the significant advances chartered in the last year at the United Nations, the rule of law agenda is still perceived as a Western initiative in which most developing countries find little interest. Apart from post-conflict countries, such as Sierra Leone or Afghanistan, most developing countries do not yet feel that this issue is of particular relevance to them. This is also due to the relative absence of General Assembly involvement in this area of UN policy and practice. The open debates organized by the Security Council on civilian crisis management and rule of law and transitional justice in the fall of 2004, highlighted some of the frustrations expressed by developing countries with respect to current international approaches. Brazil, which is hoping for representation as a permanent member of the Council, stated that

> *'the United Nations has failed the people of Haiti in the past by interpreting its role too strictly and focusing it excessively on security issues. This time, in parallel with efforts to establish a more secure environment, we need to launch a sustained programme to assist Haitian society in the political, social and economic areas. (…) I wish to emphasize the need to develop new and better tools for addressing the structural problems at the root of tensions that lead to violence and conflict. Poverty, disease, lack of opportunity and inequality are some of the causes of conflicts, particularly those within countries, which,*

regrettably, are becoming ever more prevalent on our agenda.'[35]

In the open debate on the rule of law, Brazil reiterated that it 'favoured a comprehensive approach that underscores the developmental nature of the rule of law in order to enhance the provision of support to countries for national capacity-building, a primary strategy in strengthening the rule of law.'[36] The representative of Benin expressed a similar concern:

'special attention should be given to the dialectical correlation between the rule of law and economic and social development. While the rule of law and a functioning justice system are essential to ensuring the sustainable development of post-conflict countries, the rule of law, however, can seem to be an unattainable luxury for countries that are so poor that most of their people are just managing to survive one day at a time.'

He then insisted on the 'importance of promoting economic and social rights as an integral part of the rule of law, not only in post-conflict countries but also in countries whose economy is clearly vulnerable.'[37]

The Peruvian representative also insisted on the importance of social marginalization:

'in almost all strategy studies undertaken nowadays, social marginalization is considered to be one of the main causes of civil war. Social marginalization means that political, ethnic, and religious differences evolve into extreme rivalries and hatred, leading to crimes against humanity, which is what we are trying to prevent. That is why the social marginalization dimension must be taken into account in the context of any comprehensive approach to the restoration of the rule of law

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[35] Security Council Ministerial Level Debate on Civilian aspects of conflict management and peace-building, UN Doc. S/PV.5041, 22 September 2004, p. 17.

[36] Security Council Open Debate on Justice and the rule of law: The United Nations Role, UN Doc. S/PV.5052, 6 October 2004, p. 14.

[37] Ib., p. 19; see also the statement of the representative of Uganda, UN Doc. S/PV.5052 (resumption 1), p. 10.

and justice in societies that have undergone serious civil conflicts.'[38]

While UN headquarters revolve for the most part around the work of the Security Council, the General Assembly has still important prerogatives, namely, in the budgetary and peacekeeping areas. A search on the General Assembly database reveals the limited involvement of the General Assembly in the rule of law components of conflict management policies: only 8 succinct resolutions mentioned earlier on strengthening the rule of law were adopted from 1993 to 2003, and focused most exclusively on the role of the UN High Commissioner for Human Rights. The 2003 Resolution was the first to highlight the role of the Office of the High Commissioner in the design of human rights components of UN peace operations including rule of law support.[39]

What has thus been lacking so far in the policy debate, according to some representatives of developing countries, is a stronger focus on the economic dimension of rule of law efforts, in particular in relation to social and economic rights. While the SG report sought to be even-handed in its approach, the actual practice of UN agencies reveals that their activities concentrate for the most part on criminal justice, transitional justice and judicial reform in the most conventional sense. While this is justifiable in the case of the judicial and criminal law advisory unit at DPKO, which is concerned with the re-establishment of internal security in the immediate aftermath of conflict, this focus is less evident in the case of OHCHR,[40] and even less so, in the case of the UNDP. Thus, the UNDP's Bureau for Crisis Prevention and Recovery has a team devoted to justice and security sector reform,[41] but its rule of

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[38] Ib. p. 29.

[39] UNGA Res.57/221, 27 February 2003.

[40] The additional report presented by the Secretary-General to the General Assembly on the activities of the Office of the High Commissioner for Human Rights in strengthening the rule of law, provided a list of technical assistance activities undertaken in a great number of countries. While most activities naturally focused on the strengthening of human rights institutions, the rest of the Office's interest focused on judicial and penal reform. UN Doc. A/59/402, 1 October 2004, pp. 8-17.

[41] *Justice and Security Sector Reform: BCPR's Programmatic Approach*, November 2002. The report refers to studies showing that 'security has become one of poor people's major

law portfolio does not seem to include programs directly addressing economic and social rights, which would seem to be at the heart of the UNDP's mandate on social and economic development.[42] The SG report itself notes that 'governance reform of the justice and security sector is now widely recognized as one of the essential conditions, *albeit not sufficient*,[43] for sustainable human development.'

The issue of housing, land and property issues is an excellent example of these shortcomings. Post-conflict environments are characterized by large-scale displacement, abandoned land and housing, illegal HLP occupation, overlapping claims, reduced housing stock and lack of HLP records. Simply put, if not addressed, PLH disputes have a real capability of jeopardizing post-conflict peacebuilding goals of national reconciliation and sustainable economic and social development. Yet, housing, land and property disputes have thus far been addressed on an *ad hoc* basis by the UNHCR and UN-Habitat in particular, and are not adequately integrated into post-conflict rule of law strategies. Apart from large scale restitution processes implemented most notoriously in Bosnia and Herzegovina and Kosovo, programs to improve access to HLP and tenure security, have not been given the priority that they deserve, with deleterious effects.

East Timor provides a dramatic example of the consequences of *ad hoc* approaches on long-term land, property and housing issues.[44] According to one practitioner, 'there was virtually no planned policy response to the relatively predictable effects on housing of widespread property destruction, mass population return, and the rapid influx of well-renumerated international personnel.'[45] While immediate measures to

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concerns and that during the 1990s, they experienced a decline in their sense of security.' p. 4.

[42] Note that BCPR has other activities focused on socio-economic development, but it is not clear whether these have integrated rule of law into their approaches.

[43] Emphasis added.

[44] see also Jean du Plessis, "Slow Start on a Long Journey: Land Restitution Issues in East Timor, 1999-2001" in Scott Leckie (ed) *Returning Home*: *Housing and Property Restitution Rights of Refugees and Displaced Persons*, pp. 143-4.

[45] Daniel Fitzpatrick, "Land Policy in post-conflict circumstances: some lessons from East Timor", UNHCR Working Papers, February 2002, p. 12.

temporarily allocate public and abandoned properties were taken,[46] the absence of a property or land claims commission[47] led to legal uncertainty around temporary allocation, and opened the way for the multiplication of competing claims and to social unrest.[48] In Afghanistan, which is also plagued with land and housing problems, in particular landlessness and conflict around grazing and pasture lands, piece-meal approaches have proved utterly insufficient. A land disputes court was created, but its limited remedies make it constitutionally questionable, and it has focused thus far on claims by wealthy returnees or claimants.[49] Advocates and experts have, therefore, recommended that policy makers and planners better address the linkages between refugee return, housing and land administration, elaborate template strategies for land and housing policies in peacebuilding contexts, and develop enhanced institutional coordination amongst international actors.[50] In sum, the UN should consider the adoption of rights-based PLH strategies as part of its post-conflict peacebuilding activities and, in particular, have these included in the mandate of the proposed UN Peacebuilding Commission or another body charged with post-conflict peacebuilding. At the very least, PLH should be better integrated into the planning, implementation and sequencing of peacebuilding activities undertaken by UN agencies, including the UNDP, UNHCR, UN-Habitat or FAO.

By granting more attention to these issues, UN agencies programs and departments involved in rule of law work would be able to directly address the criticisms formulated by many developing countries, which feel, rightly or wrongly, that the UN debate has been geared too much towards narrowly framed security, at the expense of social and economic development.

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[46] Ib. p. 7.

[47] According to Fitzpatrick, 'there is thus still in East Timor: no functioning land registry, no system to record or verify private land transactions, no effective regime to govern and legalize foreign interests in land, and no framework to determine competing claims to land', note 45 above, p. 15.

[48] Fitzpatrick, note 45 above, p. 5; Jean du Plessis, note 44 above, pp. 150-2 and 157, indicates that plans were drawn up to address long-term land, property and housing and included in the joint assessment mission, but these were never adopted by the Cabinet.

[49] Liz Alden Wiley, "Land and the Constitution", AREU Policy Brief, September 2003, p. 4.

[50] Daniel Fitzpatrick, note 45 above, p. 23.

3 Enhancing the Legitimacy of Rule of Law Programs in Post-Conflict Contexts

While the multilateral debate has been characterized by a polarization between security and development concerns, policy-makers and practitioners preoccupied with the nitty-gritty of programme implementation have tried to enhance the legitimacy of rule of law activities and embraced the concept of local ownership of rule of law reforms.[51] Yet, there is still a gulf between people's aspirations and the approaches and outcomes of rule of law programming. A set of case studies on justice and security sector reform showed the prevalence of approaches where 'neither everyday citizens nor civil society organizations figure prominently in these accounts of justice and security sector reform. Post-war JSSR efforts are generally state-initiated or externally directed 'top-down reforms to state institutions that have marginalized citizen input.'[52] This is particularly the case in post-conflict countries where societal institutions and processes have been profoundly disrupted if not destroyed. What is impressively consistent, is the lack of consistency and the erratic approaches of international actors in their efforts to involve local expert and local citizenry, with as one easily imagines, devastating effects. The cases of applicable law and judges' appointments in Kosovo are well known examples of these failures.[53]

The endorsement of local ownership by international agencies, while relatively recent, is the latest incarnation of concepts of 'participation' or 'local voices', which have for long been part of the development discourse. The concept appeared first in an OECD Document on 'Development Partnership in the new global context' adopted in 1995 that stated: 'for development to succeed, the people of the countries concerned must be the 'owners' of their policies and programmes.' Local ownership was then adopted as one of the themes of the OECD

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[51] Rule of Law Report, note 28 above, para. 17, *supra*, p. 5.
[52] C. T. Call, "Conclusions" in *Constructing Justice and Security After War*, on file with the author.
[53] Simon Chesterman, note 19 above, pp. 165-6.

DAC's manifesto.[54] The very concept of local ownership is loaded with ambiguity and is highly contentious. One basic problem is that the term 'ownership', in the meaning used in international jargon, is not easily translatable in other languages. The French version of the rule of law report translates 'ownership' as 'appropriation', a relatively new meaning given to this word, which may not be fully understood by most French readers. The Spanish version relies on a more conventional usage and translates the concept as 'el control y la dirreciòn locales', which seems to have a slightly narrower focus than ownership. More importantly, the concept allows international actors to elude some fundamental questions: who are the owners? The leaders who are probably partly responsible for the outbreak of violent conflict? Or the entire population? What is there to be owned? In this sense, and as analyzed eloquently by Simon Chesterman, the concept is particularly useful, inasmuch as it expresses a rhetorical commitment to something that is so ill-defined and uncertain that it can be used very conveniently and flexibly by international actors, but also by those members of post-conflict societies that are ready to manipulate political processes for their own benefit. Chesterman's analysis is particularly relevant, as it unpacks the various objectives that are generally thought to be included under the concept of local ownership. Six distinct objectives are identified by the author: responsiveness of international actors, consultation, participation, accountability, effective control and the ultimate objective, which is full sovereignty.[55] Based on this taxonomy, the following paragraphs will grant particular attention to consultation, participation, responsiveness and accountability.

Consultation and participation are probably the better known and most used concepts in peacebuilding practice, and are now regarded as essential processes in rule of law reforms.[56] Studies on popular perceptions and opinions based on various methodologies are becoming more common. A first category of studies focuses on local opinions

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[54] Simon Chesterman, "The Trope of Ownership", forthcoming in Agnès Hurwitz (ed.), *Rule of Law and Conflict Management: Towards Security, Development and Human Rights* p. 6.

[55] Ib., p. 9. The author notes that the main purpose of the classification is to highlight the multiple meanings of the concept, rather than offering a definite classification.

[56] Rule of Law Report, note 28 above, para.17, *supra*, p. 5.

regarding transitional justice mechanisms that were undertaken partly as a response to criticisms regarding the priority granted to transitional justice in international fora. The International Center for Transitional Justice commissioned such studies for East Timor and Iraq.[57] In Afghanistan, The Afghan Independent Human Rights Commission (AIHRC) recently issued a report which highlights the importance of justice for past human rights abuses in Afghan popular opinion.[58] The Asia Foundation has, on the other hand, examined popular perceptions on more broadly defined judicial reform in Indonesia and East Timor.[59] Although there is a growing body of quantitative studies on popular opinions about rule of law reforms, the question, of course, is whether the findings of these studies and their methodologies have been analyzed by international agencies and acted upon, if at all disseminated to them.

Participatory processes are also seen as an important tool in building greater legitimacy of rule of law reforms, but one is struck by the limited number of systematic research on participatory processes in the rule of law area. Development agencies have naturally been the first to develop

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[57] P. Pigou and P. Seils, *Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations*, International Center for Transitional Justice, August 2003; "Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction", *Occasional Paper Series,* International Center for Transitional Justice and the University of California Human Rights Center, May 2004; see also L. Fletcher and H. Weinstein, *Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors*, Berkeley Human Rights Center, 2000, possibly the first study of this kind, although focusing exclusively on legal professionals and with very critical findings about the administration of international justice; *The Experience of Local Actors in Peace-building, Reconstruction and the Establishment of the Rule of Law*, Conference Report from the Project on Justice in Times of Transition, March 2002, which was based on a gathering from representatives of post-conflict countries.

[58] The report was based on focus groups based interview with over 1000 interlocutors; Afghan Independent Human Rights Commission, *A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan*, January 2005.

[59] *Survey Report on Citizens' Perceptions of the Indonesian Justice Sector: Preliminary Findings and Recommendations*, prepared by the Asia Foundation and survey research from AC Nielson, August 2001; *Law and Justice in East Timor: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor*, USAID and Asia Foundation, February 2004; see also Foundation for Coexistence, *Ethnic Relations and Human Security in Eastern Sri Lanka*, A Report based on individual interviews, Asia Foundation, January 2004.

expertise in these mechanisms, with mixed results.[60] In Afghanistan, for instance, the UNDP and UN-Habitat established community forums based on the traditional 'shuras' models, which would provide advice on community matters. In Somalia, the support granted by internationals to councils of elders was misguided, inasmuch as elders in Somali clan systems have an advisory rather than leadership role.[61] In their paper on participatory intervention, Chopra and Hohe list four different approaches to participatory intervention, according to their respective levels of 'social engineering' which whilst slightly artificial, have the merit of bringing greater clarity on the different gradations of participatory interventions. *Reinvention*, which is recommended where the previous systems was abusive, completely dysfunctional or has disappeared as a result of the war, and which consists of creating a new local administration and will obviously require the greatest amount of international planning and resources. *Transformation* will entail gradual reforms and formalization of local administration. *Integration* of existing local administration into the state building process would be relevant where indigenous authorities have maintained their legitimacy and are far more functional than central structures. Finally, *reinforcement* applies where integration already exists, and will only work to support existing authorities, yet the authors warn that whilst this may seem at first the best option, it may not adequately address the roots of violence.[62]

All these different examples also illustrate the importance of anthropological knowledge in devising consultation and participatory processes and show that much remains to be done to integrate anthropological expertise in the analysis, planning and implementation of consultation and participatory processes, and have them adjusted to operational contexts.[63] Yet, anthropological understanding would not fully resolve the inherent ambivalence in international support to participatory approaches. Chopra and Hohe make the point that

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[60] See USAID and UNDP, fn 11 in Jarat Chopra and Tanja Hohe, "Participatory Intervention", *Global Governance,* No. 10, 2004, pp. 289-204.
[61] Ib., p. 294.
[62] Ib., pp. 299-303.
[63] Ib., pp. 296 and 298.

'approaches will also vary according to the degree of social change intended and the scale of time required to alter existing structures.'[64] There is, in other words, a basic contradiction between the commitment to local ownership and the 'social engineering project' undertaken by international actors. The authors acknowledge this, giving the example of East Timor, where 'resenting their loss of control as part of the logic of a program aimed at community empowerment, UN negotiators turned down twice the only project that had been funded at the time.'[65] Chesterman identifies another facet of this inherent tension of international interventions which endorse 'local ownership', even though they have become necessary as a result of the very failure of 'local owners' to govern their communities.[66]

The responsiveness and accountability of international actors would seem, in comparison, relatively easy to tackle, but this remains one of the most fundamental obstacles to the enhanced legitimacy of rule of law reforms. Lack of responsiveness can be partly attributed to the 'subculture of UN missions', as much of the staff still operates as diplomats, rather than as directly accountable civil servants.[67] The problem of responsiveness is then compounded by the absence of effective legal accountability mechanisms for breaches of international law and of the very principles that the mission is supposed to promote.[68] The recent sexual exploitation scandals in the Democratic Republic of Congo are the most egregious manifestations of a problem which is seriously undermining the outcomes of international interventions in post-conflict countries. DPKO policy paper on human trafficking and peacekeeping laid down a zero tolerance policy and advocated support rule of law policies that would prevent and counter human trafficking,[69] but it is the most recent UN report on sexual exploitation, which clearly highlighted the UN's fundamental institutional weaknesses that have

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[64] Ib., p. 293.
[65] Ib., p. 297.
[66] Simon Chesterman, note 19 above, p. 153.
[67] Ib., p. 290.
[68] On accountability mechanisms, see Simon Chesterman, note 19 above, pp. 146-153; D. Marshall and S. Inglis, "The Disempowerment of Human Rights–Based Justice in the United Nations Mission in Kosovo", *Harvard Human Rights Journal*, No. 16, 2003, pp. 96-146.
[69] "Human Trafficking and United Nations Peacekeeping", DPKO Policy Paper, March 2004.

enabled perpetrators to go unpunished. Besides the difficulty posed by the legal arrangements between the UN and troop-contributing countries, the report identified lacunae in the investigative capability of the organization, the organizational, managerial and common accountability mechanisms, and in disciplinary, individual financial, and criminal accountability.[70] However, the focus on sexual exploitation and similar serious crimes should not hide the fact that accountability mechanisms should apply at all levels and for any violation of disciplinary or legal standards of behaviour. There is definitely greater awareness than ever before of the extent of the problem, and the UN reform report of March 2005, devoted several paragraphs to the issue, emphasizing the importance of accountability and the need to overhaul the UN human resource system.[71]

A final set of remarks, which may be connected to responsiveness, participation and control revolves around the fundamental contradictions that exist between international agencies' commitment to 'local ownership' and the political agendas underlying international action in post-conflict countries. The purpose here is not to fall into a cultural relativist argument about Western concepts of human rights and democracy. Instead, the argument focuses on what some have appropriately called 'prophylactic' measures, which constitute an increasingly important component of rule of law programs undertaken by international agencies. As noted by Cooper and Pugh, 'prophylactic' control strategies are designed to address the problems that war and informal economies are perceived to export to the 'zones of peace' in the West – for example, drugs, asylum seekers and sex workers. However, rather than attempting to transform the state from within, the emphasis here is on creating a cordon sanitaire around the "unruly" world.'[72]

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[70] Comprehensive Review of the Whole Question of peacekeeping operations in all their aspects, UN Doc. A/59/710, 24 March 2005.

[71] Report of the Secretary-General, In larger freedom: towards development, security and human rights for all, UN Doc. A/59/2005, 21 March 2005, para. 188 and 191.

[72] Michael Pugh and Neil Cooper with Jonathan Goodhand, *War Economies in a Regional Context: Challenges and Transformation*, A Project of the International Peace Academy, Lynn Reinner Pub., 2004, p. 204.

'Prophylactic' programs are now common in the portfolios of bilateral and regional organizations. Thus, in Bosnia and Herzegovina, over 32 projects funded by the European Union in the field of justice and home affairs in 2003, 21 dealt with returnee processes including property legislation implementation, while 9 of these dealt with border control, asylum and migration, amounting to 91,980,000 million euros.[73] In one of the projects on support to BIH State border service, the document clearly states that the objective of the programme is 'to establish the rule of law in BiH by contributing to the fight against illegal migration, organised crime, smuggling, trafficking …'[74] Another program consists in assisting the competent Bosnian Ministry in adopting a comprehensive strategy in migration and asylum, drafting asylum and immigration legislation, training the police forces in 'migration procedures and asylum awareness', and assisting the competent ministry in setting-up a database for third country nationals. Regardless of the fact that one may consider these goals to be perfectly valid, the question of whether these programmes receive popular support and are 'locally owned' deserves to be raised.

Within the United Nations system, the recent focus on counter-terrorism has also impacted rule of law programming priorities in post-conflict countries. In accordance with UNSC Res. 1373, Member States have agreed to implement a series of measures to fight terrorism, including through effective border controls and controls on issuance of identity papers and travel documents, information exchange, etc.[75] A counter-terrorism committee was established as a subsidiary organ of the Council, to monitor the implementation of these measures.[76] Member States are expected to report to the committee on the progress made in the implementation of these policies, including the legislative and executive measures in place or contemplated to give effect to the resolution and the other efforts they are making in the areas covered by

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[73] Justice & Home Affairs, *Assistance Projects, Asylum, Migration, Border Management, Customs*, Bosnia and Herzegovina, 2003, on file with the author.
[74] Ib. p. 37.
[75] UNSC Res. 1373, 28 September 2001, para. 2 g) and 3b). See also para.4, which emphasizes the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms trafficking.
[76] Ib., para. 6.

the Resolution.[77] In this area as well, EU assistance is significant. In the assistance directory of the CTC, EU programmes for Mexico, Guatemala, Colombia, Panama and Peru are said to specifically target networks 'associated with terrorism' through judicial reform, support for the rule of law and promotion of good governance.[78] The mounting interest in a repressive law enforcement approach to rule of law reforms driven by external concerns on terrorism or illegal immigration, would not only seem to send the wrong signal to autocratic governments; it would antagonize the very 'reform constituencies' that the United Nations is supposed to embolden.

Conclusions

Rule of law reforms have now been formally recognized as an essential component of UN work in both the development realm and in the context of peace operations. At the operational level, there has undoubtedly been progress in ensuring more genuine consultation and participatory processes on rule of law reforms undertaken in peace missions. Yet, it is unlikely that this progress will bring about major improvements in the current context, primarily because some crucial elements for the enhanced legitimacy of rule of law reforms have been overlooked until now, that is, the responsiveness of international staff in every single area of their work, and its corollary, legal and disciplinary accountability. The presence of 'prophylactic' agendas in rule of law programmatic activities is another facet of the legitimacy problem and should alert us to the inherent limits of international interventions to reestablish full sovereignty in post-conflict countries. Further efforts to address more consistently the protection of social and economic rights,

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[77] Note by the Chairman on guidance for the submission of reports pursuant to paragraph 6 of Security Council Resolution 1373 (2001) of 28 September 2001, para. 1.2. http://www.un.org/Doc/sc/committees/1373/guide.htm, 1 April 2004.

[78] http://domino.un.org/ctc/CTCDirectory.nsf/0/, 1 April 2004.

for example through support for rule of law policies on housing, land and property issues, could possibly tip the scale towards a more positive perception of rule of law reforms by developing states and, most importantly, by the populations of postconflict countries.

Chapter 12

The Role of Humanitarian and Development Organisations in Relation to the Security Sector in Transition Situations

Meinrad Studer and Oliver Fox[1]

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1 The Context: Peacebuilding in Transition Situations

1.1 Background

The international humanitarian and development actors have come a long way since their strictly framed roles during the cold war. At that time, humanitarian organisations did not get involved in development, and development agencies and the International Financial Institutions stayed away from countries in conflict. Humanitarian organisations often kept all parties to conflict at arms length, including the security forces of the state authorities, relying on humanitarian law and principles for security.

The period since the end of the cold war has been characterised by a large number of internal conflicts and a shift in strategic paradigm from containment to peacebuilding. The idea that development organisations, and even more so humanitarian organisations, have a role to play in supporting the transition process emerged in the 1990s as the international community was looking for cost-effective and non-military ways to contain the growing number of internal conflicts[2]. It was recognised that the signing of a comprehensive peace accord between parties to internal conflicts was not enough to consolidate peace, with 40-50% of countries relapsing into conflict. The multi-dimensional character of peacebuilding, covering notably the humanitarian and development dimensions, has also been recognised. The recent report of the *High Level Panel on Threats, Challenges and Change* states: "Serious attention to the longer-term process of peacebuilding is critical: failure to invest adequately in peacebuilding increases the odds that a country will relapse into conflict[3]".

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[2] Overseas Development Institute, *Crisis state, humanitarian aid and the reconstruction of civilian governance,* Summary of presentations given at a round table event at the ODI, 5 June 2002.

[3] United Nations, *A more secure world: our shared responsibility*, Report of the High Level Panel on Threats, Challenges and Change, (A/59/565) 2 December 2004, p. 61.

The UN Secretary-General's *An Agenda for Peace* (1992)[4] and subsequent *Supplement to an Agenda for Peace* (1995)[5] defined the new concept of collective security that was to guide the work of the Organisation. In particular, in addition to the traditional modes of UN intervention it defined the novel concept of post-conflict peacebuilding, summarised in the *Agenda* as "…comprehensive efforts to identify and support structures, which will tend to consolidate peace and advance a sense of confidence and well being among people[6]".

The new relations that humanitarian and especially development agencies have with the security sector in transition situations should be seen in the context of the peace-building paradigm. Development agencies are now being tasked with helping to implement peace accords and to address the root causes of the conflict, including in the socio-economic, political and security fields. For the OECD Development Assistance Committee "development agencies now accept the need to work in and on conflicts rather than around them, and make peacebuilding the main focus when dealing with conflict situations[7]". Humanitarian organisations have also increasingly played a crisis management and peace-building role, through capacity-building activities and mediation for example.

The second lens through which one has to see the role of development organisations is through their role in democratisation and the building of "good governance" in relation to the security sector. The reform of the security sector has taken place in numerous states in the 1990s as part of a wave of democratisation and reforms, including in South-Eastern Europe, Latin America and East Asia.

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[4] UN Secretary-General, *An Agenda for Peace* Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992.

[5] UN Secretary-General, *Supplement to an Agenda for Peace* Position paper of the Secretary-General on the occasion of the Fiftieth Anniversary of the United Nations (A/50/60-S/1995/1) 3 January 1995.

[6] P. 32.

[7] OECD Development Assistance Committee, *Helping Prevent Violent Conflict*, Executive Summary, OECD, Paris, 1997/2001.

1.2   The Interdependence of Security and Development

Transition situations are characterised by the fragility of the peace and the often embryonic character of the national authorities. The priorities and objectives in this phase are security and the stabilisation of the peace.

There is now an international consensus among OECD countries that development, including security sector reform, cannot succeed without security and stability. In this respect, the OECD Development Assistance Committee uses the concept of "structural stability", which: "embraces the mutually reinforcing goals of social peace, respect for the rule of law and human rights, and social and economic development. It is supported by dynamic and representative political structures, including accountable security systems capable of managing change and resolving disputes through peaceful means[8]."

There is growing awareness in the international community of the interdependence between security and development, which has been echoed in the recent Report of the UN Secretary-General *In Larger Freedom* where he states:

> *"Not only are development, security and human rights all imperative; they also reinforce each other…Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights."[9]*

This is particularly true for transition situations, the special characteristics of which we will now examine.

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[8]   OECD Development Assistance Committee, *Helping Prevent Violent Conflict*, Executive Summary, OECD, Paris, 1997/2001.

[9]   UN Secretary-General, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General (A/59/2005), 21 March 2005.

1.3 The Special Characteristics of Transition Situations

In the UN, the challenges posed by transition situations have received greater attention in recent years. A joint UN Development Group (UNDG) / Executive Committee on Humanitarian Affairs (ECHA) Working Group published its report on the subject in February 2004. It defined transition as being:

> *"the period in a crisis when external assistance is most crucial in supporting or underpinning still fragile cease-fires or peace processes by helping to create the conditions for political stability, security, justice and social equity."[10]*

The term transition situation is not synonymous with the term post-conflict situation. In practice they often refer to similar realities on the ground but have different underlying assumptions. Specifically, the term post-conflict carries with it the assumption that one can distinctly separate out various phases of a conflict, and that there is a linear progression from conflict to peace. The UNDG/ECHA Working Group on Transition Issues puts it this way:

> *"While in the past, transition processes were largely regarded as sequential or a continuum from relief to development or even from conflict to peace, it is now increasingly recognised that these facets exist simultaneously, at varying levels of intensity, susceptibility of reversals, and opportunity."[11]*

The transition should be seen as a process whereby the various conflicts present in a society are gradually resolved through structural reforms and changes, and democratic modes of governance are put into place that encourage dialogue and permit non-violent change. In some cases, such as in relation to South-East European countries, the transition is multi-dimensional, involving democratic, socio-economic and security aspects.

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[10] United Nations, *Report of the UNDG/ECHA Working Group on Transition Issues*, February 2004, p. 6.
[11] United Nations, *Report of the UNDG/ECHA Working Group on Transition Issues*, February 2004, p. 6.

However, it must be noted that the scope of the transition concept has not received unanimous support. Specifically, the Group of 77 (G77) has criticised it for not encompassing post-natural disaster situations. This debate has served to highlight the contentious nature of the concept, touching as it does on the questions of political stability as well as on the sensitive question of state sovereignty.

Transition situations present particular challenges for development and humanitarian agencies, both in relation to the objectives they should pursue and to their *modus operandi*. One such challenge is the operational and funding "gap" that sometimes occurs between the relief and development phases of transition. The mandate of the UN Working Group mentioned above underlined in particular the need for the UN System to "address the funding and strategic planning gap between relief and development activities in the context of natural disasters and complex emergencies". This gap describes the period between the end of humanitarian activities and the beginning of development. Where there is a fragile peace, the existence of such a gap can undermine the transition process.

2   Contributions of Humanitarian and Development Organisations to the Security Sector

The approach and contributions of humanitarian and development organisations to the security sector are necessarily very varied, and depend on the context. Here we will concentrate on some of the key aspects of the relationship of humanitarian and development organisations to the security sector in the fragile peace context of transition, which covers several dimensions, including the operational security and access dimension and the direct and indirect contributions of these organisations to security sector reform.

2.1   *General Considerations*

One key dimension is the role that the security sector plays in providing security to humanitarian agencies in transition situations, where they are often still vulnerable to numerous threats and thus their relationship with the security sector may be ambiguous.

On the one hand, humanitarian organisations are often dependent on the local armed forces or militia to provide security for their activities and to guarantee them access to the beneficiaries of humanitarian aid. On the other hand, humanitarian organisations are often involved in upholding humanitarian law and other international standards in the security sector, including in the penitentiary sector.

The situation for development organisations is different in several respects as they generally operate in an already more secure environment and are thus less dependent on the security sector for security and access. Their activities in situations of transition generally cover the reform of governance structures, which often include the security sector. They usually operate within a political or policy framework elaborated in close cooperation with the national authorities.

Humanitarian organisations, on the other hand, operate independently of this framework and their goal is principally to save lives and livelihoods and to uphold relevant international humanitarian standards, especially through protection activities.

Where an outside intervention is taking place, such as by a UN peacekeeping force or a regional organisation, the situation for humanitarian organisations may become particularly challenging. The humanitarian *modus operandus* and principles, especially neutrality, require that these organisations avoid taking sides with any force that is or may become a party to the conflict, i.e. use force. This implies certain difficulties, because while often seeking to coordinate with the external force in supporting transition, they must keep a certain distance from all political and military authorities, including the host government and the

external force. The rule of thumb is generally that the 'hotter' a conflict, the greater the distance that must be kept.

2.2 *Contributions of Humanitarian Organisations*

Humanitarian organisations are not closely involved in the security sector reform agenda, but there are nevertheless some activities, which are worth highlighting because they do or can have a direct impact on this sector. For example, in several South-Eastern European countries the ICRC has been cooperating with the OSCE in relation to the security sector. The ICRC also undertakes actions to better regulate the armed forces through the national implementation of international humanitarian law (IHL), and has recently started several programmes for human rights training for security and police forces.

Innovative approaches such as "food-for-arms", where humanitarian food rations are distributed in exchange for the deposit of small arms and light weapons, have confirmed the relevance of targeted humanitarian interventions in this field. Still, work remains to be done to ensure that non-combatants do not feel disadvantaged for having not taken up arms, which can lead to increased tensions[12].

Another area of direct impact is in protection, which relates directly to the military, judicial, penal and human rights practice of the authorities. Some humanitarian organisations, such as the ICRC and the UNHCR, maintain close contacts with security sector agencies and institutions in undertaking their protection activities, based in particular on international humanitarian, human rights and refugee law. Protection activities essentially seek to uphold the rights of non-combatants, especially civilians, but also prisoners of war (POWs) and other detainees. The cooperation of the security sector is clearly indispensable if this goal is to be achieved. Many humanitarian agencies, including the UN Office for the Coordination of Humanitarian Affairs (OCHA), have

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[12] Lewis, Patricia, "Requirements for effective security sector reform", *Security sector reform: its relevance for conflict prevention, peace building and development*, Joint UNOG-DCAF seminar, DCAF, Geneva, 2003.

stepped up their advocacy efforts in relation to the security sector in recent years in view of ensuring better protection for civilians, including refugees and internally displaced persons, often with a focus on vulnerable groups such as children, the elderly or in some cases, women.

The direct impact of humanitarian organisations on the security sector is complemented by the indirect impact of humanitarian action on the environment in which the transition takes place. Humanitarian action may have a pacifying and stabilising role. In addition, many humanitarian organisations undertake "environment-building", which, in complement to the core tasks of humanitarian protection and assistance, seeks to build up a culture and institutions likely to support peace-building efforts. Together, the wide spectrum of humanitarian activities can contribute to creating the conditions for reduced tensions and may thus lay the groundwork for a successful security sector reform process.

This indirect role of humanitarian action relates to the provision of humanitarian aid in response to vital needs. The struggle for access to life-sustaining resources, such as water and fertile land, contributes to perilous tensions in many areas, especially if there are no effective political mechanisms to overcome them.

As the Working Group on Transition has noted "political stability and security cannot be achieved, let alone sustained, without tangible improvements in the basic conditions of people's lives, in contrast to their situation during or even before conflict"[13]. Humanitarian action does not seek to resolve these underlying structural problems, but it can act as a palliative by temporarily addressing shortages in access to resources that are essential to save lives and livelihoods. This can in turn reduce existing tensions and create a sense of hope among beneficiaries[14] and a momentum towards a political resolution of the crisis.

A second dimension of indirect action is in the field of protection. It is now recognised that humanitarian organisations, through the protection

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[13] UN, "Report of the UNDG/ECHA Working Group on Transition Issues", February 2004.
[14] See CAP launch 2003 under the theme: "Hope for the future".

activities, contribute to creating an environment favourable to respect for human rights and humanitarian law. In doing so, they address sources of grievance and tensions and help create the right conditions for transition peacebuilding.

The protection activities carried out by humanitarian organisations are very varied: The UNHCR has a mandate for the protection and reintegration of refugees. The ICRC has a mandate to protect non-combatants including especially civilians but also prisoners of war (POWs) and political detainees. UNICEF has a special mandate to protect children. A large number of specialised NGOs play a protection role in a wide range of issue areas, such as mine awareness, unaccompanied minors, and persons missing due to conflict.

A third dimension is social-psychological, since rehabilitation and reconstruction after a violent conflict are not only confined to the physical structures, but also include social structures in general[15]. The activities of humanitarian organisations can help to build up trust between warring communities and to facilitate the reconciliation process. The actions of humanitarian organisations in this field are quite diverse, and the following examples are designed to illustrate this point.

For one thing, physical reconstruction projects can have a positive social effect if it creates a new rationale and opportunities for cooperation among and between communities. Recently, the United Nations has sought to build on the positive team-building and social effects of sport to contribute to peacebuilding. The UN Secretary-General has named a Special Adviser on Sport for Development and Peace, Mr Adolf Ogi from Switzerland, to advance this agenda worldwide.

Other activities support reconciliation and the psychological well being of a population. In particular, it has been recognised that feelings of grief and revenge fuel violent conflict. Activities that help the grieving process and channel feelings of anger and revenge into constructive actions thus contribute to the peace-building process. The ICRC has a

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[15] Swiss Agency for Development and Cooperation, *Peacebuilding: SDC Guidelines,* Bern, 2003.

tracing mandate whereby it seeks to reunite family members that have lost trace of each other. Reunited families are better able to cope with the trauma of armed conflict. Similarly, the ICRC transmits Red Cross messages from prisoners and detainees to family and friends. Many humanitarian organisations integrate a psychological element into their activities, and provide counselling for adults and children affected by conflict and related traumatic experiences. All these activities lay the groundwork for reconciliation, peacebuilding and ultimately for successful security sector reform.

2.3   Contributions of Development Organisations

The international conflict prevention and peacebuilding agendas have been instrumental in raising awareness among the development community and in promoting the exploration of new areas of cooperation with other actors. The reform of the security sector is one such area which is increasingly becoming a mainstream topic of the international development agenda as pointed out by the OECD Development Assistance Committee:

> *"Helping developing countries build legitimate and accountable systems of security – in defence, police, judicial and penal systems – has become a high priority, including for external partners, even though there are risks involved. Security system reform should be treated as a normal part of work on good governance."[16]*

This view is supported by the recent report of the High Level Panel on Threats, which sets out the view that key aspects of SSR, such as police and judicial reform, should be considered as central tasks of peacebuilding:

> *"Along with establishing security, the core task of peacebuilding is to build effective public institutions that,*

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[16] OECD Development Assistance Committee, *Helping Prevent Violent Conflict*, Executive Summary, OECD, Paris, 1997/2001.

through negotiations with civil society, can establish a consensual framework for governing within the rule of law. Relatively cheap investments in civilian security through police, judicial and rule-of-law reform, local capacity building for human rights and reconciliation, and local capacity-building for public sector service delivery can greatly benefit long-term peacebuilding. This should be reflected in the policies of the United Nations, international financial institutions and donors, and should be given priority in long-term policy and funding."[17]

The UNDP and the World Bank are two of the key international development players that are involved in supporting SSR in transition situations, although in their official terminology these organisations do not usually refer to SSR as such. Rather, their objectives and activities are framed in the terms of sustainable (human) development, economic growth, and poverty reduction, but in practice, many of their can be considered as contributing to the SSR agenda *de facto*, especially since there is significant convergence between their respective ultimate goals.

The UNDP plays a role primarily through its work on governance and institution-building (e.g. reform of the civil police and judiciary etc.) and peacebuilding (e.g. DDR). As the main UN operational development agency, UNDP has both the capacity and legitimacy to support SSR in transition situations. The creation of a well-trained and accountable civilian police force has been one of the key focus areas of the agency's activities in relation to the security sector in transition situations[18]. Programmes in this field have been carried out by UNDP in, *inter alia*, Haiti, El Salvador and Cambodia.

The reform of the police force is a sensitive issue in many transition situations insofar as the force has often been directly or indirectly

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[17] United Nations, *A more secure world: our shared responsibility*, Report of the High Level Panel on Threats Challenges and Change, (A/59/565) 2 December 2004, p. 62.

[18] UNDP, *Governance in Post-conflict Countries*, downloaded the 9 March 2005 from the UNDP website at: http://magnet.undp.org/docs/crisis/monograph /monograph.htm.

involved in the armed conflict, the repression of civil unrest or implicated in human rights violations. Changing the nature of such a force is therefore no easy business. The programme must also often seek to overcome the deep-rooted distrust of the population if the transition is to be successful. UNDP is often faced with the following dilemma:

> *"…strengthening the police force is complicated by the fact that in a number of countries, abuses of human rights, political allegiances, and repression by the police force constituted one of the most egregious catalysts resulting in the escalation of armed conflict in the first instance. Furthermore, in most countries emerging from a long history of internal conflict and war, internal security has, as a rule, been transferred into the purview of the armed forces. The latter in most instances has been directly responsible for some of the most heinous abuses of human rights."[19]*

In other cases, the UNDP is faced with a situation where the almost complete failure of the state or its break-up into parts leaves the police force virtually non-existent at the national level. Such was the case in Somalia after its break-up, where the UNDP initially focused its activities on basic capacity-building and training activities for the police. Subsequent assistance was for the development of curricula, teaching materials and the training of police trainers in a wide range of police skills and activities, including management and human rights.

However, it is essential to highlight that sector-specific reforms such as of the police may have limited success if they do not form part of a wider strategy to transform a country's institutions and promote good governance. On this point, the UNDP concludes that:

> *"Experience has shown that implementation of programmes for strengthening civil police forces, improvement of jails; training of lawyers and strengthening the judiciary are best handled as a package. Each is dependent on the other for success and all*

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[19] UNDP, *Governance in Post-conflict Countries*, downloaded the 9 March 2005 from the UNDP website at: http://magnet.undp.org/docs/crisis/monograph/monograph.htm, p. 32.

must be in place to ensure smooth functioning of the entire system of law and order in the country. The current level of fragmentation of UNDP projects in this area should be avoided as effectiveness is severely compromised."[20]

The UNDP and the World Bank play a leading role in the implementation of programmes related to disarmament, demobilisation, rehabilitation and reintegration (DDRR) of combatants. DDRR is a core theme of security sector reform insofar as it contributes to the processes of military "right-sizing" and, equally importantly, to demilitarisation of a country's culture and economy. According to the UNDP, this is one of the most challenging priorities in transition situations[21]. Since 1990 major post-war demobilisations have taken place in a wide range of countries: Bosnia and Herzegovina, El Salvador, Eritrea, Ethiopia, Guatemala, Haiti, Mozambique, Nicaragua, Sierra Leone and Uganda. Such efforts require as much participation as possible so that affected groups take ownership of the reforms.

Apparently paradoxically, the UNDP has underlined the problematic nature of such programmes:

"Although often viewed as an integral part of a transition to stability, law and order, demobilisation of combatants should be accorded relatively low priority by UNDP as so many critical variables remain outside the organisation's control. Much depends on the effectiveness of peacekeeping and progress in political reconciliation. In practice, the success rate of demobilisation programmes remains low.

Furthermore, once political agreement is reached, actual demilitarisation and demobilisation is exceedingly difficult as few income generating activities can sufficiently compensate ex-combatants who have known no other profession since their

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[20] UNDP, *Governance in Post-conflict Countries*, downloaded the 9 March 2005 from the UNDP website at: http://magnet.undp.org/docs/crisis/monograph/monograph.htm pp. 62-3.

[21] UNDP, *Human Development Report 2002: Deepening democracy in a fragmented world*, Oxford University Press, New York and London, 2002.

childhood years for the loss of their weapons. Indeed, demobilisation can paradoxically contribute significantly to a deterioration of law and order. The risk of failure under such programmes is therefore extremely high. Devoting funds to other, central aspects of governance may offset the negative effects to demobilise the military."[22]

This example serves to highlight the complexity of the relationships between the various aspects of the SSR agenda and the overall dynamics of peacebuilding. It shows that individual activities such as DDR can in fact undermine peacebuilding in specific cases. Therefore it is essential that SSR activities of development organisations be approached from a holistic perspective in relation to peacebuilding, which incorporates a conflict-impact analysis.

The World Bank recognizes that "war is development in reverse" and views conflict prevention and post-conflict reconstruction as "central to its mission of poverty reduction[23]". The Bank has widened its focus from mainly rebuilding infrastructure. It now plays a role in at least three areas directly related to SSR: the creation of effective and accountable institutions; clearing land mines; and DDR. In addition to this, it often also plays a crucial role in creating the right institutional, political and socio-economic conditions for SSR, through support for projects and programmes in the fields of good governance, institution-building, civil society capacity-building and macro-economic policy. One of the main instruments of pressure at its disposal, with which it can push through reforms, is aid conditionality.

The Swiss Agency for Development and Cooperation (SDC), Switzerland's international cooperation agency within the Swiss Foreign Ministry, supports security sector reform in transition situations in two main ways: through projects and programmes targeted directly at security sector reform, on the one hand, and through measures that seek

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[22] UNDP, *Governance in Post-conflict Countries*, downloaded the 9 March 2005 from the UNDP website at: http://magnet.undp.org/docs/crisis/monograph/monograph.htm, p. 63.

[23] World Bank, *Post-conflict: building peace through development* World Bank website (www.worldbank.org/) , downloaded the 9 April 2005.

to create the right environment and governance structures for reform to be successful, on the other hand.

In addition to its direct involvement in reforming the security sector, the SDC seeks to support the creation of the right environment for security sector reform. Security sector reform is closely linked to the overall transition to peace, sustainable development, democracy and good governance. Therefore it follows that actions to facilitate the transition to peace will support the cause of security sector reform.

Good governance is an essential precondition for security sector reform and a focus area of many development actors. Countries shaken by crises have to take an arduous route from a long-lasting and undemocratic state of war to a democratic peacebuilding process. The aim is not to copy Western democracies, but to reinforce local groups that can produce structural stability and security, allowing conflicting interests to be resolved by civil means and with respect for human rights and dignity.

4   Conclusions

Recent years have seen a shift in the way the international community thinks about the relationship between security and development. Specifically, it is now recognised that security and sustainable development are closely interlinked and mutually reinforcing.

One consequence of this new thinking has been the increasing involvement of development organisations in peacebuilding activities. For not only has it been recognised, within the UN and the OECD, for example, that development interventions are essential to support the transition to peace, but of course development organisations have also come to the conclusion that sustainable development and economic growth are not possible without peace and security.

A similar logic has been at work with regards to humanitarian organisations, many of which, notwithstanding their specific *modus operandi* and adherence to humanitarian principles, have also tried to

incorporate a peacebuilding and development perspective into their work.

At the same time, experience has shown, in many contexts around the world such as Bosnia-Herzegovina, Cambodia and El Salvador, that security sector reform should be considered a central aspect of transition peacebuilding.

On this basis, development organisations and agencies, notably the UNDP and the World Bank, have integrated substantial elements of the security sector reform agenda into their policies and activities, although their explicit objectives are usually framed in development-economic terms. One of the main entry points for the development actors has been work on good governance, which is also a primary objective of the SSR agenda. But their implication has also developed in an *ad hoc* and pragmatic manner, with interventions in a wide range of security-sector related fields such as DDR. It can be expected that this trend will continue in the future, and also that the coordination of the development actors with the other peacebuilding players will be strengthened, such as through the use of the World Bank Transition Support Strategies (TSS).

Humanitarian organisations have generally maintained a somewhat ambiguous relationship with the security sector. Key security sector actors, such as the armed forces and the police, are responsible for guaranteeing their security, safety and access to beneficiary populations in often volatile environment of transition situations. But at the same time, these actors may well be parties to the conflict, and responsible for violations of international humanitarian and human rights law, and so are prime targets of the persuasion, advocacy, monitoring activities of these organisations. Still, despite this state of affairs, the action of humanitarian organisations often makes a small contribution to the SSR agenda, either directly, by upholding standards in the penitentiary system for example, or indirectly, through its tension-reducing impact and wide-ranging role in environment- and capacity-building.

Overall, it is possible to evaluate positively the current involvement of humanitarian and development organisations in contributing to the SSR

agenda in the context of transition peacebuilding. However, despite the positive role that these organisations may play, peacebuilding is ultimately a political process that is beyond the control of outside parties. Humanitarian and development organisations should not be asked to act as a substitute for the necessary reconciliation process between the parties to the conflict.

Similarly, the SSR agenda itself must also be owned by the national authorities and by the population, and must be adapted to the national and local context. There is no universal model that will fit all cases. For all the above reasons, the fields in which humanitarian and development organisations may be most effective are in reducing tensions by meeting priority humanitarian needs; promoting good governance, the rule of law and respect for human rights; and through capacity- and institution-building. More work needs to be done in terms of coordinating these activities within the overall strategic framework of peacebuilding, which now often takes the form of a UN integrated mission.

We should therefore continue to work towards further defining their role in this field and towards improving the relevant coordination policies and mechanisms to optimise their efficiency.

Lessons Learned

Conference Report

After Intervention: Public Security Management in Post-Conflict Societies – from Intervention to Sustainable Local Ownership

Eirin Mobekk

About the Report

This report is based on insights and discussions shared at an international author's workshop of the PfP Consortium, by the Security Sector Reform Working Group, entitled *After Intervention: Public Security Management in Post-Conflict Societies – From Intervention to Sustainable Local Ownership* organised by the Democratic Control of Armed Forces (DCAF), Geneva and hosted by the Latvian Ministry of Defense in Riga, Latvia 14-16 April 2005. It also draws on views expressed in papers submitted to a first conference on the same topic held in Budapest in Fall 2004.

The aim of the project was to look in detail at local ownership of post-conflict reconstruction processes after intervention, in particular security sector reform and public security management. The project sought to identify the key problems with promoting and establishing local ownership, the inherent weaknesses of the international interveners in promoting locally owned processes of reform, the difficulties within a post-conflict society in the immediate aftermath of war to cope with transitional issues and identifying potential solutions to enhancing local ownership of security sector reform and public security management.

Security sector reform (SSR) is a primary objective in all transitional post-conflict societies and after an intervention. Establishing accountable public security forces, oversight mechanisms, a transparent judicial system, a process of justice and public management of these systems are part of an overall objective to ensure stability and sustainable peace. It has long been acknowledged that without such reform conflict will be renewed. SSR will, however, only be truly successful if local ownership by the local stakeholders is at the core of these processes.

This report draws on and reflects the discussions and also the papers submitted on several key issues. It, in particular, reflects thoughts regarding the problematic nature of the concept of local ownership, and how its many uses may weaken its applicability; the legitimacy of an international mission, the new government and accountability in a post-conflict society and how this affects local ownership and hence the potential outcomes of security sector reform, which in turn affects stability and security; it emphasises the issues of transitional justice, how crucial these processes are in a transitional society and how the role of ownership is central to their success; it discusses emerging law systems and judicial reform, their importance for future security, potential transferable international norms and the problems of a model judicial system; it looks at local ownership in relation to the processes of disarmament, demobilisation and reintegration, how local capacity and capabilities may limit local ownership, and the frequent lack of political will to conduct such processes; finally, six cases are very briefly reviewed to underline the change in emphasis on local ownership through the years.

The views expressed are those of the author and do not necessarily reflect the views or opinions of the project participants or those of the authors of the book's chapters.

Contents

1   Local Ownership

Although the significant increase in the number of interventions in war-torn societies by the international community in the 1990s had an ever increasing focus on security sector reform and management of public security forces, it has only been more recently that 'local ownership' as a concept has received attention in policy and academic circles. Reform of the security sectors in interventions has been based on a westernised view of how such reform should take place and be conducted, and the objectives have frequently been established to meet donor requirements. However, since the late nineties and early part of this century more and more emphasis has been placed on the importance of local ownership of these processes. This trend began in the NGO communities who argued that without local ownership of reform of public security agencies, such as the military, police, intelligence agencies, and others that are encompassed within the notion of security sector reform, it cannot be successful. It is now commonly accepted that the notion of local ownership is something that must be promoted in international interventions and post-conflict reconstruction, including security sector reform. The Secretary General of the United Nations stated in relation to rule of law and transitional justice that *'we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.'*[1] It has also been emphasised that '*Along with establishing security, the core task of peacebuilding is to build effective public institutions that, through negotiations with civil society, can establish a consensual framework for governing within the rule of law.*'[2] Moreover, the UNDP has acknowledged that their programmes have been hampered by not promoting local ownership and

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[1]   Secretary General Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616/ 3 August 2004, para. 17. Local ownership was also significantly underlined in the Presidential Statement, Security Council stresses importance, urgency of restoring rule of law in post-conflict societies, Security Council 5052nd Meeting, SC/8209, Press Release, 6 October 2004.

[2]   UN Report of the High Level Panel on Threats, Challenges and Change, *A More Secure World Our Shared Responsibility,* A/59/565, 2 December 2004, p. 64.

that local ownership is crucial for the success of a justice and security sector reform programme.[3]

Seemingly, there is, therefore, a consensus on the virtues of local ownership. However, there are vast difficulties with and differences in the definition of the concept, glaring operational difficulties in implementing it, issues regarding at what stage it should be implemented and questions as to how and whether in certain circumstances it can be. In addition, local ownership must not only be implemented, but it must also be sustainable. There are many reasons for promoting local ownership, but in relation to SSR it is crucial because SSR is a highly political process and it deals with protection of a state's sovereignty. In addition, over forty per cent of all post-conflict societies return to conflict within a span of five years – local ownership of SSR might assist in reducing this deplorable statistic. Yet, so far, there has been more rhetoric than implementation.

Although local ownership and its importance has been emphasised for some time now there has been very little agreement over these issues, namely what exactly local ownership means, what it can be under different circumstances, how the international community should implement it in a post-conflict society after an intervention, if indeed it is something that can be 'implemented', whether focus should be on capacity building immediately after conflict so as to ensure local ownership, at what stage local ownership should take place or be induced, does the effect of local ownership automatically become reduced if it arises later on during the intervention, or, should it be a priority from the outset of the intervention, and is this in all cases a possibility. These are only some of the issues connected with local ownership, some of which will be addressed in this report.

Local ownership will be discussed in this report in relation to four processes. First, is the question of legitimate authority of both the intervening power, in this case the United Nations, and that of the newly

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[3] UNDP, *Justice and Security Sector Reform*, BCPR's Programmic Approach, November 2002, pp. 13-14.

instituted local government. Second, is the potential for and the actual problems inherent in local ownership of transitional justice mechanisms and the positive and negative aspects of this particular conundrum. Third, is the need for local ownership and the difficulties in achieving this, particularly in the context of the rule of law and emerging law systems. Fourth, is the issue of disarmament, demobilisation and reintegration (DDR) and how this needs significantly more local ownership to succeed and have continued sustainability after the end of the intervention. Lastly, six cases are very briefly mentioned encompassing the interventions from the early nineties until the present day, underlining the role of local ownership in these operations and how it has developed.

1.1   What is Local Ownership?

Local ownership lacks definitional clarity as applied by policy makers, academics and the United Nations. As with too many concepts in the security arena, it can be interpreted to mean a host of different things. It can be both an outcome and a process.[4] It can, in practice, mean anything from information meetings by the interveners to in-depth consultations and locals and interveners working side by side. It will also, inevitably, differ from country to country and circumstance. Nevertheless, local ownership is, to one extent, about political control over the post-conflict reconstruction processes, the ability to influence the political decisions made about SSR and reconstruction.[5] Local ownership only truly exists if the domestic stakeholders believe that SSR and the reconstruction processes are theirs. What must not be overlooked in the discussions of conceptual ambiguity is that the beneficiary of local ownership is supposed to be the local population.

Despite its inherent vagueness, local ownership is broadly viewed as a process in which, after an intervention, the 'locals' take charge of and

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[4]   See e.g. Annika Hansen, "*Building Local Capacity for Maintaining Public Security*", DCAF, 2005, forthcoming.

[5]   See e.g. Edward Rees, "Public Security Management and Peace Operations. Kosovo and UNMIK: Neverland", DCAF, 2005, forthcoming.

'own' the different processes of reform and change in the post-conflict transitional society. Yet, there are several problems with even this generalised and simplified idea of local ownership. In particular, there is the notion of the 'locals' and who they are. To view them as one coherent mass with an identical view of such issues as security sector reform, transitional justice and DDR is a fallacy and increases the problems of local ownership.[6] It must be acknowledged that there are different groups of 'locals' with distinctively different views on these issues. There are often vast differences of opinion within a population regarding how certain groups would like to structure security sector reform and public security management operations. There will always be a select few 'locals' that the intervening forces will, particularly at the beginning of an operation, work with. These are not necessarily representatives of the majority of the population. They might not promote what the majority of the population considers to be necessary with respect to reform. In the majority of the operations to date, insofar as 'locals' go and of only the few who have been consulted, they were not necessarily representative or legitimate. There is also a need to accept that 'locals' in local ownership can mean the very people that the interveners do not necessarily like or want to co-operate with, but who are viewed differently by the population and may have legitimacy among local communities.

1.2   Assumptions

Local ownership is further complicated by the numerous assumptions it is based on.[7] As indicated above, it is assumed that 'locals' refers to a homogeneous mass with one uniform opinion as to the needs of post-conflict reconstruction and reform. Moreover, it is built on the assumption that locals have the capacity to locally own such processes from the outset. However, more often than not, there is an absence of capacity on many levels in societies that have long suffered from conflict and war. There is an absence of ability to transform the security sector in

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[6]   See also Eric Scheye and Gordon Peake, "Unknotting Local Ownership", DCAF, 2005, forthcoming.
[7]   See also Scheye and Peake, "Unknotting", 2005.

a meaningful way without first having that capacity built up by the international community. It also builds on an assumption that the locals have been entrusted with the ownership of reconstruction. This legitimacy may not be existent or it can take some time before it can be created. Moreover, the public perception of reform might be substantially different to what is assumed by the international community. There can be resistance to reform among the public, particularly if it means considerable cut-backs and higher unemployment or if there is a lack of understanding as to what reform might bring about. In addition, there are often difficulties in instituting reform because of the institutional opposition to reform itself. There is, in any organisation, an in-built self-preservation mechanism, which means opposition to change and reform. There must, therefore, be incentives for change, assuming that there is an unlimited willingness to reform is unfounded at best. All these create a more complex environment for local ownership and must be taken into consideration when debating the issue.

1.3   How Can it Be 'Implemented'?

Although local ownership is recognised as having a high value, strategies for 'implementation' or supporting local ownership have been vague and habitually weak. They have been applied in an ad hoc manner and, more or less, on a trial and error basis. There has been no consistency. There are no UN strategies for supporting local ownership, although there is a consensus that it must take place during a peace operation, but how it can and should be implemented has thus far not been sufficiently addressed. One main reason for the frequently observed avoidance of local ownership is that proper implementation would mean that the processes of SSR and reconstruction would take a significantly longer time and be much more complicated. Consequently, as soon as local ownership is taken seriously, the timeframe increases significantly. Hence, ignoring local demands entails finishing the reform process quicker.

Local ownership came particularly to the fore with the UN operations in Kosovo and East Timor, but in both these operations local ownership was ad hoc. In East Timor, local ownership, although emphasised from the very beginning, was not in actuality introduced until a later stage. East Timorese counterparts were gradually introduced in all the positions that the UN personnel were holding and they began working together to build capacity among them. Then the East Timorese took over and the UN personnel continued their work in supporting roles. There was, however, no clear strategy as to when this was to take place and it differed in the various sectors and in the different geographical areas. In some places, it worked well; in others it did not. It tended to depend more on the type of personalities that were working together, rather than on any strategy aimed at coherent local ownership of the process of post-conflict reconstruction.

1.4   Transfer of Authority

Timing is of crucial importance to local ownership. At what stage is it better to start such a process? Local ownership is in part a transfer of authority from the intervening forces to that of the local government and institutions.[8] It is these transfer mechanisms that have not been sufficiently established and managed. A transfer of authority from the interveners to the local authorities cannot take place with a high potential for success unless certain targets have been met by the international community. There are often too many factors that hinder the ability to self-reform. A number of these will need to be addressed primarily at the start by the international community. Hence, a gradual and phased transfer of authority is, in many cases, most appropriate.

It is crucial that local ownership does not become an exit point by which the international community transfers its responsibility to the local owners. It must not be used as an abdication of responsibility. Local owners must be part of the process from the start, although this means a longer and more complicated process of SSR for the interveners.

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[8]   Rees, "Public".

Moreover, local ownership should not become window dressing, where the locals are consulted but their views and recommendations are not listened to.

A complicating factor is that there is a contradiction present in the emphasis on local ownership and the transfer of authority, namely, that to be successful security sector reform must be locally owned. However, it is often the actions of the local owners that explains why there is a need for an intervention and reform of security forces to begin with.[9] In certain missions, this has meant that public security management has been controlled by the perpetrators of the conflict, particularly if there has been unwillingness to take charge of public security by the intervening forces. Therefore, building up capacity to be able to transfer authority to the local owners is crucial. This is not to suggest that they should not take part in the decision-making processes of SSR. However, due to the transitional state of a post-conflict society and, particularly, the lack of legitimacy of many of the actors and the absence of capacity to conduct such efforts, transferring complete authority to local owners early on in the intervention may be counterproductive. This is not recommending non-involvement of locals from the very early stages, but it is underlining that there might not be the capacity for the owners to fully own these processes at that stage. Moreover, it means that the international intervener must re-evaluate certain aspects of the assumptions discussed above and deal with all types of local owners irrespectively if they find them to be palatable or not.

Transfer mechanisms must be established and strategies elaborated so that after a certain time, the timeframe will depend upon the context and circumstances of the particular mission and local authority can be fully transferred to the representatives of the local population. The ad hoc method of relating to local ownership must be avoided, since it reduces the chances of successful SSR.

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[9]   Scheye and Peake, "Unknotting".

1.5   Sustainability

Sustainability is the key to all reform and reconstruction processes. Establishing structures, mechanisms and institutions that can be sustained after the withdrawal of the international community is essential for successful reform. The systems that are left behind after a peace operation may be unsustainable without significant donor support which, inevitably, will wane and when it does reform will fail. Local ownership heightens the potential that sustainable structures are put in place. Few external actors will know what can be sustained as well as a local actor. Establishing elaborate, for example, prison systems or oversight mechanisms which cannot be supported locally after withdrawal is futile. Reform must reflect the realities of the particular country – this might not quite measure up to the standards expected in a number of donor countries, but only systems that can function without international donor funding must be established. Dependency must be avoided. Creating institutions without representation from the local population reduces the chances of sustainability.

Even with considerable local ownership during the reform process there is a chance that systems are put in place that cannot be sustained. It should not be assumed that because choices are made by locals that they are per definition sustainable or appropriate. One reason for this is that local owners may desire a type of reform that can only be achieved with considerable resources which, at the time of and during an intervention, is present. They may see this as an opportunity to obtain a certain level of development, for example, in the penal system. This also increases the importance of the structures and organisations that are being reformed, for example, by making them very reliant on specific advanced technologies. There may be a hope or expectation of continued donor funding, because certain systems have been adopted. Nevertheless, in general, the more local input into reform, the less chance there is of creating unsustainable structures.

2   Legitimate Authority

To achieve the objectives of any intervention, including security sector reform and public security forces management, the intervening power and the new local regime must possess legitimate authority. This is crucial not only in relation to succeeding with the process of reconstruction, but also in establishing a viable process of local ownership, which then in turn can create sustainable reform processes. There are several crucial factors in establishing and obtaining legitimate authority in a post-conflict society, key among them is accountability.

2.1   UN Legitimacy

In any UN operation, the UN will have legitimacy insofar as it has a Security Council mandate to proceed with the operation. However, it is not legitimacy in the eyes of the international community that is discussed here, but rather legitimacy as seen by the local population in the mission country.

A UN mandate will not automatically infer legitimacy upon the interveners as viewed by the public. Crucially, legitimacy of the international presence is often tightly connected with the co-operation partners of the interveners. Often there is an assumption that there is a vacuum of authority when the UN intervenes, particularly when referring to so-called 'failed' states. However, it is important to remember that there is rarely, if ever, a vacuum of authority in any state. There are always actors with authority and those who possess some type of legitimacy. The problem is that, repeatedly, some of these actors are ignored by the international community because they might not have international legitimacy; hence it is viewed as if there was a vacuum. It is, however, crucial that these groups of authority, if they have local legitimacy are brought into the process of reform and reconstruction, if not they can undermine the efforts and changes that the international community are trying to bring about.

Moreover, if these groups are not consulted, not only can they become an obstruction to the reform process, but the UN can lose legitimacy because it is only consulting with a few select members of the local community. A tendency in UN operations has been that the mission consults with only a certain part of the population. One UN representative stated that in a peace operation, the locals were more frequently avoided than consulted.[10] This was, particularly, in relation to non-political elites. The consultation with locals was for a long time, and to some extent still is based on a random choice of who they are able to speak with, feel comfortable dealing with and who seem to have the most capacity.[11] Capacity, however, does neither necessarily translate into the most representative co-operation partners, nor to the interlocutors who have legitimacy. The chosen interlocutors of the international community may not have broad legitimacy amongst the population. Hence the 'locals' are reduced to a small non-representative proportion of the population. By defining local ownership in this manner in practice, the UN stands to lose legitimacy and this has happened in several missions.

The selective consultation process is also based on a lack of knowledge by key actors in the mission country. There is, habitually, little information among the interveners of local groups with perceived legitimate authority by the population and identifying the key local actors can become difficult. If the UN loses its credibility and legitimacy whilst conducting security sector reform, the whole reform process can stand to lose its legitimacy as well, so that after withdrawal of the international community, the security forces and public security management may start to unravel. Co-operating with groups that have perceived legitimacy in the mission country irrespective of how the international community may perceive them is, therefore, crucial not only to ensure legitimacy of the international mission, but also to infer legitimacy onto the reform and reconstruction processes. In a post-conflict situation, there might not be any actors that can strictly be viewed as 'ideal' co-operation partners for the international community, but for there to be representative local ownership they must be given a

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[10]   Author's interview, UN staff, August 2004.
[11]   Author's interview, UN staff DPKO, May 2005.

role in the reform process. However, the international community do also have a key role to play to ensue that actors are included who, had the reform processes been exclusively locally driven, would otherwise have been excluded, such as women.[12]

Moreover, legitimacy of the UN and the international community can also be undermined because of other agendas driving SSR, such as those of counter terrorism and illegal immigration.[13] SSR and the rule of law have tended to be dominated by these types of agendas, thereby ignoring local views. If the local population perceives this to be the case in an intervention, then legitimacy is ultimately eroded.

2.2 *Accountability*

Accountability is central factor when discussing legitimate authority whether that is the legitimate authority of the international interveners, that of the newly constituted local government or the security sector reform processes. If there is no accountability, there will be no legitimacy of either the authorities or the processes of change. Ensuring accountability should be a priority from the very beginning of a peace operation. However, this has rarely been the case.

UN Accountability

After an intervention, where post-conflict reconstruction and reform are at the top of the agenda, the UN is also charged with constructing, or supporting the construction of accountability structures for the new and/or reformed security forces. A key problem in this context is that the UN lacks adequate accountability structures for its own staff. Hence, the UN is trying to impose a set of standards that, in effect, it itself also lacks.

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[12] See also Hansen, "Building".
[13] Agnes Hurwitz, "Towards Enhanced Legitimacy of Rule of Law Programmes in Multidimensional Peace Operations", DCAF, 2005, forthcoming.

The UN has a set of accountability structures to deal with trespasses and breaches of UN and local laws by its representatives in the mission country. However, for grave breaches such as assault, rape, trafficking of women and murder – all crimes that have been committed by international staff in peace operations – the perpetrator is sent away from the mission to be dealt with by his/her national government. It is then up to the national government to decide whether or not to prosecute and what sentence should be given. For the local population, this is not necessarily seen as adequate. The perpetrators are removed, there is no feedback into local communities, there is no way of knowing the outcome of a trial or if one is held – the victim is completely on the outside of the process. In addition, it can be viewed as a reward rather than a punishment to be returned to one's home country.

For the UN to have continued legitimacy, the issue of accountability for UN staff must be addressed. These are the same staff that are trying to establish accountability structures for the newly reformed security forces and create oversight mechanisms for parliament, intelligence services and all parts of the security sector. Yet, their organisation is lacking oversight and sufficient accountability structures. They run the risk of being perceived as above the law, a law they are trying to reform to conform to international standards of human rights and humanitarian law, still, the accountability of their own staff is not visible. Needless to say, nations contributing to the UN will not allow their nationals to be tried in a mission country under local laws irrespective of their crimes – however, there must be an international accountability structure that establishes a feedback mechanism into the community, gives the victims an opportunity to tell their part of the story and to see that these perpetrators are held accountable for their crimes. This will help to ensure legitimacy of the UN and the reforms it is attempting to establish.

Government Accountability

To ensure legitimacy of the reform and reconstruction processes both UN and also local government accountability must be in place. After long periods of conflict and war there are rarely any accountability structures left and it is important that these structures are a focus from

the very beginning of a peace operation. There needs to be an emphasis that there has been significant change from the old regime to the new. One of the most significant changes in a transitional democracy is that of accountability of the government to its people.

It is this accountability that will ensure that the government sustains legitimacy and, hence, confers legitimacy on SSR and reconstruction when in local ownership. However, accountability structures will take considerable time to establish and to get to function in a proper manner. The legacies of the previous authoritarian, criminal and/or corrupt regime will take time to shift. Bureaucratic opposition might be encountered at different levels whilst attempting to ensure governmental and parliamentary oversight. In addition, there is always scope for continued corruption, even organised crime, in a transitional society, which serves as a further obstacle to establishing functional accountability structures. This is where in civil society groups, media and others can get involved in the meantime and should be encouraged to function as oversight bodies in addition to the official ones that are slowly being created. They can have a potential instant impact upon accountability. Moreover, education and information must be disseminated as to how these structures function so that there is awareness both that they are present and can be used for the good of the population.

2.3   *Elections as a Tool for Legitimacy*

Since the early nineties and the expansion of peace operations, there has been an emphasis on elections as a means of inferring instantaneous legitimacy upon the new government in a post-conflict society. Prior to Haiti, the international community promoted fast elections with its intervention in today's Iraq. Nevertheless, rapid elections have never solved any of the problems faced by a post-conflict society. Rather, they have often complicated matters significantly. Yet, it is still being promoted as one of the key ways in which to ensure that the new regime possesses legitimate authority and legitimacy.

There are many potential problems associated with pressing for early elections – irrespective of circumstance and situation. Insisting on early elections when there are few ways of ensuring free and fair elections, when a democratic culture has not yet been established, when there has not been sufficient time to establish a significant and representative number of parties, when politicians and population alike have not been through an educational campaign designed to inform them of what these types of elections and 'democracy' means, can have the cumulative effect of reducing the legitimacy of the election process itself, as well as, the elected government.

It is a danger to use elections to generate legitimacy before a society has been able to create a competitive political environment. Irrespective of this danger, continuous efforts have been made to promote early elections in the immediate aftermath of most interventions. Elections will only infer legitimacy upon a new government if the populace has been convinced that it has participated in free and fair elections, if there was an understanding of the concept of elections and the democracy it was aimed at establishing, if there were enough political parties so that real choices were seen to have been on offer – and that they were not only recycled old parties of the earlier conflict, but part of a new 'democratic' process. Moreover, accountability structures, as outlined above, are also a necessity to ensure the legitimacy of the new regime, in as much as it represented an elected body, and these elements often take a longer period of time to construct. Therefore, postponing the first elections, so as to establish democratic processes, ensuring that a vibrant political environment and accountability structures are in place, will not only enhance the legitimacy of the newly elected government, but also ensure that the elections are built on more democratic foundations, which will reduce the chances of a reversion to authoritarianism.

Hence, it is more important in the transition period to have legitimate co-operation partners and then, in time, to have elections and accountability structures. Elections must neither be a pre-emptive exit strategy nor must local ownership become a way in which to override responsibility by the international community. Local ownership must be present through consultations from the beginning of any reform process in any mission

country. However, early elections should not be instigated so as to establish legitimacy and local ownership of all the processes in the post-conflict reconstruction phase. Early elections have more often than not been about establishing exit points rather than a true political will to ensure the legitimacy of the local government and local ownership of reform processes. It has more been about limiting international responsibility. Limiting responsibility does not serve to establish successful reform. Capacity and capabilities must be offered but the decision as to what type of SSR should be utilised must lie with the local owners.

3   Local Ownership of Transitional Justice

Transitional justice consists of mechanisms created to deal with crimes committed during a period of conflict or war. They are retrospective in nature and seek, in different ways, to right the wrongs of past human rights violations. Although they are retrospective in nature they have an impact on the current situation, particularly on the perception of public security. They come in many forms, most prominently, the international criminal court, international tribunals, special courts, truth commissions, domestic trials and traditional methods of justice. Transitional justice has become of increasing importance in recent years as part of the post-conflict reconstruction process. There has been a growing realisation of the nexus between peace and justice, where the UN Secretary General has highlighted the importance of integrating justice into the peace process.[14]

Local ownership of these processes of justice can be vital to their outcome. Truth commissions, domestic trials and traditional methods of justice are mechanisms where, because of their very nature, local ownership can more easily be established. They are taking place within the country's own borders and relying on, to a much greater extent, local capabilities to ensure justice. Yet, in a volatile post-conflict society there are several factors that impinge not only on local capabilities regarding

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[14]   Draft report Wilton Park Conference, "Transitional Justice and Rule of Law in Post-Conflict Societies: The Role of International Actors", 24-26 January 2005, p. 2.

transitional justice, but also on the will and possibilities of serving justice. The international community can, therefore, play a crucial role in strengthening local capabilities within these three frameworks for pursuing justice to ascertain that the problems within each framework are met and solved.

3.1   *Peace vs. Justice*

In all post-conflict societies where peace is a fragile commodity there has been an assumption that justice must often be traded for peace and that this is the price to pay for stability. The international community has frequently supported such a view and been loathe encouraging, in particular, domestic trials to deal with crimes committed during conflict. There has been a focus on reconciliation rather than justice based on the assumption that these are two opposing objectives. Moreover, there has been the in-built assumption that, in particular, local mechanisms of justice, rather than dispersing justice and peace, would lead to renewed conflict and war. Domestic trials have been viewed as retributive without an ability to establish reconciliation of any form. Therefore, truth commissions as a reconciliatory tool of justice have become increasingly popular and its use widespread in post-conflict societies. However, what is important for the international community to consider is that the concept of justice differs from one country to another, as do local norms, political issues and interference, capacity, and popular perceptions of justice.[15] So supporting a single framework alone, or, assuming that one mechanism will be preferable to all others in all circumstances ignores the factors that influence justice as well as the variations in the definition of justice in various countries.

In an increasing number of cases throughout the nineties and until the present day, the local populations in countries that have been affected by international intervention have demanded justice in the form of trials and tribunals. The perception by local populations has often been that there cannot be reconciliation without having some form of criminal

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[15]   Horowitz, "Towards".

procedures taken against the perpetrators of past crimes. Therefore, there have been a slowly growing number of cases in which different types of mechanisms to address past abuses and crimes have been applied.

Local ownership of these processes, as with all the processes in a post-intervention post-conflict society, is important for their success. However, as will be discussed, there are several obstacles to *early* local ownership of these three processes of justice.

3.2   *Choice of Process*

There are several key problems commonly shared by all three mechanisms of local justice. First, they are part of a process of political transition. The justice mechanisms, with or without the assistance of the international community, will be affected by the political transition and, hence, certain 'deals' will almost certainly be made. The new regime, whether elected or an interim regime, will try to ensure that it does not upset to any significant degree the outgoing regime so that they will not use their powerbase to destabilise the country. Second, is the question of capabilities - in an immediate post-conflict period there is rarely, if ever, capabilities to conduct domestic trials, truth commissions or even traditional mechanisms without significant external help. This help must be given without trying to influence the choice of mechanisms or what would better serve the local community's needs. The choice should be in the hands of the local owners and the support of that choice should come from the international community. Third, needs assessment establishing the need for justice and how that can best be met is often absent, which can lead to simplified solutions and an over-reliance on certain types of mechanisms without taking into consideration the different contexts involved.

Unfortunately, justice is often seen as a choice between the domestic court system and a truth commission. However, it is not necessarily an either/or situation; they can exist together and will, in certain circumstances, serve the purpose of justice more by being applied together. A complementary approach to justice will serve both justice

and reconciliation best in the long run. The international community can significantly assist local efforts by not only supplying lessons learnt from other contexts, but with capabilities to ensure that the structures will serve justice.

3.3 *Truth Commissions*

Truth commissions are non-judicial bodies established to investigate human rights abuses, perpetrated in a specific time period usually by the military, government or other state institutions, typically during conflict and civil unrest. They are established and given authority by the local governments or international organisations, in some cases by both. The objective is to establish the pattern of human rights abuse committed within a certain timeframe.

Truth commissions can be completely locally owned – and as with many post-conflict processes, this factor is essential to their success. However, truth commissions can naturally be heavily influenced by the international community, which is establishing or helping to establish such a commission. Commissioners are frequently non-locals, as are the researchers, and other staff members of a commission. Ideally, there should not be more than fifty per cent of international staff on these commissions. While the influence of international staff is not necessarily negative – in many cases it is a necessity, because of the lack of capacity and capabilities, there is, nonetheless, a question of balance. In Sierra Leone, the truth commission was very strongly influenced by international staff and the in-put of the locals was argued to have been minimal with too few efforts made to ensure local ownership of the process.[16] The truth commission did not seek to engage civil society and the local commissioners had limited engagement in the truth commission's report.[17] Moreover, some truth commissions have had skewed representation from just certain sectors of local society,

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[16] Author's interview of Sierra Leone truth commission staff member, New York, May 2005.
[17] Ibid.

sometimes as a reflection of the international co-operation. A broad coalition of people should be represented.

Although there can be significant international influence in the truth commission process, in the follow-up there is a marked absence of it, and local ownership is, so to speak, complete, which reinforces a major shortcoming of truth commissions, namely their lack of enforcement capabilities and their reliance on political will. Their recommendations, for example, in terms of reparations, can be ignored and often are. It is fundamental that victims have a forum in which to tell their story and to establish generalised patterns of abuse and the reasons for it. If, however, the recommendations are ignored due to an absence of political will, it is doubtful as to whether reconciliation will ensue. Media and government attention is dependent upon the circumstances surrounding the conflict, and international pressure and interest. However, interest and political will are crucial ingredients to ensuring the success of truth commissions.

Due to the truth commissions' non-ability to punish, they are much less politically sensitive than trials and tribunals and can be a deliberate chosen strategy by the local government to avoid dealing with issues of retributive justice. Their limited power serve no direct threat to the out-going authoritarian regime and because they serve a limited threat truth commissions can be used by new governments as the only process of dealing with the past. For certain governments, a truth commission is chosen because this is the least disruptive process and its findings and recommendations can be ignored. Furthermore, by establishing a truth commission, the government can then not be accused of inaction. A case could be made for more international pressure to ensure that recommendations are followed up; this would not necessarily inhibit local ownership, but would ensure that truth commissions are not be used as a tool to avoid justice.

3.4   Domestic Trials

Domestic trials are another transitional justice mechanism in a post-conflict setting which can be used to deal with past crimes for human rights abuses. Domestic trials are, however, faced with numerous challenges. More often than not, the judicial system is in need of extensive reform. It may have stopped functioning during the conflict. It may have been corrupt, and/or supporting human rights abuse conducted by government agents. It is doubtful whether any post-conflict society will immediately, upon the cessation of hostilities, be capable of conducting fair and impartial trials. Hence, reform is necessary.

Judicial reform requires long-term commitment as well as extensive resources, which impacts upon the ability to hold domestic trials, but interim solutions can be established to ensure fair trials in local courts should the state choose this mechanism to deal with past human rights abuses. In a transitional period, the international community plays a crucial role in supporting the development of the judicial system. There have been several examples of ad hoc solutions - in East Timor, special panels were created which consisted of both international and East Timorese judges. This hybrid solution is cheaper than a fully-fledged international tribunal and can be valuable because of the inherent local ownership of such a process. Domestic trials can have an additional positive effect in that the population sees the consequence of this mechanism and recognise that it is their own government taking control of the process, signalling a change towards accountability. In Bosnia, a new high court has been created with a special chamber that hears war crime cases. It will consist of both local and international judges and international prosecutors will also be involved.[18] Establishment of this court reinforces local ownership, accountability and change.

Minimal standards for a fair trial must be in place for domestic trials to be used for past crimes. This must be prioritised from the beginning, resources and adequate support must be given. Using domestic courts to

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[18]   Kurt Bassuener, "Lost Opportunities and Unlearned Lessons – the Continuing Legacy of Bosnia", DCAF, 2005, forthcoming. See also Matthieu Damien, "The Case of Bosnia-Herzegovina", DCAF, 2005, forthcoming.

address past human rights violations can also influence the future judicial system and how it develops. It may help re-establish the judicial system for ordinary crimes. International influence versus local ownership becomes therefore particularly pertinent if these trials aim to influence the law system.[19] The reformed law system should not be imported – it can apply hybrid methods to deal with past crimes since many of these will also be covered by international laws and standards, but not for the country's domestic law system dealing with ordinary crime. It is, therefore, crucial that in this transitional period particular attention is paid to local legal norms, traditions and systems which will influence the structure of the reformed system.

Other objections have also been raised against the use of trials in post-conflict societies. One of these is that it may destabilise the peace agreement or obstruct the transition to democracy. However, the new regime and stability may be threatened if no action is taken, because in post-conflict societies, particularly in a transition to democracy, civil society expects change. Accountability for acts of torture and violence is a crucial underpinning of a democratic society. If this is not forthcoming it may threaten stability and reconciliation. This must be established from the start, not necessarily through the domestic court system, but a shift must be seen to have taken place. Accountability is a foundation upon which democracy rests and addressing this must not be ignored. Hence, the current tendency of the international community to support truth commissions and shy away from domestic trials could be viewed as undue influence on the justice processes, particularly since in many post-conflict societies there is and has been a demand for individual criminal responsibility.

Although the demand for individual criminal responsibility has been raised in several cases, Kosovo, East Timor, Haiti, Rwanda to name a few, no domestic judicial system will be able to handle, just after a conflict, the potentially vast number of cases. Hence some have argued that the process will seem arbitrary and unfair.[20] However, not all

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[19] This will be further discussed in section 4.
[20] See e.g. M. .Minow, *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998, p. 45 and D. Bloomfield, T. Barnes, L.

perpetrators need or should be dealt with in one mechanism of justice. Individual prosecution of a number of key perpetrators will serve as a symbol that impunity no longer reigns, other perpetrators can then be dealt with by a truth commission and/or by the traditional justice system.

3.5   *Traditional Justice*

Traditional mechanisms are, on a broad and general level, mechanisms for solving disputes, conflicts and crime at the community level, where a village or tribal council, community meeting or council of elders deals with crimes perpetrated towards the community or individuals, or resolves conflicts and disputes. In the last few years, traditional mechanisms to address past crimes have been increasingly promoted in a UN peace operation context.[21] There are numerous problems associated with promoting these mechanisms for past crimes, including that they frequently deny the perpetrator the rights of a fair trial and the punishments can be against international human rights law and standards. The ability of some traditional mechanisms to deal with large-scale human rights abuse, because of their own non-adherence to international standards of human rights is, therefore, questionable.

The United Nations cannot support mechanisms whose punishments contradict international human rights laws, to deal with breaches of those very same human rights laws. Blanket support of *all* traditional justice mechanisms should not be given because there is a strong potential for local ownership and these are rooted in and reflect the country's own culture. Assessments of these mechanisms in each case and when and to what crimes it can be applied to must be made together with the local stakeholders. Only traditional mechanisms that do not breach international human rights law should be fully encouraged and supported by the international community.

Huyse (eds.), *Reconciliation after Violent Conflict. A Handbook,* IDEA, Stockholm, 2003, p. 105.

[21] For example, the UN Secretary General mentioned traditional mechanisms in the Introductory Statement at the Security Council meeting on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 6 October 2004.

The primary advantage of traditional methods is that they are entirely owned by the local population. It is not enforced from the outside and they decide how to deal with the perpetrator without external interference. In this way, they can start reconciling with each other, the past and with the crimes committed. Moreover, the local population sees an immediate and direct effect of the justice procedure. Both truth commissions and local trials take place either in capitals or in the larger cities and are, therefore, removed from large parts of the population. Traditional methods have an immediacy which should not be ignored.

Traditional mechanisms can be an invaluable way of dealing with past crimes in a transitional society, but four factors must be taken into consideration. First, what the traditional mechanisms are must be established prior to supporting them unconditionally, so that human rights, public security forces and the rule of law will not be undermined. Second, the mechanisms should not deliver punishments which are a violation of international human rights. Third, through a consultation process with the local authorities, it must be decided as to what crimes should be applied. Fourth, it should be applied in conjunction with domestic trials, since they can be complementary.

4   Emerging Law Systems

In the aftermath of conflict and after an international intervention, establishing the rule of law and law systems are crucial to ensure prolonged and sustainable peace and stability. Without institution building, a fragile peace can easily revert back to conflict. A transitional society is just that, in transition, which means that new conflicts can easily erupt unless strong foundations are put in place from the very beginning of the intervention to ensure that this does not happen. One of the key foci must be that of the law system. It was not until relatively recently that the crucial role played by judicial reform in post-conflict reconstruction was fully appreciated by the international community. However, in the last four years, there has been an increasing acceptance that law system development deserves as much focus as public security forces and that, often, the reform of security forces, the police in

particular, is futile if there is not a concurrent reform in the judicial system. Yet, this has not translated into as active policies of reform in other fields of post-conflict reconstruction. Moreover, the problems associated with conducting the reform of law systems in the aftermath of an intervention are abundant. However, peace operations are currently mandated to deal with the reform of law systems and local ownership is as crucial, if not even more so, as in any other context.

The international community is faced with an array of complexities when having to address local law systems and their reform. Local law systems must be grounded in local norms, customs and traditions and, therefore, local ownership of legal and ethical standards and the emerging law systems are essential. It is tightly interwoven with how to deal with transitional justice and the influence of the international community in this process; with the very nature of the fragile society it is confronting; with the fact that heighten criminality is the norm in most post-conflict societies and, therefore, that need for a functioning law system is immediate yet to develop such a system takes a long time; with the absence of knowledge of local laws and current systems by the vast majority of those involved in the intervention.

4.1   Local Judicial Culture and Imported Legal Framework

In any intervention, international public security forces are faced with a situation where once stability has been achieved an increasing level of criminality is likely to follow – this has been established in most missions. Focusing on the reform of public security forces without simultaneously reforming the judicial system has, therefore, been accepted as futile. However, transforming a judicial system takes considerably longer time than that of, for example, training and monitoring local police forces. Yet, there is an immediate need for a functioning system to be put into operation. The temptation of significantly influencing the creation of such a law system can therefore be considerable, particularly because it affects the exit point and resources needed to be spent. However, external models cannot be imported wholesale - this will limit their chances of success. Local

ownership of the reform of judicial systems is paramount, but it faces the same difficulties as local ownership of any other reform process.

All countries have long established traditions of some form of law systems, they might not reflect civil, common or sharia law, but are still law systems. Whether or not the reformed law system will be built on these past law systems is a decision that will have to rest with the local population or, more correctly, its representatives. These decision-making processes can only be taken through consultation processes with the local population.

The reform of a law system is a very arduous, time-consuming task and resources and multiple agencies, including development agencies, will need to be involved. It is not merely a question of 'finishing' the task of judicial reform during the presence of an international peace operation. Therefore, the potential influence on the reformed local law system will be considerable. It is important that the internationals concerned with judicial reform know the past and current law systems of the country. If they are to contribute in a significant manner, and not only suggest imported models, then a thorough knowledge of previous law systems are essential. If they have this background then the international community may be able to suggest different types of options to the mission country. The local population can then make informed decisions based on the options available to them.

Compiling these existing legal codes and legal frameworks is neither a fast process nor is it the primary objective in the aftermath of an intervention. The immediate aim is to ensure public security. Yet, because of the centrality of the issue of law systems, it is something that has to begin as soon as possible.

Establishing local ownership of a process of judicial reform based on in-depth knowledge of previous and current law systems is problematic, but not impossible, particularly because it is such a long-term process, so that local ownership has the potential to grow as has the knowledge of the international community. It is in the immediate aftermath of conflict and intervention, where crime and instability is on the rise and where

there is a non-functioning judicial system, where international influence versus local ownership becomes more challenging.

4.2 *A Legal 'Kit' and Transferable Norms and Standards*

It is the international missions' task to ensure compliance with international human rights standards and norms. In some missions, there is a law enforcement mandate; in others, there is not. Yet, in all missions, there is some part that establishes SSR on some level. Therefore, the international public security forces are faced with dealing with, either directly or via their local counterparts that they are training or monitoring, the vacuum created by a non-functioning judicial system in the post-conflict society. To eliminate that gap not only to discourage lawlessness and impunity, but also encourage the reforming public security forces and foster trust in these forces by the local population certain solutions have been proposed.

It has been suggested that transitional codes should used by the international public security forces and local forces in transitional countries during a certain period of time until permanent laws and codes can be established. A number of such codes are currently being created.[22] These transitional codes would function as a legal tool kit to be applied during a peace operation. They specifically focus on criminal law, and law enforcement, including criminal and penal codes. It is doubtful whether these transitional codes, if or when used, will be applied in full. Rather, it is expected that selective parts will be applied in the different cases.[23]

This is one way of tackling the immediate problems that an international mission faces and, in particular, for its security forces operating in an environment in which the local laws are unknown, where the international law enforcement officers come from different laws systems, and where there is a need to address common crime on a day-

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[22] USIP are supposed to finish these specific codes at the end of the year. For more information see http://www.usip.org

[23] Author's interview, UN staff member, DPKO, May 2005.

to-day basis. There is a pressing need to have this in place and it cannot wait until reform or strategies of local ownership have been introduced. These codes have the potential to narrow this gap, to ensure uniformity in application of law throughout the territory without resorting to application of a potentially abusive law system. Yet, these transitional codes must be extremely general in nature built on the principles of international human rights standards and norms. They must be built on international transferable legal norms of respect for human rights and life and they cannot be seen as going against the local culture. It must be made clear that application of these codes are for a limited time only until local stakeholders have been able to establish and adopt local laws. They must not influence the type of system that will succeed it; they need to be a short-term solution to an immediate problem.

Another solution to this judicial gap in the early period after an intervention would be to decide what local law or what part of the local law should be applied in the transitional period. This was done in East Timor where the Indonesian criminal and penal code was applied until a local East Timorese criminal and penal code was agreed upon by the East Timorese. The problem in this connection centres on who decides what law or what part of the law to apply until what time and with what background knowledge do these parties reach their decisions. For example, certain ethnic or religious groups can be marginalised in a process that necessitates speedy decisions. Hence, the application of an international transitional code for a short specific time period might be a better option.

However, having applicable laws and norms that are transferable to missions countries are only part of the solution. Having a functioning court system with lawyers, prosecutors, and judges are also essential for this to be working and to close the judicial vacuum. Establishing rule of law teams that can come into an intervention at short notice and make needs assessments has been one suggestion to quicken the pace of reform. However, establishing or reforming judicial institutions will take a much longer time. Perhaps, as with transitional justice where there is a combination of international and local judges at domestic trials, this would be one way of dealing with the judicial gap. International judges

trained in these transitional codes could preside over domestic courts for limited periods of time, where local judges in a reform programme would also be presiding. This would certainly minimise the number of detainees languishing in prisons. It would also heighten the belief in a working system and in the public security forces by the public. However, it would be necessary to establish local consultation committees from the beginning. This could only work if it is made clear that these are only interim solutions until domestic systems are in place so as to deal with the immediacy of the problem without trying to influence the type of system chosen later on. Unfortunately, it is to be assumed that such a system could go on for rather longer than anticipated and, moreover, take on a life of its own in regards to influencing the foundations for the reformed system thereby undermining local ownership.

4.3   *Education*

Education and information of the public is a crucial part of any SSR process, hence also that of law systems. The public must learn to trust the slowly reforming law system and to do so they must be informed as to what it is about, what it can do and how it can work for them, not against them. In most conflict and authoritarian societies, there is a heavy reliance on traditional mechanisms of justice often due to the fact that the courts are far beyond the reach of most people. However, frequently, it is also because there is no trust in the existing law systems, since they have been abusive and corrupt and justice was rarely dispersed by it. Therefore, information and education as to what this new system entails allows for a growing awareness by the general population that it can use the system without fear of retribution or being abused by it. This represents an important part of change as the transitional society moves from one of conflict to hopefully one of sustainable peace.

This education and information should be supported by the international community but run by local NGOs and civil society organisations. Enhancing this type of outreach is enhancing and strengthening the judicial system and ensuring that if and when traditional methods are

used it is as a supplement to the judicial system not because there is fear or distrust of the reformed system.

5   Local Ownership and Demobilisation, Disarmament and Reintegration

DDR processes have received a high level of attention for a long time in peace operations. There have been innumerable DDR programmes after wars and they have always been a complicated matter.[24] However, in the context of intervention and, in particular, with emphasis on local ownership the issues become even more complex.

Disarmament involves the collection of small arms, light and heavy weapons within a conflict or post-conflict zone from all parties. Ideally, it includes the development of arms management programmes, safe storage and destruction of the arms collected. It may entail the assembly and cantonment of combatants. It is not usually an easy task to disarm ex-combatants. Disarmament programmes face numerous problems, including opposition to disarmament by ex-combatants, but the failure to do so increases the risk of instability and further conflict.

Demobilisation is where the parties to the conflict disband the military structures and combatants begin the transformation into civilian life. Each demobilisation process varies depending on the individual post-conflict situation. Nevertheless, the process should broadly involve selection and preparation of assembly areas, planning of logistics, resource mobilisation, selection of those ex-combatants who will be demobilised, cantonment and registration, disarmament, needs assessment, provision of services (health care, basic training) pre-discharge counselling, discharge and transport to home areas. Yet, often in practice it has often entailed simply selection, cantonment and discharge. Moreover, frequently there is self-demobilisation, where ex-combatants leave the battlefields and re-enter society.

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[24] The problems and potential solutions to DDR have been debated extensively and will not be repeated here. See e.g. Beatrice Pouligny, *The Politics and Anti-Politics of Contemporary Disarmament, Demobilisation and Reintegration Programmes*, CERI, September 2004.

Reintegration is the process which allows ex-combatants and their families to re-enter civilian life and adapt socially and economically – the success of this process is dependent upon both ex-combatants and civil society. It is a long process, which alongside economic and social reintegration includes a substantial psychological adjustment. Reintegration can take years and it is particularly important that local ownership is ensured in the way that the reintegration programmes are structured and implemented. Any reintegration programme that is undertaken without knowledge of how civil society wants to handle the ex-combatants will, ultimately, fail. This is also tightly interconnected with justice and how civil society views the need for different types of justice.

Numerous approaches and ways to DDR have been attempted in post-conflict societies by a multitude of actors both international and local. The consensus is that reintegration is always more difficult, less emphasised and given less resources than the demobilisation and disarmament processes, although they are interdependent and need to be addressed simultaneously. DDR processes are essential to ensure stability and security in any transitional society and the broader needs of DDR must be addressed prior to SSR. It must come at a very early stage and it is at this juncture where the most pronounced problems with ensuring a certain level of local involvement may be encountered.

5.1 Local Political Will

If one assumes that there are clearly identifiable local stakeholders to co-operate with from the start of the intervention that are representative for all parties to the conflict - this in itself as has been established is not very probable - then these may not for several reasons have the political will necessary to support a process of DDR in its early stages. It can be difficult to get the parties involved, for example, due to fear of a DDR process - that is a fear of revenge from the actors targeted for DDR programmes. Well-executed DDR programmes theoretically are supposed to leave the combatants content to be reintegrated and pleased

with the outcome of the process. Nevertheless, this is not the most commonly observed result. Hence, there is a real threat that unless the former combatants are successfully contained after a DDR process they may restart the conflict. Therefore, there is often an absence of political will to conduct such processes. Consequently, if a choice is made not to get involved, an absence of local ownership will result. The local government may prefer that these operations are conducted by externals so that the locals can distance themselves from it and emphasise the neutrality and non-involvement of local parties. The disarmament process, for example, can be hampered and tensions heightened if one party is seen to be more involved or in charge of the process.

The reluctance to disarm is also tightly interwoven with the attitude of new regimes towards transitional justice. Although there may be an acknowledgement of the need for a DDR process, removing status and power from all actors can be viewed negatively. This is also the case with justice, whereby prosecuting individuals creates the fear that they might rise up against the new or interim government with a renewal of conflict as the end result. However, if there had been a successful DDR process it would be easier to have a transitional justice process, including individual prosecution, without fear of reverting back to earlier patterns of conflict. If all parties to the conflict are adequately disarmed and demobilised, then justice can be a part of the process of reintegration. Avoiding supporting disarmament and demobilisation increase the chances of avoiding justice, and it can become a way of seeing the need for forgetting or forgiving as the only foundation on which to build peace.

In addition, all parties tend in the early aftermath of a conflict to want to hold on to their weapons, since in the early transitional period renewed conflict can be as probable an outcome as peace. Hence, there is an in-built opposition by all parties to begin a disarmament process, although most argue for it. This is one reason why most disarmament programmes conducted collect only a fraction of the estimated weapons early on in the process. Lack of will to conduct such disarmament therefore influences the degree of local ownership.

Reintegration must take place for a sustainable peace to be achieved irrespective of the lack of enthusiasm by the different parties to conduct disarmament and demobilisation. However, the larger the number of ex-combatants with weapons, the higher the chances of an absence of reintegration. Local ownership and willingness to conduct reintegration are greater because they take a longer time and are not as immediately politically sensitive. Nonetheless, offering vocational courses and compensation to ex-combatants can be politically sensitive, since it may enrage the civilian population and the new government might not want to be seen as supporting their former abusers. This will vary extensively in the different post-conflict societies and numerous variables will influence how the new government will deal with reintegration. The key is that local ownership must be at the core of this process or it will not succeed.

5.2   International Political Will

The UNDP has stated that *'…demobilisation of combatants should be accorded relatively low priority by UNDP as so many critical variables remain outside the organisation's control… actual demilitarisation and demobilisation is exceedingly difficult… the risk of failure under such programmes is therefore extremely high.'*[25] This statement underlines that demobilisation is an extremely difficult process, which the international community is becoming increasingly disenchanted with. Disarmament is also a process which the international community has been extremely hesitant to undertake, fearing that it might infringe upon the security of the people conducting the disarmament programme. One result of this unwillingness to perform disarmament programmes, particularly if the local regime is also unwilling, has been that small arms have spiralled out of control. If there is not a successful disarmament process after intervention, the level of small arms has a tendency to increase which, in turn, heightens instability.

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[25]   UNDP, *Governance in Post-Conflict Countries*, accessed 23 May 2005, pp. 62-63.

The importance of DDR has always been emphasised by the interveners, however, in practice after an intervention DDR has been defined in the most minimalist way. The lack of enthusiasm, by those involved in the intervention, to conduct DDR is also influenced by the number of organisations involved with the different DDR processes. If possible, it is often left to the other organisations, among them the UNDP, to develop programmes. This can lead to a situation where the interveners begin to rely on subsequent interventions by international organisations to conduct such processes. However, certain aspects of these issues need to be addressed at an early stage. Moreover, even among the numerous organisations dealing with DDR, there is a lack of co-ordination and communication, serving only to limit the extent of the successful implementation of these programmes.

DDR has sometimes been talked about as progressing from demobilisation to disarmament to reintegration, however all these factors need to all be addressed simultaneously, and the processes need to begin early on. For example, disarmament must be addressed as soon as possible after an intervention and, at that stage, only the interveners should have the capability to conduct such a process. Non-implementation of DDR programmes, or partial implementation, creates a much more difficult environment for the public security forces both local and international, which will have to deal with the consequences of its absence. It heightens the chances of the reformed public security forces facing potential failure, because the environment that they have to deal with has not been sufficiently secured.

5.3   *Local Capacity and Capability*

In addition to the operational and practical difficulties with instigating a DDR process and the frequent absence of international and local will there is the question of local capacity and capability concerning local ownership of DDR processes.

Following a conflict, there is limited, if any, capacity and capability for local owners to conduct their own processes, assuming that there is an

earnest willingness by the different parties to conduct such processes to begin with. They will not be able to logistically operate disarmament or a demobilisation process without significant external input and assistance. Since the DDR process needs to be established very early on to have the desired outcome, it is faced more acutely by the problem of establishing local ownership. Early on, the interveners have greater difficulty identifying local interlocutors, are less able and, perhaps, less willing to deal with all the different stakeholders in society and, in addition, the potential for renewed conflict is at its highest at this time. Yet, it is at this time when the need for local support is very great. Reintegration is a much more long-term process and therefore local ownership can more easily be established and reinforced over time. Nevertheless, there needs to be a focus on capacity building from the very beginning so that, later on, all these programmes may be run more in entirety by local stakeholders.

Moreover, in reference to a point that was made earlier on in this report, what must be emphasised is that both the intervention and the DDR process were put in place so that the local communities would stop the conflict and stop using their weapons, hence local ownership becomes extremely tricky at this juncture. There might, therefore, be a need for insisting on the establishment of particular disarmament and demobilisation programmes that will ensure stability. Local control over these two processes at this stage may be minimal.

6   Local Ownership in Selected Cases

Local ownership has developed during the course of peace operations from the early nineties until today. Below are a few cases exemplifying how local ownership has been emphasised, or, in some cases ignored altogether.

Bosnia[26]

In Bosnia, local ownership started to be employed in 1998 – this was particularly strong in relation to the public security functions. The international community wanted Bosnia to begin to take responsibility for its own tasks. However, a key problem was that the public security forces had not only been involved in war crimes, but also organised crime after the war and were, therefore, seen as a threat to public security in many cases. There was little interest in reform among the public security forces – reform was seen as reducing their own power and abilities to protect their own ethnic groupings. These were the main factors that needed to be dealt with by the international community prior to transferring authority. Extensive consultations with local stakeholders should have been emphasised throughout, but due to the specific circumstances surrounding the security forces, the capabilities and willingness to self-reform was minimal.

The focus on local ownership can, perhaps, due to the long-term involvement of the international community in Bosnia, be viewed as part of an exit strategy. It was not until 2001 that a Partnership Forum and a Civic Forum was created so as to aid the process of local ownership. Admittedly, the context of the conflict has not aided the implementation of local ownership, but it should not have hindered the creation of, for example, these forums at an early stage.

Haiti

In the case of Haiti, after the first intervention in 1994, local ownership was never really on the agenda neither in rhetoric nor in practice. The mandate consisted of demobilisation of the army, ensuring security and stability, returning democracy, and restructuring the security forces. There were minimal consultancies held with the population in respect to any of these issues. The small political and business elite were consulted on certain issues, but they had never been representative of the

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[26] For in-depth treatment of the case of Bosnia see: Bassuener, "Lost". See also Damien, "The Case".

population at large, quite to the contrary, many of the business elite in particular supported the outgoing authoritarian military regime.

In relation to SSR, local ownership was evident only insofar as the demand by the local communities was met concerning the abolishment of the Haitian Armed Forces. The international community had wanted to reform the forces, but the population demanded their dissolution and former President Aristide supported this. However, the reform of the police did not, in any way, involve local ownership – even the political elite was astounded over the way it was conducted particularly because many of them were trained by the military or at military bases, which was reminiscent of the former armed forces. This was also reflected in the democratisation process, where the majority wanted a participatory democracy, yet received only rapid elections. The complete absence of a consultative process to enhance local ownership in Haiti of the post-conflict reconstruction process reinforced the unravelling of all of these processes – with the result of renewed conflict and the establishment of a new UN mission to Haiti.

East Timor

In the UN mission to East Timor established after the referendum for independence in 1999, local ownership was at the top of the agenda from the very beginning. The UN held a transitional authority mandate, but was focused on the fact that they needed to withdraw and leave the structures created in East Timorese hands. The transfer and hand-over became key issues. This focus was made easier by the fact that the main actor of the conflict was Indonesia who was no longer an actor within East Timor's borders; hence, there were not as many and complicated actors in the conflict to deal with.

Nevertheless, irrespective of the awareness of the transfer of authority and local ownership, the strategies for implementation were ad hoc and differed from community to community. After a period of time, the East Timorese worked together with UN staff so as to be able to take over those positions after the international withdrawal. It was a phased

approach, where the East Timorese gradually took over and the UN person became the adviser. The success of this approach varied according to the position and the people involved.

Moreover, in relation to SSR, choices were made which reflected the preference of certain members of the political elite, rather than the local population as such. This was, for example, evident in regards to transitional justice where the political elite continued to emphasise the need for a truth commission and reconciliation, whereas the local population demanded trials for key perpetrators. It was also influenced by international willingness, resources and donor objectives, such as the Portuguese involvement in training and reforming the former combatants into a new military force.

Kosovo[27]

Kosovo is, in many ways, a special case because its status remains unresolved – whether it is to be independent from Belgrade or not – this has created problems in relation to local ownership. This situation has put the international community in a difficult position. It is restricted in how much local ownership it can encourage, since the future and status of the territory is unknown. Security sector reform will perhaps look distinctively different if Kosovo becomes independent then if it will not.

Nevertheless, there has been a gradual transfer of authority, but only in certain areas, for example, public security and the use of force still rests with the internationals. UNMIK has primary responsibility for maintaining law and order and KFOR handles external defence as well as having a partial internal role. The key problem is that the international community is in a situation where it will have to establish essentially sovereign institutions without inferring sovereignty upon the institutions or the territory.

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[27] For in-depth analysis of Kosovo, see Rees, "Public".

In 2005, there have been more extensive consultations between UNMIK and Kosovars to ensure more local ownership of SSR, but as yet there are no strategies in place for the transfer of responsibility for public management of the security sector. In addition, the Police Act will not be passed by the Kosovo Assembly, but by SRSG decree – minimising local ownership in relation to this particular issue.

Afghanistan[28]

In Afghanistan, the Bonn agreement set forth a locally driven process to accommodate a multitude of groups across Afghanistan. Community forums were established to provide information and advice on community matters. After decades of war, there was very little local capacity to develop SSR and public security management and extensive help was necessary. A lead nation approach was taken, where five lead donor nations held primary responsibility for five pillars of DDR: (Japan), police (Germany), military (US), counter-narcotics (UK), judicial reform (Italy).

In addition, a policy of the 'light footprint' was promoted. Rather than encouraging local ownership, the 'light footprint' policy can be viewed as an effort to avoid public security measures by the international community, whose efforts have been concentrated in Kabul. The 'light footprint' can be seen as a reflection of the commitment of troops to Iraq, which meant that public security was absent in large parts of Afghanistan. A 'light footprint' can create vast problems in relation to public security. Moreover, it does not necessarily translate into successful local ownership.

However, local ownership has been relatively successful in relation to DDR, where they have succeeded in some of their intended goals. The international community provided the funding and resources, but stayed out of the actual programmes. On the other hand, local ownership of

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[28] For an in-depth analysis of Afghanistan, see Richard Punzio, "Public Security Management in Post-Conflict Afghanistan. Challenges to Building Local Ownership", DCAF, 2005, forthcoming.

military reform has been extremely harmed by the coalition forces persistent support for private militias of warlords to continue the fight against the Taliban. A UNDP report emphasises that the international co-operation and assistance to Afghanistan 'should be scrutinized for issues related to ownership' and that Afghan ownership must be seen as the most important objective.[29] It has not been established by far in all remits of Afghan SSR.

Iraq[30]

Iraq is a very different type of operation to that of a UN peace operation; however, it is worth mentioning here. It exemplifies the tendency of the international community to rely on certain levels and/or sectors of local society when defining local ownership and getting their information on what strategies would be best for the future of the country.

Regarding SSR, it reflects the particular participating nation's view of such reform and the objectives of the war. For example, law and order in Iraq was not given sufficient pre-planning, police groups were reformed on an ad hoc basis by coalition military commanders in the early stages and only 6-8 weeks later did it become more organised. Initial thinking on law and order came from Iraqi exiles in Washington D.C., together with Arabists and US State Department Officials, but they were not part of a planning group, but rather a discussion group.[31] Moreover, they consisted of exiled Iraqis and, hence, were not entirely representative of Iraqi society.

Currently, the aim is to ensure local ownership of SSR. For example, international police advisers are based in and work together with the Ministry of the Interior to reform the police. Yet, in practice, reform remains dependent on the different sectors and on who is in control.

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[29] Shahrbanou Tadjbakhsh (ed.), *Security with a Human Face: Challenges and Responsibilities*, UNDP, February 2005, p. 40.

[30] For an in-depth analysis of the Polish role in Iraq, see: Rafal Domisiewicz, "Consolidating the Security Sector in Post-Conflict States: Polish Lessons from Iraq", DCAF, 2005, forthcoming.

[31] Author's interview with person involved with SSR in Iraq, February 2005.

There are, in the Polish sector, regular meetings held with the provincial and municipal councils and religious leaders. These talks are focused on the political and religious leaders, as they have been identified. As was discussed earlier, the identification of local actors with legitimacy is one of the key problems for international interveners and this problem has not been any less pronounced in Iraq.

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