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Preface

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. To this end, the Centre develops and promotes appropriate norms at the international and national levels, determines good practices and relevant policy recommendations for effective governance of the security sector, and provides in-country advisory support and practical assistance programmes to all interested actors.

In addition to the numerous publications resulting from its research and operational projects, DCAF produces an annual volume based on the ongoing research and analytical work by DCAF experts and our broader circle of collaborators. The first such volume was published in 2003 under the title *Challenges of Security Sector Governance*; the second one was published in 2004 under the title *Reform and Reconstruction of the Security Sector*. The third edition which we are happy to present is devoted to *Security Governance in Post-Conflict Peacebuilding*.

Post-conflict peacebuilding has become a primary concern of international politics. Indeed, the UN reform agenda – including the creation of a Peacebuilding Commission – makes clear that more must be done to prevent societies from falling back into violent struggle. Building up domestic capacity to provide security in an accountable manner plays a crucial role in this context. Applying a security governance perspective, this volume examines a number of key issues that must be addressed by both post-conflict societies and the international community as they confront the task of rebuilding after armed conflict – including security sector reform (SSR), disarmament, demobilisation and reintegration (DDR), and the rule of law and transitional justice.

We hope that this publication helps in making the challenges and opportunities of post-conflict peacebuilding better understood as well as to provide practical policy recommendations regarding international post-conflict assistance in the broad security area. However, as the chapters make clear, this view should not deflect from the fact that ultimate responsibility for the future success of post-conflict reconstruction lies with national

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stakeholders. Local ownership is crucial in the endeavour of building sustained and sustainable peace.

It would not have been possible to carry this volume to completion without the invaluable support of a number of people. In particular, we would like to thank Jonas Hagmann for research and editing support, Jason Powers for copy editing, Tim Donais and Herbert Wulf for reviewing earlier drafts of the manuscript, and Veit D. Hopf of LIT Verlag for guiding us through the publication process. Our thanks also go to the contributors, who agreed to write under significant time pressure, and our colleagues at DCAF who provided incisive comments on different parts of the publication.

The topics touched upon in this volume were discussed at a workshop during the spring 2005 meeting of DCAF's International Advisory Board (IAB). The editors would like to thank the IAB members for their assistance in conceptualising this work.

The Editors
Geneva, 20 September 2005

Abbreviations

ANBP	Afghan New Beginnings Programme
APM	Anti-personnel landmine
APMBC	Anti-Personnel Mine Ban Convention
AU	African Union
BICC	Bonn International Center for Conversion
BiH	Bosnia and Herzegovina
CCW	UN Convention on Certain Conventional Weapons
CDR	Community-driven reconstruction
CIFTA	Inter-American Convention Against Illicit Manufacturing of and Trafficking In Firearms, Ammunition, Explosives, and Other related Materials
CIMIC	Civil-military cooperation
CoC	Code of conduct
CPA	Comprehensive Peace Agreement
CRTR	Commission for Reception, Truth and Reconciliation
CSO	Civil society organisation
DA	Dayton Accords
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DDR	Demobilisation, disarmament and reintegration
DRC	Democratic Republic of Congo
ECOMOG	ECOWAS Monitoring Group
ECOSAP	ECOWAS Small Arms Control Programme
ECOWAS	Economic Community of West African States
ELN	Ejército de Liberación Nacional
EU	European Union
EUFOR	European Union Force in Bosnia and Herzegovina
EUPM	European Union Police Mission
FAA	Armed Forces of Angola
FARC	Fuerzas Armadas Revolucionarias de Colombia
FDLR	Forces démocratiques de libération du Rwanda
FNI	Nationalist and Integrationist Front
GICHD	Geneva International Centre for Humanitarian Demining

GoL	Government of Liberia
HLP	High Level Panel
HNP	Haitian National Police
HRL	International human rights law
HRW	Human Rights Watch
IACG-MA	Inter-Agency Coordination Group on Mine Action
ICBL	International Campaign to Ban Landmines
ICC	International Criminal Court
ICMPD	International Centre for Migration Policy Development
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for the Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced person
IFI	International financial institution
IHL	International humanitarian law
ILO	International Labour Organisation
IMAS	International mine action standards
IMSMA	Information Management System for Mine Action
INGO	International non-governmental organisation
ITAF	International Police Task Force
ITAR	International Traffic in Arms
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
LANSAN	Liberian Action Network on Small Arms
LRA	Lord's Resistance Army
LURD	Liberians United for Reconciliation and Democracy
MAC	Mine action centre
MACC	Mine Action Coordination Centre
MAFP	Mine Action for Peace
MAPA	Mine Action Programme in Afghanistan
MDRP	Multi-Donor Recovery Program
MINUSTAH	United Nations Mission in Haiti
MNC	Multi-national company
MODEL	Movement for Democracy in Liberia
NATO	North Atlantic Treaty Organisation
NCDDRR	National Commission on Disarmament, Demobilisation, Rehabilitation and Reintegration
NDI	National Democratic Institute

NEPAD	New Partnership for Africa's Development
LEGAP	Liberia Economic Governance and Action Plan
NGO	Non-governmental organisation
NMAA	National mine action authority
NSA	Non-state actor
NTGL	National Transitional Government of Liberia
ODIHR	OSCE Office of Democratic Institutions and Human Rights
OECD DAC	Organisation for Economic Co-operation and Development Development Assistance Committee
ONUC	United Nations in the Congo
ONUCA	United Nations Observer Group in Central America
OSAGI	UN Office for the Special Adviser on Gender Issues
OSCE	Organisation for Security and Co-operation in Europe
PMC	Private Military Company
PoA	(UN) Programme of Action
PSC	Private Security Company
QUANGO	Quasi-autonomous non-governmental organisation
RACVIAC	Regional Arms Control Verification and Implementation Assistance Centre
RENAMO	Resistência Nacional Moçambicana
RUF	Revolutionary United Front
SALW	Small arms and light weapons
SECI	Southern European Co-operative Initiative
SEE	South Eastern Europe
SEESAC	South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
SFOR	Stabilisation Force
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SPTF	Special Task Force
SSR	Security sector reform
THB	Trafficking in human beings
TSA	Transitional Safety Allowance or
UN	United Nations
UNDP	United Nations Development Program
UNDPKO	United Nations Department of Peacekeeping Operations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

UNITA	União Nacional para a Independência Total de Angola
UNMAS	United Nations Mine Action Service
UNMBH	United Nations Mission in Bosnia and Herzegovina
UNMIK	United Nations Interim Mission in Kosovo
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UNTAET	United Nations Transitional Administration in East Timor
UXO	Unexploded ordnance
VTF	Voluntary Trust Fund
WACSOFF	West African Civil Society Forum
WANEP	West Africa Network for Peacebuilding

PART I

INTRODUCTION

Chapter 1

Approaching Peacebuilding from a Security Governance Perspective

Heiner Hänggi

Introduction

It may seem counterintuitive, but the number of active armed conflicts in the world is in steady decline.¹ This may be largely attributed to the numerous interventions of the international community in war-torn countries since the end of the Cold War – interventions aimed at making, keeping and building peace.² These interventions, however, have shown mixed results. While the number of active armed conflicts is in decline, the number of post-conflict³ states or state-like entities under international tutelage is on the rise.⁴ This is because making and keeping peace appears to be easier to achieve than building it. Yet, if the transition from armed conflict to sustainable peace fails, then, in the long run, post-conflict situations may easily become pre-conflict situations. As UN Secretary-General Kofi Annan has noted, roughly half of all countries that emerge from war relapse into violence within five years.⁵ Building peace after conflict in a sustained and sustainable manner – as daunting a task as it may be given the formidable challenges this entails – is the key to preventing such outcomes.

It is fair to acknowledge that post-conflict peacebuilding⁶ has become one of the primary concerns in current world politics. International organisations, as well as Western donor countries, have in recent years begun to prioritise and mainstream peacebuilding in their external policies. This trend has recently been evidenced by the decision of the United Nations to reinforce its peacebuilding capacity, namely by creating a Peacebuilding Commission – an intergovernmental advisory body whose main purpose is to improve the coordination among relevant actors (see Annex A).⁷ While substantial improvements have been made over the years in the international

community's peacebuilding capacity, there are still considerable gaps in the development of concepts, policies and practice that would facilitate post-conflict peacebuilding and make it more effective.

One such gap lies in the security dimension of post-conflict peacebuilding. In the early 1990s, the primary emphasis in post-conflict interventions was on economic and social reconstruction whereas the broader – and politically more sensitive – tasks of building up domestic capacity to provide security (beyond the externally assisted direct provision of security in fragile environments) were often neglected. Yet, if peace is to be lasting, the security needs of both the state and its population must be addressed equally and in parallel with political and socio-economic aspects of reconstruction. Equally important, in its security dimension – just as in the political and socio-economic aspects – post-conflict peacebuilding requires due attention to governance, particularly good governance in the security sector.⁸ If the population is threatened by unaccountable and poorly managed police, armed forces or intelligence units; if the state monopoly of legitimate power is undermined by armed non-state actors; if former combatants, including child soldiers, are not disarmed, demobilised and reintegrated; if the proliferation and misuse of small arms and light weapons (SALW) is not curbed; if anti-personnel landmines are not cleared and their victims remain unassisted; if legal regimes are not enforced, perpetrators not prosecuted, victims of past crimes not provided with reparations – then building peace will be elusive and the relapse into conflict almost unavoidable.

Thus, security governance issues such as security sector reform (SSR), disarmament, demobilisation and reintegration (DDR), rule of law and transitional justice need, and indeed increasingly seem, to be recognised by international security and development actors as priority peacebuilding tasks. In July 2005 the United Nations Security Council acknowledged 'that security sector reform is an essential element of any stabilisation process in post-conflict environments' and 'that it is inextricably linked with the promotion of the rule of law, transitional justice, DDR and the protection of civilians, among others...' (see Annex B).⁹ The recognition of these security-related issues, which have received little or only partial attention in the past, as essential elements of post-conflict peacebuilding certainly is an important, although insufficient step. On the conceptual level, what has to follow is the exploration of the linkages between these issues. On the policy level, good practices that have been developed in these areas must be consolidated. Finally, on the practical level, these security-related issues must be coherently and consistently integrated into post-conflict peacebuilding programmes.

This book aims at addressing these gaps in concept, policy and practice. It sets out to develop a conceptual and empirical understanding of the security governance dimension of post-conflict peacebuilding, to identify major challenges in this evolving policy field and to outline specific recommendations where appropriate. Hence, it examines a number of key issues that must be addressed by both the post-conflict societies and the international community as they confront the task of rebuilding after conflict – issues such as SSR, DDR, as well as rule of law and transitional justice. These issues are all part of an emerging security governance agenda in post-conflict peacebuilding.

This chapter introduces the analytical framework that underlies the essays in this volume. It begins with a brief conceptualisation of security governance which appears to provide a useful perspective from which to approach ‘new’ security issues, such as those related to post-conflict peacebuilding, escaping the traditional state-centric notion of security. This is followed by a description of what is meant by post-conflict peacebuilding and, in particular, its security governance dimension. Finally, by introducing the chapters of the book, it outlines the emerging security governance agenda in post-conflict peacebuilding.

Security Governance¹⁰

Since the end of the Cold War, with the proliferation of new security threats and the ‘securitisation’¹¹ of non-traditional security issues, our understanding of what security is has been evolving. Not only has the concept been widened and deepened, it has also been approached from new analytical perspectives, offering insights on new phenomena and developments which traditional security analysis had difficulties grasping. Governance is one such perspective which has recently been applied to security (as to many other issue-areas in international affairs). Whilst the notions of security and governance are part of both the academic and policy discourses and, despite their complexity, are well understood, the same could not be said of ‘security governance’ which is still a concept in its formative stage.¹² Yet, it is a concept which promises to produce policy-relevant insights on the security dimension of post-conflict peacebuilding.

Security

For much of the Cold War period, 'security' has been understood in terms of national security, which was largely defined in military terms. This did not preclude the acceptance of broader concepts such as common and cooperative security, but these were clearly linked to national security concerns in the politico-military field. The post-Cold War world, however, has been marked by a substantive widening and deepening of this traditional concept in both the academic and the policy discourses on security. On the one hand, it was increasingly noted that security might be endangered by more than military threats alone, which led to the inclusion of political, economic, societal and environmental aspects.¹³ In the meantime, non-military issues have put down roots on the international security agenda though some scholars have criticised the 'securitisation' of these issues, and disagreements still exist about the importance of the non-military aspects of security as compared to the military ones. On the other hand, there is a growing recognition that in the age of globalisation, and with the proliferation of internal wars and 'failed states', individuals and collectivities other than the state could and, indeed should, be the object of security. Following this view, security issues should not be addressed on the traditional national and international levels alone, but take into account the security concerns of communities and individuals. This led to the emergence of alternative security concepts such as 'societal security' and 'human security'.¹⁴

The concept of human security in particular has gained much recognition in the international policy arena. Though still an ill-defined concept, it covers a wide range of problems such as anti-personnel landmines, small arms and light weapons, violations of human rights and international humanitarian law, children in armed conflict, trafficking in persons, as well as, in its wider notion, all aspects of human development such as economic, food, health and environmental insecurity. On the practical level, the narrow approach to human security largely reflects the security dimension of post-conflict peacebuilding.

What makes these problems 'new' or 'non-traditional' security issues is not that they are truly novel concerns, but rather that they are becoming explicitly characterised and treated as security concerns – in other words, they are being 'securitised'. For illustration, since the end of the Cold War, the UN Security Council has seen a steady expansion of the range of issues brought before it, including human rights abuses, small arms and light weapons, children in armed conflict, etc. – issues which are also considered

to be, in one way or another, part of the human security and peacebuilding agendas.

Governance

The concept of ‘governance’ is quite recent and has come into use in the context of globalisation, reflecting a growing shift of perspective from *government* to *governance*.¹⁵ In its basic notion, governance refers to the structures and processes whereby a social organisation – from the family to corporate business to international institution – steers itself, ranging from centralised control to self-regulation.¹⁶ From a political science perspective, governance ‘denotes the structures and processes which enable a set of public and private actors to coordinate their independent needs and interests through the making and implementation of binding policy decisions in the absence of a central political authority’.¹⁷ As a political phenomenon, governance covers a wide range of rather different developments such as the introduction of self-government at the local level or in certain policy sectors; the outsourcing of central government functions to the private sector (including security functions to private military and security companies); the increasing network-type of cooperation between states, international organisations and private actors as illustrated by the transitional governance of post-conflict societies under international auspices. What these developments have in common is that they reflect the fragmentation of political authority among public and private actors on multiple levels of governance as well as the emergence of formal and informal cooperative problem-solving arrangements and activities.

The governance concept thus contains both horizontal and vertical dimensions. Horizontally, it refers to the multiplicity of non-state actors such as international organisations and private actors, with the latter ranging from non-governmental organisations (NGOs) to multinational corporations (MNCs), to epistemic communities and even armed groups.¹⁸ Vertically, it signals the growing interaction of these actors at various territorial levels – national as well as subnational and international – which is encapsulated in the notion of ‘multi-level governance’.¹⁹ At the state and substate levels, governance is largely exercised by governments – hence governance *by* governments – except for weak states or so-called failed states where the government is forced to share power, particularly the monopoly of coercive force, with other actors – be it international organisations, foreign powers, armed rebel groups or criminal organisations. At the level of the international system, in the absence of a world government, governance

takes the form of governance *with* (multiple) governments by way of rule-based cooperation among governments, international organisations, as well as transnational private actors. If social behaviour in a global issue-area – such as the Internet – is steered by ‘private regulations’, one may even speak of private governance or governance *without* governments,²⁰ but this is still the exception rather than the rule.²¹

Thus, as Rosenau holds, *governance* is a more encompassing phenomenon than *government*.²² At the same time, the former offers a conceptual perspective which helps to grapple with the complexity of the contemporary world in which governments are still the central actors in domestic and also in international affairs, though they increasingly are seen to share authority with non-state actors on multiple levels of interaction.

The concept of ‘governance’ has been applied to different levels or geographic spaces (see above), to different types and constellations of actors (corporate governance, private governance, multi-level governance), and to normative concepts (good governance). It has also been used to analyse different issue areas such as economic, environmental, health and human rights governance, and security governance – the last being the focus of this volume.

Security Governance

If the widened and deepened concept of security is combined with the multi-actor, multi-level concept of governance, one may expect to arrive at an understanding of security governance which is devoid of any analytical utility. However, this will not be the case if we accept the perspective that every issue-area, including security in all its dimensions, is subject to certain systems of governance characterised by more or less fragmented political authority, whether it be on the national, subnational or international level. Consequently, it is the context of security governance which matters most.

Security governance is observable at the different levels of analysis discussed above: at the global, regional, national and local levels. At the *global level*, the frame of reference is the UN system which provides the most universal structures for dealing with security issues, ranging from arms control, disarmament and non-proliferation of weapons, to conflict prevention, peacemaking, peace enforcement, peacekeeping and post-conflict peacebuilding. Global security governance is clearly dominated by state and intergovernmental actors although the role and influence of nongovernmental organisations appears to be growing in ‘new’ security issues, particularly in areas such as disarmament and nonproliferation of

smaller weapons (SALW, anti-personnel landmines), complex peacekeeping and post-conflict peacebuilding.²³ At the *regional level*, security governance refers to broad dynamics in the development of security arrangements in a given region. Measured by the degree of fragmentation of authority in security policymaking, Europe is certainly the region which has witnessed the greatest transformation of the security system in terms of a development from government to governance. Not only have national governments and regional organisations such as the Organisation for Security and Cooperation in Europe (OSCE), the North Atlantic Treaty Organisation (NATO) and the European Union (EU) expanded their security functions in the post-Cold War period, but also a variety of private actors, ranging from charities to private security companies, have emerged in local, regional and transregional security governance.²⁴ At the *national level*, security governance refers to the organisation and the management of the security sector. The security sector includes all the bodies whose main responsibilities are the protection of the state and its constituent communities – ranging from the core structures such as armed forces, police and intelligence agencies, to those institutions that formulate, implement and oversee internal and external security policy such as executive government and parliament. More often than not, non-state actors, armed groups as well as civil society organisations, also play an important role in national security governance – the former by providing or jeopardising security, the latter by strengthening governance mechanisms (see Chapters 2). In the emerging literature on the subject, security governance at the national level is generally referred to as ‘security sector governance’.²⁵ Finally, at the *local level*, security governance refers to the relevant internal security arrangements which may be dominated by national security forces, local police, or – in failed and war-torn states – by armed non-state actors such as rebel groups or forces controlled by warlords (see Chapter 3).

In sum, security governance is an analytical perspective which helps to capture complex governing mechanisms in a given issue-area characterised by a constellation of different types of actors operating at different levels of interaction. As will be discussed below, post-conflict peacebuilding exhibits the typical features of security governance: in most cases it is multi-layered, with a broad range of security actors participating in formal and informal governing arrangements and activities.

Post-Conflict Peacebuilding

After the end of the Cold War, the United Nations and other international actors began to intervene more frequently in war-torn and failing states. Such interventions were in most cases triggered either by the threat such states posed to regional stability or by the sheer extent of the humanitarian crisis that intrastate conflicts had caused. Given the nature of these interventions, traditional peacekeeping soon turned out to be an insufficient instrument for meeting the new security challenges. The multilateral peace operations in the 1990s became multidimensional, robust and complex to the extent that peacekeeping was supplemented by the much more comprehensive task of post-conflict peacebuilding. While the record of post-conflict peacebuilding is mixed and the international environment has become less conducive to such action in the wake of 9/11 and especially the war in Iraq,²⁶ peacebuilding remains much in demand given the large number of 'post-conflict' societies striving to avoid relapse into conflict and to achieve sustainable peace.

Peacebuilding – the Broad and the Narrow

While external assistance for post-war rebuilding goes back to the reconstruction of Europe and Japan after World War II, the term 'peacebuilding' is relatively recent. It came into widespread use through the UN after the end of the Cold War. In 1992, then UN Secretary-General Boutros Boutros-Ghali defined peacebuilding in his *Agenda for Peace* as 'action to identify and support structures which tend to strengthen and solidify peace to avoid relapse into conflict'.²⁷ Treating conflict as linear, the *Agenda for Peace* clearly associated peacebuilding with the post-conflict phase, following conflict prevention, peacemaking and peacekeeping. Peacebuilding was therefore the same as *post-conflict* peacebuilding, 'becoming necessary only *after* preventive diplomacy had failed to avert armed hostilities, *after* peacemaking had established the framework of a negotiated settlement, and *after* peacekeeping had monitored an agreed ceasefire and presumably facilitated the restoration of a threshold of order'.²⁸

In the 1990s, the concept was further developed and expanded to combine conflict prevention, conflict management and post-conflict reconstruction. The *Supplement to an Agenda for Peace* (1995) emphasised that the term applies not only to post-conflict settings but to the whole conflict spectrum – before, during and after conflict.²⁹ In 2001, the UN Security Council clarified the expansive notion of peacebuilding in that it

was now ‘aimed at preventing the outbreak, the recurrence or continuation of armed conflict’, and should therefore focus on a broad range of activities such as ‘fostering sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law and the promotion of a culture of peace and non-violence’.³⁰ According to this notion, peacebuilding means not only keeping former enemies from going back to war, but also addressing the root causes of conflict and even fostering development and the promotion of democracy in countries not affected by conflict. Indeed, many peacebuilding activities are the same as those of development cooperation or democracy promotion. However, peacebuilding is distinct from these in that it is a conflict-sensitive approach, which makes peacebuilding an instrument for conflict prevention, conflict management and post-conflict reconstruction.

Since the term peacebuilding has been broadened in scope, it has become a widely used but often ill-defined and contested concept, resulting in deficiencies in analysis, policy and practice. More often than not, the definition used and the approach adopted largely depends on the institutional interests of the actors involved. For analytical purposes, however, it is helpful to distinguish between the broader concept of peacebuilding as extending beyond post-conflict societies and including activities that occur during armed conflict and in the absence of warfare, and the narrower concept of peacebuilding, which refers exclusively to post-conflict settings. Also, a distinction can be made between the more modest objective of the narrower concept of peacebuilding, which is to prevent the resurgence of conflict and to create the conditions necessary for a sustainable peace in war-torn societies, and the multi-disciplinary approach of the broader concept, which aims not solely at avoiding the recurrence of war, but also at strengthening the fabric of peace through socio-economic development and democracy building. Peacebuilding therefore needs the qualifier ‘post-conflict’ to clarify when such settings are the subject of discussion. In other words: The term ‘post-conflict peacebuilding’, broadly used in UN Security Council documents,³¹ reflects the narrower concept of peacebuilding.

Dimensions of Post-Conflict Peacebuilding

Engaging in post-conflict peacebuilding presents particular opportunities, and also poses special challenges. On the one hand, in post-conflict societies, international engagement and local receptiveness to external support often converge to create a window of opportunity for political, economic and

social reforms which may transform the conditions that originally led to armed conflict. On the other, typical post-conflict features such as an adverse security situation, weak political institutions, and precarious socio-economic conditions make post-conflict peacebuilding a daunting task. Approaches to post-conflict peacebuilding are therefore inherently complex, and have to be tailored to the specific local context. Lessons drawn from practice since the early 1990s are seldom amenable to generalisation. However, there appears to be a consensus that post-conflict peacebuilding is a multidimensional process of transformation from war to peace comprising three equally important and mutually reinforcing dimensions: (1) the security dimension; (2) the political (governance) dimension and (3) the socio-economic dimension (see Table 1.1).³²

Table 1.1: Peacebuilding as a Multidimensional Process³³

Reform and Reconstruction Activities	
Security Dimension	DDR of Ex-Combatants Mine Action Control of Weapons (particularly SALW) SSR
Political Dimension	Support for Political and Administrative Authorities and Structures Good Governance, Democracy and Human Rights Civil Society Empowerment Reconciliation Transitional Justice
Socio-economic Dimension	Repatriation and Reintegration of Refugees & Internally Displaced Persons Reconstruction of Infrastructure and Important Public Functions Development of Education and Health Private Sector Development, Employment, Trade and Investment

The linear sequencing of peacebuilding activities is usually not to be recommended because of the close relationship between these three reform areas. There can be no sustainable socio-economic development without security of individuals and society and accountable political institutions, no political development without a basic level of security and improvement in the standard of living, finally no long-term security without progress in political and socio-economic development. Peacebuilding should therefore pursue development in all three dimensions at the same time and in a balanced way.³⁴

When the international community first became involved in peacebuilding as such in the early 1990s, the primary emphasis was on *economic and social reconstruction*. Achieving sustainable, poverty-reducing development is particularly important in post-conflict societies as it is difficult given the usual challenges of very low levels of development, high numbers of internally displaced persons, deficient infrastructure, defunct education and health services, collapsed economic institutions and structures, and above all the legacy of a war economy which served, and may still serve, the interests of the parties of the past conflict. Consequently, post-conflict peacebuilding in the socio-economic dimension has to focus on the repatriation and reintegration of refugees, the reconstruction of infrastructure and important public functions, the development of education and health services; and private sector development, employment, trade and investment.

Illegitimate or weak government institutions, poor or non-participatory governance, violations of human rights, a marginalised civil society and a widespread sense of injustice and impunity constitute the political legacy of conflict. Addressing the issues of *political development* in post-conflict societies is a formidable challenge, not least because societal expectations may be higher than the capacity of the local government is able to deliver. Consequently, post-conflict peacebuilding in the political dimension encompasses the rebuilding of national political authorities; good governance, democracy and human rights; civil society empowerment; and reconciliation and transitional justice.

Finally, the security situation is often precarious in post-conflict settings with armed non-state actors still playing a role – including potential peace-spoilers such as former combatants waiting for demobilisation and reintegration into civilian life, and a state security apparatus undergoing reconstruction or being ill-prepared to provide security for the state and its population. In addressing these challenges, post-conflict peacebuilding in the security dimension must involve both the direct provision of basic security in fragile environments as well as the broader tasks of building up domestic capacity to provide security. This includes activities such as DDR, mine action, control of SALW, and SSR in particular.

The three-dimensional approach in post-conflict peacebuilding also puts high demands on the providers of external assistance, in most cases bilateral and multilateral security and development actors. To be effective, these actors need to coordinate internally their external peacebuilding policy. This should include a coherent governmental approach including the ministries of foreign affairs, defence and development – also known as the

'3-D formula', signifying Diplomacy, Development and Defence. Some Western donor countries, the UK being the leading example, have already chosen such an approach while others are considering it. In practice, however, the coordination of peacebuilding activities across the range of different governmental actors proves to be an extremely laborious task. The development of an analogous coherent approach to peacebuilding will most probably be even more difficult for international organisations such as the UN or the EU. Yet, the recent decision to restructure the UN's peacebuilding activities gives some hope at least for the emergence of a more coherent, more consistent, and better coordinated approach by the most relevant actor in this policy field.

The Security Dimension from a Governance Perspective

As already mentioned, a minimum of security is considered a prerequisite for post-conflict peacebuilding. Some of the security challenges that generally confront post-conflict, and only post-conflict, societies include the needs to disarm, demobilise and reintegrate large numbers of combatants, including child soldiers; to curb and remove remnants of war such as small arms and light weapons, anti-personnel landmines and unexploded ordnance; to carry out sweeping reforms in the security sector in order to establish effective security forces and governance mechanisms; to disband non-statutory armed forces, or to integrate them into the new statutory ones; to establish the rule of law under transitional administration; to redress past crimes and atrocities with some urgency, and to seek reconciliation in this context.

These needs and challenges reflect the wider and deeper notion of security, in that they largely represent security issues where the military aspect is only one dimension: DDR, combating SALW, and mine action have as much to do with societal and even economic security as with military security. SSR encompasses military as well as non-military component parts. DDR and the engagement of armed groups may have a military dimension, but these activities are primarily of a political nature. Also, security-related issues with a legal dimension constitute essentially political and societal security issues. Moreover, these needs and challenges reflect a deeper notion of security because they transcend national security. The fight against SALW and landmines are a case in point as these issues are to a considerable extent addressed on the international level. When it comes to norms and standard setting, then the other issues discussed here also exhibit a strong global and regional dimension. Finally, almost all of these

issues are viewed as an integral part of the evolving human security agenda; they are judged on their merits in improving the security of individuals and groups rather than that of the state.

These security needs and challenges in post-conflict peacebuilding also reflect a governance rationale. First, the multitude of actors involved beyond state actors is formidable. International organisations and transnational private actors play a key role in externally-assisted peacebuilding. Second, post-conflict peacebuilding is not only a multi-actor endeavour, it is also multi-layered. All territorial levels of interaction are involved – from the substate to state, up to regional and global levels. International regimes and conventions set normative frameworks in areas such as SALW, mine action, child soldiers, human rights law and international humanitarian law. In many post-conflict states, armed non-state actors, such as irregular paramilitary forces and remnants of armed rebel groups, remain significant players on the substate level of security governance. Finally, highly political issues such as SSR or transitional justice embody a normative governance dimension in the sense that they clearly presuppose the existence of political institutions that are capable of enforcing the principles of good governance and democratic accountability.

These broad security issues have been recognised in the framework of the UN Security Council as being essential elements of post-conflict peacebuilding (see Annexes B, C, and D). Moreover, the international security and development community appears to have incorporated this set of issues into its policies and programmes, though without necessarily addressing them comprehensively.³⁵ Approaching these issues from a security governance perspective permits us to treat them as a coherent group of peacebuilding activities which exhibit strong linkages.

Towards a Security Governance Agenda in Peacebuilding

In analysing the emerging security governance agenda in post-conflict peacebuilding, three overarching themes can be discerned (see Table 1.2). They comprise issues which deal with: security sector reform and governance (Part II); disarmament, demobilisation and reintegration (Part III); rule of law and transitional justice (Part IV). This broad categorisation reflects the evolving security governance agenda in post-conflict peacebuilding – at least with regard to the current discourse on peacebuilding in the framework of the UN Security Council (see above).

Part II of this volume addresses issues related to security sector reform and governance. It begins by discussing the central role of reforming and, in most post-conflict settings, reconstructing the security sector commensurate with the principles of good, preferably democratic, governance (Chapter 2). In order to facilitate security sector reform and governance, two important but difficult and therefore often neglected tasks have to be tackled: to engage constructively the remnants of armed non-state actors to prevent them from spoiling the fragile peacebuilding process (Chapter 3), and to enable civil society in order to help strengthen the governance of the security sector (see Chapter 4).

Table 1.2: Key Security Issues in Post-Conflict Peacebuilding

Overarching Themes	Key Post-Conflict Peacebuilding Tasks
Security Sector Reform and Governance (Part II)	SSR Engagement of Armed Non-state Actors Civil Society Empowerment
Disarmament, Demobilisation and Reintegration (Part III)	DDR of Former Combatants DDR of Former Child Soldiers Action on SALW Mine Action
Rule of Law and Transitional Justice (Part IV)	Legal Regimes under Transitional Administrations Transitional Justice Anti-human Trafficking

Part III introduces a number of issues related to disarmament, demobilisation and reintegration, understood here in a broad sense. This includes disarming, demobilising and reintegrating former combatants (Chapter 5), as well as tailoring DDR to the needs of child soldiers (Chapter 6). Furthermore, it covers the reduction and eventual elimination of the threat of SALW (Chapter 7) and anti-personnel landmines (Chapter 8), which both contribute to insecurity and undermine reconstruction if not properly addressed.

Part IV discusses a number of measures aimed at restoring the rule of law and guaranteeing the protection of individuals and communities. These include the implementation of legal regimes under transitional administrations which have a dual responsibility to apply the rule of law in their own conduct and in their administrative functions (Chapter 9); the pursuit of (transitional) justice through prosecution, truth commissions, provision of reparations, reforming institutions and promoting reconciliation

(Chapter 10); and the combat against trafficking in human beings which inhibits transitions from war to peace and is a clear evidence of a breakdown of the rule of law (Chapter 11).

The volume concludes with a review of the main issues and challenges of security governance in post-conflict peacebuilding based on the findings of the previous chapters. Concentrating on key cross-cutting issues, it will emphasise the need for integrated, holistic and long-term approaches to security governance in post-conflict peacebuilding.

Notes

- 1 Since the early 1990s, the number of such conflict has dropped from some 50 to 30 (in 2004). See Harbom, L., Wallensteen, P., 'Armed Conflict and Its International Dimensions, 1946-2004', *Journal of Peace Research* vol. 42, no. 5 (2005), pp. 623-635.
- 2 Call, C., 'Institutionalizing Peace: A Review of Post-Conflict Peacebuilding. Concepts and Issues for DPA' (31 January 2005), pp. 6-8. See also: Dobbins, J. et al., *The UN's Role in Nation-Building: from the Congo to Iraq* (RAND: Santa Monica, 2005); Doyle, M.W., 'War Making and Peace Making. The United Nations' Post-Cold War Record', Crocker, Ch., Hampson, F.O., Aall, P. (eds.), *Turbulent Peace. The Challenges of Managing International Conflict* (United States Institute of Peace Press: Washington D.C., 2001), pp. 529-560.
- 3 'Post-conflict' is a problematic term. What is generally called post-conflict does not really mean after the end of conflict as conflict never really ends. At best, it refers to a situation after the cessation of violent conflict or after the conclusion of a peace agreement.
- 4 Tschirgi, N., *Post-Conflict Peacebuilding Revisited: Achievements, Limitations, Challenges* (International Peace Academy/WSP International: New York, 2004), pp. 10-17.
- 5 United Nations General Assembly, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary General, Addendum: Peacebuilding Commission, UN Doc. A/59/2005/Add.2 (23 May 2005), p. 1.
- 6 Following recent practice in UN documents and in line with related terms such as 'peacemaking' and 'peacekeeping', the term 'peacebuilding' will not be hyphenated in this book (as proper British English would suggest).
- 7 United Nations General Assembly, *2005 World Summit Outcome*, Final document of the High-level Plenary Meeting of the General Assembly, UN Doc. A/60/L.1 (15 September 2005), pp. 25-26.
- 8 Ball, N., 'The Challenge of Rebuilding War-Torn Societies', Crocker, Ch., Hampson, F.O., Aall, P. *op. cit.*, pp. 719-736 (723-725).
- 9 United Nations Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/2005/30 (12 July 2005), para. 10.
- 10 This section draws on Hänggi, H., 'Making Sense of Security Sector Governance', Hänggi, H., Winkler, T. (eds.), *Challenges of Security Sector Governance* (LIT: Münster, 2003), pp. 3-22 (4-8).

- 11 See: Sheehan, M., *International Security. An Analytical Survey* (Lynne Rienner: Boulder, 2005), pp. 52-55; Waever, O., 'Securitization and De-securitization', Lipshultz, R. (ed.), *On Security* (Columbia University Press: New York, 1995).
- 12 See: Krahmman, E., 'Conceptualizing Security Governance', *Cooperation and Conflict* vol. 38, no. 1 (2003), pp. 5-26.; Webber, M., 'Mea culpa – Security Governance in Europe: Theory and Application', paper prepared for the Fifth Pan-European International Relations Conference, The Hague (September 2004).
- 13 See: Sheehan, M., *op. cit.*; Buzan, B., *People, States and Fear: An Agenda for International Security Studies in the Post Cold War Era*, 2nd edition (Harvester/Wheatsheaf: London, 1991);
- 14 For the concept of societal security see Waever, O., Buzan, B., Kelstrup, M., Lemaitre, P., *Identity, Migration and the New Security Agenda in Europe* (Pinter: London, 1993). For a discussion of the human security concept from different perspectives see contributions in *S+F – Sicherheit und Frieden/Security and Peace* no. 1 (2005) and in Brzoska, M., Croll, P.J. (eds.), *Promoting Security: But How and For Whom?* (Bonn International Center for Conversion: Bonn, 2004).
- 15 On the differences between the perspectives of *government* and *governance* in political science see Benz, A., 'Einleitung: Governance – Modebegriff oder nützliches sozialwissenschaftliches Konzept?', Benz, A., (ed.), *Governance – Regieren und komplexen Regelsystemen* (VS Verlag: Wiesbaden, 2004), pp. 11-28.
- 16 Rosenau, J.N., 'Governance in a Globalizing World', Held, D., McGrew, A., (eds.), *The Global Transformations Reader* (Polity: Cambridge, 2000), pp. 181-190.
- 17 Krahmman, E., *op. cit.*, p. 11.
- 18 See: Karns, M.P., Mingst, K.A., *International Organizations. The Politics and Processes of Global Governance* (Lynne Rienner: Boulder/London, 2005), pp. 15-20, 211-248.
- 19 On the concept of multi-level governance see Bache, I., Flinders, M. (eds.), *Multi-level Governance* (Oxford University Press: Oxford, 2004).
- 20 See: Rosenau, J.N., Czempiel, E. (eds.), *Governance Without Government: Order and Change in World Politics* (Cambridge University Press: Cambridge, 1992).
- 21 See: Brühl, T., Rittberger, V., 'From international to global governance: Actors, collective-decision-making, and the United Nations in the world of the twenty-first century', Rittberger, V., (ed.), *Global Governance and the United Nations System*, (United Nations University: Tokyo, 2000), pp. 1-47 (4-7).
- 22 Rosenau, J.N., 'Governance, order, and change in world politics', Rosenau, J.N., Czempiel, E., *op. cit.*, p. 4.
- 23 See: Karns, M.P., Mingst, K.A., *op. cit.*, pp. 277-354.
- 24 Krahmman, E., *op. cit.*, p. 10. See also: Webber, M., Croft, S., Howorth, J., Terriff, T., Krahmman, E., 'The Governance of European Security', *Review of International Studies*, vol. 30, no. 1, 2004, pp. 3-26.
- 25 See, for instance, Hänggi, H., Winkler, T. *op. cit.*
- 26 Tschirgi, N., *op. cit.*, pp. 17-19.
- 27 United Nations General Assembly, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc. A/47/277-S/2411 (17 June 1992), para. 21.

- 28 Cousens, E.M., 'Introduction', Cousens, E.M., Kumar, C. (eds.), *Peacebuilding as Politics* (Lynne Rienner: Boulder, 2001), pp. 1-20 (6).
- 29 United Nations General Assembly, *Supplement to An Agenda for Peace*, Position Paper of the Secretary General on the Occasion of the Fifth Anniversary of the United Nations, UN Doc. A/50/60-S/1995/1 (3 January 1995), para. 46.
- 30 United Nations Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/2001/5 (20 February 2001).
- 31 For illustration, in May 2005, the UN Security Council held an open meeting on 'Post-conflict peacebuilding'. See United Nations Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/2005/20 (26 May 2005).
- 32 This categorisation draws on: OECD, *Introductory Tip Sheet on Peacebuilding* (OECD: Paris, 2005), available at URL <www.oecd.org/dataoecd/13/33/35034078.pdf>; Norwegian Ministry of Foreign Affairs, *Peacebuilding – a Development Perspective* (Norwegian Ministry of Foreign Affairs: Oslo, 2004). For a similar approach which, however, distinguishes between four categories of 'post-conflict reconstruction' (security, justice and reconciliation, social and economic well-being, governance and participation) see *Post-Conflict Reconstruction Task Framework* (Center for Strategic and International Studies and Association of the United States Army: Washington, DC, 2002), available at URL <<http://www.csis.org/isp/pcr/>>.
- 33 This table draws on the strategic framework for Norway's role in peacebuilding. See: Norwegian Ministry of Foreign Affairs, *op. cit.*, pp. 16-34.
- 34 See: Ball, N., *op. cit.*, pp. 723-725.
- 35 The Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD), for example, has recently adopted guidelines on what counts as Official Development Assistance (ODA) in conflict prevention and peacebuilding. These guidelines cover to a considerable extent the security governance agenda of post-conflict peacebuilding. OECD DAC, *Conflict Prevention and Peace Building: What Counts as ODA?* (3 March 2005). See Annex E.

PART II

SECURITY SECTOR REFORM AND GOVERNANCE

Chapter 2

Reforming and Reconstructing the Security Sector

Alan Bryden and Heiner Hänggi

Introduction¹

Developed since the late 1990s, the concept of security sector reform (SSR)² increasingly shapes international programmes for development assistance, security cooperation, democracy promotion, and post-conflict peacebuilding. This process is driven by the understanding that an unreformed security sector represents a decisive obstacle to the promotion of sustainable development, democracy and peace. The SSR concept thus bridges those previously separate international discourses of security policy, peace and democracy promotion, and development assistance. These cross-sectoral characteristics make the SSR approach innovative and promising while simultaneously rendering it more demanding in terms of conceptualisation and actual implementation.

For a better understanding of the SSR approach, it is important to distinguish between three very different reform rationales which gave rise to the SSR concept. First, following the end of the Cold War, Western governments – in the framework of their ‘new defence diplomacy’ – put emphasis, bilaterally as well as through multilateral security institutions such as the OSCE and NATO,³ on the promotion of democratic civil-military relations in post-communist Central and Eastern Europe. With other multilateral actors coming into the picture, notably the EU and the Council of Europe, this approach soon began to expand to non-military elements of the security sector such as the judiciary, police, and border guards.⁴ Second, as a consequence of the increase in intrastate conflict in the 1990s, the development community started to recognise the importance of the security-development nexus and to embrace SSR as an opportunity for development cooperation. Following the lead of the United Kingdom, Western donor countries and multilateral development actors such as the OECD and UNDP

embedded SSR into development assistance policies and programmes.⁵ Finally, SSR gained most practical relevance in the context of externally-assisted reconstruction of fragile and failed states as well as states emerging from violent intra- or interstate conflict.⁶ Within the UN discourse, SSR – together with disarmament, demobilisation and reintegration (DDR) and the rule of law – is increasingly viewed as a key to success in post-conflict peacebuilding efforts.⁷

It is the latter SSR rationale – post-conflict peacebuilding – that this chapter considers. The underlying assumption is that SSR in post-conflict settings imposes additional and distinct challenges compared to SSR in other contexts. Thus, security sector reconstruction – that is SSR in post-conflict settings – is viewed as a variation on the broader theme of security sector reform, albeit one of rapidly increasing importance. The chapter starts with a brief conceptualisation and contextualisation of security sector reform in order to lay the foundation for the subsequent discussion of the specific features of SSR in post-conflict peacebuilding. This will be followed by a review of lessons learned thus far from practical cases of security sector reconstruction. The chapter will conclude with a number of policy recommendations drawn from this analysis.

Security Sector Reform – Concept and Context

Although SSR is still an evolving and contested concept, and lessons learned from practical experience are still scarce, SSR has emerged as a key concept which is increasingly accepted – at least in principle – by development practitioners, security experts, democracy advocates, and those engaged in post-conflict peacebuilding. SSR is essentially aimed at the efficient and effective provision of state and human security within a framework of democratic governance. In practical terms, SSR varies substantially according to the specific reform context, three of which will be introduced in this section: developmental, post-authoritarian and post-conflict contexts – each reflecting different rationales for reform. Clarifying these different contexts will open the way for a more detailed discussion of SSR in post-conflict peacebuilding.

The Security Sector from a Governance Perspective

There is no generally accepted definition of what the security sector comprises. Nonetheless, there appears to be a convergence on broad and

narrow notions of the term. The narrow notion reflects a traditional *governmental* approach which is premised upon a state-centric view of security and the state's monopoly of coercive force. Accordingly, the security sector can be considered as the component of the public sector responsible for the provision of internal and external security. It rests on two pillars: (a) the state security (and justice) apparatus, and (b) the relevant civilian bodies responsible for the management and control of that apparatus.⁸

Though still within the confines of the narrow government approach, this definition reflects a broad notion of security for two reasons.⁹ First, it does not cover the military alone, but acknowledges the important, and in some countries predominant, role of non-military security forces – either in the provision of security or, on the contrary, as a source of insecurity. Consequently, apart from the armed forces, the state security apparatus includes the police, gendarmerie and paramilitary forces, the intelligence and secret services, border guards and customs authorities, as well as justice and penal institutions. The inclusion of the latter category of actors such as criminal investigation and prosecution regimes, prison services, etc. into the security apparatus reflects the growing importance of internal security issues, particularly in the aftermath of 9/11.

Second, this definition of the security sector adds a normative political dimension in the sense that it posits the state security apparatus as accountable to government authority or – as UN Secretary General Kofi Annan put it – that the security sector 'should be subject to the same standards of efficiency, equity and accountability as any other [public] service'.¹⁰ Consequently, apart from the security apparatus, the security sector includes the elected and duly appointed civil authorities, such as the executive government, the relevant ministries (so-called 'power ministries', particularly the ministries of defence and the interior), the parliament and its specialised committees, as well as the judicial authorities and special oversight bodies such as human rights commissions and ombudsmen. The role of these bodies is to ensure that the security apparatus is managed in an efficient and effective way and is held accountable to current standards of democracy and human rights.

Given the centrality of the security sector as the sole agent of the legitimate force in the nation-state, there are good reasons to expect that the shift from *government* to *governance* has generally been modest in the security sector.¹¹ However, this focus on a security sector understood to be confined to state institutions falls short of reality in many countries, in established democracies as well as in developing countries, in post-

authoritarian and post-conflict states. More often than not, non-state actors, armed groups, as well as civil society organisations play an important role in providing, as well as in undermining, security. From a governance perspective, this calls for a broader understanding of the security sector which should include non-statutory security forces and non-statutory civil society groups as well.¹² As will be shown below, this holds particularly true for post-conflict countries.

Given the increasing importance and, particularly in post-conflict cases, the prevalence of private and other non-statutory security actors, armed groups such as guerrilla and liberation armies, irregular paramilitary organisations as well as private armies of warlords, political party militias and mercenaries all have to be considered either part of the *de facto* security sector or at least important actors shaping security sector governance. This also holds true for private military and security companies which have become a key feature of many conflict and post-conflict theatres (see Chapter 3). Finally, again with particular relevance to post-conflict settings, foreign troops may also play a crucial role in the provision of security. Foreign troops impacting on the security sector governance of the host country may take the form of international peace support operations, deployments of allied troops, or even occupying forces.

Furthermore, given the relevance of civil society for democratic governance, non-statutory civil society actors such as the media, non-governmental organisations, research institutions, and community groups may play an important role in the oversight of the security apparatus. They can contribute to the creation of an informed public sensitised to security sector governance issues, and they can provide the state institutions responsible for the management and oversight of the security apparatus with alternative expertise (see Chapter 4).

Considering civil society actors and armed non-state actors as component parts of the security sector in the broad sense helps to transcend its essentially state-centric nature which, in an increasing number of cases, wrongly assumes that the monopoly of the means of legitimate coercion rests solely with the state and its institutions.¹³ While necessary from a *governance* perspective, the broadening of the security sector to include non-state actors is much less desirable from a *government* perspective, particularly with regard to armed non-state actors. However, from government and governance perspectives, the limited or, even better, non-involvement of armed non-state actors in security sector governance, and a strong role for civil society actors, is more desirable than not.

The Concept of Security Sector Reform

The point of departure for security sector reform is a dysfunctional security sector, i.e. a security sector which does not provide security to the state and its people in an efficient and effective way or, even worse, which is itself a cause of insecurity and violent conflict. Moreover, in line with the aforementioned normative dimension of SSR, and in view of the fact that non-democratic states may also have efficient and effective security sectors (though primarily for the purpose of regime security), a security sector must be considered dysfunctional if it is deficient in terms of democratic governance. Thus, SSR is meant to turn a dysfunctional security sector into a functional one, thereby reducing security deficits (lack of security or even provision of insecurity) as well as democratic deficits (lack of oversight over the security sector). This double objective of developing an affordable, effective, and efficient security apparatus within a framework of democratic accountability constitutes the uncontested core of the SSR concept.¹⁴

The SSR agenda favours a holistic approach in a double sense – firstly, by integrating all those partial reforms such as defence reform, police reform, intelligence reform and judicial reform, which in the past were generally seen and conducted as separate efforts; and secondly, by linking measures aimed at increasing efficiency and effectiveness of security forces to overriding concerns of democratic governance. Consequently, it has to be emphasised that reforms aimed to modernise and professionalise security forces without ensuring their democratic accountability are not consistent with the SSR concept as commonly understood. Such activities would fall rather under the heading of technical assistance in the framework of ‘old defence diplomacy’, which was aimed at beefing up the armed and security forces of allies irrespective of governance considerations.¹⁵ By definition, SSR-related activities must be aimed at improving the governance of the security sector.

Given the scope and complexity of the SSR concept, the range of SSR activities that are recommended and implemented by the actors involved is quite extraordinary. They range from political dialogue, policy and legal advice, training programmes, to technical and financial assistance. Two major categories of reform activities can be distinguished – each reflecting one of the two core elements of SSR:¹⁶

- First, measures aimed at restructuring the security apparatus. These SSR activities include partial reforms such as military and, more generally, defence reform as well as police reform, intelligence

reform, judicial reform, prison reform, etc. In line with the holistic approach of SSR, it is imperative to link each area of engagement because efforts will not succeed unless complementary work is carried out in other areas. From a security governance perspective, activities aimed at engaging and integrating non-state armed actors into the state security apparatus might also be considered as a part of this category of SSR activities.

- Second, measures aimed at strengthening civilian management and democratic accountability of the security apparatus. These SSR activities include reforms of the relevant ministries and their management capacities (particularly financial management) as well as parliamentary and judicial oversight mechanisms. From a security sector governance perspective, capacity building in favour of specialised civil society actors would also fall into this category of SSR activities.

A third category – specific SSR-related activities addressing the legacies of conflict – will be introduced in the next section. Beyond these broad categories of SSR activities, a number of cross-cutting reform measures must be mentioned because they impact on, or even link, several component parts of the security sector. Such reform measures would include the development of norms, standards and good practices specific to the security sector, the strengthening and adaptation of the constitutional and legal framework of security sector governance as well as comprehensive and inclusive national security reviews as a precondition and catalyst for successful SSR.

Contexts of Security Sector Reform

In practical terms, SSR varies according to the specific reform context. There is general agreement that no common model of SSR exists and that, in principle, each country engaging in SSR constitutes a special case and hence a different reform context. However, for analytical purposes, broad SSR contexts may be distinguished which contain a number of similar cases – depending on the criteria for categorisation. If the level of economic development, the nature of the political system and the specific security situation are used as points of departure, the following three SSR contexts, or rather ‘context clusters’, emerge as typical – each reflecting a different rationale for reform (see Table 2.1):

- the developmental context in relatively stable developing countries (key criterion: socio-economic development);
- the post-authoritarian – primarily post-communist – context in transition countries (key criterion: political system);
- the post-conflict context in countries engaged in rebuilding the state after conflict (key criterion: security situation).¹⁷

Relatively good opportunities for externally-assisted SSR activities tend to exist in developing countries which have embarked on a process of democratisation after elections or other forms of peaceful change, in post-authoritarian transition states which aim at joining a regional organisation making democracy a requirement for membership (e.g. potential EU and NATO members), and in those post-conflict states in which international peace support operations offer a basis for reconstruction and local actors show a certain capacity and readiness for reform. In many other cases, however, prospects for externally-assisted SSR are rather dim. In particular, this applies countries in armed conflict, to fragile and ‘post-conflict’ states at early stages of conflict transformation, as well as to authoritarian regimes and so-called illiberal democracies where the will to reform is lacking. This does not necessarily mean that SSR should not be promoted in these countries, but that this task will be even more challenging with higher political risks attached than is the case in more conducive environments.

The framing conditions, the nature of external involvement, the specific security sector problems and the challenges and possibilities for SSR may be very different depending on the specific reform context. What all three contexts have in common, however, is that SSR tends to be externally induced. In most cases, external (development and security) actors tend to initiate SSR programmes, fund them to a large extent, and often provide the bulk of expertise needed for implementing these programmes. Where local will for reform is lacking, external actors often facilitate SSR programmes by means of political incentives or pressure. Furthermore, there seems to be a tendency among external actors to promote their own (i.e. ‘Western’) reform models, which rarely fit the specific SSR context on the ground. In all three reform contexts, there are tensions between external imposition and local ownership of SSR. Finding a balance between international good practice in this area and domestic political culture of reforming states is a *conditio sine qua non* for successful SSR, though, at the same time, this tension is inherent to the SSR concept itself and thus not amenable to easy solutions.

Table 2.1: Contexts of Security Sector Reform¹⁸

	Developmental context	Post-authoritarian context	Post-conflict context
Key criteria	Socio-economic development	Political system	Security situation
Key problem	Development deficit	Democratic deficit	Security deficit
Key reform objective	Development	Democratisation	Peacebuilding
General reform process	Transition from underdeveloped to developed economy	Transition from authoritarian to democratic system	Transition from armed conflict to sustainable peace
Nature of external involvement	Reform pressure through development assistance coupled with political conditionality	Perspective of accession to regional organisation (e.g. EU, NATO) as incentive for reform	Reform pressure through international (mostly UN-led) peace support operations
Key external actors	Western donor countries; development organisations (e.g. UNDP, World Bank); transnational actors	Western donor countries; international organisations (e.g. EU, NATO, OSCE); transnational actors	Multinational peace troops (mostly UN-led); Western donor countries; UNDP; transnational actors (e.g. NGO, PMC)
Specific security sector problems	Poorly managed and governed security apparatus; excessive military spending; security apparatus partly funding itself through own business activities	Oversized, over-resourced, omnipresent security apparatus; civil but no democratic control; strong state but weak civil society	State structures collapsed; very weak civil society; strong presence of armed non-state actors; specific security problems (e.g. small arms, landmines)
Possibilities for SSR	Mixed – depending on political commitment to reform, strength of state institutions, role and state of security apparatus, regional security environment, donor approach to SSR, etc.)	Rather good if external incentives available, e.g. EU membership – strong state institutions, professional security forces, broader democratisation process)	In principle rather poor – weak and contested statehood, privatisation of security – depending on foreign commitment and local readiness to reform

Security Sector Reconstruction – the Post-Conflict Context

Most of the activities currently subsumed under the heading of SSR take place in post-conflict societies emerging from intra- or interstate conflict which are embarking on a process of reconstructing all dysfunctional parts of the public sector. Clearly, engaging in SSR in post-conflict environments poses special challenges, and also presents particular opportunities. On the one hand, SSR seems to be particularly difficult in a post-conflict setting, usually characterised by weak state institutions, a fragile inter-ethnic or political situation, with influential military and non-military security forces, both statutory and non-statutory, and precarious economic conditions. On the other hand, given the external resources made available through post-conflict peace support and peacebuilding interventions, the receptiveness of post-conflict societies to external support for all kinds of reform, even in the most sensitive areas such as the security sector, and the quite obvious need to ‘right-size’ the security sector and reform or even reconstruct it after the end of the conflict, post-conflict situations are generally viewed as representing ‘windows of opportunity’ for SSR programmes. However, this does not necessarily apply to cases where an interstate war or foreign military intervention aimed at regime change and resulting in transitional occupation preceded post-conflict peacebuilding efforts, because the ensuing security environment may simply be too adverse.

Post-Conflict SSR as a Challenge of Security Governance

From a governance perspective, post-conflict peacebuilding reflects highly complex constellations of interaction. A multitude of actors, particularly armed non-state actors such as international peace support forces, transnational private military companies (PMCs) and local non-statutory armed groups, must be taken into account. Also, post-conflict peacebuilding takes place on several levels of engagement beyond, above and below the state level. This is evidenced by the fact that post-conflict theatres are characterised by two distinct features which represent additional challenges for SSR: the privatisation and the internationalisation of security, which tends to be much greater in post-conflict cases than in the other contexts discussed above.

Post-conflict settings are more often than not characterised by the strong presence of armed non-state actors whose political ambitions and economic stakes will have to be taken into account in post-conflict peacebuilding. Furthermore, the former conflict parties, as well as the

international forces tasked to keep the peace, may have hired the services of PMCs which have their own stake in post-conflict peacebuilding. Efforts aimed at stabilising the security situation immediately after conflict tend to conspicuously ignore these armed non-state actors. This may impact negatively on the long-term objectives of peacebuilding, which include the reestablishment of the state monopoly on the legitimate use of force. The ‘privatisation’ of security in post-conflict settings tends to be contrasted by the absence of strong civil society actors who could engage in increasing public pressure for the demilitarisation and deprivatisation of security. The combination of a strong involvement of armed non-state actors and a weak role for civil society bodes ill for security sector governance. However, it is a distinct feature of post-conflict environments and, thus, a specific challenge for security sector reconstruction.

International intervention is the rule of post-conflict peacebuilding rather than the exception. In most cases, a transitional administration under the auspices of the UN or other international institutions, supported by the military strength of an international peace support operation, has to reimpose some sort of a monopoly of coercive force and step in as a provisional government – often for a considerably longer period of time than initially expected. The activities of intervening military forces tend to influence the development of a new national security apparatus and the implementation of specific post-conflict SSR-related measures such as DDR, SALW programmes and mine action. Peacekeepers may even engage in capacity-building activities aimed at strengthening civilian management, parliamentary oversight and the role of civil society in security sector governance. The ‘internationalisation’ of security in post-conflict settings tends to be contrasted with a shortage of local capacity and, thus, by a lack of local ownership in post-conflict peacebuilding because physical security will have to be provided by international actors while sufficient local capacity is gradually being developed – a process which can be very lengthy. As mentioned above, finding a balance between external imposition and local ownership of SSR is a particularly challenging, but nevertheless crucial, task in the post-conflict context.

Specific Objectives of Post-Conflict SSR

SSR in post-conflict settings – security sector *reconstruction* – follows the same two key principles as SSR in other contexts, namely (re-)establishing security forces which are able to provide public security in an effective and efficient manner and within a framework of democratic governance. What

makes security sector reconstruction different from security sector reform, however, is the fact that it must deal with the legacy of past armed conflict. This may include armed non-state groups that need to be disbanded or integrated into new force structures; oversized armed forces that need to be downsized; former combatants (including child soldiers) that need to be disarmed, demobilised and reintegrated; surplus weapons that need to be removed; landmines and unexploded ordnance that need to be cleared; transitional legal regimes that need to be implemented; large numbers of perpetrators that need to be prosecuted; widespread trafficking in human beings that needs to be combated, etc. These legacies all have in common that, to a greater or lesser extent, they relate to the security sector and impact the conditions for security sector reform.

Consequently, apart from restructuring – or reconstructing – the security apparatus and strengthening – or establishing – civilian control and democratic accountability, SSR in post-conflict peacebuilding has to tackle a third objective, namely to address this broader category of related reform and reconstruction activities.¹⁹ Thus, more often than not, disarmament, demobilisation and reintegration of former combatants, measures against proliferation and misuse of small arms and light weapons as well as mine action, rule of law and transitional justice, and anti-trafficking programmes are viewed as components of SSR in post-conflict peacebuilding, but not necessarily of SSR in developmental and post-authoritarian contexts (see parts III and IV of this book). Needless to say given the broader range of core tasks, security sector reconstruction is even more challenging than ‘standard’ SSR in developmental and post-authoritarian contexts.

Lessons from Post-Conflict SSR

The relationship of SSR to the multi-actor, multi-level dynamics of post-conflict peacebuilding processes is inherently complex. Relatively few dedicated SSR programmes have been enacted to date in post-conflict contexts, but a range of activities that fall within the scope of post-conflict SSR can be traced within past and ongoing post-conflict peacebuilding efforts. This section seeks to highlight briefly a number of lessons from the international community’s practical experience in SSR in different post-conflict settings and how security sector reconstruction relates to the broader security governance challenges in states emerging from conflict. Consequently, four key themes are considered: the *framing conditions* or specific contexts for security sector reconstruction; the role and influence of

external actors; the challenges and dilemmas of fostering *local ownership*, and, finally, the *sequencing* of related activities.

Framing Conditions

The collapse of political and societal institutions, and a breakdown of the rule of law, are common to all contexts of post-conflict reconstruction. The post-conflict landscape generally includes a wide availability of weapons, refugees and internally displaced persons and porous borders, exacerbating the openings for organised crime. Post-conflict security actors may be characterised by politicisation, ethnicisation and corruption, uncontrolled spending, a lack of professionalism and poor oversight. The vacuum left by a deficient state security sector risks being filled by a range of non-statutory actors with their own aims and agendas. Bringing such actors under civilian and democratic control through restoring the state's monopoly on the use of force is therefore a critical peacebuilding challenge.

Beyond these general framing conditions, knowledge of the specific reform and reconstruction context is essential in order to inform external interventions and avoid embedding divisions in reconstructed security sectors. From a *security* perspective, the type of conflict, its duration and the level of violence have serious consequences for the willingness of stakeholders to cooperate. Persistent factionalism, an ethnic or religious dimension to the conflict, and the level of civilian involvement in hostilities all contribute to residual hostility that will need to be considered – as shown by the failure of peacebuilding in Somalia – in the formulation and implementation of security sector reconstruction programmes if security and sustainable peace are to be achieved.

The *political* context, taking into account the nature and extent of political development prior to the conflict, is equally pertinent to the shape of security sector reconstruction programmes as they are conceived and implemented. Different opportunities appear in reconstructing security in states characterised by strongly centralised dictatorial regimes – such as Iraq – in comparison to a feudal system with much power held by regional stakeholders as in Afghanistan. In particular, the opportunities to reconstruct the security sector will be conditioned by the characteristics of the pre-conflict security sector which in many such cases would have been regime-focused and weakly governed. Importantly though, the previous political dispensation, as well as a range of other contextual factors such as religion, will deeply colour local actors' expectations for reconfigured governance structures. The regional political context for security sector reconstruction

must also be taken into account given the range of transnational security threats and the potential for neighbours to act as spoilers.

Finally, the *socio-economic* context will have a direct bearing on openings for security sector reconstruction. States with higher standards of living are more likely to achieve long-lasting peace. However, States that are the subject of peacebuilding efforts tend to be characterised by limited social and economic capital, including reliance on economic and food assistance, coupled with an absence of infrastructure and skills. These factors, exacerbated by long-standing governance deficits, represent significant barriers to security sector reconstruction.

These security, political and socio-economic histories are interrelated, deeply engrained, and can only be influenced to a certain extent by external actors. They therefore represent an essential dimension, alongside external involvement and local capacity, of the available political space for building peace.²⁰ Domestic characteristics and root causes are therefore highly relevant to the scope and possibilities for successful SSR even when external actors have substantial political and military strength. As discussed below, to achieve sustainable results, security sector reconstruction projects should be firmly grounded in these local realities even though these realities can represent as much a part of the problem as a part of the solution.

External Involvement

Addressing security sector governance issues before windows of opportunity close – either as a result of suboptimal governance practices becoming embedded or, at worst, a return to conflict – is essential. While post-conflict contexts do not represent a blank canvas for reform and reconstruction, the near collapse of state structures represents a chance for thorough change not necessarily found in other reform settings. The resources and commitment of dedicated external actors have been a critical factor in furthering the security and development goals of post-conflict peacebuilding efforts. However, with regard to security sector reconstruction, a number of valid concerns should be highlighted regarding both the policy dimension and the practical consequences of such interventions.

Key external actors may include a combination of peacekeeping forces, transitional administrations, development and donor agencies as well as relevant NGOs and commercial companies. Regional actors such as the EU or Economic Community of West African States can play a key role in providing linkages to international organisations as well as a local knowledge and commitment that these larger actors do not have. At the

policy level, external approaches to SSR have frequently lacked coordination or have been shaped by domestic experiences that do not apply to other reform contexts. In processes involving a combination of actors, there is a consequent need for more joined up approaches by the various external actors involved in SSR in order to ensure policy coherence. On the ground, challenges to coordination are mirrored by problems in cooperation generated by organisations with overlapping mandates but contrasting priorities and approaches.

Engaging in SSR in post-conflict settings requires a long-term commitment by external actors. This requires a sustained resource flow although resources are not enough – as demonstrated by the continued failure of SSR in Haiti despite major pledges from the US, France and Canada, among others.²¹ Even more important is a political will to sustain involvement until national actors are mature enough to assume responsibility for their own security sector governance. If this does not happen, then unfulfilled expectations of local actors can have significant repercussions on the wider goals of the peacebuilding process. Political ‘exit strategies’ need to be replaced by ‘transfer strategies’ keyed to realistic and durable benchmarks. This dilemma is evident in Iraq where achieving security sector reconstruction goals is being impeded by the inability of the US-led coalition, in conjunction with reconstituted Iraqi security forces, to provide a basic level of security as a precondition for the provision of services or rebuilding the economy.²²

Legitimacy is also essential for external intervention. The continued insurgency in Iraq also demonstrates both the inadequacy of external military power as a force for change, and the role that perceived illegitimacy can have in strengthening those groups opposing new governance structures. In contrast, the United Nations Transitional Administration in East Timor (UNTAET) successfully oversaw the resettling of over 100,000 refugees and internally displaced persons, the building of a civil administration from scratch, the holding of free and fair elections, and the emergence of an independent nation after centuries of Portuguese colonial rule, followed by military occupation by Indonesia and extreme violence. Critically, this startling success was underpinned by credible security guarantees and an international presence that was welcomed openly by the local population.²³

The nature of the contributions provided by external actors must be tailored to the specific needs of the given reform context. Military personnel have often been at the forefront of the international community’s SSR programming. However military skills sets, while appropriate to activities such as defence reform, do not necessarily lend themselves to developing

governance frameworks or building capacity in local actors. Conversely, development actors, who are more exposed to the challenges of capacity building, have been reluctant to engage in the security field. What is required, as described by Brzoska and Heinemann-Grüder, is 'a multidisciplinary approach involving legal and constitutional experts, military and police professionals, experts in human resources management, persons and agencies with experience in demobilisation, re-trainers and labour market experts'.²⁴

The potentially negative impact of external actors on post-conflict societies must also be acknowledged in order to be minimised as much as possible. There is a danger of causing a 'dependency culture' which creates 'de facto multilateralist states' that leave nothing behind when international support is withdrawn.²⁵

Local Ownership

The importance of 'local ownership' to successful security sector reconstruction has become so widely acknowledged as to become a truism. The difficulty lies in implementing measures which enshrine this principle when the ability to implement change resides essentially with external actors. However the importance of societal reform mirroring institutional developments cannot be overstated in States with long legacies of weak or authoritarian governance. In general terms, local ownership, understood as an expression of national will, is essential for SSR. Local actors need to be involved in security sector reconstruction processes from the outset in order gradually to build local capacity and allow for the eventual handover of responsibility from external actors, as difficult as this may be. Kosovo and Bosnia and Herzegovina are two examples where externally-imposed SSR has not proved conducive to sustainable reform.

Local ownership also requires societal, as well as institutional, re-positioning in order to restore faith in armed and security forces in post-conflict states. Consultation and discussion therefore represent important mechanisms for surmounting the historical legacies of recently reformed security sector institutions. Civil society involvement in reconstructing the security sector is intended to narrow such gaps between security institutions, newly-elected political authorities and the populace, building confidence through demystifying a sector traditionally characterised by secrecy. It is also an effective means of moving away from donor-driven SSR perspectives. Support for research institutes, media organisations, and other

civil society actors focusing on security issues can increase the space for debate on SSR issues.

Local capacity should be considered as a practical rather than aspirational or normative goal. Compatibility of new structures and mechanisms with available long-term resources is essential for sustainability. More broadly, moving from the absence of war to stable peace is untenable without taking into account issues of capacity, leadership and participation. This is reflected in the case of Sierra Leone, generally seen as a positive example of an SSR process led by one committed external actor. However, there is concern that the high quality of training and equipment provided by the British cannot be sustained once support is reduced and full responsibility returned to national actors, which may weaken morale and may dampen other reform activities.²⁶ In another context, US support for regional powerbrokers in Afghanistan may have helped in the military struggle against the Taliban, but has been counterproductive in terms of strengthening central government in Afghanistan. Beyond obvious ‘peace spoilers’, the misguided support of ‘uncivil society’ also includes organisations set up with the goal of accruing donor funding as, for example, in Bosnia and Herzegovina (see Chapter 4). Building the proper kinds of local capacity, ensuring that organisations are genuinely representative and accountable, is therefore critical.

Sequencing of Reforms

A broad conceptualisation of SSR is important in order to map the range of related actors and issues that security sector reconstruction processes are designed to address. However, such approaches may result in ‘laundry lists’ which provide little concrete guidance for planning interventions. How SSR efforts are sequenced is key to long-term sustainability of reform. Although basic security is a precondition for SSR, if security is achieved solely through external actors or at the expense of the human rights of citizens, then long-term stability cannot be achieved. Consequently, SSR must go hand in hand with a broader democratic transformation of the country’s political and legal system. However, it is also important to note that while democratisation is an important precondition for SSR, the relationship between democratisation and democratic governance of the security sector is less clear. In the West African sub-region, democratic openings in a number of States have occurred in the context of security sectors that remain geared towards the security of the regime in power rather than the security of all of its citizens.²⁷

In the ideal case, security sector reconstruction should emerge from a restated national security policy that includes such sectoral policies as defence and intelligence. Higher-level policy reform should form the basis of constitutional and legal reform which reinforces democratic control and shapes the roles and functions of security organisations. This should be mirrored by compatible personnel and resource management structures that are transparent and accountable. These steps, which should be supported by effective and regular evaluation procedures, cannot take place in the absence of viable national capacity, and should therefore be a key focus of donor assistance. In the reality of the early post-conflict period, this ideal model must be set against the immediate goals of rebuilding state capacity to address security threats.

Security sector reconstruction is directly and indirectly linked to the range of security governance challenges that need to be addressed as part of post-conflict peacebuilding. The governance dimension of the SSR concept provides a thread which links security issues where the military aspect is only one dimension such as DDR and SALW, to political security issues like engaging armed non-state groups and to societal security issues such as transitional justice or human trafficking. Pursuing these linkages in policy and programming terms is essential in order to address the consequences of coordination and cooperation problems, as well as to inform priority-setting in current and future interventions.

An important aspect of sequencing lies in determining how and when to return responsibility to local actors. Political deadlines and exit strategies are antithetical to meaningful reconstruction, with engagement being the key to meaningful results. Early withdrawal of external support undermines opportunities to embed sustainable locally-owned security sector institutions and oversight mechanisms.

Conclusion and Policy Recommendations

The increasing application of the SSR concept by a range of international actors is evidence of the growing awareness that SSR is an essential element in addressing a number of security and development goals. This chapter has considered the SSR concept in the particular context of post-conflict peacebuilding where it is situated as an essential requirement among the governance challenges of states emerging from conflict. Such contexts are inherently complex, combining external intervention with the long-term goal of states reassuming responsibility for their own security.

Experience in implementing SSR as part of post-conflict peacebuilding efforts has demonstrated the importance of context in shaping external interventions and optimising opportunities for capacity-building among local actors. The international community now has significant experience in assisting the reconstruction of states following armed conflict, and lessons can be identified and, more importantly, applied, which should help to shape future interventions. The following recommendations are therefore proposed:

- Enhancing governance capacity should not be considered an option in the security dimension of the reconstruction effort. Without investing in oversight mechanisms, the key requirement of sustainable, locally-owned reform cannot be achieved.
- As difficult or seemingly counterproductive as it may seem in the short-term, participative reform processes involving a range of local actors are critical in order to embed reform in wider societal structures. The building of local capacity should therefore support the full range of activities led by external actors.
- International actors must intervene swiftly, but be prepared for extended involvement both in political and financial terms. However, advantages gained through political commitment and resources will be undermined if interventions lack legitimacy. Linking interventions to the provisions of peace agreements or broader international mandates are therefore very significant.
- Sequencing of security sector reconstruction needs to reflect realities on the ground and should be based on comprehensive needs assessments. In particular, transfer strategies to local actors must be founded on objective criteria relating to the feasibility of such measures.
- SSR is part of wider reform efforts and must be linked to other elements of the peacebuilding process. At the strategic level this means that coordination mechanisms should be simplified and key goals agreed upon by donors, international organisations and other major actors. On the ground, cooperation strategies must be based on information sharing and the selection of 'fit to task' human and technical resources. Developing a framework that better integrates these activities could have considerable benefit for coordination and priority setting at the strategic level and in the field.

This chapter has sought to clarify the SSR concept and its specific application to post-conflict peacebuilding. The lessons which come from this analysis are therefore applicable to a wide range of stakeholders. In particular, the UN has a central role in policy-setting, coordination and implementation – and the new Peacebuilding Commission may serve as its primary instrument. Bilateral donors as well as international and regional actors also have a clear responsibility to coordinate SSR interventions and further develop the linkages between SSR and other aspects of the peacebuilding agenda. But the key responsibility for SSR rests with local actors. SSR can only be achieved in post-conflict contexts if a genuine transformation is achieved that sets the security of citizens above partisan interests or regime loyalties. Embedding such a transformation in the agencies and actors responsible for the provision of security and its oversight is a fundamental condition for sustainable post-conflict peacebuilding.

Notes

- 1 This chapter draws on earlier publications by the authors, including Bryden A., 'Understanding Security Sector Reform and Reconstruction', Bryden A., Hänggi, H. (eds.), *Reform and Reconstruction of the Security Sector* (Lit: Münster, 2004), pp. 259-275; Hänggi, H., 'Conceptualising Security Sector Reform and Reconstruction', Bryden, A., Hänggi, H. (eds.), *op. cit.*, pp. 3-18; Hänggi, H., 'Sicherheitssektorreform (SSR) – Konzept und Kontexte', *Sicherheit und Frieden/Security and Peace* no. 3 (2005, forthcoming); Hänggi, H., Tanner, F., 'Promoting security sector governance in the EU's neighbourhood', *Chaillot Paper* no. 80 (EU Institute for Security Studies: Paris, 2005).
- 2 'Security sector reform' is the term of choice in this chapter because it is most commonly used by practitioners as well as analysts. Reference is made, however, to alternative terms such as 'security system reform', used by the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD); 'justice and security sector reform', introduced by the United Nations Development Programme (UNDP); and 'security sector transformation', which is increasingly being used in the African context to underline the need for fundamental change in governance processes in the security sector. – For an overview of the earlier literature on the SSR concept see Hänggi, H., 'Conceptualising', *op. cit.*, pp. 16-17.
- 3 See, for instance, Cottey, A., Forster, A., 'Reshaping Defence Diplomacy. New Roles for Military Cooperation and Assistance', *Adelphi Paper* no. 365 (London: International Institute for Strategic Studies, 2004), pp. 31-40.
- 4 Hänggi, H., Tanner, F., *op. cit.*, pp. 25-42.
- 5 See, for instance, Brzoska, M., 'Development Donors and the Concept of Security Sector Reform', *DCAF Occasional Paper* no. 4 (Geneva Centre for the Democratic Control of Armed Forces: Geneva, 2003).
- 6 See, for instance, Bryden, A., Hänggi, H., *op. cit.*, particularly chapters in part III.

- 7 United Nations Security Council, *Statement by the President of the Security Council*, UN Doc. S/PRST/2005/30 (12 July 2005). See also Chapter 1.
- 8 For an authoritative definition of the security sector in the narrow sense see Informal DAC Task Force on Conflict, Peace and Development Co-operation, *Security Issues and Development Co-operation: A Conceptual Framework for Enhancing Policy Coherence* (Organisation for Economic Co-operation and Development: Paris, 2000), p. 8.
- 9 For a discussion of the broad notion of security see Chapter 1.
- 10 Annan, K., *Peace and Development – One Struggle, Two Fronts*, Address of the United Nations Secretary General to World Bank Staff (19 October 1999), p. 5.
- 11 For a discussion of the shift from *government* to *governance* see Chapter 1.
- 12 For authoritative definitions of the security sector in the broad sense see UNDP (2002), p. 87; OECD DAC, *DAC Guidelines and Reference Series: Security System Reform and Governance* (OECD DAC: Paris, 2005), pp. 20-21, available at URL <www.oecd.org/dataoecd/8/39/31785288.pdf>.
- 13 See Wulf, H., 'Internationalisierung und Privatisierung von Krieg und Frieden', *BICC/DCAF Schriften zu Sicherheitssektor und Konversion* no. 11 (Baden-Baden: Nomos, 2005).
- 14 According to the OECD DAC, security sector reform 'seeks to increase partner countries' ability to meet security needs in their societies in a manner consistent with democratic norms and sound principles of governance, transparency and the rule of law'. OECD DAC, *op. cit.*, p. 11.
- 15 These attempts are not unusual as noted in a recently published report of the OECD DAC: 'In this context, there is a danger that traditional security-related programmes be simply re-labelled as SSR without a serious review of their contents to ensure that they support a governance-oriented approach to the security system.' OECD DAC, *op. cit.*, pp. 25-26.
- 16 For a systematic catalogue of SSR activities see Hänggi, H., Tanner, F., *op. cit.*, annexe V.
- 17 One should, however, be aware that highly developed countries, consolidated democracies and states which are internally and externally secure also face pressures to reform their security sectors, particularly in response to new security requirements accentuated by 9/11 and its aftermath or to deficiencies in international security governance related to the effects of globalisation. These pressures are not specific to a given reform context but are more generally applicable.
- 18 This table, though revised and updated, is drawn from Hänggi, H., 'Conceptualising', *op. cit.*, p. 10.
- 19 Ball, N., 'Reforming Security Sector Governance', *Conflict, Security & Development* vol. 4, no. 3 (December 2004); Hänggi, H., 'Conceptualising', *op. cit.*, pp. 9, 14.
- 20 Doyle and Sambanis characterise these three dimensions as a 'peacebuilding triangle' in which positive support is required along each dimension but, importantly, more of one element can substitute to an extent for deficiencies in other areas. Doyle, M.W., Sambanis, N., 'Building Peace: Challenges and Strategies After Civil War', The World Bank Group, 1999, p.15.
- 21 Law, D., 'Security Sector Reconstruction in Conflict and Post-Conflict Settings', Brzoska, M., Law, D. (eds.), *Security Sector Reform in Peace Support Operations* (2006, forthcoming).

- 22 See: Slocombe, W., 'Iraq's Special Challenge: Security Sector Reform "Under Fire"', Bryden, A., Hänggi, H. (eds.), *op. cit.*, pp. 232-255.
- 23 See: Hood, L., 'Security Sector Reform in Timor-Leste', Brzoska, M., Law, D. (eds.), *op. cit.*
- 24 Brzoska, M., Heinemann-Grüder, A., 'Security Sector Reform and Post-Conflict Reconstruction Under International Auspices', Bryden, A., Hänggi, H. (eds.), *op. cit.*, pp. 121-142 (136).
- 25 Cawthra, G., Luckham, R., *Governing Insecurity* (London: Zed, 2003), p. 325.
- 26 Bryden, A., N'Diaye, B., Olonisakin, F., 'Democratising Security Sector Governance in West Africa: Trends and Challenges,' *Conflict, Security and Development* vol. 5, no. 2 (August 2005), pp. 203-226 (221).
- 27 For an analysis of the relationship between democratisation and security sector governance in the West African sub-region see: Bryden, A., N'Diaye, B., Olonisakin, F., *op. cit.*, pp. 203-226.

Chapter 3

Engaging Armed Non-State Actors in Post-Conflict Settings

Caroline Holmqvist

Introduction

It is often inferred that the Weberian model of the state – in possession of a monopoly on the sanction, control and use of force – has proved elusive, particularly in parts of Latin America, Asia and Africa.¹ In recent decades the outsourcing of various security and military functions to private companies has further challenged conventional assumptions about the state's exclusive role in military and security affairs, even in the Euro-Atlantic context.² Data on conflicts give yet further indication of the prominence of armed non-state actors: in 2004 the 19 conflicts recorded by the Uppsala Conflict Data Programme as 'major armed conflicts' were all fought within states, by definition involving at least one non-state actor.³ In addition, 31 non-state conflicts (conflicts involving the use of armed force between two organised groups, neither of which is the government of a state) were recorded for 2003.⁴

Defining 'armed non-state actors' (NSAs) as *armed groups that operate beyond state control* purposely casts the net wide.⁵ It includes, but is not limited to, the following groups:

- Rebel opposition groups (groups with a stated incompatibility with the government, generally concerning the control of government or the control of territory);
- Local militias (ethnically, clan or otherwise based);
- Vigilantes;
- Warlords;
- Civil defence forces and paramilitary groups (when such are clearly beyond state control);

- Private companies that provide military and security services (hereafter private security companies or PSCs).⁶

The categories offered here are fluid, and the same group may be differently classified over time. The splintering of rebel groups, inter-faction or inter-militia hostility, and the various roles played by warlords further add to the definitional conundrum, as illustrated by the recurrence of violence in the West African sub-region, the Great Lakes and Afghanistan.⁷ The conflicts in Sierra Leone, Angola and more recently, Iraq, are illustrative of the extent to which security relations both during and after conflict are shaped by a multiplicity of armed non-state actors (armed groups and the private sector alike), whereas the contracting of private security by other non-state entities, such as rebel groups (e.g. in Colombia), adds further complexity to the armed non-state actor picture.⁸

The relationship between state and non-state actors in conflict or post-conflict settings is often ambivalent. States at times acquiesce in, or actively partake in, the use of private protection to eschew their responsibilities.⁹ Corrupt or ineffective governments may pursue a 'divide-and-rule' logic, preferring competition between various armed groups over the emergence of one strong actor effectively challenging the state's existence; in this instance, the term 'quasi-states', meaning states internationally enfranchised as sovereign but demonstrably lacking in crucial capacities (e.g. Somalia), is particularly apt.¹⁰ Such conditions may offer significant benefit, often financial, to elite constituencies in society, causing them to have strong stakes in preserving the status quo. In some cases, an armed group may initially be under state control or sanction, only to later assume an autonomous status (e.g. paramilitary groups in Colombia). In other cases, an armed group may originally be considered illegal but further down the line make the transition into the realm of the acceptable (e.g. various Nigerian vigilante groups).¹¹

This chapter affirms the centrality of establishing effective and democratically accountable security sector governance in the context of post-conflict peacebuilding. When government, tacitly or explicitly, allows other actors to shoulder the burden of its own security responsibilities or failings, including a lack of accountability of its own security forces, this impacts negatively on the legitimacy of the state. The persistent existence of armed non-state actors can thus be seen to provide an entry-point into the process of (re)negotiating the social contract that takes place in the transition from conflict to post-conflict. As such it provides clues as to how accountability and transparency in relations between state and citizen are constructed.

The main objective of this chapter is to illustrate and elaborate on the possibilities for influencing the conduct of armed non-state actors as a preliminary means to establish effective security sector governance in post-conflict settings. The role and functioning of armed groups in various contexts differs substantially from that of (international) private security companies, and the scope for drawing generic lessons as regards the governance of ‘armed non-state actors’ as a unitary category is extremely limited. For this reason, the chapter is divided into two main parts. The first part deals with armed groups as a challenge for security governance in the transition from conflict to post-conflict, illustrating how such groups may both abuse and protect human security needs of local populations. It is argued that the international community is at present too reticent about its interaction with armed groups, primarily because of the inherent state-bias of the international system. There is a need to increase the respect for international humanitarian and human rights standards of armed groups; some practical recommendations for this will be made at the end of this section. The second part of the chapter concerns the special case of private companies being used for the provision of security and military services. The increasing use of international PSCs under the aegis of post-conflict reconstruction and peacebuilding efforts raises questions about states’ capacities (and willingness) to establish effective security sector governance. Prospects for regulating the industry will be suggested as a means of increasing accountability of private sector actors in the security sphere.

Addressing Armed Groups

Armed groups, whether in Comfort Ero’s words simply a ‘home-grown response to insecurity’ or rebel groups with clear political objectives, to a great extent shape the security situation of local populations in weak or conflict-affected states.¹² However, there is little consistency in the way the international community deals with armed groups. Strategies are often determined on the basis of whether a group is conceived as a criminal threat (to be dealt with through law enforcement mechanisms) or a political opponent (to be dealt with in the context of political negotiations); and the arbitration between the two may be subject to political opportunism. When armed groups are formal parties to peace negotiations, influencing their behaviour becomes an integral part of the political bargaining process – subject to much discussion in literature on mediation and peace negotiations. The focus of the present chapter is rather on measures taken *in the absence*

of or beyond formal negotiation to influence the conduct, practices and attitudes to violence of armed groups.¹³

Armed Groups – Both Abusive and Protective

In the first instance armed groups constitute a threat to human security. Populations generally suffer both direct, physical violence (armed attacks, killings, beatings, kidnappings, rape, genital mutilation) and indirect violence (forced displacement, enslavement, occupation and destruction of property) at the hands of armed groups, of which the activity of Sierra Leone's Revolutionary United Front (RUF) and Uganda's Lord's Resistance Army (LRA) are particularly gruesome examples. Threats to human security may also take more subtle forms through the forming of structures exploitative of civilian populations, for example through economic predation by rebel and criminal groups on populations or by intimidation to garner 'support' and refuge amongst local populations – a pattern recognisable from the Nepalese Maoist insurgency and the legacy of the Fuerzas Armadas Revolucionarias de Colombia (FARC) and Ejército de Liberación Nacional (ELN) in Colombia.

However, armed groups may also serve 'positive' functions for both their members and local constituencies. Well-documented in this regard are economic incentives to violence and the establishment of clandestine economies through looting and 'pay yourself' arrangements ordered or tolerated by leaders of armed groups. Asset transfers may under such circumstances benefit civilian constituencies linked to the group in question.¹⁴ The accruing of economic benefit to one segment of the population at the expense of others illustrates the ways in which human security concerns cut both ways: armed groups may both protect and abuse economic needs of local populations.

Yet less frequently discussed is the way in which armed groups 'protect' other human security needs amongst their members, notably social or psycho-sociological needs. Membership of an armed group may provide not just a means to livelihood and a source of physical protection, but an alternative unit of solidarity and identity. David Keen has pointed to the way in which 'war, status and visibility have been inverted by young people through violence', to explain both the persistence and level of brutality exercised by the RUF in Sierra Leone.¹⁵ Interviews with ex-fighters from insurgencies in Liberia, Sierra Leone and Guinea have illustrated how forced recruitment or abduction at a young age, separation from families and alienation from normal societal structures may lead fighters to confer on

commanders a surrogate father role.¹⁶ The social relations of armed non-state groups are complex; and their security roles cannot be treated in isolation from other human security functions such groups may (however inconsistently and undemocratically) serve if peacebuilding strategies are to deal effectively with their existence.

Moreover, local populations' perceptions of state security forces impact on their willingness to join or support armed groups. A study carried out in 2004 including women members of 18 different armed groups indicated that 'nearly all women joined armed groups to shield themselves from violation of their physical and mental integrity by state actors'.¹⁷ In the same vein, members of the Nigerian Njemenze Vigilante Service cite rising crime and a prevalent culture of impunity as central to their decision to establish an armed group.¹⁸

Ultimately, the objective of addressing – or governing – armed groups, as pointed out by Ebo, is a question of either 'eliminating or accommodating' such groups.¹⁹ However, the process of elimination (depriving groups of their possession of arms rather than liquidating their existence as a collective unit) or accommodation (where a negotiated settlement leads to a peace agreement, often followed by the incorporation of former rebel/militia forces into reformed or transitional state forces, military or police) is neither quick nor straightforward, as illustrated by the legacy of groups rearming/reforming, and the challenges of reintegrating ex-fighters in Sierra Leone, the DRC and Burundi. An emphasis on the 'positive' functions served by membership of an armed group should not be seen as giving licence to such groups' existence; but a more subtle understanding of reasons for their longevity is fundamental in devising effective strategies to *counter* their existence, and achieve sustainable post-conflict peacebuilding.

International Law and Norms

A key difficulty in addressing armed non-state actors is that legal and normative frameworks governing the use of force (international humanitarian law (IHL) and international human rights law (HRL)) are still understood primarily on the state level. The classic conception of the state as guarantor of citizens' rights conceptualises the existence and conduct of armed groups as a domestic politico-criminal problem for the state, regardless of the identity of the perpetrator. International agreements such as the Optional Protocol to the Convention on the Rights of the Child (adopted in 2000, entered into force 2002) are in most cases no exception to this

approach, with the key enforcement mechanism being the criminalisation of (recruitment of) child soldiers by states party to the Protocol.²⁰

The 1977 addition of Protocol II to the Geneva Conventions addressing 'non-international conflicts' represents the first significant attempt to confront the inherent state-bias in provisions of international law. Non-state actors under the jurisdiction of the Conventions are defined as groups that have a clear organisational structure and hierarchy (enabling leaders to control their subordinates) and which control sufficient territory to permit them to carry out substantial and concerted military efforts. Protocol II does not only call upon the High Contracting Parties to respect and protect certain fundamental human rights in times of internal armed conflict, but also confers the same obligation to non-state armed actors, and thus alters their legal personality and standing within international law.

Central in the provisions of laws and norms of war is the protection of civilian life. A distinction between 'combatants' and 'non-combatants' is continuously stressed by the UN Security Council, calling on 'all parties' to respect the sanctity of civilian life.²¹ However, given the frequently deep entrenchment of armed groups within civilian constituencies, this distinction may be manipulated by state and non-state armed groups alike. In Somalia, for instance, militias have attacked entire villages on the basis of clan or ethnic identity. The UN Security Council *Aide Memoire*, adopted in 2002, requests attempts at securing humanitarian access on a 'structured and co-ordinated basis'.²² The *Aide Memoire* outlines various broad areas for consideration (e.g. security for displaced persons, access to vulnerable populations, security of humanitarian personnel, rule of law objectives) but provides no guidelines as to how or by whom contacts with armed groups should be made.

A significant shift in international human rights norms took place during the 1980s and 90s when leading human rights organisations such as Amnesty International and Human Rights Watch (HRW) altered their definitions of human rights abuse to include acts committed by non-state actors. Subsequent issuing of public statements and reports to reflect this has produced a global practice of 'naming and shaming' armed groups that perpetrate human rights abuses, both in the context of armed confrontation with state or non-state warring parties and against civilian populations.²³ The normative significance of increased reporting and documenting of human rights abuse *per se* is a considerable achievement; yet the susceptibility of groups to such pressure and actual impact on their behaviour is evidently varied.

The impact of public denunciation on a group's behaviour is contingent on a range of factors, such as the level of organisational structure, leadership and general international standing of the group in question. Clearly a group such as the Sudanese SPLA/M, after years of partaking in a comprehensive and internationally supported peace process with the Government of Sudan, would be more conscious of its international reputation than the Janjaweed militias, who have no ambition of assuming a political role, whose organisational structure and leadership is unclear, and who have earned themselves an international reputation as bandits.²⁴ Groups that are dependent on financial support from diaspora communities may be among those more susceptible to international denunciation given the negative effects that this may have on their international constituencies' willingness to support their cause.²⁵

In recent decades, the interplay between the strengthening of international normative frameworks and efforts to promote respect for human rights standards amongst armed groups has been complicated by the global counter-terrorism agenda; and the enactment of new legislation to combat international terrorism has in some cases been criticised for compromising civil liberties.²⁶ While harder security measures, such as international police cooperation or inter-state collaboration on border monitoring, are important, there is risk that such measures are developed without sufficient consideration of softer aspects of security of affected populations, or without being complemented by measures to address attitudes of people ready to take up arms against civilians. In many cases, the use of the label 'terrorist' has given significant political benefit to governments that are less concerned with upholding human rights, such as in the case of the Russian government's handling of the conflict in Chechnya or recent developments in Uzbekistan, and has obvious implications for the capacity to influence armed groups.²⁷ In some cases the application of counter-terrorism policies has even impeded efforts to deliver aid to populations affected by armed conflict, as recognised in a recent UN Secretary General Report.²⁸

Soft Measures – Directly Engaging Armed Groups

Efforts to influence the attitudes and hence conduct of armed groups are generally made by actors other than the government of the state in question, most importantly international organisations and NGOs active in the field. It may also be a task under the mandate of a multilateral peace operation.²⁹ The International Committee of the Red Cross (ICRC) occupies a unique position

in its work to raise awareness of, and increase respect for, IHL and human rights standards amongst armed groups by virtue of its permanent mandate under international law and recognised policy of impartiality, independence and neutrality. In many cases this makes the organisation the only accepted external actor in situations of widespread violence and abuse, where information campaigns and training in IHL and IHRs are prominent amongst 'soft' measures to 'govern' armed groups.³⁰

Interaction, and hence attempts to influence the behaviour of armed groups, also takes place when such groups share operational space with external actors. Importantly, NGOs and humanitarian actors in many cases find that the delivery of aid and humanitarian relief to populations forces them into a situation where they need to enter into dialogue with an armed group. The negotiation of 'safe corridors', both land and water, in rebel or militia-controlled areas often involves talking directly to armed groups, as does catering for the needs of displaced populations and protection of camps for refugees or internally displaced populations (IDPs). The long-standing presence of Rwandan rebels (Forces démocratiques de libération du Rwanda, FDLR), periodically launching attacks on Rwanda from the eastern provinces of the DRC, and the population of refugee dependents illustrates the intricate challenge of confronting refugee populations.³¹ By negotiating temporary and isolated instances of cooperation or agreement with an armed group, external actors exercise a measure of influence over the group in question, albeit limited.

The presence of multinational corporations (MNCs) in areas affected by, or under the effective control of, armed groups adds to the web of actors, both during and post-conflict. Instances of MNCs engaging in dialogue with, and at times securing cooperation from, armed groups have been reported in most of Africa's conflict areas. Reports that AngloGold Ashanti, part of the international mining conglomerate Anglo American, developed links with the Nationalist and Integrationist Front (FNI), a group infamous for atrocities committed against civilians, in order to secure access to the mining sites around Mongabwalu in the Democratic Republic of Congo (DRC)'s Ituri district, illustrates the treacherous ground occupied by MNCs in conflict affected areas.³² In recent years, considerable effort has been devoted to making companies more sensitive to the effects on conflict of trade in natural resources, with the Kimberly Process regulating international trade in rough diamonds as a notable success.³³ Whether MNCs entering into direct dialogue with armed groups could add to the abundance of actors seeking to influence the conduct of armed groups has been less explored. International Alert, a London-based NGO, has recently argued that companies could be

viewed as intermediaries between rebel commanders and peace negotiators or the government in question, using their leverage with armed groups to influence their behaviour and promote peace.³⁴

An instance of direct engagement with armed groups is found in the work of Geneva Call, an NGO advocating the signing of a 'deed of commitment' (DoC) by armed non-state groups to stipulate the non-use of anti-personnel landmines. The DoC instrument is unique in that armed groups are generally not eligible to sign international treaties or join international organisations. Although the monitoring and verification of landmine non-use by armed groups is notoriously difficult, Geneva Call's efforts are interesting in that they provide armed groups with a forum for seeking international recognition beyond traditional frameworks. Though the DoC instrument is exclusive to Geneva Call, there is no reason that a similar tool could not be constructed for other issue areas, such as the recruitment of child soldiers.³⁵

Common to attempts by external actors to influence armed groups is the ad hoc nature of their activity and the lack of an agreed framework within which such activity takes place. The international community has not solved 'the rebel problem' and, with the notable exception of the ICRC, humanitarian actors, conflict management NGOs and private companies are largely left to devise their own strategy of engagement with armed groups – in most cases without state or UN sanction.³⁶ The lack of consensus on what such strategies should look like is further complicated by the fact that much engagement takes place on an informal basis, by actors that themselves do not have official (state-sanctioned) status. The example of the European Union funding a two-year project by Geneva Call to engage with the ELN on the issue of landmines (despite the ELN being branded as an international terrorist organisation), while the Colombian government itself has proven reluctant to support the process, is indicative of the mixed messages external actors face in this regard.³⁷ Another example of state-resistance is seen in the stalled discussions within the UN Group working to draft a legally binding instrument for the protection of all persons from forced disappearances; discussions faltered on the issue of whether the instrument should be made binding on non-state actors as well as states.³⁸

The lack of established principles on which armed groups the international community should engage in dialogue, and under what circumstances, makes for fragmented efforts at influencing their behaviour. Within the range of actors and strategies used, some efforts are clearly more effective than others and the lack of communication and trust between track 1 and 2 actors in particular complicates discrimination between methods.

Moreover, there are specific risks associated with large number of actors interacting with armed groups without sufficient coordination of efforts; for instance there have been reports of armed groups playing different humanitarian agencies against each other to gain political, tactical or material advantages, both mitigating the efforts at addressing the treatment of civilians and further diminishing the space for humanitarian action

Towards a More Systematic and Effective Engagement of Armed Groups

Efforts should in the first instance be directed at reinstating a state monopoly on the use of force, effective rule of law, and individual accountability for crimes committed. Although the issue of engaging armed groups is inherently fraught, broad guidelines could be identified to provide for a more systematic and effective engagement with armed groups until they are effectively demobilised. A precondition for this is a more frank dialogue between affected parties, including affected states.

Attempts to govern or influence armed groups should be seen in the context of broader sensitisation programmes that seek to increase respect for human rights amongst the population at large.³⁹ Various external actors, in particular UN agencies and international civil society organisations (CSOs), have long been conducting such programmes, often in the form of information dissemination and educational campaigns. However, research on the challenges of effective disarmament, demobilisation and reintegration (DDR) suggests that individual fighters often have negligible knowledge of human rights principles. Recent attention to DDR as a process of ‘social engineering’ indicates the link with efforts to affect the attitude and behaviour of armed groups.⁴⁰ Engagement with armed groups prior to formal DDR, and as a complement to it, should be given priority, and efforts thereto by CSOs given more recognition at the state/international level. In this respect the targeting of particular constituencies within armed groups, such as women or youth, may lead to more effective sensitisation.⁴¹ Furthermore, addressing armed groups in the context of broader sensitisation programmes skirts the issue of whether or not a particular group is considered an official actor in the conflict, which may impact on its involvement in formal DDR.⁴²

The fact that armed groups often maintain links across state borders, drawing on the same constituencies of populations (frequently displaced as a result of earlier conflicts) and/or receiving financial or material support from neighbouring governments, means that efforts to influence the attitudes of fighters need take a regional approach.⁴³ The re-recruitment of ex-fighters having gone through the DDR process in Liberia to insurgency movements

in Guinea, as well as the rising tensions amongst refugee populations in Guinea's *Région Forrestière* are recent examples of porous borders permitting spill-over of both people and arms.⁴⁴ A preliminary report published in 2004 by the Small Arms Survey and the Foreign Ministry of Mali (as chair of the Human Security Network) identified 25 armed non-state groups, active in nine of the fifteen ECOWAS member countries. The report called for more frank tackling of the issue by states: 'today's pro-government militias may become tomorrow's rebel groups.'⁴⁵

Attempts have been made at addressing human security in West Africa through regional cooperation; such collaboration should consider the issue of influencing armed groups in more detail. The first ECOWAS-civil society consultation in 2003 saw the creation of a West African Civil Society Forum (WACSOF), a support network of over 100 civil society organisations.⁴⁶ Though it is still young, WACSOF might provide a good stage for strengthening cooperation between track 1 and 2 efforts at governing armed groups in the sub-region.⁴⁷ The West Africa Network for Peacebuilding (WANEP), which facilitates networking and training of peace activists, may be another forum in which practitioners could share experience on addressing armed groups in the context of post-conflict peacebuilding.

The involvement of local communities is frequently cited as a key priority within the peacebuilding agenda.⁴⁸ Potentially interesting, but relatively unexplored in this respect, is the potential for gearing leaders of armed groups toward peacebuilding by making them more sensitive to IHL and human rights during the conflict phase. Though such efforts require sensitive calibration there is a clear need to 'talk to the bad guys', even in the absence of formal settlement, if peace is going to last. Research on efforts to draw on local leadership capacity in peace processes – converting 'warlords into peacelords' – in Afghanistan, Sierra Leone and Kosovo, has shown that there is uncertainty as to how best to capitalise on local leaders' influence, as well as integrate local capacities with international ones.⁴⁹ Giving more attention to the factors at work in the transition to order after conflict necessarily involves engaging all armed constituencies, and may perhaps be seen as an incentive for local leaders to promote good behaviour.

Furthermore, efforts to affect the behaviour of armed groups need to operate on a case-by-case basis. The contrast between a situation such as Colombia, where there has been a high degree of continuity in the composition of armed groups over the last decades, and West Africa or the Great Lakes, where groups have frequently splintered and reformed, indicates that strategies for engagement may not be transferable from one

context to another.⁵⁰ Context-specific approaches would also need to take into account the societal structures and the particular constituencies (young, destitute or well-off and powerful) that armed groups draw on for support. Consideration of a particular group's degree of organisation, cohesiveness, political agenda, leadership and membership is likely to influence the degree of success of various strategies. A particularly important determinant for the possibility to affect change is the armed groups' organisational coherence and command structure - in the absence of a capacity for command and control, attitudes of leaders may have little impact on the conduct of individual fighters.

What Role for the United Nations?

The recommendations in the 2004 report by the UN High Level Panel (HLP) on Threats, Challenges and Change, that the organisation give renewed priority to mediation (articles 100-103), deserve attention in the context of addressing armed groups.⁵¹ Departing from a human security perspective, the HLP specifically recommends a field-oriented mediation support capacity; greater interaction with national mediators, regional organisations and NGOs involved in conflict resolution; and greater consultation with and involvement of civil society in peace processes. Drawing NGOs and civil society organisations closer to the UN framework would raise the profile of work done to change the attitudes of armed groups and shield such organisations from possible resistance from the host government which may object to any dealings with armed groups in its territory. The UN and regional organisations could in this way strengthen the normative frameworks within which contact with armed groups takes place.⁵²

However, there are also limitations to what the UN or regional (intergovernmental) organisations can do. Establishing standards concerning which groups the international community should engage is unlikely to be productive. The likelihood is that member states would have an interest in presenting the groups they oppose as illegitimate, thus making the criteria for engagement excessively strict and closing the door to dialogue with other groups. In terms of how external actors engage with armed groups, however, more flexibility might be available for setting standards by the international community. In the interest of the UN assuming a more active mediating role and the importance of being perceived as neutral in this task, the argument could be made for a separation of tasks between external actors so that the same actor would not establish the close contacts needed to ensure influence over

their attitudes and behaviour of an armed group, and then be forced to act as a neutral arbitrator and mediator in peace negotiations.

Making armed groups conform to IHL and demonstrate greater respect for civilian life is a key human security concern, and one that the UN will likely have to give more attention to, regardless of whether it is doing so in its own capacity or by promoting the assumption of such a 'governance' role by civil society organisations in the transition to post-conflict. The UN Peacebuilding Commission should provide the international community with an institutional framework for influencing armed groups in the transition from conflict to post-conflict, and also enhance continuity, sustainability and coordination of such efforts.

Addressing Private Security Companies

The contemporary private security industry provides a wide range of services. Such services range from those provided at a comfortable distance from the frontline, such as logistics and communications; while others are carried out close to combat environments, e.g. maintenance of key weapons systems or operational support of regular troops. Yet other services may have significant tactical and strategic impact, such as military advice and training, intelligence and even interrogation services.⁵³ Armed protection of sites as well as personal close protection are other key services of the private security industry in weak and conflict-prone states.

Like that of other armed non-state actors, the presence of private security companies in weak states is clearly linked to a security sector deficit or security vacuum. However, as a general rule international PSCs do not operate in response to local (civilian) populations' security needs.⁵⁴ In most conflict and (violent) post-conflict states, private security companies are contracted either by national governments to bolster state security forces, or by external actors, notably multilateral peace operations, NGOs, MNCs and members of the international media requiring close protection for their staff or other support services. A growing segment of the industry's operations is located in the context of donor-sponsored security sector reform (SSR) programmes, where PSCs are hired to rebuild and retrain police, military and intelligence agencies. The contracting of the US company DynCorp to recruit and train the new Liberian military forces in 2005, as well as the staggering presence of private security personnel in Iraq, is illustrative of the prominent role that the industry has come to play in post-conflict peacebuilding.⁵⁵

Problems of Accountability, Legitimacy and Sustainability

The use of PSCs raises a wide range of concerns and challenges. First, structures are lacking to ensure that companies – and their employees – perform their tasks to high standards of accountability. The deficiency in accountability of PSCs impacts on a number of levels but most immediately includes a lack of clear mandates, standard operating procedures or rules of engagement, inadequate safeguarding of companies' respect for human rights, inadequate vetting and training of personnel, as well as problems of financial accountability and contractual oversight and monitoring; all of which complicates, and risks undermining, effective and equitable peacebuilding.

Second, the use of private security providers by external actors risks creating a skewed distribution of security as safe 'enclaves' are established within an otherwise insecure environment. This may in turn fuel grievances amongst populations who observe an increased militarisation of society while their own physical security remains uncertain. The coupling of MNCs with international PSCs is particularly compromising in contexts where an inequitable distribution of resource revenues may have triggered grievances and rebellion in the first place.⁵⁶

Third, there is a risk that shouldering of costs for protection by external actors is seen as an alternative to building up sustainable, effective and democratically accountable state institutions.⁵⁷ Though the use of private actors to implement SSR programmes may provide donor countries with a quick avenue to channel support, there is a risk that such companies are seen as a short cut to the costly and politically burdensome task of rooting out corruption and misconduct within state forces. This in turn may dilute the political content of the relationship between donor and recipient state, as well as promote the aim of increasing effectiveness and capacity of security forces over that of increasing democratic accountability and legitimacy, both aspects that are integral to sustainable SSR and wider peacebuilding.⁵⁸ An important, and related, concern is that of international companies offering highly competitive salaries and thereby enticing away individuals from state security forces, a trend that has added to the difficulties faced in recruiting and protecting staff for Iraqi police forces, as well as in the reconstruction process in Afghanistan, another private security epicentre.⁵⁹

Regulating the Private Military and Security Industry

A complete ban on the private security industry has been widely discarded as counterproductive, running the risk of promoting 'rogue' companies over those seeking respectability, pushing the industry further underground, and, on some accounts, wasting a potentially useful resource.⁶⁰ If sufficiently regulated, the potential for international PSCs to contribute positively to SSR, post-conflict reconstruction and support of multilateral peace operations more generally would be significantly improved.⁶¹ However, any constructive effort at regulation must balance a wide set of interests and issues in order to be effective: those of the 'host' state, the state in which the company is operating, those of the exporting or 'home' state, and, importantly, the host state populations. In addition, the industry's international clients, NGOs, MNCs and international or regional organisations, need to ensure that their use of the private sector meets agreed standards. The global reach of the industry and the ease with which companies can shift country of registration makes it unlikely that any one instrument will capture all activities; accountability, legitimacy and practicability of private security provision need be ensured through overlapping structures of regulation.

For states that are host to international PSCs, the primary need is to ensure that individual contractors operate under individual legal accountability and respect human rights. The inadequacy of international legal instruments covering the activities of private security personnel defers the issue of individual accountability to the state level.⁶² The case of Iraq, where contractors have been granted immunity from local prosecution under Coalition Provisional Authority Order 17, is not exceptional; and although this theoretically deflects responsibility for holding individuals accountable for wrongs committed to the country in which the company is based, the record for enforcement is not encouraging.⁶³ The negotiating away of accountability under local legislation considerably reduces the host state's influence over private security personnel on its territory.

Further, it should be the responsibility of exporting states to ensure that 'their' PSC operations meet adequate standards of accountability and legitimacy. However, few exporting states have sufficient regulation in place. The United States operates a licensing scheme for security and military services under the International Traffic in Arms (ITAR) legislation; but this is widely regarded as inadequate or even idiosyncratic, with little procedural consistency.⁶⁴ Despite considerable pressure for UK regulation of the export of private security services, the Government has so far failed to

deliver on this; neither US and UK stated intentions to improve on existing regulation has so far made any significant advancement.⁶⁵

In principle, licensing schemes for exporting countries could operate on two levels: on the company level, where the company would apply for a general licence and then be subject to registration of individual contracts; or on a specific activity/contract basis, where each contract would have to be licensed by the exporting government. Given the different strategic impact of the same type of service depending on operational environment, the latter option is clearly favourable. Providing close protection services in Iraq, for instance, has frequently brought contractors into exchange of fire with insurgents and direct participation in combat; while in less insecure environments such services may have more of a deterrent effect.

The ease with which companies can relocate to other countries means that interstate collaboration on setting standards is required. The European Union, which regulates its member states' exports of armaments, is one conceivable forum for a broader regulatory 'regime' on the exporting of private security services.⁶⁶ This in turn might provide a platform for further international discussion on private security transfers. NGOs, MNCs and intergovernmental organisations (UN, EU, African Union, ECOWAS) need also to adopt clear standards for the circumstances under which they contract private security. Though there have been attempts at formulating standards for international clients' contracting of PSCs, such as the 2000 Voluntary Principles for Security and Human Rights setting standards for MNC's contracting of private security, primarily for close protection, such standards have suffered from permissive language and a comparative lack of international endorsement.⁶⁷

A complementary measure that could be taken should come from the industry itself.⁶⁸ An international code of conduct (CoC) for the operation of private security companies, preferably drawn up by the members of the industry in cooperation with constituencies that have knowledge of, and high credentials within, the context of IHL and human rights norms (importantly humanitarian agencies and NGOs that share operational context with PSCs), as well as international organisations, could be adopted by companies as a standard contractual clause. This would provide clients, whose current frames of reference for contracting services are largely based on anecdotal evidence and personal relationships, with a standard of reference.⁶⁹ Issues covered by an international code should be compatible with those relevant to national licensing procedures, and include provisions for the adequate training and vetting of personnel, clear tendering and contracting procedures, transparency both in contracting and in operations (including financial

transparency), and due consideration of the sensitivity and particularity of the operational environment that PSCs generally operate within.

Crucial to any regulatory framework, whether national licensing or international standards, is the question of oversight and monitoring. If the UN would formally endorse standards for the industry's operation, the organisation could perhaps also develop an 'audit capacity' by providing trained staff to monitor PSC operations through intermittent checks and regular dialogue with all affected parties (companies, governments, NGOs). Such a capacity could conceivably be developed under the new UN Special Rapporteur on Mercenaries' Office, preferably in conjunction with the UN Peacebuilding Commission.

Conclusion and Policy Recommendations

As alluded to at the outset of this chapter, efforts to 'govern' armed non-state actors, whether armed groups or private security companies, are generally met with two sets of common concerns. The first relates to the relationship between state and non-state actors. The argument is frequently made that by addressing and engaging armed non-state actors, the international community is in effect conferring undue legitimacy on what are inherently illegitimate actors. Governments that are reluctant for armed groups to receive an international voice by proclaiming a commitment to fair practices frequently raise this concern. Similarly, some critics of the private security industry have argued that there is no place for private companies in post-conflict peacebuilding, regardless of the standards to which such companies adhere.

The state/non-state relationship is important both on a philosophical and practical level, and underlines the importance of addressing armed non-state actors only as a complement to building up functioning state institutions, including judicial and penal systems. From a human security perspective however, threats to civilian life need to be countered regardless of the identity of the abuser of human security, and before effective reinstatement of a state monopoly on violence can take place. With regards to international PSCs, neither demand nor supply show any sign of waning, and efforts at regulation of the industry should not be seen as a relinquishing of the goal of a state monopoly of violence *per se*, but as a pragmatic engagement with current realities.

A second concern is that by governing armed non-state actors there is a risk of prolonging or sustaining conflict by making the behaviour of rebel

actors seem more legitimate, or by allowing governments to prop up their forces with private sector support. However, from a utilitarian point of view it can be argued that whatever increases the security of civilian populations should be seen as a good in itself. Moreover, engaging armed groups can be seen as a first step toward a 'socialisation' process, where the promotion of democratic standards is directed at all segments of society. Similarly, private sector competence can be usefully drawn on, without leading to a prolonging of conflict or intervention 'on the cheap', if done to high standards and with clear demarcations of acceptable and unacceptable activity.

Because of the complex and sometimes contradictory relationships between state and non-state actors, the push for a nascent 'governance' structure of armed non-state actors likely needs to be made from supra- or sub-state levels; most importantly from the UN, regional organisations and civil society organisations. Several possibilities for this have been suggested in this chapter.

With respect to armed groups, external actors need to coordinate their efforts at increasing respect for humanitarian and human rights norms amongst all parties. There need also be more effective coordination between track 1 and 2 efforts, to mitigate the risk that organisations that interact with armed groups are played out against each other. Notably the UN, the African Union and ECOWAS need for this reason to draw civil society organisations closer to their own work, and look more carefully at what can be learned from the various methods developed, including the pin-pointing of armed group-type specific strategies. Further recommendations to influence the conduct of armed groups include targeting specific constituencies within armed groups (e.g. women and children); giving concern to regional dynamics; as well as devising of context-specific instruments and methods. Within this framework the UN should be encouraged to take the lead in devising strategies and coordinating efforts for influencing armed groups, until they can be either eliminated or accommodated in the context of functioning security governance structures.

With regards to private security companies, it has been recommended that the international community collectively set standards for the operation and conduct of PSCs, including clear mandates, rules of engagement, standard operational procedures, and vetting and training of personnel. Licensing of exports from home states should be based on similar considerations, applied for on a service rather than company basis, and extended also to consideration of specific circumstances of operation. The implementation of regulatory schemes, whether national or international, should be monitored and verified by independent 'audit' agents.

The goal of successful security governance in the context of post-conflict peacebuilding should be the establishment of effective, transparent and democratically accountable state institutions. However, the persistent existence of armed non-state actors - whether in the shape of armed groups that outlive formal peace settlements, or ones that resurface in response to post-conflict insecurity, or in the shape of international PSCs brought in by external actors – means that efforts need to be directed also below and beyond the state level. As measures complementary to the rebuilding of the state, efforts at constraining armed non-state actors, protecting vulnerable populations from abuse (or recruitment into non-state entities), and increasing respect for human rights, influencing armed non-state actors should be seen as an integral part of post-conflict peacebuilding.

Notes

- 1 To be found in Parsons, T. (ed.), *The Theory of Economic and Social Organisation* (Free Press: New York, 1964). For recent contributions to this debate, see Davis, D. E., Pereira, A. W., Koonings, K., Kruijt, D. (eds.), *Armed actors: Organized violence and state failure in Latin America* (Zed Books: London, 2004).
- 2 For a historical analysis, see Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press: Ithaca, 2004), chapter 1.
- 3 According to the Uppsala Conflict Data Project a ‘major armed conflict’ is one that has resulted in over 1,000 battle related deaths in any one given year. Wallensteen, P., Harbom, L., ‘Appendix 2A: Patterns in major armed conflicts, 1990-2004’, *SIPRI Yearbook 2005: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, forthcoming).
- 4 Data for 2004 will be published in *Human Security Report 2005* (Oxford University Press: Oxford, forthcoming). For further information on definitions and methodology, see Eck, K., ‘Collective Violence in 2002 and 2003’, Harbom, L. (ed.), *States in Armed Conflict 2003*, (Department of Peace and Conflict Research: Upsala, 2004), pp. 143-158.
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Chapter 4

Enabling Civil Society in Security Sector Reconstruction

Marina Caparini

Introduction

The end of the Cold War was followed by an immediate increase of civil unrest and internal conflicts in various regions of the world. The resulting humanitarian emergencies proved especially harmful to civilian non-combatants, and in some cases posed a threat to neighbouring states and regional stability and security. In response, the international community, usually although not always led by the United Nations (UN), began to intervene more frequently in fragile, conflict-ridden, and ‘failed’ states. With the waning of superpower confrontation, agreement was more easily reached on launching multilateral ‘peace operations’ or ‘coalitions of the willing’. Many of these multilateral peace operations went far beyond traditional peacekeeping in the extent to which they sought to influence the internal affairs of the state and society following armed conflict and state collapse, and engaged in what has become known as ‘peacebuilding’ (see Chapter 1).

Civil society ostensibly has a key role to play in peacebuilding and post-conflict reconstruction, as it is considered a primary source of local ownership, legitimacy and sustainability of reforms of state and political institutions and socio-economic development in post-conflict settings.¹ More specifically with regard to the security sector, the involvement of civil society is considered a vital element in effective and accountable governance of security institutions, and in the long-term success of democratic reform efforts.² Yet, although inclusion of civil society is upheld as a norm of democratic governance, the actual role and influence of civil society in the post-conflict reconstruction of security institutions has received surprisingly little systematic attention and analysis.

This chapter examines the contribution that civil society can make to post-conflict peacebuilding, especially in reconstruction of the security

sector, and what it has achieved in practice, looking specifically at the case of post-Dayton Bosnia and Herzegovina (henceforth Bosnia or BiH). The first section of this chapter sets out the concept of civil society and its relevance to the concept of security sector governance. Second, the chapter situates security sector reform and governance in the broader context of post-conflict peacebuilding processes. In the third section, the paper examines civil society involvement in security sector reconstruction during the international peacebuilding efforts in Bosnia. In the final section, the paper derives policy recommendations for the engagement of civil society in post-conflict reconstruction of the security sector as a key element of post-conflict peacebuilding. It ends by identifying which aspects of civil society's role in SSR and peacebuilding need to be further clarified through research and developed through concrete measures.

Civil Society and Security Sector Governance

The Concept of Civil Society

Civil society is a widely-used concept in discussions about governance, and its empowerment is often encouraged in development and democratisation circles.³ However, the frequent evocation of civil society belies its essentially contested nature, which is the subject of continuing debate among sociologists, political scientists and philosophers. Conceptual differences revolve around whether civil society is separate from political society (political parties and other explicitly political actors) and from economic actors (business firms).⁴ Lack of consensus on the precise definition of civil society also results from the differing ideologies and agendas of various groups promoting civil society and its development. Some use civil society as a synonym for the general public. Others use civil society in a normative fashion, focusing on its capacity to impart 'civic' values and behaviour, and its capacity to make states more accountable, such as through their capacity to monitor public bodies and private sector actors. Another view considers civil society as a means of fostering social participation and providing alternative forms of social governance. Still another perspective conceives of civil society as a locus of opposition to the state and a means of limiting state power.⁵

The definition of civil society adopted in this study is that of the intermediate associational realm that lies between the state and basic social units such as individuals and families. Through such voluntary associational

groupings, which are both separate from and autonomous in relation to the state, members of society seek to protect or advance the interests or values around which those associations are based. Although commonly thought of as referring mainly to non-governmental organisations, civil society organisations (CSOs) may also include advocacy groups, interest groups, religious groups, professional associations, academic associations, women's groups, youth groups, sports groups, and any other form of voluntary associational groups. Civil society is by definition diverse, reflecting divisions and the multiple competing interests in wider society. Civil society organisations serve as channels for expressing these diverse and sometimes contradictory interests, priorities and grievances.

Civil society is often associated with pluralism, with the broad spectrum of views and opinions voiced in social and political dialogue, and the more comprehensive inclusion of the diversity of perspectives in governmental decision-making. According to this view, civil society may facilitate and open alternative channels for political participation of citizens, and help to move democracy beyond the formal, procedural participation embodied by elections. While democratic elections enable citizens to make general choices, such as the party or individual who will represent their views and govern them, elections are held years apart, leaving political accountability suspended often for years at a time. Some types of civil society actors can help to open up state power to outside influence, making government more accountable and enabling citizens to have greater input into the formulation and implementation of policy. Civil society organisations can create additional avenues for public participation in governance. Civil society is thus conceptualised as a space where societal diversity and pluralism can be expressed and public participation in governance enhanced.

However, it is important to recognise that mobilising, empowering and including more civil society organisations in governance activities will not necessarily lead to accommodation and the peaceful settlement of disputes or a harmonisation of conflicting priorities and interests. In practice, the broadening of political participation can result in more contentious politics as more groups of citizens become engaged in the pursuit of often conflicting interests. This may be especially marked in transitional states, where mechanisms for the settlement of disputes and for the enforcement of systemic rules, such as legal and judicial systems, are not well developed. Moreover, not all civil society actors espouse civic values and some civil society groups may instead be exclusionary and promote illiberal and undemocratic values or even intra-communal conflict.⁶ Certain groups in

civil society may have an interest in maintaining poor state capacities in order for them to exploit and profit from the inability of the state to maintain control and public order. Such actors as mafia groups, warlord gangs, militias and paramilitary organisations have sometimes been referred to as ‘uncivil society’.⁷ Civil society, by the definition used above, comprises all of these groups, whether those that seek to monitor the state and hold it accountable, or those that express nationalist or extremist views. It is thus important to comprehend the context and constitutive elements of civil society in order to better understand the impact it may have on governance, democracy or peacebuilding.

Depending on the context, civil society can play a positive or negative role vis-à-vis democratisation and peacebuilding processes. Relevant factors include the influential actors in civil society, what agendas and interests those groups are espousing, how they relate to the local political, economic and social context, and which institutions and mechanisms exist to moderate conflicting and competing interests as expressed by civil society groups. Discussions of civil society in the policy and donor literature tend to be infused with a strong normative element, focusing on the potential for civil society to foster democracy, reconciliation and development. The potential for civil society to produce divisions or conflict is an often overlooked aspect, yet one which holds important implications for peacebuilding strategies.

Civil Society’s Relevance to Security Sector Governance

Civil society has a potentially important role to play in good governance of the security sector.⁸ First, in the articulation of their diverse interests and positions on issues relevant to security and the policies undertaken by the government to provide it, civil society organisations provide the reminder that society is inherently pluralist, and that democratic governments should take the broad diversity of views and interests into account when formulating policies ‘in the public interest’. Civil society organisations are by definition supposed to be closely in touch with local populations, and therefore collectively representative of public interests and needs. More specifically, certain types of civil society organisations and independent journalists who have specialised expertise or represent the views of affected constituencies constitute another form of pluralism and represent civilian capacity to monitor government policy and the activities of state security institutions, to present alternative assessments of security issues and identify alternate policy options. Specialised think tanks, research institutes, policy studies

institutes, and human rights organisations are able to serve as sources of independent expertise and analysis of legislation, policies and current events for the public, media and other members of government (as experts in parliamentary committees, the courts, as independent advisors to members of the executive). That is, they constitute a potential alternative source of information and analysis for policymakers and the public, in contrast to that provided by the state bureaucracy.

CSOs in the security sphere may also act as innovators, although informal barriers may exist as to how open the policy sphere is to alternative policy prescriptions to the accepted orthodoxy. Those that are able to critique knowledgeably, mobilise public opinion, and exert pressure on policymakers and opinion-leaders, can contribute to keeping a democratic government responsive and accountable. Their involvement in government policymaking processes can help to challenge the orthodoxy or institutional biases embraced by a government bureaucracy or political elite. Such specialised segments of civil society can also help to hold those government and security elites accountable.

Civil society organisations that seek to hold government and its direction of state agencies accountable on an issue or an area of activity must have a sufficient level of organisation, knowledge about a subject, and professionalism to systematically interact with and have an impact on the State. Yet at the same time, if they are truly to represent the interests and concerns of citizens, they must remain in touch with the grass roots level and continue to involve the local population and foster its support. The security domain presents distinct challenges with regard to this requirement of being both professional and linked to local constituencies. In some fields, such as defence, intelligence and border management, the constituency that the NGO presumes to speak for is country-wide. And as an element of its professionalism, it may include retired military officers, former government high officials, academic experts and other individuals with highly specialised areas of expertise. Such profiles may facilitate their contacts with domestic political elites. However, without a conscious effort to communicate their views to local constituencies and to gain support from them for their ideas and programmes, security sector NGOs risk remaining essentially bodies of 'elite' civil society. As security policies typically, although not always, address issues at the international level, identifying the relevance for local constituencies is more challenging than in other policy issues that may have more immediate consequences for individuals, and thus which have greater potential to motivate and mobilise them.

Civil Society and Reconstructing the Security Sector in Post-Conflict Peacebuilding

Civil society has become increasingly recognised as having a potentially positive role to play in peacebuilding throughout the cycle of conflict, from providing early warning of growing social, economic or political grievances that may be leading to conflict, to conflict prevention, working in war zones to provide basic services which the state may be unable to provide, and facilitating peacebuilding, dialogue, justice processes, and reconciliation in post-conflict situations.⁹

Civil Society and Post-Conflict Peacebuilding

The growing recognition of civil society's role in post-conflict peacebuilding is reflected in a number of initiatives at the level of the UN, regional organisations, multilateral NGOs- are becoming increasingly integrated into formal dialogues, consultations and decisionmaking processes, and as a consequence exercising greater influence over the formulation and implementation of policies and the shape of public opinion. According to Kofi Annan, UN Secretary General, peacebuilding missions should seek to create a synergy with those civil society groups that are bridge-builders, truth-finders, watchdogs, human rights defenders, and agents of social protection and economic revitalisation. This can build reconciliation and lessen the appeal of those who might try to reignite conflict. It can help ensure that national and international actors are held accountable. It can assist in building national consensus on the design of post-conflict structures and programmes. It can help prepare local communities to receive back demobilised soldiers, refugees and internally displaced persons. And it can give a voice to the concerns of the marginalised.¹⁰ And in his 2001 report on the Prevention of Armed Conflict, Annan underscored that 'the primary responsibility for conflict prevention rests with national Governments, with civil society playing an important role'.¹¹

Several initiatives on the topic of UN reform have addressed the inclusion of civil society, although with mixed results. The Secretary General's High-Level Panel on Threats, Challenges and Change (hereinafter referred to as the High-Level Panel) reported on ways to improve the UN's responses to threats to international security, underscoring that states remain the 'front line responders' to insecurity.¹² The Panel of Eminent Persons on United Nations-Civil Society Relations, chaired by former Brazilian President Fernando Henrique Cardoso (known as the Cardoso Panel)

produced a flawed and controversial report in June 2004 which was strongly criticised by a number of NGOs and delegations to the UN, who maintained that the report proposed changes that would weaken the role of NGOs.

The recognition of civil society's role in peacebuilding has also led to the elaboration of the concept of multi-track diplomacy, which holds that there are both official (governmental) and unofficial approaches to resolving interstate conflict. Yet, despite recent efforts to include more civil society actors in high-level policy consultations of international organisations, IFIs and states, NGOs and other civil society actors remain insufficiently involved.¹³ Concerns exist that public consultation processes with civil society that are aimed at gaining more legitimacy for the policies undertaken are more for show than substance, that these institutions continue to lack transparency and accountability, and that the concerns of CSOs are not adequately taken into account.¹⁴

One of the most fundamental dilemmas, however, is that a society just emerging from armed conflict is not likely to have many functioning civil society organisations. Civil society is often not given support by governments of fragile or post-conflict states, or worse, is actively suppressed. Facing deficits of capacity and legitimacy, such governments tend to perceive autonomous civil society organisations as potential challenges to their authority. Governments may also tend to perceive CSOs that provide services as competitors in terms of donor funding. Repressive and weak governments have sought to suppress civil society through various means; restrictive laws may be used. Similarly, controls over the media and severe punitive measures are used to silence journalists who may seek to expose corruption or abuse.

Local CSOs may also seek to satisfy donor requirements before those of their local constituencies and communities.¹⁵ Western and international donors who set out explicit areas of interest or regional priorities contribute to this dynamic, and may limit in practice the ideas and agenda that local CSOs seek to advance or implement. The norms that they promote are not necessarily those of the local communities, and, if combined with an elite membership of such groups, can reinforce the disparity between the agenda they promote and the requirements, needs and culture of local communities.

For donors, one challenge is how to sponsor and support civil society organisations that might, over time, generate the trust, cooperation and capacities that enable them to play a more active and positive role in security sector governance. Unfortunately, there are many obstacles to civil society development. The experience in many post-conflict contexts has been that those civil society groups that emerge often tend to become dependent on

external donor funding, do not facilitate broader public participation in governance, reflect the agenda and priorities of the donor, and are in practice accountable to the donor while not representing the interests of the societal groups they claim to represent.

Civil Society and Security Sector Reconstruction

A civil society role in post-conflict reconstruction of the security sector centres on the involvement of local civil society groups and in making the decisionmaking processes as inclusive as possible. It is vital that the reconstruction process, if not driven by local actors, is determined in a way that takes into account the diversity of local preferences, rather than being imposed by the international community. However, as discussed below, one of the main characteristics of a fractured and fragile state is often the sheer weakness of civil society. In cases where there is a significant international presence, a weak state and a fractured society, such as in Bosnia, state-building from above tends to predominate.

It is necessary to identify the state context of civil society in order to delineate the contributions that civil society can make to security sector reconstruction and good governance of the security sector. That is, security sector reconstruction focuses primarily on state capacity to deliver public goods, such as security and public order. The role that CSOs can play depends to a large extent on the condition of the state itself – for example, is it a functioning state that exercises basic control over its territory, provides order and public goods, but experiences problems in effectiveness or oversight and is seeking to democratise its system of governance? Has the state collapsed and is unable to provide for the basic needs of its citizens? Or is the state, having emerged from violent conflict, being reconstituted? These three very different examples suggest very different roles for civil society.

In contexts where the state is largely intact and functioning, the role of civil society in security sector governance derives most clearly from its potential for independent monitoring, analysis, support or criticism of government policies and the activities of security institutions, disseminating their findings to a broader public, raising public awareness, and pressuring government to respond to perceived problems, oversights, corruption or mismanagement. Civil society also serves for governments and parliaments as a source of independent expertise, for example, providing informed and expert commentary on draft legislation. Civil society also provides a potential staff pool for positions in government and security oversight bodies.

However, where the state is in crisis or has collapsed after violent conflict, these roles may be severely limited. A fundamental dilemma is that when there is no functioning state to provide a basic framework of stability and security and state institutions may not be functioning or providing even the most basic public goods and services to the population, civil society tends to atrophy. Numerous authors have noted that civil society depends on the existence of the state, and civil society's ability to contribute to the quality of governance is closely linked to the nature and condition of the state in which it exists: 'a functioning state that provides basic public order and security is a prerequisite for the existence of civil society'.¹⁶ The outbreak of conflict and the breakdown of public order suggests that civil society has been weakened or has disappeared as people withdraw into the family and seek to meet the basic needs of themselves and other clusters of close acquaintances.

Where the state has collapsed, there is no government to monitor, pressure or lobby, and the CSO potential for oversight becomes irrelevant. Moreover, with the loss of governmental authority or capacity to maintain order, civil society often becomes a target of violence. Thus, civil society tends to atrophy under conditions of state failure. People may organise to provide security and other goods for themselves and their families that the state cannot provide, but they cannot afford to concern themselves with broader collective projects or the 'public good'. More seriously, groups that do emerge may seek to profit from the disorder and lack of state authority. Mafia groups, militias, or organised crime groups have vested interests in the perpetuation of the absence of state authority and capacity. This conundrum raises the issue of the role of external assistance and donor funding in post-conflict contexts, and how it might best be used to empower civil society while rebuilding state capacities.

In post-conflict situations, civil society can in theory play a role in reconstituting the state and society through provision of public goods. Posner has asserted that where the state has collapsed, the most likely role for civil society in governance is that of providing public goods and substituting for a state that cannot yet fully function.¹⁷ Some analysts distinguish between formal political projects of international and local NGOs (recrafting political institutions and processes towards more democratic forms) with 'nonpolitical' reconstruction projects involving building or repairing housing and infrastructure, providing health, education and public services, and stimulating economic development such as through microcredit programmes. Involvement in such concrete projects is valued not only for compensating for insufficient state capacity and delivering services that

citizens would not otherwise receive, but helping to diversifying sources of employment and resources.¹⁸

It can also be argued, however, that even such concrete reconstruction projects have political dimensions and consequences, although these may be less explicit than in formal political institution reform programmes. The potential for having political impact is also underscored by the participatory element that is frequently emphasised in construction projects – that is, the deliberate involvement of the local community in identifying needs for reconstruction, and participating in the planning and implementation of such projects. As Gagnon suggests:

The most effective strategies for reconstructing and strengthening civil society have been those that focus on rebuilding communities by encouraging people to work together toward a tangible, common goal. Such a strategy facilitates a recreation of the organic bases on which any community is built and moves the focus of energy away from the national political scene (which was the focus of nationalists before and during the war) and toward the local and regional scene...¹⁹

Internationally sponsored reconstruction projects have increasingly striven to be participatory by giving individuals and communities a voice in the rebuilding of basic structures, building local capacities to manage those structures, and thereby have a role in their own socio-economic development.²⁰ Donors including the World Bank have also given support to promoting local-level involvement and participation in post-conflict reconstruction. The idea of ‘community-driven reconstruction’ (CDR) seeks to incorporate a local governance perspective through the involvement of local populations and institutions in project planning, execution and monitoring. CDR emphasises that the decisionmaking process is as important as the subsequent material outputs, and through its participatory and transparent nature, supports accountability, local ownership and reconciliation of post-conflict communities.²¹

However another dynamic that is increasingly common is the outsourcing of reconstruction and development projects to private companies. The widespread use of private contractors in the security sector reconstruction of Iraq is the most obvious example of this trend.²² Criticism of the outsourcing of reconstruction and development stems from the different approaches and objectives supposedly pursued by international NGOs and private firms: whereas international NGOs seemingly pay particular attention to the process of involving the local community in all

stages of the reconstruction project and hence are said to contribute to the development of local capacity, private firms are not seen as similarly process-oriented. This, again, is most amply demonstrated by the current practice in Iraq. The Iraq example also underscores that civil society actors, including international NGOs, which implement reconstruction programmes may reflect the interests and priorities of more powerful states and donors. As a result local interests may get less attention in the externally-funded reconstruction and development process, and the legitimacy of the reconstruction process may be undermined.²³

Lessons from Bosnia and Herzegovina

Bosnia and Herzegovina (BiH) represents a key example of post-conflict peacebuilding by the international community, an endeavour characterised by a large international presence and external assistance that has channelled huge amounts of resources into rebuilding the political, economic and social infrastructure over the past 10 years. Bosnia is also noteworthy for the interventionist approach to reconstruction taken by the international community. Bosnia thus constitutes a rich case study of post-conflict peacebuilding, especially in the dimension of local ownership. In this section, efforts to support and promote civil society in state reconstruction and especially in the reform and democratic governance of Bosnia's security sector since 1995 will be examined.

Post-Dayton Bosnia and Herzegovina

In March 1992, following a referendum which had been boycotted by Bosnian Serbs, BiH declared independence from former Yugoslavia. Armed resistance by the Bosnian Serbs, supported by Serbia and Montenegro, broke out, aimed at partitioning the country along ethnic lines. Three years after the onset of war in BiH, the General Framework Agreement for Peace (Dayton Accords or DA) was negotiated in November 1995, bringing the conflict to an end. The Dayton Accords established a new constitution for the federation, with a weak central government structure in acknowledgement of the existing ethnic divisions; a three-member presidency; and two strong, ethnically-based 'entities' – the Bosnia-Herzegovina Federation (composed largely of Bosnian Muslims, or Bosniacs, and Bosnian Croats) and the Republika Srpska (predominantly Bosnian Serbs). Additionally, Bosnia contains the autonomous district of

Brcko. Two other important layers of government – cantons and municipalities – also exist, creating a highly complex system of governance in Bosnia.

The international community in the person of the High Representative was responsible for monitoring implementation of the civilian aspects of the DA, and promoting compliance with the DA in order to prevent a recurrence of conflict. A NATO-led international peacekeeping force (IFOR) was established to monitor the military aspects of the DA, followed by the smaller Stabilisation Force (SFOR) to deter renewed hostilities, which was replaced in December 2004 by the European Union-led peacekeeping force (EUFOR). Additionally, the UN created the International Police Task Force (IPTF) as part of the United Nations Mission in Bosnia and Herzegovina (UNMBH), charged with reforming the police and creating a depoliticised, democratic and accountable multiethnic police force. This was succeeded in January 2003 by the smaller European Union Police Mission (EUPM).

The international community put much emphasis in the DA on holding democratic elections as early as possible, which were seen as a key component of demonstrating international commitment to democracy in Bosnia. When these were held in September 1996, the three ethnic-nationalist parties responsible for the war were predictably voted into power by all three ethnic communities, blocking any further attempts to strengthen the weak central institutions and (re)construct the state. As a result, in 1997 the Peace Implementation Council granted the High Representative extended powers to pass laws, issue decrees, and dismiss elected and appointed officials for good cause. The ‘Bonn Powers’ have since been used extensively, especially by current High Representative Paddy Ashdown, who has introduced numerous laws and structures that constitute the formal components of a rebuilt state, and who has also dismissed many democratically-elected public officials who were deemed to be obstructing the development of the state.

Critics maintain that the highly interventionist role of the international community in the person of the High Representative has created a quasi-protectorate in Bosnia which has undermined the process of democratisation. Decisions imposed by the High Representative relieve democratically-elected representatives from the necessity of negotiation and compromise, blocking the development of a sense of responsibility among local political elites, while reinforcing tendencies towards passivity, distrust of participatory policymaking, and reliance on experts who lie outside the political process.²⁴

The debate over the Office of the High Representative's – and the international community's – proper role in the state-building process is highly relevant to discussions of civil society empowerment and security sector reconstruction in post-conflict contexts. Bosnia emerged from war with more than 200,000 people killed, a shattered economy and infrastructure, deep ethnic divisions, and displacement of more than two million people as a result of the ethnic cleansing campaign. The existence of a stable state framework which provides basic public goods is the basis for involvement of civil society organisations in security governance. Critics maintain that while many statements are made about fostering local ownership, policies are generally not developed through consultation with the groups affected by them. Legislation that is developed by international actors and bypasses local legislators and advocacy groups undermines any claims to local ownership and democratisation through supposed greater inclusiveness of the political process.

Bosnian Civil Society and Peacebuilding Efforts

According to Freedom House, there are generally four types of civil society organisations in Bosnia: non-governmental organisations (NGOs) that are largely dependent on external funding; special interest groups, including many cultural and sports associations that often date back to the Communist period and are often large in membership and numerous but dormant; religious (especially Catholic and Muslim) charities; and radical nationalist movements.²⁵ However, there are wide discrepancies as to how many civil society organisations exist in Bosnia. One source maintains that while some 8,000 NGOs were registered in 2004, only about 1,500 were considered active.²⁶ Another source maintains that there are 1,500-2,000 NGOs in Bosnia, but only 300 are considered active.²⁷ Yet another lists some 300 domestic NGOs in the country.²⁸ The low incidence of active NGOs is not inconsistent with studies showing similar trends throughout post-communist Central and Eastern Europe.²⁹ The discrepancies in numbers in Bosnia suggest that civil society is defined in different ways by different actors. It is also suggestive of the highly complex legal and regulatory environment in Bosnia for NGOs from the end of the war in 1995 until 2002: during this period, no common legal framework existed for NGOs, preventing the legal establishment of national NGOs (those entitled to operate throughout the country). Further problems included inconsistent NGO registration processes and the absence of legislation enabling tax deductible contributions to non-profit organisations, complicated by the absence of a state-level taxation

regime.³⁰ Nevertheless, improvements have occurred, as in September 2002, when the legal framework was clarified with the passing of a new state Law on Associations and Foundations.³¹

International NGOs and foreign aid agencies arrived en masse in Bosnia in the aftermath of the war. Many domestic NGOs emerged as the result of projects of international NGOs, or in response to the availability of donor funding. Few Bosnian NGOs had the structure or constituencies that often characterise Western NGOs, and these were primarily involved with service provision, as the advocacy and monitoring elements were generally not present.³² There was also little cooperation among CSOs due to inadequate resources and competition for decreasing donor funding as donor assistance shifted to Kosovo or disengaged from the region altogether after 2000. This is also mirrored in the academic sector, in which Bosnian universities, with few resources and lacking the capacity to act independently, have found it easier to cooperate with foreign universities than with their domestic counterparts.³³

Specific instances of local civil society organisations that have become involved in security sector reconstruction are difficult to identify and are rarely mentioned in the SSR literature on Bosnia. According to one local observer, the development of CSOs dealing specifically with security sector issues began later than in most other states in Southeast Europe; many networks of academic centres, research institutes, and training institutions for security services that had existed were disrupted and destroyed during the war years. Bosnia continues to have few civilian experts in security matters who could be used as resources for policy analysis on NGOs.³⁴ Furthermore, Bosnian government officials have not proven very open to the expertise and analysis of independent external actors such as NGOs, 'preferring to rely on internal resources, personal contacts, or international advisors when developing new legislation or policies'.³⁵

Despite the paucity of evidence of local civil society involvement in SSR, Bosnia has played host to a rich array of international non-governmental organisations (INGOs), quasi-non-governmental organisations (QUANGOs) and foreign non-governmental organisations that have sought to influence some aspect of the SSR process, often through partnerships with individual experts, parliamentarians, state actors and local CSOs that provide support or implementation assistance. Major support is provided by the EU through the Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme for the Western Balkans, which has focused on legal reform and state institution building, especially in the area of justice and home affairs.³⁶ Other actors include the major INGOs such as

the National Democratic Institute (NDI) and International Republican Institute (IRI), both of which support development of policy research capacities, although only the NDI has an explicit SSR programme. Various organisations support research projects and policy dialogues on small arms proliferation, security policy and democratic oversight of the security sector. Legal and judicial profession reform, criminal law reform, promoting alternative dispute resolution and anti-corruption initiatives have also been supported.

Problems in International Approaches to Supporting Civil Society in SSR

Bosnia saw a general proliferation of NGOs that responded primarily to donor funding priorities, were primarily concerned with short-term projects that donors supported, and lacked connection with local communities and government. Donor priorities also tended to shift frequently, every six to twelve months in Bosnia, for example, from humanitarian relief (especially psycho-social counselling) to reconstruction, from business revitalisation to refugee returns, and most recently to civil society building.³⁷ With the rapid decrease of donor funding since 2000, many civil society organisations in Bosnia had to shift focus and search for new funding, discouraging long-term strategic planning and development in their organisations. The fault was two-way: international NGOs and donors sought cheap service delivery through local implementing NGOs without concern for long-term sustainability of the civil society sector. Meanwhile, local NGOs responded opportunistically to the initially abundant supply of donor funding to provide security and employment.³⁸ Heavy reliance on external donors undermined long-term capacity and sustainability. International donors have tended to focus resources on building up individual NGOs rather than developing the sector more generally, and have focused on funding specific projects, with the result that when donor funding dried up, many of these NGOs ceased to exist.³⁹ Dependence on external funding exerts a strong influence on their agendas and activities. With donor-driven NGOs, planning tends to be top-down and influenced by donor assessments and priorities, while accountability is directed upwards towards the donors, and NGOs focus pragmatically on provision of services rather than facilitating wider political participation.⁴⁰ Reflecting distrust and also the lack of tradition of government funding of civil society initiatives, civil society actors have tended to approach representatives of the international community to meet their needs and interests instead of local officials.

Criticism of international approaches to civil society building also focuses on other mistakes and misperceptions. Some observers maintain that due to the failure of the international community to facilitate progress in reconciling Bosnia's various ethnic groupings and reconstructing the social, political and economic bases of the country, it has turned to promoting and building civil society as a means of democratising the country. Civil society is valued for embodying the idea of compromise and dialogue, as a means of holding public officials accountable, broadening citizen participation in governance, contributing to peacebuilding, and human rights awareness. Civil society, in other words, is seen as a corrective to the ethno-nationalist politics of local leaders who are perceived as having persisted in obstructing the return of refugees and minorities to areas under their jurisdiction and preventing reconciliation among the three main ethnic groups.⁴¹

One critique that has arisen in Bosnia, however, is that donors have promoted and supported a version of civil society that, while fitting the agendas and needs of donors, has not been perceived by Bosnians as serving their interests. Rather, donors have focused on the quantitative aspect of facilitating the emergence of more NGOs and transferring technical skills they believe are linked to advocacy. The creation of dependency on international actors among civil society groups has weakened accountability of such CSOs to their local constituencies as they respond to the (frequently shifting) priorities and short-term projects of the international community, and has thus undermined the credibility of CSOs and their contribution to the emergence of a democratic culture.

The international community has been especially criticised for misunderstanding what is necessary to overcome the divisions among the three main ethnic groups within Bosnian society, which were frozen by the constitutional Dayton framework agreement. Ethnic nationalism impedes the emergence of a public space in which different forms of civil society organisations can be established.⁴² According to Belloni, peace, reconciliation and reintegration in Bosnia have been severely constrained due to misperceptions among international actors, such as the belief that civil society is necessarily a force for compromise and dialogue. By channelling funding through nationalist ethnic elites, the international community has served to sustain ethnic nationalism and the gray economy. By undermining the development of sustainable local and state institutions, the international community has undermined the role that local can play civil society in peacebuilding and reconciliation.⁴³

When seeking to address security sector governance issues such as the continuing problems with organised crime and corruption in the country,

members of the international community need to have a detailed knowledge of the country's history, its language and its people. Moreover, they tend to rely heavily on interpreters, engage primarily with a small group of select representatives of NGOs in the capital and the largest urban centres, and fail to incorporate the views of a diverse range of local experts in the definition and framing of problems and their solutions at the policy level. Lacking contextual knowledge yet determining public discourse of the subject through its dominance of the means of communication, the international community has framed its ideas for addressing the problem of organised crime and corruption in terms of general principles and processes rather than solutions tailored specifically to Bosnian circumstances. The perception of limited contextual knowledge has undermined the credibility of international community initiatives in this domain, contributing to local resistance to implement new measures.⁴⁴

Prognosis

There is general agreement among observers that Bosnian civil society remains weak, underdeveloped, and lacking capacity, with NGOs largely dependent on external funding, donor-driven, failing to cooperate with one another and ineffective in advocacy activities. Nevertheless, recent assessments have noted some progress in the sector. The public image of NGOs has improved, as NGOs have made more effort to be transparent and to seek media coverage of their activities. Notwithstanding these improvements, some 20 percent of respondents in a 2003 poll conducted by the OSCE viewed NGOs as being of little societal use and serving only to provide good incomes for their members.⁴⁵

Perceptions of NGOs by government officials at the local, cantonal and entity levels have also improved, indicated by their increasing collaboration with local NGOs, which are no longer interacting only with the international community.⁴⁶ This is significant as Bosnia is a highly decentralised state, and since the central government remains fairly weak and underdeveloped, the entities and municipalities constitute the key legislative and implementing bodies in many policy sectors.⁴⁷ Advocacy skills and activities of NGOs have also generally improved: 'In the past, advocacy was limited to closed discussions between government officials and civil society representatives. NGOs now make use of additional forums for advocacy, including public hearings, direct meetings, and written correspondence with government officials.'⁴⁸

An area that shows promise for civil society initiatives in security sector reform is the growing regional involvement of new EU member states from Central and Eastern Europe in terms of foreign aid and development assistance. Transfer of knowledge and experience in transforming various components of the security sector would seem promising, given that Bosnia is not only a post-conflict state, but also a post-socialist state which bears many of the same political, social and economic legacies as the other former state socialist countries in Central and Eastern Europe.

The Bosnian example demonstrates that civil society is as political an arena as that of formal political competition, and its empowerment and building cannot be seen as an alternative to building effective, transparent, responsive and accountable state institutions – indeed, the development of civil society depends on the creation of such a state structure.

Conclusion and Policy Recommendations

One of the major challenges encountered in post-conflict peacebuilding is that there are typically few civil society actors in a post-conflict environment who are adequately equipped or prepared to function as an oversight mechanism *vis-à-vis* government, let alone play an active role in security sector governance.⁴⁹ Indeed, the very subject of governance may be moot where political institutions and the policy process are severely limited or even collapsed. State collapse is often accompanied by social lawlessness, or the existence of multiple, contradictory rules and thus the lack of commonly binding, consistent and generally accepted social rules.⁵⁰ A state that has recently experienced violent internal conflict and is largely unable to provide fundamental public goods to its citizens, such as security, sanitation or education, requires major capacity rebuilding in terms of state institutions, and the building of consensus and integration in society. Substituting for the state in providing essential services may be one of the most feasible roles for civil society in such contexts, at least until fundamental political and state administrative institutions are re-established, making the monitoring, oversight, innovation and lobbying roles more possible for CSOs.

A related challenge donors face in civil society empowerment in post-conflict settings is that civil society is supposed to be intrinsically generated and supported by citizens within that society. Civil society organisations are essentially understood as to be bottom-up initiatives that reflect the interests of local groups of citizens and local culture. While international NGOs and other actors (development agencies, etc.) may seek to facilitate the growth

and empowerment of local CSOs, it is essential that local CSOs truly represent the interests of their constituencies, and remain accountable to them. Thus external support for civil society ‘empowerment’ and ‘capacity-building’ must ensure that there is a deliberate effort by sponsored CSOs to involve and gain the support of local populations. A key means of doing that is to ensure that the ideas and causes the CSO seeks to advance are appropriate to the local culture and local needs. Donors and funding agencies should exercise a measure of self-restraint in imposing their own priorities and solutions on countries, especially where they lack sufficient local input and local knowledge to determine that their priorities are those that are in the best interest of the local community.

The problem is especially present in the chaotic and dynamic conditions of an immediate post-conflict environment, where there is little time for donors, development agencies and Western implementing NGOs to develop and integrate a sensitive understanding of local conditions and interrelationships among institutions and actors. But even after the immediate crisis has passed and longer-term institutional rebuilding and reform has begun, there is often a failure to apply and integrate supposed ‘lessons learned’ to capacity-building and more general reform and democratisation programmes.

A danger arises when local CSOs become reliant on international funding or foreign donors for support. Civil society groups may compete for international funding, and as such may not share information or cooperate. Planning tends to be top-down, flowing from the priorities and objectives of funding organisations, while accountability tends to flow upwards to the donor, rather than down to the grassroots level which is presumably the social base of the NGO. Broadening social and political participation is often of less importance than providing quantifiable services and activities. As Belloni notes, ‘this is essentially a top-down discourse embellished by rhetoric of bottom-up empowerment...’⁵¹

Local advocacy CSOs that uncritically adopt the agenda of their sponsor without adapting it to local conditions and needs risk remaining isolated from local politics by failing to connect with society and the state, and by imposing an externally-driven process. Western NGOs involved in post-conflict peacebuilding have similarly been criticised for using a ‘cookie-cutter approach that does not take into account local experience or knowledge’, and sending in staff with no regional expertise or knowledge of the local language to manage programmes in field offices. Further, Western NGOs have been criticised for their translation of generic material such as

handbooks and training manuals, and devising programmes based on those documents with no effort to take local conditions into consideration.⁵²

Local experts and representatives of civil society must be consulted and brought into the process of post-conflict peacebuilding at the policy level, including in the defining of the problem and its solutions. Local contextual knowledge is key, both for those planning post-conflict reconstruction, and those international actors who may be participating in the implementation of such designs, such as through civil society empowerment programmes. Involvement of a broad array of local experts would help to avoid inappropriate or overly general assessments of what needs to be done, and would help to inject local concerns and requirements into the national policymaking level.

Finally, donors should also take more care to differentiate between those civil society organisations (especially NGOs) that can speak the language of donors but remain divorced from local communities on the one hand, and those CSOs that are connected to local constituencies but are not necessarily conversant with the methodology and framing of project funding requests.

Notes

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- 4 Jean Cohen and Andrew Arato, for example, consider civil society 'a sphere of social interaction between economy (market) and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication. In Cohen and Arato's view, civil society actors do not aspire to explicitly political roles, but exercise influence through their associational activity and role in promoting public debate.

Accordingly, this definition would exclude political parties, and also explicitly excludes profit-seeking enterprises (business firms) from civil society. See Cohen, J., Arato, A., *Civil Society and Political Theory* (MIT Press: Cambridge, 1992); Skidmore, D., 'Civil Society, Social Capital and Economic Development', *Global Society* vol. 15, no. 1 (2001), p. 55.

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PART III

DISARMAMENT, DEMOBILISATION AND REINTEGRATION

Chapter 5

Embedding DDR Programmes in Security Sector Reconstruction

Michael Brzoska

Introduction

When wars end, armed forces are generally downsized and armed groups disbanded, as signs that peace has come but also because of the costs of maintaining militaries. For the individuals concerned, this implies a major change in life. Beginning in the late 1980s, external actors began to take a keen interest in promoting post-conflict downsizing of forces and reintegration of individuals into civilian society as an instrument of post-conflict peacebuilding.¹ Disarmament, demobilisation and reintegration (DDR)² has become the preferred shorthand term for packages of activities combining force downsizing and reintegration of former combatants into civil society, including a host of measures such as the collection of combatants in camps, their registration and discharge, generally in exchange for the surrender of weapons, and support for their start in civilian occupations. The latter can include transport to home locations, a series of cash payments, training and micro-credit schemes. While often organisationally separated, support for the reintegration of former combatants in society is nonetheless regularly included in the package, because it increases the likelihood of success of the programme, and, for the individual combatant, is the most important aspect. DDR has become part of the core repertoire of post-war donor reconstruction assistance and is rightly seen as a central element for the long-term peacebuilding process. What is often overlooked, however, is that DDR has security implications beyond the cessation of hostilities among warring parties and influences the conditions for security sector reconstruction and reform (SSR).

It will be argued here that a number of deficiencies, inconsistencies, contradictions, but predominantly losses of potential synergies mark the

relationship between efforts at SSR and the policies and practices of DDR. More coordination between SSR on the one hand and DDR on the other hand would be cost-saving, beneficial for individuals concerned, and would enhance the functioning of armed and police forces. The main place for such coordination of efforts are joint military-civilian institutions of security sector governance. The argument is made here on the basis of a review of the relevant literature. Unfortunately, rather little thought has been given to the analysis of the links between SSR and DDR so far, and empirical evidence is scant.

Still, it seems that various factors are responsible for the unsatisfactory relationship between SSR and DDR, described in some depth below. One is conceptual differences. The purposes of SSR have been fairly clearly defined: the creation of effective, accountable forces and supporting structures to bring security to people. The goals of DDR programmes, on the other hand, are rather case-dependent, and range from simple downsizing and cost-cutting to a central role in peacebuilding. The wide range of objectives of DDR programmes reflects a broad spectrum of purpose in actual DDR programmes. The second discrepancy between DDR and SSR is notable in comparing the practice of DDR and SSR. Ironically, the conceptual contrast between DDR and SSR is turned upside-down when one looks at implementation. DDR consists of a set of fairly clear and standard procedures with some variety to cater to the particular case. Still, DDR programmes, of which there have by now been quite a large number in many countries, look rather similar all over the world. The prescribed programme for SSR on the other hand is vast, and consists of many elements, including, in many cases, DDR. Practical applications of more than a few of these elements are, so far, few to note. A third important difference accounting for much of the tension between SSR and DDR are the main actors involved. SSR, within a framework of democratic security sector governance, is predominantly a process steered by domestic political actors, governmental and non-governmental, and specialists in public security institutions, although increasingly also including private actors.³ Development donors have also discovered SSR as a field of activity, but so far remain of secondary importance. DDR, on the other hand, involves a more limited set of actors. After the initial decisions on the extent and the character of downsizing has been made by political decisionmakers, the main actors of DDR are technical experts, generally military experts for the 'DD' and development experts, with a dominant influence of external development actors, for the 'R'. The overlap of actors in DDR and SSR is largest in peace support operations, where the security sector needs to be reconstructed or

newly established. With the UN increasingly covering this task, its offices and organisations have taken on responsibilities for both SSR and DDR. Most of the available discussion on the links between SSR and DDR has accordingly been conducted within the larger debate on the integration and expansion of UN peace support operations.⁴

The differences in concepts and practice, as well as on the level of primary actors, between SSR and DDR lead first and foremost to a delinking of what in fact are linked issues, as is argued below. Furthermore, this delinking can even lead to tensions between SSR and DDR. In both cases, the outcome is suboptimal for both policy arenas. SSR and DDR have many overlaps which are often unexploited, because of lack of coordination but also by choice of the main actors. The overlaps occur because SSR and DDR concern, in principle, the same organisations, in particular the military but also the police and other security forces, as well as overlapping groups of people. But the interests in SSR and DDR differ, which is reflected in the above mentioned range of objectives in DDR and practices in SSR.

This chapter looks at how SSR has been linked to DDR and vice versa, focusing on post-conflict situations, the most dramatic theatres for downsizing and reintegration measures, and changes in security sector institutions. Often in civil wars, DDR is part of the peace negotiation package. The need to reduce the costs of armed forces also provides powerful pressure for downsizing in all cases where wars have come to an end. Still, some DDR programmes have occurred several years after the end of fighting. The main reasons for this delayed downsizing of armed forces are the reluctance of former warring parties to agree to major force reductions soon after the conflict, and the time it takes to organise international financial support for reintegration measures. As time goes by, DDR, even if occurring in post-conflict situations, becomes more similar to downsizing in countries motivated primarily by financial considerations or the wish to modernise their forces.

Special emphasis is given throughout this chapter to security sector governance concerns. The proper place to link the approaches to SSR and DDR are security sector governance institutions. In order to be able to provide guidance to both SSR and DDR, these institutions need to include stakeholders in both SSR and DDR. The concluding section offers suggestions for improving the relation between SSR and DDR through better security governance, discussing both opportunities but also limitations of such an approach.

DDR in Post-Conflict Settings

While the combination of post-war demobilisation and support to ex-combatants is nothing new, it had not been a noticeable feature of post-war situations in developing countries until the late 1980s, when international development donors as well as peacekeepers became interested in supporting such programmes. The first United Nations peacekeeping operation to undertake disarmament and demobilisation was the United Nations Observer Group in Central America (ONUCA), which was deployed in 1989.

The primary motivation for DDR programmes in post-conflict situations has been and continues to be a contribution to peacebuilding. In the words of the Brahimi Report of August 2000 on the reform of peacekeeping, DDR is a 'key to immediate post-conflict stability and reduced likelihood of conflict recurrence'. It is called 'an area in which peacebuilding makes a direct contribution to public security and law and order'.⁵ In a report by the UN Secretary General on *The Role of United Nations Peacekeeping in Disarmament, Demobilisation and Reintegration*, published in 2000, it is said: 'In the civil conflicts of the post-cold war era, a process of disarmament, demobilisation and reintegration has repeatedly proved to be vital to stabilising a post-conflict situation; to reducing the likelihood of renewed violence, either because of relapse into war or outbreaks of banditry; and to facilitating a society's transition from conflict to normalcy and development.'⁶ Development donors argue similarly. The World Bank, for instance, starts the internet presentation of its activities on DDR with the following observations: 'The prospects for stabilisation and recovery in conflict-affected countries largely depend on the success of the disarmament, demobilisation and reintegration (DDR) process.'⁷

The argumentation in these and other official documents on DDR is based on a narrow perception of post-conflict security. Security is primarily seen as an issue of making peace between the former warring parties. If one side wins, it is seen as natural that the soldiers of the losing side will be demobilised. In addition, the winning party should also be able to reduce the number of its combatants. If there is no winner on the battlefield, but there is the political will to stop fighting, the future of security institutions, particularly the various forces which have fought the war, needs to be negotiated.

Putting peace first is good policy in post-conflict situations. However, the legitimate priority of satisfying the security concerns of former foes is not the only security consideration that should inform decisionmaking even early in a post-war situation. Parties which have fought in a war will not be

the only relevant groups of people in need of improvements in security. The marginalisation of other groups in post-war situations at the expense of those involved in war-fighting, and thus peace-making, has been a major problem in a number of post-war situations, in some cases, such as Sudan after 2004, directly leading to renewed conflict. Moreover, in most post-conflict situations, the protection of people's lives and rights is generally at a very low level. The monopoly of force often needs to be reestablished and security provision improved. This is an interest beyond the immediate one for peace. Unfortunately, in many countries, the ending of immediate fighting has not led to a rapid improvement of physical security of people – for some cases, such as El Salvador in the mid-1990s, it is even claimed that individual physical security declined after the end of the war.⁸

In addition to its contribution to peace, the effects of DDR on post-war security, including efforts at security sector reconstruction and reform, are therefore of interest. Two issues stand out. The first is familiar in the DDR literature and concerns the 'demand' for security, or put differently, the insecurity in a post-conflict situation. The other is often overlooked, including in the documents quoted above; and is about the way in which DDR programmes themselves are shaping the 'supply' of security, or put differently, the operation of security sector institutions.

Failed Reintegration as a Source of Insecurity

There is general agreement in the DDR literature that reintegration success has direct effects on post-war security. First, there is the immediate effect of satisfying fighting factions and their members, who often see themselves as entitled to some benefits. Lack of satisfaction with reintegration can lead to internal unrest, such as in Nicaragua in the mid-1990s, and Zimbabwe in the late 1990s. However, a more frequent effect of low levels of integration of former combatants into the regular economy is an increase in criminal activity. The danger of former combatants using their skills as 'violence entrepreneurs' is frequently mentioned in DDR discourse: 'reintegration – or the lack thereof – will affect levels of crime and instability in the longer run.'⁹ Additionally, there can be international security effects. In the West African case, there are reports that soldiers demobilised, but not reintegrated, in Liberia were easy prey for warlords who wanted to attract fighters for the war in Côte d'Ivoire.¹⁰ To the extent that unsuccessful reintegration contributes to high rates of criminality, it also adds to the demand for police, courts and prisons. Another repercussion is that former combatants have, in several cases, such as Nicaragua and Zimbabwe, organised politically and

extracted additional funds from the government, with the argument that they had not been sufficiently rewarded.

For most former combatants, the main aspect of civilian integration is to find gainful employment or some other way to earn an income. Obviously, this is primarily an economic issue. In many countries, domestic economic actors and external donors are primarily called upon to support former combatants to find a place in civilian society. But defence and military planners also exert some influence over the forms and costs of civilian economic reintegration by deciding on numbers and types of positions to be cut. Military organisations can also help make the step from military to civilian life easier by providing combatants with qualifications which are useful in civilian life.¹¹

Observers of recent DDR processes agree that reintegration is the most difficult part of programmes, but also the least likely to be adequately funded. Comparatively large amounts of money are often programmed for reintegration support, but even when these sums can be found, they may not suffice. In addition, funds for reintegration of former combatants usually come from development assistance budgets in donor countries which often means they are slow to flow. As a result, many of the recent DDR processes have seen serious underfunding of the reintegration component. A recent example is the Liberian case, where the number of people to be reintegrated is much higher than initially planned and budgeted for, and where resources are slow in coming into the country. In early March 2005, the total number of formally demobilised combatants stood at 101,495, including 22,370 women, 8,523 boys and 2,440 girls, while the number of ex-combatants in reintegration projects was only 25,591. Projects for a further 44,502 ex-combatants were in the pipeline but many of these projects had yet to commence owing to a lack of funding.¹²

While most recent DDR processes have occurred fairly quickly after the end of conflict, in some cases downsizing occurred only after some years, either because of security concerns or out of consideration for the people earning an income in armed forces.¹³ In such cases, the task of preparing soldiers for civilian life is often picked up by armed forces. There are three arguments in favour of involvement by defence and military institutions in preparing combatants for reintegration. The first is that in many cases it is simply more practical, if implementation of measures which facilitate the integration of former armed forces personnel occurs within the armed forces. People are already registered, their qualification profiles and deficiencies known etc. Measures can be spread over a longer period, with counselling and training accumulating towards the end of military careers.

The second reason is the effect on job satisfaction when soldiers know that their institution is preparing its members for a later civilian life. The final, and most important, reason is that unsuccessful reintegration can have major security implications. Security sector organisations are thus doing themselves a favour by helping soldiers to prepare for civilian life.

SSR Parameter Setting through DDR Programmes

While the effects of DDR programmes on security, which can only briefly be summarised here, are accepted in the DDR literature, there is much less recognition of the way in which DDR programmes influence security sector reconstruction and reform. DDR is often seen as a rather technical process, while in fact, it often is, in addition, a highly political one.¹⁴ In particular, decisionmaking on the overall numbers of combatants to be demobilised as well as on who will be kept on in security forces and who will be demobilised set important parameters for security sector reconstruction and reform. In official documents on DDR, such as the ones quoted above, these decisions are seen as outside of the realm of DDR programmes, coming out of the negotiations of the warring parties, from the winning side or whomever is running the show. While such an approach may be acceptable for DDR implementers, it is inappropriate for organisations involved in DDR policy-making, planning and funding. However, many organisations, including the UN DPKO and the World Bank, have a hard time acknowledging this link between DDR and SSR.

Somewhat unrealistically, it seems to be implied in such documents that warring parties will make the right decisions about numbers, and retain only those forces necessary for future security maintenance and shed the rest. Obviously, however, warring parties and their leaders have additional interests in decisionmaking on numbers. They want to reward their fighters and protect their interests, as well as not give up power positions in the future political process, which will partly be based on the satisfaction of former fighters and their families with the DDR process. The logical result of this interest is that larger numbers of people are kept in armed forces than would be necessary for the maintenance of post-war security. One good example of this is Bosnia. The force numbers agreed in the wake of the Dayton Peace agreement are ridiculously high, considering that security in the country was to be provided by international peacekeepers. The leaders of the warring parties convinced the international community to accept these numbers as a confidence-building measure, but obviously this also provided them with a means to reward former combatants. There have been

successive rounds of downsizing after the Dayton agreement, but this was largely on the insistence of external donors who funded a large part of the oversized forces.

Contrary to the impression given in many official documents, however, the international community has much influence on decisionmaking over numbers. The main leverage of the international community is money. In most conflict situations, substantial portions of the costs of domestic security forces, such as the military and police, have to be covered by bilateral donors. These obviously have an interest in reducing such costs as much as possible, offsetting to some extent the interests of warring parties to keep large numbers of troops.

Another factor shaping the framework for SSR are decisions on major personnel parameters of demobilisation. Decisions on who to demobilise and who to keep in the armed forces is, judging by official documents, largely a decision of the warring parties. There are some exceptions. The international community is very concerned about child recruitment and will therefore insist on demobilisation of all underage persons within armed groups. Similarly, the international community is concerned that special care is taken of some groups, such as female combatants, the handicapped, and people with trauma. But beyond that, the generally accepted starting point of DDR processes is that those agreeing on the terms of a peace agreement should decide. While it seems wise to leave decisions on the integration of forces, whom to keep on and whom not and so on, with the former warring parties from the point of view of peacebuilding, it is problematic from the point of view of creating and maintaining efficient and democratically controlled security institutions.

Predictably, leaders of warring parties will decide to keep those persons who are most loyal and most able, to whom they are most indebted and who will be troublesome if they feel ill-treated by their leaders. They will want to get rid of troublemakers, sick people and the handicapped. Long-serving soldiers and officers will more likely choose to stay in the armed forces than young recruits, because they will have higher merits and also would find it more difficult to reintegrate into civilian life. The likely result of decisionmaking on personnel parameters of demobilisation are first, a more efficient, and second, a more loyal, force after demobilisation.

It should be obvious from the above that DDR programmes are also defence reform projects where the decisions on who to demobilise and who to keep on are made by leaders of warring parties. However, they are generally defence reform projects from above, in the interests of leaders of former fighting groups, and with little discussion about them. One good

example of this was the DDR process in Sierra Leone in the early 2000s. Prior to the peace negotiations, a force of 5,000 soldiers was recommended in a study by ECOMOG. In the Lomé Peace Agreement of 1999 it was agreed that the ex-combatants of the three major fighting forces 'who wish to be integrated into the new restructured national armed forces may do so provided they meet established criteria' (Article VII). After a lengthy DDR process, during which more than 72,000 persons were formally demobilised, the Sierra Leone armed forces have a strength of 14,500 soldiers.¹⁵

The international community has been somewhat slow to grasp these realities. In early DDR programmes they were ignored. In the Ugandan demobilisation programme of the early 1990s, for instance, many of the demobilised were HIV-infected, had disabilities, or were otherwise unfit for military service. It can well be argued that the international community, by subsidising the reintegration of these former soldiers, inadvertently paid for an increase in the efficiency of the Ugandan armed forces (but also for the spreading of HIV in the countryside where former soldiers settled after demobilisation). As it turned out, the Ugandan government later increased personnel numbers again, justifying this with the volatile situation in the Eastern DRC. In retrospect, the international development community had thus helped the Ugandan armed forces to modernise.

DDR programmes also have an influence on SSR by adding to the supply of people with certain types of skills. Former soldiers generally have at least some qualifications such as working in very regulated environments but also in dangerous situations, or the application of physical violence and weapons handling, that raise their competitiveness for positions in other parts of the security sector. When former combatants or regular soldiers look for civilian occupations, jobs in the security sector are one interesting alternative. However, the experience with employing former military personnel in police forces has been mixed. Two major cases of failure are Haiti and El Salvador.¹⁶ The main reasons for failure were insufficient screening of applicants for police service and insufficient training of police recruits. This resulted in police forces more familiar with military than with police methods of dealing with problems and with large numbers of members involved in earlier war crimes. In both cases, police forces largely recruited from among former combatants had to be dissolved and new recruitment drives started. Qualifications needed by members of police forces are only partially consistent with military qualifications. Dependent on the type and organisation of police force, independence, knowledge of the law and communication skills are of overriding importance. These are generally not the skills learned in armed forces. Planning for soldiers to

become police officers needs to be carefully done. The interest of a professional police force should be primary, with recruitment of former soldiers following this lead. Again, communication among those planning DDR and those planning police reconstruction and reform is central, and is best done within institutions of security sector governance.

Another part of the security sector often absorbing former combatants and ex-soldiers are private military and security companies. The private security industry has become an important, though still deficient, field of security sector governance.¹⁷ The role of former armed forces personnel has not received special attention so far, although there would be some options, such as requiring former members of national armed forces to register prior to working for foreign military companies.

Linking DDR with SSR in Post-Conflict Settings

Peace agreements differ widely with respect to the scope of future security arrangements contained in their texts. In general, the focus is justifiably on the avoidance of the recurrence of fighting among the peace-making parties. One such example is the Dayton agreement with its provisions on arms reduction and confidence-building measures. Other agreements have, however, had additional provisions, for instance on the recruitment, composition and objectives of police forces, or on elements of the rule of law, such as the division of responsibilities within federalist systems.

Still, it is safe to say that the provision of physical security of individuals from crime and violence has been of lesser concern to peace-makers, including when deciding on DDR programmes. Ways in which such links could have been made are, for instance, decisions on the composition of the security sector, the objectives of the various forces etc. Demobilisation could be used in these circumstances as an instrument to shape the conditions for the provision of security to individuals, that is human security, in post-conflict societies.

Obviously the main reason for this prevailing deficit is that priorities are generally on immediate post-crisis stabilisation. Issues related to the rule of law, to police reform, the sustainable size of forces, etc., have often been seen as later priorities, to be tackled after the immediate tasks of stabilisation have been achieved, and thus outside of the realm of DDR. In addition, DDR policy-makers and implementers are justifiably concerned with an overload of the DDR agenda. It is already a tough job to implement programmes of the desired scale and quality.

Still, it would be foolish to ignore the important links between DDR and SSR. This is clearly seen in the importance of reintegration success on criminality, but not yet as clear for DDR as influencing security sector reconstruction and reform. It is a good sign that views are changing, in post-conflict countries, among development donors, and in the international community at large. Security issues, including the build-up and democratic control over domestic security forces, are increasingly seen as integrated with the overall reconstruction effort. The traditional separation between civilian and military elements in reconstruction is slowly giving way to better coordination and cooperation. However, this is a slow and tortuous process, full of sensitivities among actors involved and contradictory outcomes.

To sum up, decisionmaking on DDR in peace agreements or early on in post-war situations is related to some elements central for SSR, particularly the size and composition of forces, but also the funding needs of security sectors, and the roles and objectives of the various institutions of the security sector. These decisions are generally made in negotiations among former warring partners and with major players in the international community, including those willing to fund post-war security sectors. They therefore tend to be shaped by the interests of the leaders of warring groups and major international actors. Main concerns are post-war stabilisation, but also costs and protection of the interests of the leader of former warring groups and their combatants, while physical security of people and SSR issues were, at least in the past, only rarely of importance.

Lessons from Post-Conflict DDR

If the above argument holds, DDR designs should not only follow the logic of preventing the recurrence of armed conflict but also more broadly take account of the effects of DDR programmes on post-war human security, including the way in which parameters are set for SSR. What would this mean in practice? DDR practitioners, academics, representatives of international organisations and particularly development donors have increasingly found decisionmaking over DDR, as described above, deficient. Several ways to address this have been suggested, and will be discussed below, namely to put SSR first, to broaden the scope of security sector governance and to better coordinate SSR and DDR planning on the ground.

Security Sector Reform First?

Obviously, it would be more logical to have a broad security assessment and an SSR planning process first – involving a wide spectrum of actors concerned with and affected by security provision – and DDR as one of the instruments of SSR. In an ideal situation, future threat analysis, development of a strategic policy framework, specific plans for security institutions, etc., should precede decisions about the level of personnel security forces should have, and how many soldiers and who should be demobilised and offered reintegration support.

Such planning, however, is generally out of the question in immediate post-war situations. Peacebuilding, including promoting trust among former warring parties, the reduction of the costs of armed formations, and giving former combatants a new, civilian perspective, are the priorities, and rightly so. Still, at least some SSR concerns should be included in peace negotiations and in immediate post-war situations. In particular, decisions taken should not be set in stone. Flexibility is also advocated in a recent practical field and classroom guide on DDR.¹⁸ It also seems to be the path taken by an expert group within the Stockholm Initiative on DDR.¹⁹

In cases where the international community has a strong and direct stake in post-conflict situations, international organisations seem to have the potential to implement joint DDR and SSR strategies. In post-2003 Liberia, for instance, the UN is central for both SSR and DDR efforts, though it can be questioned to which extent these efforts are really joint. The tools are available. A recent report on the advances in reforming peacekeeping by the UN Secretary General contains the following:

The major strategic challenge in the year ahead for our approach to disarmament, demobilisation and reintegration is the need to develop workable arrangements for United Nations system-wide coordination of disarmament, demobilisation and reintegration policy and strategy development. That would also provide opportunities for other entities, including the Bretton Woods institutions, Member States and NGOs, to contribute to disarmament, demobilisation and reintegration planning and implementation processes. Recent experience in post-conflict societies has demonstrated that sustainable peace cannot be built in the absence of the rule of law and United Nations peacekeeping operations continue to expend efforts and resources on restoration of the rule of law.²⁰

The World Bank, which has been a major actor in reintegration, has used several instruments to prevent its funding from inadvertently being used for

force modernisation. In the Ugandan case, for instance, the international donor community set a limit on military expenditures. The Ugandan government was told, beginning in the late 1990s, that it would lose development assistance if the share of military spending in the gross national product would rise above 2 percent. Spending caps, however, have proven to be highly problematic. In Uganda it has, for instance, led to 'creative budgeting' and a decrease in transparency in military expenditures.

The World Bank now seems to favour commitments for SSR from governments receiving DDR funding. One example is the Multi-Donor Recovery Program (MDRP), the largest post-conflict DDR program currently running, planning the demobilisation of 455,300 ex-combatants in the African Great Lakes area. The World Bank, which leads the MDRP, has on its website lists of 'What the MDRP Is' and 'What the MDRP Is Not'. First among the former is: 'An initiative aimed at improving stability and socio-economic development in the greater Great Lakes region of Africa'. Among the latter is 'A security sector reform program'.²¹ If that is so, how has the World Bank arrived at the numbers of ex-combatants to be demobilised, and, in consequence, to be kept in armed forces of countries in the African Great Lake area? In a paper from the MDRP program discussing these issues it is said that '[i]n order to be eligible for funding under the MDRP, the Governments concerned are expected to submit a letter of demobilisation policy that should expand on links with security sector reform, including plans for future military size and budget, military unification and restructuring where relevant'.²² In the demobilisation programme for Angola, the ADRP, the World Bank has attached a number of conditions on funding, including 'further clarity concerning the Government's plans for the security sector' and 'a net reduction in the size of the AFF (Armed Forces of Angola)'. It required the government to prepare and sign a letter of demobilisation policy outlining government commitments, including 'to the regional peace process, demobilisation and reintegration, security sector reform and fiscal impact of demobilisation'.²³ These are beginnings in a process of greater integration of SSR and DDR programmes, but not more. For the MDRP, for instance, follow-up to letters by governments stating their SSR intentions has been very limited: 'However, once such letters are submitted, there have been very few, if any, formal or informal exchanges between partners on the subject of SSR'.²⁴ With no follow-up it is not clear what value such arrangements have in reality. They are commitments made in certain situations. Circumstances can easily change. Moreover, it is not clear from the World Bank documents whether there are any requirements on the process of deciding on these

commitments. In addition, SSR policies drawn up by governments, without consultation of stakeholders, and no democratic decisionmaking process, are not passing the basic test of security sector governance.²⁵

Broadening the Scope of Security Sector Governance

Another and potentially complementary approach to bringing SSR thinking into decisions on DDR is to widen the circle of decisionmakers, and include a broader set of stakeholders in the provision of security. The broadening of participation in peace negotiations has been argued for from several angles. Most prominent is the inclusion of women, which has been endorsed by the UN Security Council in SCR 1325, but good arguments have been made for broad, and representative, inclusion of stakeholders in peace negotiations and post-war situations. This is obviously also true for decisions about the scope and structure of DDR programmes.

Such representation comes close to the emphasis in the literature on SSR in democratic control and governance. Of course, even very representative decisionmaking bodies may not come up with the right solutions with respect to DDR and SSR, but the likelihood that decisions are not made in the interests of particular groups of powerful leaders is lowered.

In a nutshell, the way forward in making the links between DDR and SSR stronger in post-conflict situations is security sector governance, and at least some international actors now seem to promote this approach. Obviously, neither full-blown security sector reform planning, nor a set-up of balanced security sector governance institutions is realistic in post-war situations. But what is realistic is to include a broad range of stakeholders in peace negotiations and immediate post-war decision making and to bring SSR issues to bear, including in decisions on DDR.²⁶

Removing Obstacles to Better Coordination

The argument for better coordination and decisionmaking in security sector governance institutions is rather straightforward. Still, limited information available both about post-conflict situations as well as major downsizing in the wake of streamlining and modernisation of armed forces indicates that it is often lacking. If so, what are the reasons?

Currently one can only speculate on an answer. One possible reason is that interests of both military and civilian actors in pursuing their priorities are often too strong to allow for better coordination, which may come at the cost of the pursuit of partial interests. Another possible reason is that the

importance of coordination of SSR and DDR is too small to lead to the establishment of proper bodies for coordination. A third possible reason is that security sector governance institutions are often lacking or weak, so that it would be unrealistic to expect them taking on the role of coordinating DDR and SSR processes.

As mentioned above, the facts about the links between SSR and DDR, and the lack of coordination between the two processes are not well established and are partially speculative. DDR practitioners are often overwhelmed by the various demands on DDR programmes and warn of overloading DDR programmes. However, increasingly, it is argued that the political nature of DDR programmes cannot be ignored and their broad security implications beyond immediate peacebuilding have to be considered, including on post-war human security. Still, rather little research has so far been done on the security conditions and security implications of DDR. Most of the limited research on DDR focuses on practical matters, or on effects on peacebuilding.²⁷ Research on its implications for individual security, particularly crime rates and crime prevention, is scarce, despite the often made assumptions about the effects of failed reintegration on crime. SSR is even less well researched, partly because of the novelty of this concept, which remains contentious in both its content and usefulness. More research would therefore seem important before more definitive answers can be given as to how important the lack of coordination between SSR and DDR actually is, how the interests of various types of actors in such coordination can be overcome and what kind of security sector governance institutions are best suited to deal with these problems.

Conclusion and Policy Recommendations

The main arguments made in this chapter were that: (1) there are several important links between SSR and DDR; (2) these can be detrimental to both the success of SSR and DDR but also be used to improve, through better coordination, the success of both SSR and DDR; and (3) institutions of security sector governance are the best place for such coordination.

The most important link is that between DDR and SSR in post-conflict situations. DDR influences the conditions for SSR both on the supply side – by setting initial force sizes and selection between who is to be demobilised and who not – and on the demand side – by affecting the security situation, particularly with respect to crime and the likelihood of resurgence of armed conflict. In theory, it would be preferable to let an SSR

process precede DDR. However, this often is not possible because of the pressing need to downsize armed forces, as an element in peacebuilding as well as for financial reasons. In addition, there are often clashes of interest, particularly between national military decisionmakers, who want to prioritise SSR and see DDR as a kind ‘mopping up’ of those parts of the former military sector not seen as needed for the new military, and some civilian actors, often including external development donors, who want to prioritise demilitarisation. These actors tend to see the modernisation of armed forces as counter to the objectives of DDR processes. In such a constellation of interests, institutions of security sector governance, which bring these various interests together in a deliberative process that ends with democratic decisionmaking, are of great importance. Currently, there generally is a lack of such security sector governance institutions, sometimes leading to misunderstandings about the objectives and practical implementation of DDR and SSR processes.

Lack of policy coordination in post-war reconstruction is not specific to SSR and DDR, but a rather general phenomenon. Efforts at better integration can therefore benefit from general progress in the area of policy coordination, which is currently a subject of much debate in the development donor community.²⁸ Based on the above discussion three recommendations seem to be of particular importance for improving coordination.

The first recommendation is to raise awareness of the effects of the design and implementation of DDR programmes on the provision of security beyond the immediate interest of satisfying the demands of parties to a peace agreement. Some of the links are broadly accepted, such as the one between reintegration success and post-war criminality. Others, however, are often overlooked, particularly the ways in which decisions on DDR programmes set parameters for security sector reconstruction and reform. Part of this awareness-raising effort needs to be more research into the links between DDR and SSR. Recent studies on human security in local settings seem to provide a particularly useful avenue for such research.²⁹

The second recommendation is to broaden decisionmaking on DDR in view of the recognition of the effects of DDR beyond immediate post-war confidence-building. This should occur within the framework of a general expansion of decisionmaking on security issues in post-war situations. There is no reason to create specific governance institutions to deal with the links between DDR and wider security considerations. Rather it would seem possible that this first be done in the forum where peace is negotiated, to be followed later on by more permanent institutions that allow the relevant stakeholders voice and influence.

A third recommendation is for the international community to broaden its perspective on DDR. There are major institutional obstacles already in the current situation, with design and implementation of DDR programmes generally marked by a multitude of actors with differing interests and mandates. Current efforts to achieve greater consistency, such as the Stockholm Initiative, as well as ‘learning by doing’, for instance in the MDRP programme, are welcome improvements. However, more policy discussion, as well as the coordination of implementation, will need to be done to better address the full complexity of DDR programmes, including their effect on security sector reform.

Notes

- 1 A good summary of standard practice is: Gleichmann, C., Odenwald, M., Wilkinson A., *Disarmament, Demobilisation and Reintegration. A Practical Field and Classroom Guide* (GTZ: Frankfurt, 2004). A critical assessment can be found in Knight, M., Özerdem, A., ‘Guns, Camps and Cash: Disarmament, Demobilization and Reinsertion of Former Combatants in Transitions from War to Peace’, *Journal of Peace Research* vol. 41, no. 4 (2004), pp. 499-516.
- 2 Acronyms with more Rs are also in use, with the letter standing for activities such as reinsertion, repatriation or resettlement. All of these R-terms are problematic in many cases, where combatants have no area or work to go back to, or choose not to.
- 3 See for instance Ball, N., Bouta, T., Van de Goor, L., *Enhancing Democratic Governance of the Security Sector: An Institutional Assessment Framework*, (Clingendael/Netherlands Institute of International Relations: The Hague, 2003).
- 4 See for example Eide, E., Kaspersen, A., Kent, R., von Hippel, K., *Report on Integrated Missions. Practical Perspectives and Recommendations*, Independent Study for the Expanded UN ECHA Core Group (United Nations: New York, May 2005).
- 5 United Nations, *Report of the Panel on Peacekeeping Operations*, UN doc. A/55/305-S/2000/809 (2000), para 42.
- 6 United Nations, *The Role of United Nations Peacekeeping in Disarmament, Demobilization and Reintegration*, Report of the Secretary General, UN doc. S/2000/101 (2000).
- 7 See URL <<http://lnweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/Themes>>.
- 8 Cruz, J. M., Trigueros, A., González, F., *El crimen violento en El Salvador: Factores sociales y económicos asociados*, report prepared for the World Bank project on violence in Latin America (Washington, DC, 2000).
- 9 Kaspersen, A., Eide, E., Hansen, A., *International Policing and the Rule of Law in Transitions from War to Peace*, working papers from NUPI’s UN Programme (Oslo, 2003).
- 10 Paes, W-C., ‘The Challenges of Disarmament, Demobilization and Reintegration in Liberia’, *International Peacekeeping* vol. 12, no. 2, (2005), pp. 253-261.

- 11 The same questions of training and education, certification of qualifications, housing, personal attitudes etc. are relevant for soldiers with time-limited contracts of medium length. In armed forces where many soldiers serve on medium-term contracts, measures which ease the later reintegration into civilian life are often found. This is generally different in armies where most longer-serving soldiers are lifetime professionals, as was the case in the former socialist countries.
- 12 United Nations Security Council, *Sixth Progress Report of the Secretary General on the United Nations Mission in Liberia*, UN doc. S/2005/177 (17 March 2005).
- 13 See the list of DDR programs collected in Ball, N., Hendricksen, D., *Review of International Financing Arrangements for Disarmament, Demobilization and Reintegration*, Phase 1 Report to Working Group 2 of the Stockholm Initiative on Disarmament, Demobilization and Reintegration (Stockholm, May 16, 2005).
- 14 See Pouligny, B., *The Politics and Antipolitics of Contemporary DDR Programmes* (Centre d'Etudes et de Recherches Internationales, Science Po/CNRS; Secrétariat Général de la Défense Nationale; Programme d'Etudes Stratégiques et de la Sécurité Internationale: Paris and Geneva, 2004).
- 15 See Gbla, O., 'Security Sector Reform in Sierra Leone', *International Peacekeeping* (forthcoming).
- 16 Call, C. T., 'War Transitions and the New Civilian Security in Latin America'. *Comparative Politics* vol. 35, no. 1 (October), pp. 1-20.
- 17 Singer, P. W., *Corporate Warriors: The Rise of the Privatized Military Industry* (Cornell University Press: Ithaca and London, 2003); Wulf, H., *Die Internationalisierung und Privatisierung von Krieg und Frieden* (Nomos: Baden-Baden, 2005); Holmquist, C., *Private Security Companies. The Case for Regulation*, SIPRI Policy Paper no. 9 (SIPRI: Stockholm, January 2005).
- 18 See Gleichmann et al, *op. cit.*
- 19 See the first interim report from Working Group 1 of the Stockholm Initiative on Disarmament, Demobilization and Reintegration, URL <www.sweden.gov.se/content/1/c6/03/52/81/51fbd940.pdf>.
- 20 United Nations, *Comprehensive review of the whole question of peacekeeping operations in all their aspects Implementation of the recommendations of the Special Committee on Peacekeeping Operations*, Report of the Secretary General, UN doc. A/58/694 (26 January 2004).
- 21 See URL <www.mdrp.org>.
- 22 Multi-Country Demobilization and Reintegration Program, *Linkages between Disarmament, Demobilization and Reintegration of Ex-Combatants and Security Sector Reform*, position paper, (Washington, DC, October 2003).
- 23 World Bank, *Technical Annex for a Proposed Grant of SDR 24 million (US\$ 33 million equivalent) to the Republic of Angola for an Angola emergency demobilization and reintegration project*, report no. T7580-ANG (World Bank: Washington, DC, 7 March 2003).
- 24 See World Bank, *op. cit.*
- 25 See Ball, N., Bouta, T., Van de Goor, L., *op. cit.*
- 26 See also the discussions in: International Peace Academy, *Challenges in Peacekeeping: Past Present and Future* (Department of Peacekeeping Operations and International Peace Academy: New York, 20 October 2002).

- 27 See for example Kingma, K. (ed.), *Demobilization in Sub-Saharan Africa: The Development and Security Impacts* (Macmillan Publishers: Basingstoke, 2000); Gleichmann, C., et al, *op. cit.*
- 28 See for example United Nations Development Group and World Bank, *An Operational Note on Transitional Results Matrices. Using Results-Based Frameworks in Fragile States* (Washington, DC, January 2005).
- 29 See Burgess, P., Owen, T. (eds.), 'Special Issue on Human Security', *Security Dialogue* vol. 35, no. 4 (2004); Debiel, T., Werthes, S., 'Human Security–Vom politischen Leitbild zum integralen Baustein eines neuen Sicherheitskonzepts?', *Sicherheit und Frieden (S+F)* vol. 23, no. 1 (2005), pp. 7-14.

Chapter 6

Addressing the Global Challenge of Child Soldiers

P. W. Singer

Introduction

Today, as many as 300,000 children under the age of 18 serve in government forces or armed rebel groups. Some are as young as eight years old. They fight in places like Afghanistan, Colombia, Congo, Iraq, Myanmar, Côte d'Ivoire, and Sudan. Indeed, the first U.S. soldier killed in Afghanistan was killed by a fourteen-year-old sniper. Iraq has witnessed tens of child soldier incidents so far, and underage al Qaida terrorists held captive at the U.S. military prison on Guantanamo Bay, Cuba.¹ Child soldiers are not just participants in war, but in relation to forced or compulsory recruitment, also victims of what the International Labour Organisation rightly considers as one of 'the worst forms of child labour',² and what the New York Times calls one of the world's worst cases of 'child abuse'.

This phenomenon presents thorny dilemmas for the already difficult task of rebuilding states emerging from conflict. How can international actors integrate this issue within a wider framework of post-conflict peacebuilding? What are the linkages between child soldiers and related issues such as demobilisation, disarmament and reintegration (DDR), small arms and light weapons (SALW), trafficking in human beings and transitional justice? And, fundamentally, how can measures to address the challenges posed by child soldiers be made sustainable and tailored to specific contexts?

The chapter examines the causes and implications of children's role in war from the perspective of post-conflict peacebuilding. It addresses the difficult questions and policy dilemmas that emerge, seeks to identify lessons learned, and highlights how and why policymakers, militaries, and humanitarian groups must respond to the post-conflict legacy of children at

war. The chapter concludes with a number of concrete policy recommendations flowing from this analysis.

An Overview of the Child Soldier Problem

The presence of children is a fact of warfare. They serve in approximately 40% of the world's armed forces, rebel groups, and terrorist organisations and fight in almost 75% of the world's conflicts. Roughly 30% of the armed forces that employ child soldiers also include girl soldiers; underage girls have been present in the armed forces in 55 countries. In 27 of these, girls were abducted to serve and in 34 of these they saw combat.³ Girl soldiers are often singled out for sexual abuse, including by their own commanders and comrades, and have a harder time reintegrating back into society when the wars end. Unfortunately, their special needs are too often ignored or under-resourced in DDR programming.⁴

Not just armies, but also peacekeeping forces have increasingly come into conflict with child soldier forces. The first notable instance for Western intervention forces was the British *Operation Barras* in Sierra Leone in 2000. There, British SAS special forces, deployed in support of the UN force, fought a pitched battle against the 'West Side Boys,' a teen militia that had taken hostage a squad of British Army troops.⁵ UN and EU peacekeepers in places like Liberia and the Democratic Republic of Congo (DRC) were equally plagued by this phenomenon.⁶

In Afghanistan, beyond the challenge of their presence in forces on the ground (with the largely insufficient DDR programmes that were set up after the Taliban's fall not including a proper scope for child soldiers), there was also a question of what to do with those captured. At least six young boys between the ages of 13 and 16 linked with al Qaida elements have been captured by U.S. forces in Afghanistan and were taken with adult captives to the detainee facility at Guantanamo Bay, Cuba. They were housed in a special wing entitled 'Camp Iguana'.⁷ In addition, several more in the 16-18 year range are thought to be held in the regular facility for adult detainees at 'Camp X-Ray'. U.S. soldiers continue to report facing child soldiers in Afghanistan to this day; the youngest on the record is a twelve-year-old boy who was captured in 2004, after being wounded during a Taliban ambush of a convoy.⁸

Under the regime of Saddam Hussein, Iraq built up an entire apparatus designed to pull children into the military realm and bolster control of the populace. This included the *Ashbal Saddam* ('Saddam's Lion Cubs'), a

paramilitary force of boys between the ages of 10-15 that acted as a feeder into the noted *Saddam Fedayeen* units. The *Fedayeen* remnants now make up one of the contending insurgent forces. During the invasion, American forces fought with Iraqi child soldiers from these groups in at least three cities (Nasariya, Mosul, and Karbala).⁹ The overall number of Iraqi children involved in the current insurgency is not yet known. But the indication is that they play a significant role with both radical Sunni and radical Shia elements. For example, British forces have detained more than 60 juveniles during their operations in Iraq, while U.S. forces have captured 107 Iraqi juveniles determined to be 'high risk' security threats. Most were held at the infamous Abu Ghraib prison.¹⁰ As Iraq seeks to reassemble its security institutions, dealing with this next generation of combatants presents an immense challenge for effective security sector governance.

Demographic changes, global social instability, the legacy of multiple conflicts entering their 2nd and 3rd generations, and the wide range of near- and long-term catastrophes that act to weaken states and undermine social structures are all contributing factors. Orphans, street kids, and refugees are considered to be special at-risk groups for child soldier recruitment, as they are disconnected from institutions of stability and more vulnerable to cooption and even abduction. However, while there have always been dispossessed and disconnected children, changes in weapons technology have altered the lethal capabilities that children can offer to commanders tapping into unregulated pools of military labour. In particular, the proliferation of simple and cheap SALW have played a primary role. The challenge that SALW proliferation presents to post-conflict peacebuilding is well documented. Today, through the incorporation of plastics and the simplification of use, such weapons as the AK-47 are far more lethal than prior generations of battlefield weapons, easy to learn to use, and now 'child-portable'. Their wide proliferation (Amnesty International estimates more than 600 million light weapons around the globe) means they are not only cheap and thus create inherent instabilities, but also leave a legacy that can undermine security institutions for years to come.¹¹ Indeed, some analysts have even taken to calling this period of failed states and quasi-criminal conflict the "Kalashnikov Age".¹²

The involvement of children alters not only the dynamics of war, but in so doing the contexts of states undergoing or having undergone various types of post-conflict processes. For weak states, the legacies of conflict – including challenges such as disarmament, demobilisation and reintegration of former combatants, transitional justice, illegal trafficking, landmines, etc.

– can make these tasks daunting. The presence of child soldiers has had a number of specific implications for certain recent conflicts:

- *Increase in violent conflicts due to the ease of force generation.* Children are targeted for recruitment because they represent a quick, easy, and, most importantly, low-cost way for armed organisations to generate force. Groups which previously would not have been considered viable military threats can now field serious forces or, at the very least, easily disrupt society through the targeting of unarmed civilians. This ease also impacts conflict persistence and thus the ability of conflicts to start back up again, a key concern for security institutions in the immediate post conflict period. Organisations that use children are sometimes able to endure conditions that would break forces that do not, and are able to reconstitute themselves rapidly, even when defeated. As an example, the Revolutionary United Front (RUF) in Sierra Leone was completely routed in two separate instances (once by the private military firm Executive Outcomes and the second time by the ECOMOG force), but each time the core leadership escaped and the group used abducted children to return to strength and break a ceasefire.¹³
- *The proliferation of violence and the devaluation of ideology.* The use of children also means that the connections between the motivations of the group's leaders and its likely success in fielding a combat organisation are broken. Fringe movements which would have been marginalised in the past, can become quite powerful forces, spurring further conflict (as an example, the Lord's Resistance Army, a cult-like group in Uganda that has fought a two decade civil war). These changes complicate post-conflict situations, as the usual guarantees, rewards, and confidence-building measures that help ensure peace matter less to such groups with minimal political agendas.
- *Children in combat and the greater price of war.* Methods of recruitment and indoctrination of children entail massive violations of the laws of war. The use of atrocities in turning children into soldiers has been well documented. In connection to the susceptibility of children to indoctrination, commanders may have a

freer hand to promote more brutal forms of violence against prisoners and civilian targets. This strategy is in opposition to common guerrilla doctrine of winning local support so as to blend into the environment.¹⁴ Children are also likely to suffer greater casualties. Many commanders deliberately exploit them in two primary methods: using children as shields or as cannon fodder. The first is the use of children to protect the lives of organisation leaders and better trained, and thus more valuable, adult soldiers. Children are also commonly used in suicide missions or ‘human wave’ attacks, where the tactic is designed to overpower a well-fortified opposition through sheer weight of numbers.

- *Child soldiers and the conflict cycle.* In many ways, children bear greater burdens after the conflict is over than their adult counterparts. Many were forced to commit atrocities against their own families and communities, or have physical disabilities and/or psychological scars, which are exacerbated by their youth. Most have special rehabilitation needs. Or, because they were removed from school at an early age, they may have no valuable peacetime skills. Perhaps, though, the most serious long-term consequence is the disruption of psychological and moral development. Many children end up joining new conflict groups elsewhere or becoming involved in criminal activity. The resulting tendency for more violence contributes to the difficulty of trying to reintegrate hostile groups into society. The case of Liberia is an example of how conversion of a generation of children into soldiers not only increases the likelihood of conflict recurrence within the country, but also endangers regional stability. Child soldiers from Liberia have ended up fighting in Sierra Leone, Guinea, Côte d’Ivoire, and as far away as the DRC.

Child Soldiers as a Challenge for Peacebuilding

The policies of the international community require further efforts to address this issue on a global level and to support local capacities to cope, at a time when local institutions are at their weakest. Relevant to peacebuilding, child soldiers present an even greater burden to an already difficult task, especially in post-conflict settings. The human costs to recover from are higher, both for children and the local community, social institutions are more deeply

scarred, and the conflict dynamics are such that the local security situation is more fragile, with conflict entrepreneurs finding it easier to restart the fighting, even when the rest of society is exhausted. There are also particular rehabilitation and reintegration problems when children are present among the warring factions. Thus, in order to meet this challenge, attention must be paid to all of child soldiering's stages – before, during and after conflict.

Prevention and Deterrence

Although progress has been made in recent years towards bringing attention to the recruitment and use of child soldiers, many thousands continue to be involved in fighting forces and much remains to be done. Significant advances relate to developments in international policy and standards. However, ensuring their implementation remains a challenge, particularly in relation to armed non-state actors. While there has been the creation of an international legal framework that prohibits the recruitment and use of children in conflict, the reality is that it remains largely ignored by conflict groups, as there has been little action on the enforcement side.

A particular landmark in the development of a legal framework is the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, that entered into force on 12 February 2002. The Optional Protocol raises the minimum age for direct participation in hostilities to 18 years from the previous minimum age of 15 years specified in the Geneva Conventions and the Convention on the Rights of the Child. The treaty also prohibits compulsory recruitment by government forces of anyone under 18 years of age, and calls on State Parties to raise the minimum age above 15 for voluntary recruitment, and to implement strict safeguards when voluntary recruitment of children under 18 years is permitted. In the case of armed non-state actors, the treaty prohibits all recruitment – voluntary and compulsory – under the age of 18.

Other developments include the UN Security Council annual discussions since 1999 on children and armed conflict, and a series of subsequent resolutions. The latest, Resolution 1612 (2005), requests the UN Secretary General to establish a monitoring and reporting mechanism that would ‘...collect and provide timely, objective, accurate and reliable information on the recruitment and use of child soldiers in violation of applicable international law...’. A working group of the Security Council would review reports and make recommendations to the Council on possible measures to promote the protection of children affected by armed conflict. The Council for its part states that ‘targeted and graduated measures’ would

be considered through country-specific resolutions but none equal to the problem have been implemented. Such measures have so far fallen short of changing practices as they attempt to shame the shameless – those who willfully recruit and abuse children. To change actual practice, the focus should be both to drain the pool of potential child soldiers and to discourage leaders from accessing it. A revamped sanction and prosecution regime should be combined with enhanced aid programmes that provide support to particular at-risk groups for recruitment, such as communities in conflict zones, refugees, street children, and orphans.

It is also interesting to note that under the Statute of the International Criminal Court that entered into force July 2002, the ICC has the jurisdiction to prosecute persons charged with war crimes, genocide, aggression, and crimes against humanity. Included in the list of war crimes is ‘conscripting or enlisting children under the age of fifteen years into national armed forces or using them to participate actively in hostilities’ (article 8). There is also a provision regarding an 18 years minimum age for the jurisdiction of the court. The ICC Statute precludes the Court from trying any person who was under the age of 18 at the time of the alleged commission of a crime. It should be noted however that this does not mean that child soldiers will not be prosecuted – this depends on domestic legal provisions.

Fighting Children

At the same time, intervention forces or peacekeeping forces, entering into conflict zones where child soldiers are present, must face up to the reality of war. While operational planning clings to the assumption of forces of men in uniform, fighting for some political cause of their nation-state (such as the classic peacekeeping model of blue-helmets policing a ceasefire line), wars are fought by men, women, and children, on behalf of actors ranging from warlord groups to private military companies, motivated by everything from religion to personal profit. The result is that forces engaged in post-conflict zones simply are unprepared for the dilemmas and difficulties that child soldiers raise.

For nearly every military in the world that participates in interventions abroad, a range of military functions from mission planning, training programmes, intelligence, doctrine, equipment, public affairs, even after-action counselling and support, are still woefully under-prepared for this issue. Such preparation becomes important not just in engaging child soldiers, but also in how security institutions deal with what comes next. That is, the defeat of a child soldier-utilising opposition does not just take

place on the battlefield, no matter how successful. A force must also take measures to receive child soldier escapees and POWs so as to dispel any myths on retribution and to induce others to leave the opposition as well. This also entails certain preparations being made for handling child detainees in an appropriate and effective manner, for which neither U.S. nor UN forces have had any doctrine or training.

Breaking the Cycle

A particularly pernicious characteristic of child soldiering is the potential to ruin the lives of children and, in doing so, lay the groundwork for future conflict. Unfortunately, there are typically few mechanisms in place after conflicts end to govern and respond to the issues unique to child combatants. In most peace settlements and post-conflict recovery programmes, child soldiers are either forgotten or lumped together under the general grouping of 'ex-combatants.' The result is that children typically receive inadequate support, not only to their detriment but also to the detriment of broader peace prospects. For example, in its first Sierra Leone operation in the mid-1990s, the UN earmarked \$34 million to disarm, demobilise and reintegrate ex-combatants. However, only \$965,000 of this already small amount was directed towards the tens of thousands of child soldiers; despite the fact that they made up the bulk of the fighters in the war.¹⁵ As a result of the failures of the peace process, the original settlement in Sierra Leone never fully stuck and the fighting began again, with most of the ex-child combatants simply rejoining the warring groups.

A dangerous lack of attention to the child soldier issue in peace processes and post-war planning continues today, with sufficient demobilisation programmes for children lacking in places ranging from Afghanistan and Kosovo to East Timor and Liberia (for example, in Liberia, only 11% of the child soldiers were assisted in the first war's demobilisation programmes).¹⁶ In fact, it was not until the 1999 Lomé Accords in Sierra Leone that any peace treaty even recognised the very existence of child soldiers or made any specific provisions for their rehabilitation and reintegration into society. As such, the agreement was groundbreaking by setting a mandate that both the local parties and international agencies should deal with child soldier requirements, and thus should be a reference point for any such talks in other conflict zones where children are present.¹⁷

Unless the needs of children are explicitly incorporated into peace and reconstruction plans, they will not be given the priority status that they merit. As a result, just as forces in the field must deal with the younger makeup of

their likely adversaries, so too must post-conflict operations think better about the younger ex-combatants they must engage. Too often, peacekeeping operations are ill-prepared for the reality they will face on the ground. As a result, many former child soldiers do not have access to educational programmes, vocational training, family reunification, or even food and shelter, all of which they need to successfully rejoin civilian society. In Sierra Leone, for example, the sheer number of former soldiers (both adult and child) overwhelmed the limited relief efforts. Half a year into the operation, only 30% of the child soldiers in the RUF had been demobilised and disarmed. The duration of rehabilitation that many former child combatants received there was often no more than one week, hardly sufficient.¹⁸

A key impediment to the inclusion of child soldiers into post-war planning and peace settlements is often the denial by the local parties, in the face of obvious evidence, that child soldiers are even part of their forces. For example, in Mozambique, despite the fact that more than a quarter of the total troops in the war were child soldiers, neither party admitted it. Unfortunately, the UN acquiesced in this façade. Thus, formal demobilisation programmes there did not include child soldiers who returned to civilian life with no help or support. The outcome had long-lasting societal repercussions, including extremely high levels of banditry that plagued Mozambique for the following decade.¹⁹ Similarly, in Angola, the government's demobilisation programme was designed so as to avoid the financial costs of providing benefits to nearly 7,000 former child soldiers. The government never admitted their presence in its forces and the children have been essentially abandoned.²⁰

A particularly egregious subset of these denials is the frequent attempt by groups to retain girl soldiers even after the fighting has ended. They do so because the adult leaders often want to retain the girls' added value as 'wives' or servants. For instance, in Sierra Leone, the RUF returns of abducted children only included a small percentage of girls. In one case, when 591 abducted children were released, only 10 were girls. This was obviously not in line with their much larger numbers within the force.²¹ Similarly, in Mozambique, visits by international observers to RENAMO camps during the war found that around 40% of its child soldiers were girls. After the war ended, though, nowhere near this figure were repatriated.²² More than 10,000 girl child soldiers were thought to have been missed in the DDR programmes there, reinforcing the gender divide.²³

An additional group that is typically forgotten by peace settlements and post-war assistance are child soldiers who have grown up over the

course of the war. Many conflicts' durations are so long that children brought into the fighting before the age of 18 may age out of being child soldiers. However, their growing-up within war means that their problems will likely be far more extensive than those who originally joined the fighting when they were adults. Even though they are now adults, they may also require specialised support to deal with the after-effects of child soldiering. These include psychological harm, as well as the loss of educational prospects. Unfortunately, these former child soldiers are generally over-looked in post-conflict processes as well.²⁴

In general, funding to support DDR programmes is far from sufficient. For example, UNICEF's child soldier demobilisation programmes in the DRC have run at a 75% shortfall.²⁵ The result of these gaps is that programmes run well beyond capacity. The Colombian government, for example, has two well regarded rehabilitation programmes, the Family Welfare Institute and the Reinsertion programme. Both, however, are often so full that children sleep in bunks placed in the hallways. In turn, World Vision's child soldier rehabilitation centres in Northern Uganda often run at six times their capacity.

The UN and other organisations that run and advise such processes should include greater planning for children's needs. Some aspects may include: adding language in the tone of the Lomé accords to treaties, which gives a mandate to such efforts; ensuring that child-centred funding for post-conflict recovery is sufficient; and planning and coordinating civil-military cooperation (or CIMIC) operations in peacekeeping forces that are best suited for aiding child soldiers. As organisations prepare to deploy into the field to support peace agreements, they should ensure the proper amount of child protection advisors and human rights experts among their personnel. Another aspect is that, as experience in West Africa shows, peacekeeping operational planners, and those planning the reconstruction of local security institutions, should also consider the potential need to include contingents of female soldiers, who may be better prepared to deal with the special needs of girl soldiers.²⁶

Disarmament and Demobilisation

The predominant belief in the field is that the process of turning a child soldier back into a child must take place in three essential phases: (1) disarmament and demobilisation, (2) rehabilitation in both the physical and psychological aspects, and (3) reintegration with families and the community, which must include sustained follow-up support, including

personal capacity building and extended counseling.²⁷ The required time for each phase varies, but the general consensus is that the overall process must be measured in terms of months, rather than the weeks or days too often given because of lack of resources or improper attention to needs. Likewise, this is not a clean process of three distinct parts, but must be part of an overall strategy that fits within the broader goals of post-conflict peacebuilding.

Once the fighting is ended, one of the most urgent priorities is to mandate the immediate removal of all soldiers less than 18 years of age from the local armed forces and support their disarmament and demobilisation. This should involve programmes to end any individual possession of weapons by children. Optimal are programmes that bring the weapons under the control of outside organisations, such as an internationally monitored weapons cantonment programme. There may also be an opportunity to link this need with other priorities. For example, UNDP's 'weapons in exchange for development' programme has sought to link disarmament with projects designed to help create alternative (i.e. legal and productive) livelihoods for combatants.²⁸ However, some programmes have made the mistake of requiring weapons turn-in as the price of admission into demobilisation and rehabilitation programmes. In Sierra Leone, for instance, the handover of an automatic rifle was sometimes required to receive ex-combatant benefits. Such policies exclude child soldiers that escaped without their weapons or served as spies, porters, or 'wives'. Given the different concerns and dynamics at play with child soldiers, their process of disarmament and then demobilisation should be kept distinct and separate from those of adult soldiers. This also would have the positive side effect of breaking leaders' direct controls them. Added attention should be given to dismantling command and control structures within child soldier units, such as ending any hierarchy or organisation that rewards the most zealous or vicious child soldiers with added powers over their compatriots.

After disarmament comes the process of demobilisation. This usually involves the movement of ex-combatants into some type of formal housing situation, such as camps, where the children are prepared for a return to civilian life. A number of key lessons have emerged from the international community's experience with this process over the last decades. Two critical requirements are that, first, any assembly areas should be located sufficiently far from the combat zones. This is to ensure security and impede re-recruitment. Secondly, no weapons should be permitted into these camps. This is necessary both to achieve a clear break from their former life (as demobilisation is the first step in the social reintegration of a child soldier),

but also to prevent the risk that any intractable combatants might act as spoilers for the entire peace process.

Disarmament and demobilisation programmes of children are generally successful only outside of crisis situations. In cases where it was tried while the situation was unstable or the fighting still went on, such as by UNICEF in the DRC, the programmes were often in vain. As one Congolese NGO noted, 'Demobilisation in the middle of war is neither possible nor permanent'.²⁹ The idea of disarming can be a daunting one, particularly in the uncertain political environment that surrounds this process. This means that the number of groups and individual soldiers that willingly participate is greatly reduced if the fighting is ongoing or the situation otherwise unsettled. One problem is the phenomenon of re-recruitment, by either recalcitrant parties or even by the opposing force (such as former child soldiers on the rebel side, now being drafted by the government). For child soldier groups, there is the fear that they will be taken advantage of and that their opponents will sweep up 'their' children. As one commander in DRC noted, 'You can't demobilise [our] child soldiers, because others will enroll them'.³⁰ For children, there is also often a great fear of retribution, as well as an underlying uncertainty about their future place in society.

Therefore, all measures must be taken by security institutions to convince the important actors in the process (both the conflict group leaders, as well as the individual soldiers) of the need and benefits of demobilisation. Programmes must be set in place that offer incentives to groups and individual soldiers to demobilise. Examples include group leaders gaining greater political roles in the post-war governing structure if they act appropriately, to combatants receiving education and job training that will aid them later in gainful employment. In general, though, direct cash payments to demobilised soldiers have not been successful.³¹ Security guarantees (often protective deployments from local security or peacekeeping forces) must also be provided that offer assurances that no one will be taken advantage of in their new position of greater vulnerability, and that re-recruitment does not occur. Another novel way to think about child soldier demobilisation is its potential as a confidence-building measure between the warring parties. In negotiations, groups often are looking for proof of the other side's good intentions. The demobilisation of children by both sides can thus be a first step for them to ramp down their conflict, which importantly carries positive externalities for the children as well.³²

The staff that deal with former child soldiers should remain as consistent as possible, to reinforce familiarity (this is often difficult, though, given the high stress of working with former child soldiers and resulting

high rates of staff turnover). Another priority is that, wherever possible, aid workers and counsellors should be drawn from the local culture or are at least familiar with the local culture's rites, practices, and values. Organisations should seek to establish a family-tracing programme as soon as possible. This entails creating a shared network of contacts and resource centres, where families and aid workers can place needed contact information. Ideally, the programme would involve the creation of a shared or common database. The ICRC has a long history of tracing people unaccounted for as a result of armed conflict. UNICEF is presently establishing a global consortium of organisations with the aim of developing a computer-based tracing network that would allow information to be accessed at multiple sites, not just within the country at conflict, but in resource centres in neighbouring states and other likely refugee zones. A key lesson is that tracing activities must involve the local government, the warring parties, and humanitarian groups to be fully effective. No communication tool should be ignored. For example, in Sierra Leone, UNICEF-supported tracing agencies established registration points across the country and used radio publicity to help families find missing children. A tracing network should also be kept in place after the reunification of children with families, to allow groups to monitor the status of children and provide any follow-up assistance. Former child soldiers should also be provided with some sort of documentation at this stage, which will help ensure that they have access to these programmes and are not excluded from any governmental benefits.

Rehabilitation

Disarmament and demobilisation, which make up the disengagement of children from military life and control, are the essential first steps. However, the hardest work lies in trying to rehabilitate and reintegrate former child soldiers into society. The challenge of rehabilitation for a child soldier is a highly difficult process, primarily due to the added psychological and physical scars that burden ex-child soldiers. It should be noted that all programmes must have a long-term perspective to be sustainable. Ideally, they will involve the participation of not just international aid workers, as is too often the norm, but also local community institutions, ranging from elected local leaders to spiritual leaders. Providing the appearance of a welcoming and stable local social environment provides a crucial context for rehabilitation. Additionally, the intent of external intervention must be to

support, rather than replace, local society's coping strategies. This means that there is no one standardised approach to rehabilitation.

The physical treatment side of rehabilitation should be provided as soon as possible. This will require that post-conflict assistance help to restore broken local health networks. Operational planning should therefore include much larger external assistance for hospitals and treatment clinics, which may have to be located in demobilisation camps. Aid agencies and local governments must also be prepared to aid children with more lasting ailments, including those with incurable diseases, damaged or lost limbs, or other handicaps. Too often, the resources for such are insufficient. One sad example is the frequent lack of good prostheses for children. Consideration in post-conflict planning should therefore be given to how the local construction of such devices can be encouraged. This has the side-benefit of spurring positive economic activity, as well as long-term sustainability.³³

In the end, it is time and stability that appears to be what is most required for healing. Unfortunately, the need for counselling and other rehabilitation activities is too often ignored in post-conflict programmes. For example, in the first Sierra Leone operation, provisions were made by the UN for only one trained child psychologist to address the special needs of the tens of thousands of child soldiers present.³⁴ Likewise, in a recent survey of child soldiers in East Asia, only one interview location had counselling available.³⁵ This is not just because of poor preparation on the part of the operational planners, but also broader resourcing issues. There are simply too few specialists skilled in children's psychology issues available to meet the growing needs of relief and aid agencies. A unified effort should be taken up by the humanitarian community to build up the pool of child psychiatrists, psychologists, counsellors, and social workers. This may involve formalised cooperation with relevant international occupational organisations, such as the International Council of Psychologists or the World Psychiatric Association. They must also work with mission planners to ensure that these specialists are then actually deployed in sufficient numbers.

Reintegration

The final stage in the process of attempting to return childhood to young soldiers is reintegration. This step involves introducing the child back into their home or community, so that they can rejoin society on positive terms. As discussed in prior sections, the ideal outcome is to return them to their own family. Inevitably, sometimes children will have lost all family in the

fighting or not be able to locate them. Arrangements should then begin to be developed for how the authorities plan on responding to these harder cases of ex-child soldier orphans. In several countries, including Colombia and Afghanistan, 'youth houses' have been organised for such children. Akin to halfway houses, children in these programmes live together under the supervision of a mentor and participate in education and vocational training programmes designed to allow their reinsertion into the community.

Efforts must be made to overcome the stigma and stereotypes that surround ex-child soldiers and describe them as perpetrators. Rather, they should seek to reinforce the acknowledgement by society that the children are victims in the process. Truth and reconciliation programmes have been run to some good effect in places like South Africa, but programmes more specific to child soldiers are needed. In Sierra Leone, for example, UNICEF set up an agreement with local media to promote reintegration and reconciliation, including even producing radio spots that sought to educate the local populace and keep them informed of related activities.³⁶ More recently, 'Voice of the Children' was launched. It is a UN-sponsored radio station, dedicated to children's issues. Another example is that children in Uganda are given a public presidential pardon for any activities they carried out while in captivity, providing an official sanction to societal forgiveness and reconciliation.

Another way to support the acceptance and well-being of ex-child soldiers is to involve them in helping to solve communal problems, meaning that child soldier DDR programmes can become integrated with broader peacebuilding activities. Examples include programmes that set children to repair damaged community infrastructure, such as schools or wells, and to participate in weapons and landmine location. These programmes work best if structured into group activities, designed to decrease the stigma placed on the children and promote their sense of self-esteem and accomplishment. Such programmes can have a powerful redemptive effect for both the child and the community. There may also be an avenue for the participation of elders in the community, who are often vulnerable in post-conflict situations as well. Programmes can be designed that encourage and reward the passing on of skills and cultural heritage from elders to children.³⁷

Ensuring that local security forces, which might have been on the opposing side, do not harass or attempt to re-recruit ex-child soldiers is another priority for reintegration efforts. This may require incorporating sessions on child protection into training programmes, and linking this concern to the duties of any relevant military observer or peacekeeping forces. Children should also be informed of the laws against their

recruitment, so that they understand that the practice is not allowed. Some analysts even support the participation of ex-child soldiers in local recruitment prevention initiatives.³⁸ The ultimate goal should be to create a community support network designed to reintegrate ex-child soldiers in a positive manner. Like other aspects of the overall process, the network should be as self-sufficient as possible. This means that outside agencies and experts should focus most on aiding and training local actors, rather than seeking to run such programmes themselves.

Restoring lost educational opportunities is critical for both communal recovery and children's reintegration. Many child soldiers will have missed out on months or years worth of basic instruction. An additional aspect may be the need to set up vocational training programmes.³⁹ Unfortunately, most post-conflict reintegration programmes follow the trend in demobilisation and only provide such job skills and support programmes to adult ex-combatants. This, though, ignores both the wide presence of child soldiers in many conflicts as well as their economic needs. An added problem is that many child soldiers may be too old to enroll in basic education programmes or are now the primary wage earners of their families. If they lack the skills to compete in the economy, an entire generation may be left adrift and seek refuge in other warring groups or criminal activity.⁴⁰

As with broader development programmes, the best of such vocational training programmes are often linked to micro-credit initiatives, which extend the backing over the longer-term.⁴¹ These may include support in the formation of cooperatives or other associations in which a small group of young people can jointly undertake projects. The Don Bosco Center, for example, provides its graduates with the needed tools for their new trade, a small cash grant, and the advice of a small business advisor. In Sierra Leone, the Christian Children's Fund set up a micro-credit loan and payback programme, which helps groups of ex-combatants share a small loan to help purchase needed business start-up items, such as tools for farming or fabrics and dyes for textiles.⁴²

The final element in any reintegration programme must be sustained follow-up activities. These should aim at providing social and psychological support to ex-child soldiers and their families and communities. They should also seek to determine the whereabouts and activities of former child soldiers. This can help ensure that they do not fall through the cracks, or end up becoming involved in criminal or other violent groups again. For example, in East Timor, one positive programme created incentives (links to assistance programmes) for demobilised soldiers to check back in with support groups. This helped ensure that they are adjusting well and steering

clear of any negative activities, such as street crime. In Sierra Leone, follow-up activities have included the organisation of local governmental committees at the district level, which provide community-based support for vulnerable children.

Conclusion and Policy Recommendations

Child soldiers are a key element in the wider challenge of post-conflict peacebuilding. The issue must therefore be considered within the framework for how societies rebuild and reform themselves, and deal with the key issues of re-establishing governance and security. Unless the issue is adequately addressed at both the global level and within given conflict zones, it will create a burden that will undermine both short-term security and longer-term post-conflict peacebuilding. Thus, the issue merits focus and intervention by not only local actors and institutions, but also by international efforts as well. A series of policy priorities must therefore be ensured:

- The implications that child soldiers can have for successful peacebuilding require that the international community pay close attention to the issue particularly in regard to ensuring that the protection, rights and well-being of children affected by armed conflict are specifically integrated into all peace processes, peace agreements and post-conflict recovery and reconstruction programmes;
- Develop a realistic prevention and deterrence program at the international level, that matches aid to at risk groups with sanctions and prosecutions for child soldier users and abettors;
- Maintain focus on the issue of child soldiers with continued monitoring and reporting at the international level. This would also contribute to removing the ‘culture of denial’ often associated with the use of child soldiers;
- Ensure that each state’s international obligations are integrated into national legislation and that these are effectively implemented through relevant national procedures, not only in regard to recruitment practice but also child protection in general;
- Preparatory requirements must be made in military planning, doctrine, training, and other operation or matters to better deal with the evolved

threat in conflict zones, and the special dilemmas that child combatants present;

- Successful DDR programmes are vital to breaking the cycle of conflict and should ensure that special consideration is given to children. This should reflect their overall numbers in the conflict and their special requirements, including of special categories such as girl soldiers, orphans, and adult combatants who entered as children.;
- The importance of sustained, long-term support which include recognition of the necessity of enabling local participation and ownership of programmes, so as to ensure long-term sustainability and integration with local communal needs and culture;
- Build local capacity to deal with rehabilitation and reintegration issues, including the establishment of community support networks.

Equally, as analysts explore how they can aid in bolstering peacebuilding efforts in a practical manner, there are number of areas for further research relevant to the issue.

- A key priority should be the establishment of large group, longitudinal studies that track former child soldiers over time;
- Focused research on factors bolstering rehabilitation and reintegration and identifying key pitfalls for recidivism or entry into criminal violence;
- A formalised compendium of lessons learned from various militaries and police forces in such areas as juvenile detainee policies, military/police interface with DDR programmes, etc.;
- Outreach to security institutions, international, and humanitarian organisations, aiding learning by a focus on what works, rather than the present ad hoc approach towards programming that prevails in the field;
- Identify effective approaches for engaging armed non-state actors in addressing their use of child soldiers, e.g. political pressure, political incentives, third-party influence, involvement from regular military sources, etc.

The challenge in these research efforts will be to be as comprehensive as possible, tracking both successes and failures. Equally, they must be integrative of programmes from across regions. For example, studies are often Africa-centric, ignoring the experiences in places ranging from Latin

America to Southeast Asia. Too often, such studies are limited to one area or region, missing the global nature of the child soldier problem and the variety of innovative programming that is potentially replicable from region to region.

Notes

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Chapter 7

Combating Small Arms Proliferation and Misuse after Conflict

Adedeji Ebo

Introduction

In the aftermath of violent conflict, large numbers of small arms and light weapons (SALW) often remain in the hands of government forces, warring parties, and civilians. The flow of illicit arms contributes to an atmosphere of insecurity which further increases the demand for arms. Ex-combatants and criminals also take advantage of the lack of effective and functional security institutions to perpetuate crime and revenge attacks. The result is a cycle of violence which is a direct legacy of conflict and which presents significant challenges for post-conflict peacebuilding. Small arms proliferation and misuse undermines post-conflict reconstruction and development; hampers the delivery and distribution of humanitarian and developmental aid; and has the potential to destabilise neighbouring states and societies. Thus, the removal of weapons from circulation after conflict, usually through disarmament, demobilisation and reintegration (DDR) programmes, is a necessary, though not sufficient, condition for successful post-conflict peacebuilding.

This chapter seeks to understand the impact of small arms proliferation and misuse on post-conflict peacebuilding, and the particular opportunities and constraints (for combating SALW) inherent in states emerging from conflict. The central questions posed include: which are the key issues in addressing SALW after conflict? Who are the principal actors engaged and what mechanisms are employed in the framework of security governance? Given the inherent inability of post-conflict states to exert effective security governance, how beneficial are external interventions in this area? How can local ownership be enhanced to enable long-term sustainability?

The chapter begins with an overview of the challenges posed to peacebuilding by small arms proliferation. It then argues that, from a peacebuilding perspective, combating proliferation extends beyond the state, which in many post-conflict contexts, is hardly existent. The challenge of addressing proliferation after conflict is therefore one of *governance* rather than *government*, reflecting a multiplicity of actors, levels and mechanisms. The third section of the chapter identifies and discusses these actors, levels and mechanisms, and the accompanying governance challenges and responses. In the fourth section, an examination is made of the Liberian experience, as well as the lessons which can be drawn from this case. The ensuing discussion is therefore focused on the West African subregion. The chapter concludes that long-term strategies which focus on the root causes of conflict are indispensable. As such, the Liberian experience does not manifest such a holistic peacebuilding agenda. The empirical evidence, it is argued, is one of qualified, compartmentalised successes in the technical processes of removing small arms after conflict, without necessarily addressing the root causes of conflict and the motivations for illicit small arms possession, or linking small arms control to other peacebuilding strategies.

The Challenge of SALW in Post-Conflict Peacebuilding

Small arms are revolvers and semi-automatic pistols; rifles and carbines; automatic rifles and submachine guns which are designed for personal use and can usually be carried and operated by one individual. Light weapons are heavy machine guns, handheld and mounted grenade launchers, man-portable anti-tank and anti-aircraft guns, recoilless rifles, portable anti-tank and anti-aircraft missile systems, and mortars of less than 100mm bore. Despite the nomenclature, 'light weapons' are usually too heavy for one person to carry and require a small team to operate.¹ For the purpose of this chapter, the term 'small arms' (or SALW) is used to refer to both categories. It is estimated that there are some 639 million small arms in circulation worldwide.²

The peacebuilding dimensions of small arms proliferation are numerous and interrelated.³ The flood of weapons which typically follow conflict inhibits post-conflict peacebuilding, as the availability of weapons tends to increase in immediate post conflict periods.⁴ It has been demonstrated that numbers of civilian deaths from firearms either remain unchanged or increase in post-conflict environments.⁵ This comes from the

absence of effective and legitimate statutory security actors after conflict, a permissive environment for crime, and the widespread possession of small arms as a means of self-protection.

A peacebuilding perspective on small arms proliferation is not *as such* concerned with the availability (total numbers) of SALW, but rather with their impact on individuals and their communities. To be sure, human security is a major casualty of small arms, and the damage done by small arms is deep. Small arms have been aptly described as holding development hostage,⁶ and the ransom is often paid in lives and livelihoods. Granted that available data are only gross estimates, some 90% of deaths in post-Cold War conflicts have been by small arms, and in the past decade alone they have, by some estimates, caused more than 3 million deaths.⁷ In addition to inflicting death and injury, international peace and stability are undermined, political conflicts in individual states are transformed into armed conflicts, and communities within states are weaponised.⁸

The sharply increased role of small arms as instruments of violence since the end of the Cold War is due to several factors, including the changing character of conflict itself. The post-Cold War period has departed significantly from the *Westphalian* assumption about the nature of war as emanating from, and fought across, borders. In fact, most conflicts are now fought within, rather than between, states.

Nor are the conflicts that result fought by professional military forces as has been historically the case. Many of the 'new' wars are fought by non-statutory forces and other non-state actors. Correspondingly, while the protection of civilians – particularly women, children and the elderly – was a feature of traditional warfare, these most vulnerable groups have become 'legitimate' targets, judging by the frequency with which they are attacked.

Small arms proliferation causes great damage. Even though it is widely acknowledged that small arms do not by themselves cause war, they do have a catalytic effect on conflict – intensifying violence and armed crime, and hindering stability, democracy and good governance.⁹ In post-conflict environments, the atmosphere of insecurity created by small arms proliferation lessens the prospects for stability and order, conditions which are essential for recovery.¹⁰ Small arms also represent a significant factor in inducing displacement, making the return of internally displaced persons (IDPs) and refugees more difficult. In addition, small arms make it less safe for international relief and peacebuilding personnel to function in the post-conflict environment. Humanitarian and development agencies are exposed to, and made vulnerable by, the widespread availability of small arms: In

2001, the rate of death by firearms for UN civilian staff was around 17-25 per 100,000.¹¹

The causes of small arms proliferation are many. Even though there is a legal trade in small arms, legally-purchased weapons may end up in criminal hands or be (mis)used by state security personnel for illegal acts. Thus, the line between licit and illicit arms is often blurred. The original stockpiles of SALW were usually acquired as part of 'technical military assistance' programmes during the Cold War. One of the consequences of the end of the Cold War was, in general, a considerable downsizing of armed forces. As a consequence, 'a huge labour pool of potential security entrepreneurs, mercenaries, and arms merchants has been created, particularly in South Africa and Eastern and Central Europe'.¹² Armsbrokers have an extensive network of contacts, front companies, intermediaries, and off-shore financial institutions which are used to exploit loopholes in national and international arms control regulations. Corrupt government officials can provide and use fake End-User Certificates to channel arms illicitly.¹³ Particularly in post-conflict environments, where stockpile management is weak, theft also feeds the proliferation cycle. In addition, local manufacture (craft production) of small arms is increasingly contributing to proliferation. In West Africa, for example, there is an emerging military industrial complex, with its own network of regionally-focused, locally-based arms dealers and manufacturers.¹⁴

Whether from local or external sources, small arms are only tools within complex social and political processes. They do in fact complicate, prolong and intensify conflict, but they are by no means the cause of conflict. Especially in the case of developing regions, the proliferation of SALW is attributable to a lack of effective governance. In other words, the lack of good governance often empowers and encourages violent resistant movements, rebel groups, and militias – all of which turn to SALW to redress socio-economic and political exclusion. As R.T Naylor has noted, small arms proliferation is a 'surrogate for the demand for social justice and the firearm is the capital good intended to bring about that objective'.¹⁵

In post-conflict environments, the inability of the government (or what is left of state institutions) to provide public security drives the citizens to adopt self-help measures by arming themselves in self-defence, and thus, further heightening insecurity and small arms proliferation. When and where DDR programmes fail or are incomplete, unemployment persists and the resulting unrest reinforces this insecurity and the need to be armed.

Table 7.1: Approaches to Combating SALW Proliferation and Misuse

Level/Actor	Function	Mechanism	Activities
<i>Global</i>			
United Nations	Norms and standards Setting	Programme of Action (UNPoA) Firearms Protocol	Biennial Meetings Review Conferences
Civil society	Advocacy and research	Programme of Action; institutional objectives	Conferences; workshops; seminars
<i>(Sub)Regional</i>			
African Union	Regional norms and standards setting	AU-NePAD Peace and Security Agenda: (1) ensure efficient and consolidated action for combating small arms; (2) improve security sector and capacity for good governance Bamako Declaration (African Common Position on UNPoA)	Summits and ministerial meetings
ECOWAS	Sub-regional norms and standards setting	Moratorium / Convention; Code of Conduct; ECOWAS Small Arms Control Programme (ECOSAP)	National Commissions; harmonisation of laws, regional arms register/database, Culture of Peace programmes
<i>National</i>			
Government	Provision of security	DDR; legislation; SSR, enhancement of border controls	Arms collection and destruction, training of security personnel
Armed groups/warring parties	Enhanced government monopoly of SALW	DDR	disarmament
Private Military Company	Implementation of SSR	Bilateral contract	Restructuring; Training
<i>Local</i>			
Community Associations and organisations	Promotion of local ownership and participation	Weapons for development projects	Voluntary weapons surrender; monitoring of possession

SALW as a Security Governance Challenge in Peacebuilding

Addressing small arms after conflict is a multi-layered exercise, involving global, regional, subregional, national, and community actors. Table 7.1 identifies some of the key actors involved in governing the proliferation of SALW, along with the corresponding governance mechanisms and related activities. It has to be noted, however, that the table is not necessarily limited to, or focused on, post-conflict situations but is intended as a heuristic device, which attempts to capture the multi-layered and multi-actor character of addressing small arms proliferation. The specific post-conflict context receives particular focus in the treatment of Liberia in the next section. Though global and regional norms, instruments, and frameworks do support and effect national dimensions of the issue, national governments remain the primary agents of delivering and administering control measures and policies. As Krause has noted, the sovereign state remains the primary institution for providing security for their citizens and most of the practical measures for dealing with small arms take place at the local and national levels.¹⁶

The challenges posed by small arms to peacebuilding reflect, and are complicated by, the fragmentation of political authority and the emergence of new actors in small arms issues. The state has become an increasingly insufficient, albeit crucial, actor in addressing small arms proliferation, particularly after conflict when state capacity is weak. The fight against small arms proliferation has grown beyond the sole responsibility of government institutions, structures and processes, and there has been a marked increase in the number and profile of non-state actors involved in addressing what should be described as the ‘small arms crisis’.

Global Governance Approaches

While there has been an increase in global efforts to control small arms since the end of the Cold War, governance regimes for small arms have not really existed in the sense of a comprehensive framework of control requiring uniform compliance by state and non-state actors. However, multilateral involvement in addressing small arms availability and misuse received increased support following the Cold War, just as small arms proliferation surged due to surplus weapons and personnel. In 2001, the UN Conference on ‘The Illicit Trade in Small Arms and Light Weapons in All Its Aspects’ (hereafter the 2001 Conference) was held in New York. Resulting from this

conference was the *Programme of Action To Prevent and Eradicate the Illicit Trade in Small Arms and Light Weapons In All Its Aspects*. Known widely as the UN Programme of Action on Small Arms (UNPoA or PoA), this normative document has emerged as ‘the only authoritative international consensus statement of the nature of the problem and the proposed solution’.¹⁷ It is a politically binding document which has become ‘the central global instrument for preventing and reducing trafficking and proliferation of SALW’.¹⁸ The UNPoA is significant because it captures the way in which states have negotiated the response to the small arms scourge. It is also significant for what it provides, and for what it omits. The UNPoA calls on states to, among other things:

- Establish a national coordinating agency on small arms;
- Identify and destroy stockpiles of surplus weapons;
- Keep track of officially-held guns;
- Issue end-user certificates for export/transit;
- Notify original supplier nations of reexportation;
- Disarm, demobilise and rehabilitate ex-combatants;
- Support regional agreements and encourage moratoria;
- Mark guns at point of manufacture;
- Engage in information exchange;
- Ensure better enforcement of arms embargoes.

To be sure, the UNPoA does not deal with all the dimensions of the problem, nor has it enabled the degree of global consensus achieved on landmines. Certain significant dimensions and issues are conspicuously absent from the PoA. Against the protestations of civil society groups and several states, the document failed to cover the prohibition of small arms transfers to armed non-state actors, to negotiate an instrument on brokering, or to establish a code of conduct for exports. In particular, that the failure of the UNPoA to address regulation of civilian weapons was due mainly to U.S. opposition is a stark reminder of the political limitations and the power context of small arms governance. The US was by no means the only culprit. A number of other governments (Russia, China, and Pakistan, for example) were prepared to discuss illicit transfers only, and were not disposed to introducing internationally accepted norms. Israel was one of those states reluctant to regulate brokers. The global governance regime for small arms and light weapons also reflects a focus on supply, as opposed to the demand dimension of proliferation.¹⁹ Yet, it is the demand dimension that essentially

links SALW with broader governance issues.²⁰ Indeed, and as it becomes evident in the following discussion, there is a disconnect between the normative provisions of international instruments and the needs of post-conflict reconstruction on the ground. Given the supply focus of these normative instruments and the demand driven character of the small arms crisis in post-conflict states, it becomes problematic to operationalise international instruments on the ground. The PoA is therefore worthy of discussion in this context, not so much because it is directly responsible for getting the guns off the streets of Monrovia, but because it helps to illustrate the plethora of actors which attempt, albeit in a rather disarticulated manner, to govern small arms proliferation.

Three types of actors have been central to the evolution of the PoA: 'like-minded states, a small set of relatively large transnational NGOs, and several key individuals...playing roles of bridges, gateways and routers'. Civil society and non-state actors played a crucial role in at the 2001 Small Arms Conference, in addition to their traditional roles of advocacy, research and analysis, and watchdogs of small arms flows between states – NGOs and key individuals were 'themselves often directly inserted into the policy process', and responsible for drafting aspects of the PoA.²¹

Among global and multilateral actors, donor states play a particularly important role in dictating the pace and direction of post-conflict reconstruction in general, and in addressing small arms in particular. One specific area in which this has become evident is in the reintegration and rehabilitation (RR) components of DDR programmes, which is dependent on voluntary contributions. In the case of Liberia, for example (as illustrated below), the RR components were stalled due to a funding shortage until the European Union, the United States and Sweden made financial commitments. Donors can also have a direct bearing on those sectors which should receive priority attention. For example, despite the decay of the Liberian judicial system and the desire of the Liberian government to redress the situation, progress could not be made because, at the February 2004 donor conference, no financial commitments were received for judicial reform.

The UN's role in addressing small arms availability, however, has evolved beyond norm-building and standard-setting. Particularly in post-conflict environments such as Liberia, in which state capacity is weak, traditional state functions of providing security are often the direct responsibility of the UN mission.

Regional and Subregional Governance Approaches

There have also been regional and subregional initiatives on normative frameworks and confidence-building measures in various regions of the world. The most significant among these is the OAS Firearms Convention, known formally as the Inter-American Convention Against Illicit Manufacturing of and Trafficking In Firearms, Ammunition, Explosives, and Other related Materials (CIFTA), adopted in November 1997, and stands out as the first legally binding regional agreement on illicit firearms trafficking. The 'Programme for Preventing and Combating Illicit Trafficking in Conventional Arms' was agreed by the EU Council in 1997, while the EU Code of Conduct on Arms Exports was agreed in 1998. The OSCE Document on SALW was adopted in 2000 and outlines how the organisation would provide assistance to participating states, and has resulted in a series of workshops on SALW.

At the African regional level, out of the eight items on the Peace and Security Agenda of the African Union's New Partnership for Africa's Development (NEPAD), two relate directly to small arms and democratic governance of the security sector: (1) ensuring efficient and consolidated action for the prevention, combat and eradication of the problem of illicit proliferation, circulation and trafficking of SALW; (2) improving the security sector and the capacity for good governance as related to peace and security.²²

A major regional normative instrument on small arms in Africa is the Bamako Declaration, which evolved out of the need for a Common African Position at the 2001 UN Conference. Following a Ministerial Conference in Bamako in late 2000, the declaration recommends the following actions by African states:

- Creation of national coordinating agencies for small arms;
- Enhancement of capacity of law enforcement and security agencies and officials, including training and upgrading of equipment and resources;
- Destruction of surplus and confiscated weapons;
- Development and implementation of public awareness programmes;
- Conclusion of bilateral arrangements for small arms control in common frontier zones.

In this regard, it can be argued that the African region was a direct beneficiary of efforts to develop a global instrument on small arms (the UNPoA), as it was the UN Conference that necessitated the Common African Position. The effect of the Bamako Declaration is added legitimacy for the UNPoA and the codification of a set of regional priorities concerning small arms.

The West African subregion has been a pioneer in addressing the plague of small arms proliferation. This phenomenon, featuring militarised societies arising out of protracted military rule, has been overwhelming and alarming even in states ostensibly at peace.²³ Estimates of the number of illicit small arms circulating in West Africa range between 7 million and 10 million.²⁴ The conflict in Liberia starkly illustrates how the prospects for good governance and political stability are hampered by small arms proliferation. Warlords converted the region's natural resources into a curse, carrying out illegal exploitation in exchange for small arms. One of the first challenges of post-conflict reconstruction therefore is to return locations rich in natural resources to legitimate government control.

Until the 1990s, addressing small arms in West Africa occurred within the framework of Cold War rivalry. By 1996 however, the search for a viable and sustainable peace in the Malian civil conflict between the Tuaregs in the North and the Malian government necessitated a regional approach. Building on the success of the Malian peace process, President Konare proposed a regional freeze on the import, export and manufacture of SALW in West Africa. This proposal was the basis for a number of meetings, consultations and conferences culminating in the adoption of a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa, signed in Abuja on 31 October 1998. Despite official proclamations to the contrary, various governments have undermined the efficacy of the Moratorium by working against its objectives. Togo and Burkina Faso, for example, were named by the UN as being implicated in facilitating weapons flows to UNITA in Angola and dealing in 'blood diamonds'.²⁵ The Liberian and Sierra Leonean civil wars were grave challenges to the Moratorium and exposed its failure to address the role of non-state actors in the proliferation of small arms. Yet in other states, there appears to be a higher degree of political will, with governments lending support to the creation of National Commissions and other structures for the implementation of the Moratorium. There is however widespread lack of knowledge among the populace about the Moratorium, even in states with demonstrated political will. Overall, the effect of the Moratorium on small

arms proliferation in West Africa has been more evolutionary than revolutionary.²⁶

Addressing small arms availability and misuse at the level of individual states has necessarily been conditioned by domestic realities. Overall, however, domestic legislation and control measures have operated within the framework of the UNPoA and the ECOWAS Moratorium. In post-conflict states in particular, there has been a complex web of multilateral intervention, regional and subregional normative frameworks, civil society engagement, domestic legislation and community action. In such contexts, DDR programmes have served as major mechanisms for addressing small arms proliferation, within the framework of UN peace operations. However, while multilateral intervention led by the UN presents an opportunity for third party involvement to rebuild security after conflict, addressing small arms after conflict must also confront the need to ensure that such interventions respond to local needs and advance local ownership if security is to be sustainable.

National and Community Governance Approaches

At the national level, most governments use institutional and administrative arrangements to comply with global and regional/subregional normative frameworks, such as the designation of a national point of contact for small arms, as required by the UNPoA. In West Africa, the ECOWAS Moratorium demands that states establish a National Commission on Small Arms. All West African states, except Liberia, have complied with this provision, though with varying levels of effectiveness. Governments also put in place legislation which set out to define eligibility criteria for firearm possession and importation, together with a regime of penalties for breaching the law. For most states in post-conflict contexts, DDR is particularly useful in removing weapons from circulation and providing peaceful alternatives to ex-combatants. SSR also serves not only as a means of achieving increased efficiency in the provision of security, but also of placing security institutions under democratic civilian control. Thus, security personnel are less predisposed to putting firearms to personal and illegal use.

Armed non-state groups which were warring parties during conflict also have a direct role to play in addressing small arms proliferation, following the cessation of hostilities.²⁷ Their contribution to the small arms governance process is through disarmament, thus enhancing the government's monopoly of coercive force. In the particular case of Liberia, the approach has been to incorporate the armed groups into the state, making

them part of the transition government. Private military companies (PMCs) have also emerged as actors in addressing small arms proliferation through SSR, with Liberia serving as a pilot case in West Africa.

DDR programmes, no matter how effective, have a limited lifespan and are often focussed on disarming warring factions. Thus, they cannot ensure the removal of weapons from local communities on a systematic, longer-term basis. Community-based approaches to disarmament are therefore necessary in order to build on the gains of DDR. Thus, while various normative policy frameworks may be prescribed at various levels, governance at the community level is crucial for achieving sustainability through local participation and ownership. A focus on the Liberian case will illustrate how societies deal with the governance of small arms proliferation after conflict.

Lessons from the Case of Liberia

By the time the Comprehensive Peace Agreement (CPA) was signed²⁸ in Accra, Ghana, on 18 August 2003, the 14-year war had led to a collapse of not only the state, but of the economy and society as well.²⁹ Some 250,000 died during the war, of which half were civilians. About 500,000 were internally displaced. Poverty is endemic, with 75% living on less than a dollar a day. More than 8 in 10 persons are unemployed, and literacy is a very low 37%. Liberia's post-conflict reconstruction context is therefore one of deprivation and lack of opportunity arising largely out of an absence of good governance.

Impact of SALW on Peacebuilding Efforts in Liberia

Prior to the civil war, civilian possession of SALW was limited largely to the governing elite and the licensing system governing possession was fairly effective. Even though there was a tradition of hunting in the hinterland, Liberia could not be described as a country with a gun culture.³⁰ Small arms proliferation is not merely a legacy of conflict, but has a major impact on the post-conflict reconstruction context in terms of power relations among the various stakeholders in the peacebuilding process. The dilemma of post-conflict reconstruction very often is to devise a realistic and sustainable peace agreement which does not appear to reward violence, as there appears to be a direct correlation between a warring party's record in brutalising and

terrorising the population and the concessions the group is awarded through the peace process.

Beyond the negotiation table, small arms define interpersonal and inter-group relations after conflict. Those who possess arms attract respect and fear in proportion to what they possess, those who lack it feel disempowered and vulnerable, and therefore seek to possess arms. With SALW in their possession, warlords, armed militias, and criminal gangs have been able to dictate the pace and scope of, and act as an obstacle to, post-conflict reconstruction programmes. In post-conflict environments therefore, whoever has the gun has power. In addition, Liberia was for many years, and arguably remains, the hub of small arms proliferation in the West African subregion, feeding weapons into conflicts in Sierra Leone and Côte d'Ivoire.

SALW have had a complicating and debilitating impact on peacebuilding in Liberia. Liberia has emerged as a prime source of young fighters who are willing to fight for any cause. Liberian ex-combatants are reportedly participating in the on-going conflict in Côte d'Ivoire, representing a continuing source of public insecurity. Exiled former Liberian leader Charles Taylor is reported to be funding, training and arming a small loyalist military force led by his former commanders. Elements of this force are reported to be operating in Liberia, Sierra Leone, Guinea, Côte d'Ivoire, Ghana, and Nigeria. He is also reported to be financing candidates in political parties registered to participate in the forthcoming Liberian elections.³¹

Responses to Small Arms Proliferation after War

(a) *Disarmament, Demobilisation and Reintegration.* UNMIL initially grossly underestimated the number of ex-combatants that needed to be disarmed and demobilised. Thus, when UNMIL launched the DDR programme in December 2003, it suffered setbacks as estimates of the total of ex-combatants to be disarmed had been set at 38,000. The actual figure turned out to be over 100,000. The decision to commence the disarmament exercise despite the lack of adequate preparation and data resulted in a violent reaction by the ex-combatants, the death of nine persons, and the injury of several more. This has been attributed to 'the rush to disarm in order to show donors that UNMIL was making progress'.³² By November 2004 when the process was officially declared ended, according to the National Commission on Disarmament, Demobilisation, Rehabilitation and Reintegration (NCDDRR), 103,018 persons had been disarmed. 11% of

these were children. 27,000 weapons, 6,153,631 rounds of ammunition and 29,274 pieces of heavy munitions had been collected.³³ Disarmament and Demobilisation attracted a total of US\$300 (known as Transitional Safety Allowance or TSA) per ex-combatant, with half the amount paid prior to discharge and the remaining half after. Child combatants, and indeed anyone who turned in a serviceable weapon, was qualified to receive TSA. In the case of child combatants however, TSA was only paid once they were reunited with their parents or guardians.³⁴ Despite the official declaration of the end of disarmament and demobilisation however, there are reports that the exercise was far from comprehensive.³⁵

The lack of accurate records and baseline data on Liberia's weapons stock render an assessment of the level of success of the disarmament programme difficult. However, the UN Panel of Experts on Liberia has provided accurate data on weapons transported from the former Yugoslavia in 2002 to Charles Taylor using fake Nigerian End-User Certificates, in defiance of a UN arms embargo. Using this particular consignment as a basis, the DDR programme appears to have had significant impact:

By 3 October, 2004, ex-combatants had turned in a total of 3,175, or 64%, of the original 5,000 rifles. UNMIL undertook a similar count of 200 missile launchers (RB M57)... Of these, it appeared from the serial numbers that ex-combatants had turned in 184, or 92%. Further analysis also showed that, of an estimated 791 RPG-7 rockets, a total of 459, or 58% were collected. Combined, these figures show that 64% of the weapons...were collected.³⁶

Disarmament in Liberia has left significant fire power, in terms of heavy guns, in the hands of the former warring factions. Very few of the larger weapons, such as those used in the August 2003 siege on Monrovia were handed in. Only 3.3% of weapons collected by UNMIL were mortars, anti-aircraft guns or large calibre machine guns. It has been suggested that 'most mortars and other heavy weapons returned to Guinea (in the case of LURD) and Côte d'Ivoire (in the case of MODEL) between November 2003 and February 2004, before UNMIL was fully deployed'.³⁷

The discrepancy between the initial estimated caseload of 38,000 ex-combatants and the actual figure of over 103,000 disarmed ex-fighters led to a budgetary shortfall of \$58 million. Moreover, while disarmament and demobilisation are provided for in UNMIL peacekeeping budgets, reintegration and rehabilitation are funded by voluntary donations. There are, however, encouraging signs that donors are responding to the deficit. By June 2005, the UN Secretary General reported that this shortfall had

decreased to \$39 million.³⁸ More recent information provided by the Acting Head of UNMIL indicates further progress, with the deficit standing at \$10 million, following payments of \$15 million from the United States, \$3.6 million from Sweden, and \$8.8 million from the European Union.³⁹

(b) *Civilian Disarmament.* The Liberian disarmament process, under pressure from the warring factions, yielded to a policy of multiple ex-fighters to one weapon. Allowing multiple persons to one weapon (as opposed to a policy one fighter per weapon) vastly increases the number of beneficiaries in the disarmament process. This largely explains the disproportionate ratio of arms to ex-combatants (1:4). It also contributes to the suspicion that there are still many weapons in the hands of the population and outside government knowledge and control.⁴⁰ Therefore, UNDP initiated a Small Arms Control and Community Micro-Disarmament Project which remains largely at a preparatory stage, and will work within the programmatic framework of the Recovery and Reintegration programme of UNDP.⁴¹ The programme aims at removing residual arms from circulation. Working through District Development Communities (DDC), the project introduces a voluntary weapons collection scheme, which would be rewarded with specific projects such as clinics, schools and solar energy, and others as may be determined by the communities themselves. The collected weapons are then destroyed in ceremonies, while the remnants are used to fabricate productive tools.⁴²

Community small arms governance in Liberia appears to be responding positively to the demands for local ownership, and empowerment of local populations. However, legitimate concerns arise with regard to the sustainability of these initiatives in the absence of material incentives. Moreover, the objective of a weapon-free community may not only be utopian, but out of sync with the socio-economic and cultural practices of the communities. For example, locally-made shotguns have been part and parcel of social and economic life in Liberia. Disarmament needs therefore to be better situated within local contexts. It is not an unlikely scenario that focusing on removing hunting rifles from these societies would distort the socio-economic habits and patterns of the population and drive local arms fabrication further underground.

(c) *Small Arms Control Measures.* Liberia remains under a United Nations arms embargo. Liberian law permits private possession of firearms, which must be registered with the police. Such private possession was however very restricted before the war, and limited largely to the ruling elite.

Registration of private firearms is currently suspended. The pre-war legal framework remains in force, though there is an on-going effort to review firearm legislation, supported by UNDP. Police capacity for data collection and analysis collapsed during the war. The Liberian Action Network on Small Arms (LANSA) was launched in 2004, and has, with UNDP support, held sensitisation workshops and issued statements on small arms proliferation issues, led by the Centre for Democratic Empowerment (CEDE). However, Liberia remains the only country in West Africa which is yet to establish a National Commission on Small Arms as required by the Code of Conduct of the ECOWAS Moratorium.

(d) Security Sector Reform (SSR): The Liberian armed and security forces have historically served regime interests, often at the expense of the populace. Indeed, their brutal methods made them threats to the population. The use of armed and security forces to oppress the population reached its peak during the regime of Charles Taylor. Salaries of uniformed personnel went unpaid and small arms often served as the instruments with which uniformed personnel looted civilians.

A major response to small arms proliferation therefore has been through SSR with the objective of providing security in a more effective and efficient manner, and within the framework of civilian democratic control. It is envisaged that a more professional outlook which is under democratic oversight would change the mindset of security personnel, with particular regard to the use of firearms, and with regard to stockpile safety and management. It would also limit the use of firearms in society through better enforcement and would demonstrate to the citizens that self-help security measures are no longer necessary. In this regard, Part 4 (Articles VII and VIII) of the CPA is centred on SSR and provides that ‘all irregular forces shall be disbanded’ (article VIIa); the Armed Forces of Liberia (AFL) shall be restructured under a new command (article VIIb). Efforts are underway to build a new army of 4,000 (down from the post war strength of 14,000), and a police force of 3,500.

Local Ownership

While external intervention is essential, local ownership is a no less necessary condition for sustainability. Inadequate attention to local participation in responses to small arms proliferation may therefore limit the success of the programme to the lifetime of the intervention. In the case of Liberia, there has been disquiet among the populace that the international

community (particularly UNMIL) has failed to emphasise local ownership of the reconstruction process. Liberians feel excluded from the planning and implementation of key programmes such as DDR and police reform. According to an independent assessment

While UNMIL provides office space for the national Commission for DDRR (NCDDRR) and pays the salary of its Executive Director, there is real concern that the blueprint for DDR did not contain significant Liberian input and that the NCDDRR was virtually sidelined in the development of the DDRR programme.⁴³

However, though valid, the case for local ownership must be set beside gross governance deficits – which are at the root of Liberia’s development crisis and represent the major structural demand factor for small arms.

Liberia is far from transcending the cleavages and social conditions which were, in the first instance, the root causes of conflict, centring around a lack of good governance. The character of the state itself shapes social behaviours and the Liberian transitional government, which was intended to lay the groundwork for the establishment of an enabling environment for good governance, has itself been caught in a web of scandal and has evidenced a lack of transparency and accountability. The socio-economic and political cleavages between descendants of freed slaves on the one hand and the indigenous population on the other continues to resonate in many aspects of life in Liberia. Popular participation, accountability and transparency in governance are the core principles whose absence in the Liberian political economy continue to represent major gaps in the attempt to address the small arms problem on a sustainable basis. In the face of socio-economic and political exclusion, lack of employment and economic opportunities, sections of the population will continue to look for violent paths to participation. This is particularly evident in the face of widespread corruption among the governing elite. The pervasiveness of corruption in the transition government has led to the United Nations, the European Commission, World Bank, IMF, and ECOWAS to establish ‘an economic governance action plan’.⁴⁴ The Liberia Economic Governance and Action Plan (LEGAP) would give the power to veto government economic policies, would contract awards, and would exercise strict control over government finances. The National Transitional Government of Liberia (NTGL) is indeed afflicted with a de facto crisis of legitimacy. In order to address the root causes of conflict, and thus the primary motivation for small arms

proliferation, the governance framework in Liberia needs to depart from past practice and should be accountable, transparent and participatory.

A major gap that remains to be addressed in the Liberian peacebuilding process is the lack of an integrated and comprehensive peacebuilding strategy. Transformation, rather than reform, is necessary. The lack of an integrated approach is reflected in the DD-RR gap discussed above, the emphasis on police reform without corresponding reform in the correctional services, and the failure to factor in the implications for other peacebuilding initiatives in the subregion. For example, in Côte d'Ivoire ex-combatants were offered \$970 for disarming. In Liberia they were offered \$300. This disparity raises the danger of combatants from Liberia crossing into Côte d'Ivoire to get a better deal.⁴⁵

Conclusion and Policy Recommendations

This chapter sought to investigate the impact of small arms proliferation on post-conflict peacebuilding. It was argued that combating small arms extends beyond the reach of the state, particularly in post-conflict environments where state capacity is weak. Though still crucial, the state has become one of many actors, which explains the number and profile of non-state and regional actors.

Addressing small arms after conflict is, more accurately, a multi-layered exercise involving global, regional, state, and substate actors and predicated on several interlinked mechanisms for which no single actor is adequate. The role of the UN has extended beyond norm-building and standard-setting to include the provision of security in post-conflict environments through mechanisms such as DDR, SSR, and support for civilian disarmament. In so doing, it works with regional and subregional organisations, national governments, local and international NGOs, and local communities. Regional and subregional organisations have been the bridge between the normative functions of the UN at the global level and local contexts and realities, while also promoting confidence building measures such as the ECOWAS Moratorium. Though operating within normative frameworks set by global and regional actors, the state remains the principal organ for the provision of security and for implementing the standards set by other actors. In post-conflict contexts, however, the UN, as is the case in Liberia, assumes a major role in governing the proliferation of small arms and functions as the midwife of stability by removing weapons from circulation and reforming the security sector.

A major challenge of peacebuilding in Liberia is the presence of too many guns within the context of too few economic and employment opportunities, and a failure to address the root causes of what is essentially a governance crisis. The Liberian case demonstrates that, devastating as they may be, small arms are merely instruments for redressing governance deficits. The chapter therefore argued that good governance remains the long-term solution for addressing the demand for small arms. The guns need therefore not only be removed, but structures and processes also need to be put in place to ensure that there is no compelling need to be armed. This means the provision of employment and economic opportunities for Liberia's teeming youth population (more than 50% of population are under 30 years). It must also include a responsible and responsive government, and political dialogue and reconciliation to address wartime injustices and the question of national cohesion.

The following specific recommendations are put forward:

- A holistic approach to addressing small arms proliferation after conflict requires the provision of non-violent alternatives. For example, with Liberia's youthful population structure and high unemployment rate, a comprehensive youth programme is needed as a means of socio-economic empowerment;
- The UN's *modus operandi* since the end of the Cold War is characterised by a sequence of activities in the order of peace agreement, followed by deployment of peacekeepers, a DDR programme, SSR, and ending with elections. There is a need to balance such generic approaches to post-conflict peacebuilding with the imperatives of local context and ownership;
- The entire DDR programme should form part of the UN peace mission. Reintegration and rehabilitation should not be subject to voluntary contributions;
- Encourage more community-based approaches and Weapons-for-Development programmes;
- Involvement of community in small arms governance beyond DDR processes. Civil education and school curricula should be used build a culture of peace;
- Capacity-building and empowerment of civil society in post-conflict environments;

- Community Small Arms registers should be developed and integrated, building on voluntary disarmament schemes:
- More focus on addressing local arms production in terms of research and analysis;
- Mainstream SALW governance into UN reform initiatives, including Peacebuilding Commission/Support Office.

Combating the scourge of SALW is a function of a multiplicity of actors and mechanisms. In the final analysis success will depend on the extent to which governance mechanisms and interventions enhance social empowerment through local ownership, based on accountability and broad participation of the target population. The long-term and sustainable path to addressing the small arms crisis lies in addressing those factors which drive the demand for small arms, such as socio-economic and political exclusion. This would require rebuilding the nation so that all segments of society have a sense of ownership and belonging. No one seeks to destroy what they consider to be theirs.

Notes

- 1 United Nations General Assembly, Report of the Governmental Experts on Small Arms (1997).
- 2 Small Arms Survey, 'Red Flags and Buicks: Global firearms Stockpiles' (2002), chapter 2.
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Chapter 8

Optimising Mine Action Policies and Practice

Alan Bryden

Introduction¹

Landmines and unexploded ordnance (UXO) affect communities and individuals long after conflicts end and therefore have a profound effect on opportunities for post-conflict peacebuilding. In the immediate post-conflict phase the presence, or simply the threat, of landmines can hamper refugee return and the implementation of humanitarian assistance programmes. They pose a long-term social, economic and environmental threat that denies the use of fertile land and access to water and affects flows of people, goods and services. There is also an important security risk from abandoned explosive ordnance stockpiles or caches which, if not properly secured or destroyed following the end of hostilities, offer rich pickings for insurgents, rebel groups, criminals and other disaffected elements that mark the post-conflict landscape. Mine action – ‘activities which aim to reduce the social, economic and environmental impact of mines and UXO’² – is therefore an important aspect of post-conflict peacebuilding, both in its own right and as an enabling activity for other elements of the peacebuilding agenda.

The governance of mine action involves a wide range of stakeholders both at the strategic policy level and in the implementation of mine action programmes on the ground. For a number of reasons that will be discussed below, linkages and potential synergies between mine action and other post-conflict peacebuilding activities have not been fully exploited. This chapter will assess the complexities of governing mine action generally as well as potential and actual linkages to other elements of post-conflict peacebuilding by analysing two interrelated governance issues. First, the multi-actor, multi-level nature of mine action creates barriers between different stakeholders, potential democratic deficits in decision-making processes and a knowledge

gap between constituencies both at the strategic level and in the field. It will be argued that stakeholders need to be brought closer together, coordination mechanisms reassessed and fresh expertise tapped, if progress is to be sustained and synergies with other peacebuilding activities fully realised. Second, in post-conflict peacebuilding, the involvement of the international community offers important opportunities, but also creates particular challenges. A security governance perspective provides a means to better link policy and practical mine action agendas with the wider security governance challenges faced by states emerging from conflict. These challenges relate, on the one hand, to coordination and cooperation between different elements of the international community's response. On the other, they are embedded in the relationship between international actors and domestic stakeholders, and in particular the common goal of building capacity and instilling local ownership of post-conflict peacebuilding activities.

The chapter begins by tracing the emergence of mine action on the international humanitarian agenda and its evolution as a humanitarian activity. It then considers the various mechanisms adopted by the international community to address this challenge and analyses gaps in current approaches from the perspective of security governance. Linkages between mine action and other aspects of post-conflict peacebuilding are assessed drawing on the cases of Afghanistan and Kosovo. The chapter concludes with several policy recommendations drawn from this analysis.

The Evolution of Mine Action

Although a number of historical weapons can be linked to the modern landmine, mass-produced landmines have only been in widespread use since the 1939–45 war, with significant mine clearance activities having taken place since 1945.³ However, mine action as a distinct humanitarian discipline only really began in Afghanistan from 1988 with a UN-assisted appeal for funds to assist 'humanitarian demining.'⁴ The UN subsequently supported the creation of a number of Afghan non-governmental organisations (NGOs) and facilitated their training in mine clearance techniques, setting a precedent for the involvement of various UN bodies in the coordination and implementation of mine action globally. The first of many international NGOs operating in this field, the HALO Trust,⁵ was also founded in the same year to work in Afghanistan. Mine action activities subsequently expanded to many other countries,⁶ particularly in Asia, Africa

and the Balkans, but also, though to a more limited extent, in Eastern Europe and the Americas. The mine and UXO clearance operation which followed the 1991 Gulf War was notable for the emergence of a number of commercial demining companies who have since become significant actors in mine action.

Mine action is distinguished by its underpinning humanitarian objective to make land safe for civilians. This logic is closely linked to the nature of recent armed conflicts – particularly intra-state – in the developing world involving the use of landmines not only as a tactical means of combat against the enemy, but also as a weapon of terror specifically targeted against civilians. In the immediate post-conflict phase of mine action, risk reduction is therefore the key priority, clearing those mines that pose the most immediate threat to human life. These priorities later shift to a ‘developmental’ emphasis on reducing the threat in socio-economic terms posed by the presence of mines and other UXO. Indeed, one of the biggest shifts in thinking within mine action since its inception has been from early emphasis on the extent of mine infestation as a starting point for priority setting, to an assessment of humanitarian impact as the key factor in prioritising tasks. This is reflected in the definition of ‘mine action’ in the international mine action standards (IMAS) as comprising: (1) mine risk education; (2) humanitarian demining; (3) victim assistance; (4) stockpile destruction; and (5) advocacy.⁷

The five components of mine action span the range of security, development and policy-related activities that are most prominent in addressing the threat posed by landmines and UXO: *mine risk education* refers to activities which seek to reduce the risk of injuries from mines and UXO by raising awareness and promoting behavioural change; *humanitarian demining* refers to activities which lead to the removal of mine and UXO hazards (including mine and UXO survey, marking and clearance); *victim assistance* refers to all aid, relief, comfort and support provided to those whose lives have been blighted by the explosion of a mine or item of UXO; *stockpile destruction* refers to the physical destructive procedure of the national stockpile of anti-personnel mines; and *advocacy* refers to public support, recommendation or positive publicity with the aim of removing, or at least reducing, the threat from mines and UXO.

The use of landmines is regulated by two international treaty frameworks: the Anti-Personnel Mine Ban Convention (APMBC) and the UN Convention on Certain Conventional Weapons (CCW).⁸ The APMBC, opened for signature in December 1997, lays down a complete ban on the use, production, transfer and stockpiling of anti-personnel landmines

(APMs). Amended Protocol II (APII) to the CCW, which had previously been agreed in 1996, largely only restricts landmines, especially anti-personnel mines, seeking to minimise their effects through regulating their use while accepting the underlying legitimacy of the weapons. Protocol V to the CCW, which was adopted in 2003 but which has not yet entered into force, establishes measures to address wider categories of explosive remnants of war beyond landmines. If the Ottawa process⁹ that led to the adoption of the APMBC has been most prominent in mobilising public opinion and effectively stigmatising APMs, the CCW framework is important in applying international humanitarian law (IHL) to specific weapons that pose a particular danger to the well-being of civilians or inflict excessive harm on combatants. The consensus-based CCW framework also engages States such as China, India, Pakistan, Russia, and the United States, who still consider APMs militarily useful and are therefore unlikely to adhere to the APMBC in the near future.

Governing Mine Action

Considering mine action from a governance perspective involves an understanding of the various levels of political authority – national, sub-national and international – which shape mine action. On these different levels, principles of ‘good governance’ – such as accountability, transparency and democratic participation – are particularly relevant.¹⁰ As illustrated in Table 8.1, mine action is governed at the strategic level by various actors within the UN system, donor governments, international organisations and NGOs. These actors are also central to the implementation of mine action programmes alongside commercial companies and a range of national actors in mine-affected countries.

Table 8.1: Key Mine Action Governance Actors and Roles¹¹

Actor	Responsibilities
<i>International level</i>	
UNDPKO	Department responsible for UNMAS; integrates mine action into peacekeeping, USG for Peacekeeping chairs Inter-Agency Coordination Group on Mine Action (IACG-MA)
UNMAS	Overall policy coordination within and beyond UN system; provides mine action assistance in humanitarian emergencies; oversees international mine action standards (IMAS); coordinates planning for transfer to national authorities
UNDP	Supports development of national and local mine action capacity, promotes coordination between mine action and wider development community at country level
UNOPS	Service provider in design/implementation of mine action programmes
UNICEF	Supports development and implementation of mine risk education projects in cooperation with UN and other partners
UNDDA	Supports UNSG in relation to APMBC and CCW; promotes dissemination of annual State reports under the treaties
OCHA	Lead agency for information sharing on humanitarian impact of landmines and resource mobilisation
UNHCR	Addresses special needs of refugees in mine action
OSAGI	Advances gender equality and empowerment of women in mine action
OHCHR	Advances human rights aspects of mine action
World Bank	Resource mobilisation and agenda setting on landmines as an impediment to development
WFP/WHO/FAO	Linkages between mine action and respective mandates in food, health and agriculture
Donor states	Funding/in-kind support for mine action
ICRC	Promotes development and implementation of IHL, victim assistance and mine risk education
GICHD	Operational assistance in mine action, research, development of IMAS, support for APMBC process
ICBL	Monitoring and advocacy for APMBC, research and production of Landmine Monitor
NGOs	Various, local and international, involved in full range of mine action activities
Commercial companies	Various, local and international, involved in range of mine action activities, but primarily clearance
Organisation of American States	Military to military training in clearance/stockpile destruction; some other mine action activities
European Union	Funding largely through the European Commission, commitment to research and development

Table 8.1 continued: Key Mine Action Governance Actors and Roles

Actor	Responsibilities
<i>State level</i>	
Government	Develop, articulate and implement mine action policies and programmes in accountable, transparent and cost-effective manner. Draft and implement necessary domestic legislation. Ensure compliance with legal obligations, scrutiny of budgets, projects etc. Prosecution of offenders under national law Mine clearance, stockpile destruction Ensure respect for land ownership following clearance Prevent weapons trafficking including landmines
Parliament	
Judiciary	
Military	
Police	
Border guards	
<i>Private actors</i>	
Local authorities	In some countries, engaged in selection of sites for clearance Managing the risks from mines or UXO on a daily basis ¹² National and local level mine risk education and support for victim assistance Provide spotlight/pressure on government decision-making, focus on issues such as corruption. Key mine risk education role. Advocacy role, assistance to victims, mine risk education etc.
Communities	
Red Cross & Red Crescent Societies	
Media	
Civil Society	

The Strategic Policy Framework

The UN has the predominant role in the coordination of mine action globally. The United Nations Mine Action Service (UNMAS), set up in October 1997 as part of the UN Department of Peacekeeping Operations (DPKO), serves as the focal point for mine action within the UN system. This includes mine action assistance in humanitarian emergencies and peacekeeping operations, ensuring coordination between UN Headquarters and its field operations as well as partners outside the UN system. These actors come together in an Inter-Agency Coordination Group on Mine Action and in a Steering Committee on Mine Action which also includes the International Committee of the Red Cross (ICRC), the Geneva International Centre for Humanitarian Demining (GICHD) the International Campaign to Ban Landmines (ICBL), as well as various mine action NGOs.

A 1997 report commissioned by the UN on *The Development of Indigenous Mine Action Capabilities*¹³ was strongly critical of UN management and strategy, notably regarding the speed of initiation of programmes in war-torn environments. The study emphasised the need for a mix of political, management and technical expertise as well as reform of budgetary and administrative procedures. These criticisms of the UN role in coordinating mine action can still be heard today and stem from the organisation's multiple commitments, including for policy, norms and standards setting, implementation, and coordination. These problems are clearly exacerbated by the multiplicity of actors involved within and outside of the UN system.

Mine action has been funded by a relatively small number of donor governments, notably Canada, Norway, Sweden, the United Kingdom and the United States. Much of this funding, estimated at \$2.07 billion for the period 1992–2003,¹⁴ has been prompted, directly or indirectly, by the APMBC. Donors contribute to mine action either through the UN or bilaterally through support for mine action NGOs or commercial companies, as well as through the provision of equipment, personnel and training, and investments in research and development. UNMAS coordinates the Voluntary Trust Fund (VTF) for assistance in mine action which was established in 1994 to provide resources for UN mine action where other sources were not available. The VTF has proved an inefficient mechanism for channelling money to programmes and is disliked by donors because of the high overheads retained by the UN Administration and its slow disbursement of funds to field operations. Increased use of bilateral and other funding mechanisms have sought to bypass such bureaucratic bottlenecks but have also posed problems for the UN's mine action coordination role. The key governance mechanisms which apply to different levels of mine action are described in Table 8.2 below.

Table 8.2: Key Mine Action Governance Mechanisms

Mechanism	Function
<i>Multilateral</i>	
IACG-MA Inter-Agency Coordination Group on Mine Action	Integration and coordination of UN mine action
SCMA Steering Committee on Mine Action	Coordination between UN and other mine action actors
MASG Mine Action Support Group	Monthly donor forum based in New York to discuss issues of concern
Resource Mobilisation Contact Group	Convened by states in margins of APMBC Standing Committee to address treaty issues
Forum of Mine Affected Countries	Cooperation mechanism for New York-based representatives of mine affected countries
UN Programme Managers meeting	Annual information exchange between UN field managers, UNHQ and other stakeholders
APMBC Anti-Personnel Mine Ban Convention	Annual reporting requirements, annual meetings and five- yearly review conferences, intersessional work programme related to treaty implementation
CCW Convention on Certain Conventional Weapons	Annual reporting requirements, review meetings on treaty implementation
IMAS International Mine Action Standards	Guidelines for national governments, mine action centres (MACs) and demining organisations as a basis for standards, standard operating procedures
VTF Voluntary Trust Fund	Provides resources for UN mine action where other funding not available
ITEP International Test and Evaluation Programme	Facilitates cooperative testing of mine action equipment and technologies

Table 8.2 continued: Key Mine Action Governance Mechanisms

<i>Regional/Subregional</i>	
ITF International Trust Fund	Raises funds for mine action in South Eastern Europe
<i>National</i>	
UNCT United Nations Country Team	Principal country level coordination mechanism composed of representatives of UN agencies, led by senior UN official in country
NMAA National Mine Action Authority	Government department(s), organisation(s) or institutions(s) – often an interministerial body – in a mine-affected country charged with overall mine action regulation, management, coordination
MAC Mine Action Centre	Organisation or institution that carries out operational mine action coordination; has primary responsibility for information management; develops workplans with local organisations/external agencies/NGOs /deminers
<i>Sub-State</i>	
Deed of Commitment	Non-legally binding document used by NGO Geneva Call to engage non-state actors to ban APMs and cooperate on mine action
MAPU Mine Action Planning Unit	Used in Cambodia to prioritise clearance tasks based on requests from communes, villages, districts; issues documents confirming land ownership

The Legal and Normative Framework

The origins of the campaign that led to the APMBC began entirely through the efforts of civil society. The ICRC raised the problem of increasing numbers of landmine amputees through diplomatic, legal and public awareness efforts while the NGOs that came together to form the ICBL¹⁵ brought a range of field experience to the issue. The strength of the ICBL lay in its structure, combining a small international staff which provided direction and coordinated policy on behalf of hundreds of local organisations around the world. These civil society efforts combined with the work of sympathetic States to lay the ground for the successful negotiation of the treaty. This coalition of States, international organisations, and NGOs was particularly influential because of its cross-regional nature, undercutting

traditional alliances and multilateral channels of communication.¹⁶ Price notes that ‘the most basic effect of civil society, then, has been the transnational dissemination of information about the scope of landmine use and its effects, thereby helping to define the use of AP landmines as not only a problem but as a global crisis’.¹⁷ The movement to ban anti-personnel mines grew because a ban seemed the logical solution to an obvious humanitarian disaster. As important as the inclusive nature of the Ottawa process was its message. Ken Anderson, former Director of the Arms Division at Human Rights Watch, notes that ‘this utter moral and political clarity was an integral part of the campaign in reaching various publics’.¹⁸ The visibility of the mine ban issue was, therefore, essential to the success of the pro-ban lobby.

The APMBC represents a unique modern example where a grassroots campaign has combined with inter-State negotiations, outside of the UN framework and without the critical involvement of major powers, to produce an international arms control agreement.¹⁹ Certainly, widespread resistance to US lobbying during the Ottawa negotiations, including by close allies France and the United Kingdom, demonstrates the strength of the anti-APM norm. There is also evidence that the process has had some influence on the behaviour of States not party to the treaty: the US complies *de facto* with the majority of the treaty’s requirements while Russia and China have ceased APM exports.²⁰ The APMBC is also significant in terms of norm spillover with momentum from the anti-APM campaign providing new vigour to advocacy efforts in related issues such as small arms and light weapons, cluster bombs and explosive remnants of war.

The ICBL retains an influential role in the implementation of the APMBC although concerns have been voiced over its structure and whether the organisation has adapted to the qualitatively different demands of treaty implementation. Anderson qualifies the frequently held association of the Ottawa process with a ‘new diplomacy’²¹ or ‘new multilateralism’²² by pointing out the ‘permanently incurable democratic deficit’ when NGOs work directly with State actors, cautioning against the conflation of NGO coalitions with civil society more broadly.²³ Hubert also recognises, ‘the risk that humanitarian advocates would seek second best solutions that are palatable to progressive governments, particularly where NGO coalitions are largely the product of government funding’.²⁴ Annual meetings of States Parties to the APMBC and an intersessional work programme have become major fora to discuss implementation and interpretation of treaty obligations. These intersessional meetings were reduced in frequency in 2005 following a decision by States Parties at the first Review Conference of the APMBC

and have been regarded in some quarters as more significant for awareness-raising among the diplomatic community than for bringing tangible benefits to mine action in the field.

Article 7 of the APMBC requires annual reporting to the UN Secretary General on a range of treaty issues. This transparency measure is complemented by a significant annual ICBL publication, *Landmine Monitor*, which reports on every State (whether or not they have adhered to the treaty) as well as major contested territories. It has also allowed local researchers to provide their input on mine-related issues. This comprehensive publication records progress and highlights problems in the implementation of the treaty. It represents a positive example of giving ‘teeth’ to a disarmament treaty in the absence of formal, treaty-based verification mechanisms.

The APMBC has produced clear benefits in areas such as stockpile destruction, in the eradication of the licit trade in APMs, and more broadly in normative terms through effectively stigmatising the use of APMs. However, some mine action practitioners feel that an undue emphasis on advocacy distracts attention and resources from mine action in the field. A related concern is that while ‘ownership’ of mine action is highly visible in policy statements and international meetings, the true influence of the South in policy formulation is, arguably, much more limited. Beier questions the association commonly found in the literature which cites the Ottawa process as a success of global civil society by distinguishing between ‘collapsed political time’ as a result of the Ottawa process and ‘unchanged political space’ in its impact on ownership of the process by mine-affected countries.²⁵ Although analysis of the ‘ownership’ of the Ottawa process would require significant further analysis, the potential for the process to become detached from reality in mine-affected countries and from actual demining activities would be particularly unfortunate given that its strength lay in engaging the expertise of mine action practitioners.

Mine Action Programming

Fundamentally, as enshrined in the APMBC and the International Mine Action Standards (IMAS) issued by the UN, States are responsible for clearing mines within their own territory (even if they were not responsible for their emplacement), typically under the auspices of an inter-ministerial national mine action authority (NMAA). A Mine Action Centre (MAC) is responsible for day-to-day coordination and implementation of mine action policy and activities. However, States emerging from conflict commonly lack the capacity to manage their mine action activities, or there may be a

political vacuum in a country or region. In such cases, the UN may assume this role. Local capacity building is a central goal in order to hand responsibility for this activity back as soon as possible to the legitimate national authorities.

Capacity building in mine action is understood as ‘a state’s ability and willingness to develop and articulate mine action policy and direction. It is also about a state’s ability to plan, coordinate, manage and sustain a mine action programme that is accountable, cost-effective and able to address the humanitarian and socio-economic implications of landmine contamination, and to provide appropriate legislation’.²⁶ Mine action programming, as with other externally supported peacebuilding efforts, suffers from the ‘Samaritan’s Dilemma’. As Maslen notes, ‘the generosity of donors can make it less likely that the recipients exert the necessary efforts to help themselves’.²⁷ This concern has been reflected in calls for a more critical assessment of the actual rather than intended capacity building effects of externally sponsored and implemented mine action activities.

One challenge to capacity building has been a preference by donors for home-grown organisations and in-kind contributions – such as staff and equipment – when these have not been the most appropriate solutions to a given national or local mine action context. Similarly, the selection of MAC staff has been criticised in a number of studies with the prevalence of military and former military personnel proving a barrier to fostering the developmental and capacity building aspects of mine action.²⁸ As noted by Kjellman et al, ‘such a professional composition is not necessarily inherently problematic, but it does have the potential to limit the understanding of broader humanitarian objectives within mine action, and brings with it an approach in which authority and the possibility for sanctions may tend to dominate’.²⁹

Significant questions remain over the development of capacity to govern mine activities by national authorities. Executive and legislative bodies must be capable of assuming responsibility for setting policy, overseeing and managing mine action at the national level. There is also an emerging recognition that capacity building of mine action actors at the local level can only be optimised within the framework of an effective national mine action strategy.³⁰ Security sector actors and institutions are key to addressing these issues in practice. Overall planning and priorities need to be agreed at national level and sequencing is essential: why clear schools if there are no teachers? Security sector governance actors should also be much more closely implicated in an aspect of mine action programming that receives insufficient attention: corruption. Diversion of funds, self-interested

selection of clearance tasks and ‘land-grabbing’ have long been associated with certain demining programmes. Responsibility for this issue rests with the range of civil management and oversight bodies at the national level as well as judicial and public security bodies and civil society at national and local levels (see Table 8.2). A recent study on the development of national mine action legislation³¹ highlights a number of significant potential benefits from the development of such legislation including improved coordination within government and with international actors, improved accreditation procedures as well as increased transparency and accountability. Failure to address such concerns erodes donor confidence, undermines the goals of mine action programmes and has particularly important consequences at the national level in the face of public scrutiny.

There is a significant potential role for current and former military forces in demining, stockpile destruction, and other aspects of mine action. Coordination of military forces at the national level is particularly important. Revising military doctrine, manuals and retraining troops are some measures that may be required in regard to legal obligations under the APMBC. Equally important is to acknowledge areas where military forces are weak, notably in taking account of socio-economic criteria and implementing community-based mine risk education.³² The link between DDR and building mine action capacity, discussed below in the case of Kosovo, has not been adequately explored in more general terms. Similarly the use of military troops for demining as a post-conflict confidence-building measure in local communities has been noted in cases such as Nicaragua and Thailand, but broader lessons have not been developed.

State and civil society actors also have a very important role in land allocation and protection of land rights as well as mine risk education and victim assistance at the community level. There is a need to better link these issues with other civil society roles in advocating for and assisting communities. As Harpviken and Skara point out, ‘it is therefore important that priorities are set in a legitimate and transparent manner in order to reduce the potential for tension; this will ultimately also serve as a model for good governance’.³³ In this respect, armed non-state actors who represent a major category of mine users today need to be more effectively engaged.³⁴ They often control mined territory and are responsible for the manufacture, trade, selling and use of landmines. However, being characterised by decentralisation, poverty and unwillingness to compromise, they offer a qualitatively different challenge to State actors (see Chapter 3). NGOs can play an important role in addressing armed non-state actors when States are unwilling or unable to negotiate with such actors. The ICRC has a

long history of such engagement while the NGO *Geneva Call* was established in 2000 with the specific mandate of engaging such armed groups in a ban on APMs and in the respect for humanitarian norms. It does so through encouraging groups to adhere to Deeds of Commitment that mirror the requirements the APMBC places on states.³⁵

Mine action programming, therefore, must emphasise local ownership and the building of genuine national capacity over the long-term. Addressing the obstacles described above should dictate the timing of handovers to local authorities. Kosovo is the only case to date where the UN has handed over responsibility for mine action to local actors and, as discussed below, subsequent developments in that province have not been unproblematic.

Mine Action in Post-Conflict Peacebuilding

Mine action reduces deaths and injuries and allows refugees and internally displaced persons to return home in relative safety following the end of hostilities. It is also an important enabling activity for rebuilding economies, transport and other infrastructure as well as providing jobs (including for former combatants). Consequently there is an obvious need for integration of mine action with other post-conflict peacebuilding tasks geared to providing a secure environment such as SALW measures, DDR, and broader efforts to address disrupted social and economic networks.

Mine action's impact on security in post-conflict peacebuilding is demonstrated by over 37 million stockpiled APMs destroyed to date³⁶ in accordance with the requirements of the APMBC. The value of destroying ordnance stockpiles following the end of hostilities is highlighted in the case of Iraq where vast quantities of munitions were littered throughout the country in both rural and urban settings following the fall of the Saddam regime, posing a threat to both coalition security and local communities. Indeed, such ordnance was used in the bomb attack on UN Headquarters in Baghdad on 10 August 2003 which caused the deaths of 22 UN staff, including UN Special Envoy Sergio Vieira de Mello.³⁷ The priority given to this issue is shown in the award of contracts by the US, valued at more than \$478 million in 2003 alone, to begin disposal of Iraqi ordnance.³⁸

The willingness of former parties to a conflict to reveal the location of minefields, destroy stockpiles or agree to clearance in territory under their control is not just a disarmament activity but an evident confidence-building measure. It is also important to note that the stigmatisation of APMs in particular is felt on the ground (as well as by the international community). This is an important distinction from small arms, which are frequently

regarded as legitimate (see Chapter 7), and contributes to the widespread perception of demining as an 'honourable' profession.

In a number of cases, the decision to include mine action in peace agreements has resulted in important benefits.³⁹ The obligation on former parties to a conflict to provide information on mine-laying can be one important output. Equally important is the willingness indicated by such an agreement of the new national authorities to commit to mine action. The 1992 Mozambique peace agreement made no reference to mine action and the lack of agreement on such activities by former warring parties meant that a UN programme was initiated with no clear planning for the handover of responsibilities to national authorities, resulting in years of misguided and inefficient mine action efforts.

However, Harpviken and Skara conclude from a review of donor policy statements that 'the link between mine action and peacebuilding is generally acknowledged, but poorly developed'.⁴⁰ Applying the logic of peacebuilding to mine action can have limited or counter-intuitive results if not done carefully. In Mozambique, road clearance was prioritised as an immediate support to the UN peacebuilding mission in that country. Contracts worth hundreds of thousands of dollars were given out to clear 2,000 kilometres of roads which, after months of operations, uncovered only six mines.⁴¹ More critically, Harpviken and Roberts describe how the demining and reopening of Highway A9 in Sri Lanka enabled internally displaced persons to return home to settlements that had not themselves been cleared, leading to casualties among returnees.⁴² There is also a seemingly logical link between building mine action capacity and DDR with demobilised soldiers offering a ready pool of recruits already familiar with handling weapons and accustomed to following orders and set procedures. However, the cases of Afghanistan and Kosovo below give contrasting messages as to the potential benefits of such linkages.

These examples reflect the vulnerability of external actors to unfamiliar and complex local contexts. While mine action capacity building can provide a model for re-establishing good governance the inverse is also true. The influx of foreign investment can cause tensions and attract the corrupt and self-interested.

In summary, mine action is one of the earliest entry points for the international community in states emerging from conflict. If conducted well, it can offer significant security benefits through its disarmament and confidence building effects which are not only positive in their own right but serve as enabling activities for related peacebuilding tasks. Moreover, if the national capacity-building dimension of mine action is developed, important

emulation effects for other areas of security governance can be accrued. However these 'ideal' goals often founder in complex post-conflict environments. The following section addresses such challenges based on mine action experiences in Afghanistan and Kosovo.

Lessons from Afghanistan and Kosovo

This section considers mine action, in particular the governance of mine action, in the specific post-conflict peacebuilding contexts of Afghanistan and Kosovo. While not seeking to directly compare two very different cases, both have received significant investments from the international community and in terms of mine action are held to be models for successful programmes, with responsibility for mine action in Kosovo handed back to local actors in 2001 and a similar handover planned in Afghanistan by the end of 2005.

Afghanistan

Afghanistan is one of the most heavily mined countries in the world. Soviet forces entered the country in December 1979 in support of an Afghan government which had seized power in an April 1978 *coup d'état*. Conflict between Soviet-backed government forces and *Mujahedeen* rebel forces grew in scale with the rebels increasingly supported by the West. The 1989 withdrawal of Soviet forces was the precursor to the collapse in 1992 of the 'communist' regime. A period of fighting among rebel groups was followed in 1994 by the emergence of the Taliban as a political and military force. Within the next two years the Taliban gained control of most of the country, including Kabul. Linkages between the Taliban government and *Al-Qaida* were the catalyst, following the terrorist attacks of 11 September 2001, for the US-led military intervention which overthrew the Taliban to be replaced by the government of Hamid Karzai.

In 1988, after unsuccessful military-driven efforts to train Afghan deminers, the UN supported the creation of a number of specialist Afghan NGOs operating under international supervision from neighbouring Pakistan. Although the plan was met with concern by the international community – in particular over the need to give training in explosives to former guerrilla fighters – it was the only viable option on the table and formed the basis for today's Mine Action Programme in Afghanistan (MAPA). The programme includes national and regional offices as well as

oversight responsibility for 15 Afghan NGOs. Regime change in Afghanistan made available unprecedented levels of funding for mine action as part of the wider reconstruction process, opening up previously inaccessible areas of the country for clearance. This opportunity immediately presented the problem that little information was available on the extent of mine or UXO infestation that would permit priority-setting.

A recurrent problem in Afghanistan is that despite the high overall level of funding the delivery of funds by the UN-administered VTF has been erratic, with arrears in payments to Afghan NGOs resulting in operating problems and potential gaps in operational and equipment standards.⁴³ A specific consequence of the broader peacebuilding context in Afghanistan is that demining organisations have been losing staff to the UN as well as other agencies and contractors offering higher salary scales.

The ongoing military action has posed problems for mine action operations. Initially, sub-munitions were deployed which are particularly difficult to make safe and had the same distinctive colour as UN air-dropped food parcels.⁴⁴ Moreover, according to one MACA employee, a lack of coordination between the UN-controlled International Security Assistance Force and demining organisations has led to a number of incidents including the killing of four deminers by security guards.⁴⁵

One specific initiative, Mine Action for Peace (MAFP), has tried to link mine action with the reintegration of soldiers in their own communities, setting mine action efforts alongside the broader goals of transforming relationships between former combatants and facilitating reintegration. The initiative is integrated in the MACA but is also part of the broader DDR effort in Afghanistan – the Afghan New Beginnings Programme (ANBP). The goal of MAFP is to give former combatants, selected in conjunction with local councils, a package of mine action and vocational training, a reintegration grant and thirteen months guaranteed employment. However, in a review of the programme, Strand notes two sets of challenges that affected its implementation:⁴⁶

- Contextual challenges included factional disputes, weak central government, unrealistically high donor expectations and competition from opium farming;
- Specific problems stemming from the overall management role of the ANBP. Symptomatic was a decision to withhold a payment to hand in weapons, on the basis that former commanders would seek to obtain

them, seriously undermined confidence in the programme as well as the broader DDR programme from participants.

Strand suggests that the inexperience of national staff members and international staff with a predominantly military mindset and limited knowledge of the Afghan context contributed to ‘the relative inflexibility of the organisation and for the emphasis on the technical, as opposed to the larger political and social, aspects of the programme’.⁴⁷ Despite these problems, the programme has proved effective in disrupting commander-combatant relationships, supporting community reintegration and reconciling former combatants from opposing factions. It is notable that the DDR dimension was greatly facilitated by being grafted on to an already mature and respected activity in mine action.

The historical strength of the Afghan mine action programme, coupled with unprecedented levels of donor support, provide a firm basis for continued progress in clearing the country of mines and UXO. A recent Needs Assessment suggests that, dependent on a sustained commitment, Afghanistan could be free of the ‘impact’ of mines within five to seven years.⁴⁸ The critical challenge for mine action (as for reconstruction and development more broadly) is one of capacity building and ownership. There is a danger that responsibility for mine action is handed back to Afghan ownership before its institutions are ready to assume the demands of policy and management required by this role. It is also important to recognise that while national capacity may be deficient, capacity-building at the regional level in the NGOs that conduct mine action is the major success story of mine action in Afghanistan. Consequently, there is a related danger that the historical neutrality of the Afghan NGOs involved in this work, which has proved constant through over a decade of operations, is jeopardised. As Maslen notes, given that the security situation in Afghanistan remains dangerous and humanitarian organisations are not immune to being targeted, ‘many NGOs are therefore sensitive to any change in the programme that gives it more of a government identity’.⁴⁹ Weak government capacity, ongoing military operations and the only very recent development an adequate legal framework within which mine action is situated therefore suggest that the transition of ownership should not be rushed in Afghanistan.

Kosovo

Kosovo's mine and UXO problem does not have a long historical legacy but came about as a result of fighting between the ethnic Albanian Kosovo Liberation Army (KLA) and Serb forces which broke out in 1998 following years of tension during conflict in the wider Balkan region. Failed negotiations driven by the international community were followed by NATO airstrikes against Serbian military targets which added unexploded submunitions to the barrier and nuisance minefields laid by the opposing forces.⁵⁰ The 11-week bombing campaign was ultimately successful, resulting in a ceasefire agreement on 3 June 1999.

UN Security Council Resolution 1244 provides the governing framework in Kosovo under which NATO-led Kosovo Stabilisation Force (KFOR) troops are mandated to provide a stable and secure environment in coordination with the UN Interim Administration in Kosovo (UNMIK), established on 10 June 1999. Immediately following the end of hostilities, ethnic Albanian refugees and internally displaced persons flooded the heavily mine and UXO-affected region seeking to return home. UNMIK, through UNMAS, established a Mine Action Coordination Centre (MACC) as early as 17 June 1999, mandated to manage and coordinate all mine action within Kosovo with the support of KFOR, the humanitarian community and international donors.

MACC Programme Manager John Flanagan notes that 'the MACC was deliberately set up as a "coordination centre", rather than the more traditional mine action centre,'⁵¹ allowing other organisations to focus on their core competences. The availability and management of information was key to this role and a dedicated tool, the Information Management System for Mine Action (IMSMA), which is now used in more than 80 percent of mine action programmes,⁵² was first deployed in Kosovo. Information made available on Serb and KLA mine-laying⁵³ was complemented, following institutional bottlenecks and problems of security classification, by details of NATO bombing missions. Similar delays were encountered in the provision of information by KFOR on demining conducted in support of KFOR operations.

The plethora of bilaterally-funded NGOs and commercial organisations working on aspects of mine action in the province provided a major coordination challenge for the MACC. Some of these organisations had limited practical experience and a lack of standing operating procedures which undoubtedly led to duplication of effort and increased cost. These

bilateral arrangements also meant that the MACC's coordination role was based on goodwill rather than authority.

Personnel and equipment needs of the newly established MACC were largely met by donations from various governments with in-kind outnumbering regular staff by a ratio of nearly two to one. In many cases these staff had no experience in mine action, which led to a credibility gap given the coordination role of the MACC.⁵⁴ Funding proved an ongoing concern for the programme with significant donor funding channelled bilaterally. This factor was highlighted in the UN-commissioned review of the Kosovo mine action operation: 'in any peacebuilding operation, mine action should not be a discretionary activity left to the charitable impulses of the donor community'.⁵⁵ As an example, the UNMIK budget for 1999–2000, was not made available to the programme until late 2000.⁵⁶

Kosovo's status as an international protectorate has implications for all post-conflict peacebuilding activities in the province. Political authority remains largely with UNMIK although specific responsibilities have been gradually transferred to local provisional institutions. Mine action was labelled from a very early stage as an activity suitable to be handed over to local authorities. In this respect a key UNMIK decision was that responsibility for mine clearance be given to the Kosovo Protection Corps (KPC), an organisation made up of demobilised ethnic Albanian fighters and very closely identified with the KLA. This was deemed by UNMIK to be an effective way to demilitarise and reintegrate former combatants but had a number of unforeseen results. First, the decision reduced options for building civilian mine action capacity by depriving inhabitants of the province who had already been trained of long-term employment prospects. Second, initial training of the KPC was not 'fit to task' resulting in poor work. Third, major concerns were raised about the political and ethnic bias of the force, particularly if deployed in ethnic Serb enclaves. This final point was reflected in a lack of support by KFOR, particularly concerned by the prospect of giving the KPC explosives, which led to significant delays in implementing the policy.

Responsibility for mine action was handed to newly founded government authorities on 15 December 2001, despite a residual landmine and UXO threat. Concerns were voiced that this was a political exit strategy by UNMIK that came too early for the nascent executive. This is borne out by the fact that senior management posts are still held by international staff and a lack of capacity in the relevant Ministries is apparent. As a consequence, authority for mine action in early 2004 moved back to responsibility of UN Special Representative, reflecting a need for greater

control and oversight. On the operational level, although recent improvements have been noted, the KPC has proved inefficient and certain clearance tasks have been assumed by their international trainers, the NGO Handicap International. In six districts declared free of mines and UXO, contamination has subsequently been found, leading to new surveys and clearance as well as to significant embarrassment for the UN and donors.⁵⁷ The threat posed by mines and UXO in Kosovo has been significantly reduced since 1999 but the mine action faces the same governance questions relating to capacity and ownership *vis à vis* the role of the international community that need to be addressed in the province.

Conclusion and Policy Recommendations

This chapter has sought to delineate the governance of mine action at the levels of strategic policy and programming. As demonstrated by the cases of Afghanistan and Kosovo, the governance of mine action is further complicated in the context of post-conflict peacebuilding as the constellation of actors and their interactions increase. It is argued that applying a security governance perspective provides a useful way of deconstructing the policy process and its relation to mine action programming. Moreover, it enables a better understanding of the linkages and potential synergies between mine action and other aspects of the post-conflict peacebuilding agenda. On this basis the following recommendations are proposed:

- *Legal and normative frameworks for mine action at the international level could further contribute to effectiveness at national and sub-national levels.* The APMBC and CCW work programmes provide a mechanism for the oversight of mine action that has not been fully exploited to date. Greater transparency and critical analysis on how resources are used – both by mine action programmes and mine affected states – would result in significant benefits on the ground if backed up by sufficient political will.
- *Better coordination of mine action is a precondition for better integration with the broader post-conflict peacebuilding agenda.* Short-term or slowly disbursed funding and the provision of inappropriate in-kind contributions continues to hamper the effective implementation of mine action programmes. Bureaucratic knots need to be untied and programmes provided with ‘fit to task’ tools and

adequate funding if they are to succeed in already difficult environments. Moreover, if the UN's coordination role is to be successful, bilateral donors and other mine action funders must ensure that this role is enshrined in agreements with mine action NGOs and commercial companies and that they apply the same standards in their work.

- *Effective mine action as peacebuilding requires all elements of the international community's response to pull together.* There is a significant potential for mine action to make a more explicit contribution to post-conflict peacebuilding. This requires greater coordination between transitional administrations, peacekeeping forces, mine action stakeholders and other relevant actors. In particular, it is essential that decisions are not based on 'political' criteria but on a realistic appreciation of the local context. This entails embracing expertise from related security and development fields, notably NGO experts who in many cases are closer to what is happening on the ground. Enlarging the knowledge base, in terms of research, policy and programming, will enable new insights to be developed and allow the international community to better situate mine action with other development priorities.
- *The provision of accurate and timely information is indispensable to mine action.* Accurate information is arguably the most important and source difficult to obtain commodity in complex post-conflict situations. Knowledge of the local context is essential for all peacebuilding activities in order to avoid sub-optimal results as a result of 'imported' approaches. The provision of relevant information, including on mine use, should be enshrined wherever possible in peace agreements between former warring parties. Information of use to mine action organisations such as military mine clearance activities and bomb damage assessment reports is often available but compartmentalised and difficult to access. This should be supplied as a matter of course and included in appropriate rules and guidelines. The effective use of liaison officers between, for example, the mine action coordination body in country and other agencies, is one way to address such gaps.
- *Building sustainable local capacity in states emerging from conflict is the most difficult but most important objective in both mine action and peacebuilding more broadly.* The paucity of concrete examples where ownership of mine action has been successfully handed back to

national authorities is testament to the difficulty of building sustainable capacity. A focus on governance structures and mechanisms will facilitate sustainability: at the national level, capacity-building for mine action needs to be closely linked to broader efforts to encourage transparency, accountability and democratic oversight in the area of security governance including the legislative, executive and judiciary as well as security sector actors such as the police, army and border management agencies. Capacity-building opportunities should pay particular attention to the role of civil society, in particular at local and regional. Finally, local ownership involves leaps of faith in engaging actors with often difficult conflict histories. This requires ongoing assessment and a willingness to impose sanctions if evidence of misuse is apparent.

The process that led to the APMBC has achieved unprecedented results in normative and practical terms while also invigorating advocacy on other related humanitarian issues. Mine action has also adapted and developed over a relatively short time period, particularly through greater appreciation of the socio-economic dimensions of the issue. However, its particular evolution points to the need for the better integration of mine action with other security and development issues. As this chapter has sought to highlight, more effective coordination and cooperation at headquarters and on the ground, coupled with a determination to build local capacity in difficult circumstances, will reinforce the significant efforts of all those who work in this key area of post-conflict peacebuilding.

Notes

- 1 The author would like to thank Stuart Maslen for his insightful comments on earlier versions of this Chapter. Responsibility for any errors in the text lies entirely with the author.
- 2 *International Mine Action Standards (IMAS) 04.10*, second edition (1 January 2003), Standard 3.124, available at URL <www.mineactionstandards.org>.
- 3 For example, in the years following World War II, the area of Poland subject to mine/UXO clearance was 271,840 square kilometers, or 87% of Polish territory. By 1985, more than 88 million items of UXO, including 15 million mines had been disposed of. *Landmine Monitor* (2004), p. 910.
- 4 This section on the genesis of mine action draws on 'A Guide to Mine Action' produced by the Geneva International Centre for Humanitarian Demining (GICHD), pp. 21-27, available at URL <www.gichd.ch/about_gichd/guide/index.cfm>.

- 5 Hazardous Area Life-Support Organisation.
- 6 The 2004 edition of the *Landmine Monitor* identifies 83 mine affected countries around the world. The report is available at URL <www.icbl.org/lm>.
- 7 International Mine Action Standards (IMAS) 04.10 , op. cit.
- 8 Full titles: Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; and, 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects.
- 9 Named after the Canadian capital where the initiative was launched in October 1996 by the then Foreign Minister of Canada, Lloyd Axworthy.
- 10 For a comprehensive analysis of the interrelated concepts of 'governance', 'security governance' and 'security sector governance' see Hänggi, H., 'Making Sense of Security Sector Governance', Hänggi, H., Winkler, T. (eds.), *Challenges of Security Sector Governance* (Lit: Münster, 2003). An electronic version of this book can be found at URL <www.dcaf.ch/publications/e-publications/Sec_Gov/contents.html>.
- 11 Information on the responsibilities of the various UN bodies has been drawn from *Mine Action and Effective Coordination : The United Nations Inter-Agency Policy*, endorsed by the Inter-Agency Coordination Group on Mine Action (6 June 2005). Available at URL <www.mineaction.org>.
- 12 Communities have to live with the threat and they do so more or less effectively, depending on a variety of factors. Many set up what are, in effect, their own informal, small-scale mine action programmes. For instance, when outside help is too slow to come (in the eyes of the community) they may engage in so-called village demining – unofficial and unregulated clearance of mines and UXO, often without any detection or protective equipment. Mine action continues to grapple with this problem in a number of countries, most notably across South-East Asia.
- 13 United Nations Department for Humanitarian Affairs, *The Development of Indigenous Mine Action Capabilities* (DHA: New York, 1997). Available at URL <www.reliefweb.int>.
- 14 See URL <www.icbl.org/lm/2004/funding>.
- 15 The founding members of the ICBL were Handicap International; Human Rights Watch; Medico Internationale; Mines Advisory Group; Physicians for Human Rights and the Vietnam Veterans of America Foundation.
- 16 Tomlin, B., Cameron, M., Lawson, B. (eds.) *To Walk Without Fear: The Global Movement to Ban Landmines* (Oxford University Press: Oxford, 1998), p.5.
- 17 Price, R., 'Reversing the Gunsights: Transnational Civil Society Targets Landmines', *International Organization* vol. 52, no. 3 (1998), pp. 613-644.
- 18 Anderson, K., 'The Ottawa Convention Banning Landmines, the Role of International Non-Governmental Organisations and the Idea of International Civil Society', *European Journal of International Law* vol. 11, no.1 (2002).
- 19 Lachowski, Z., 'The Ban on Anti-Personnel Mines', *Armaments, Disarmament and International Security*, SIPRI Yearbook (1998), p.558.
- 20 Hubert, D., 'The Landmine Ban: A Case Study in Humanitarian Advocacy', *Humanitarianism and War Project*, occasional paper no. 42 (2000), p.29.
- 21 See for example: Davenport, D., 'The New Diplomacy', *Policy Review* (2002).

- 22 Axeworthy, L., 'Towards a New Multilateralism', Cameron, M. A., et al, *op. cit.*, pp. 448-459.
- 23 Anderson, K., *op. cit.*
- 24 Hubert, D., *op. cit.*, p. 70.
- 25 Beier, J. M. "'Emailed applications are preferred': ethical practices in mine action and the idea of global civil society", Harpviken, K.B. (ed.), *The Future of Humanitarian Mine Action* (Palgrave: New York, 2004), p.28.
- 26 United Nations General Assembly, *Mine Action and Effective Coordination: the United Nations Policy*, UN Doc. A/53/496 (UNMAS: New York, 1998).
- 27 Maslen, S., *Mine Action After Diana: Progress in the Struggle Against Landmines* (Pluto Press: London, 2004), p. 103.
- 28 For example see: Horwood, C., 'Humanitarian Mine Action: The First Decade of a New Sector in Humanitarian Aid', *Relief and Rehabilitation Network Papers*, no. 32 (ODI: London, 2000).
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- 30 GICHD, *A Study of Local Organisations in Mine Action* (2004), pp.13-14. Available at URL <www.gichd.ch/fileadmin/pdf/publications/Local_Organisations.pdf>.
- 31 GICHD, *A Study of the Development of National Mine Action Legislation* (2004). Available at URL <www.gichd.ch/fileadmin/pdf/publications/Legislation_study.pdf>.
- 32 GICHD, *The Role of the Military in Mine Action*. Available (2003). Available at URL <www.gichd.ch/fileadmin/pdf/publications/Role_Military_MA.pdf>.
- 33 Harpviken, K. B., Skara, B. A., 'Humanitarian Mine Action and Peacebuilding: Exploring the Relationship', Harpviken, K. B. (ed.), *op. cit.*, p. 39.
- 34 The 2004 Landmine Monitor describes mine use by non-state armed groups since May 2003 in Bhutan, Bolivia, Burma/Myanmar, Burundi, Colombia, DRC, Georgia, India, Iraq, Nepal, Peru, Philipinnes, Russia (Chechnya and North Ossetia), Somalia, Turkey and Uganda.
- 35 According to the Geneva Call website 27 armed groups in Burma, Burundi, India, Iraq, the Philipinnes, Somalia and Sudan have agreed to ban the use of APMs through this mechanism. A template Deed and complementary information can be found at: URL <www.genevacall.org>.
- 36 Landmine Monitor, *op. cit.*, p. 13.
- 37 Maslen, S., *op. cit.*, p. 19.
- 38 Landmine Monitor, *op. cit.*, p. 997.
- 39 See United Nations, 'Mine Action Guidelines for Ceasefire and Peace Agreements', (United Nations Inter Agency Coordination Group on Mine Action: New York, 2003). Available at URL <www.mineaction.org>.
- 40 Harpviken, K.B., Skara, B. A., *op. cit.*, p. 37.
- 41 Maslen, S., *op. cit.*, p. 34.
- 42 Harpviken, K.B., Roberts, R. (eds.), *Preparing the Ground for Peace – Mine Action in Support of Peacebuilding* (PRIO: Oslo, 2004), p. 58.
- 43 Maslen, S., *op. cit.*, p. 40.
- 44 *Idem*, p. 18.
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- 46 Strand, A., 'Transforming Local Relationships: Reintegration of Combatants Through Mine Action in Afghanistan', Harpviken, K.B., Roberts, R. (eds.), *op. cit.*, pp. 44-45.
- 47 *Idem*, p. 52.
- 48 Needs Assessment re-printed in GICHD, *op. cit.*, pp. 16-17.
- 49 Maslen, S., *op. cit.* p. 95.
- 50 Landmine Monitor 2004, *op. cit.*, pp. 1208-1209.
- 51 John Flanagan quoted in Scott, J. J., 'The Kosovo MACC : The Most Successful Mine Action Program Ever', *Journal of Mine Action* issue 6.1. Available at URL <www.jmu.edu/journal/6.1/focus/scott/scott.htm>.
- 52 URL <www.gichd.ch/35.0.html>.
- 53 Mines laid by Yugoslav army (VJ) units were typically recorded whereas those deployed by Serbian paramilitary forces were frequently targeted at civilians and went unrecorded. KLA laid mines were also predominantly unmarked and unmapped.
- 54 The Praxis Group Ltd., *Willing to Listen: An Evaluation of the United Nations Mine Action Programme in Kosovo 1999-2001* (February 2002), p. 9.
- 55 *Idem*, p. 20.
- 56 *Idem*, p. 8.
- 57 Maslen, S., *op. cit.*, p. 93.

PART IV

RULE OF LAW AND
TRANSITIONAL JUSTICE

Chapter 9

Re-establishing the Rule of Law under Transitional Administration

Sylvain Vité

Introduction¹

During the 1990s, the UN Security Council began using its powers under Chapter VII of the UN Charter to establish international transitional administrations.² When faced with a humanitarian emergency, the Security Council may authorise the deployment of a peacekeeping or peace-enforcement operation.³ Once the conflict is over, at least formally, the crisis may still require a continuing field presence. In such cases, the UN has established a number of transitional administrations on the territory of countries that had already been the object of an armed intervention. Among recent examples, two cases are of particular relevance: the United Nations Mission in Kosovo (UNMIK), established on 10 June 1999,⁴ and the United Nations Transitional Administration in East Timor (UNTAET), established by the Security Council on 25 October 1999.⁵ This chapter will mainly focus on the Kosovo case.⁶

In post-conflict peacebuilding, international actors, especially the UN, play a new and particular role. On the one hand, this may involve the use of military force, as is the case in peacekeeping and peace-enforcement operations. On the other hand, this can include broad powers for the administration of territory, to such an extent that it is no exaggeration to say that they receive ‘sovereign rights’ or ‘prerogatives of public power’. These powers may even require the establishment of police forces under the organisation’s direct control. Depending on the mission’s internal structure and mandate, the exercise of such prerogatives and responsibilities may be shared with individual states.

These interventions will always raise questions concerning the rule of law and its implementation, particularly from the specific perspective of the

protection of individuals. The purpose of this chapter is to consider the role of international peace operations in reestablishing and strengthening the rule of law, in particular the application of and respect for international humanitarian law (IHL) and international human rights law (HRL) by such entities, focusing in particular on the recent experience of transitional administrations. The chapter begins with a short presentation of the notion of the rule of law in this context, analyses the complexity of the applicable legal regimes and identifies the need for their harmonisation in situations where a variety of actors are involved and different degrees of instability may occur. An assessment of the practical implementation of IHL and HRL in such operations lays particular emphasis on the case of Kosovo, identifying gaps and challenges of ownership and democratic oversight. The chapter concludes with a number of concrete policy recommendations drawn from this analysis.

The Rule of Law in the Context of International Peace Operations

As defined by the UN Secretary General, the rule of law

refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.⁷

In peacebuilding operations, international actors usually intervene in situations where legal structures have been partly destroyed or neglected. The legislative framework, for example, may be distorted by emergency laws or executive decrees, and public institutions, such as the judiciary or the police, may be unable to function properly for lack of funds or personnel. Moreover, such situations are characterised by deep political divisions, which result in the alteration of proper and impartial functions, as well as the lack of legitimacy of local authorities. As a consequence, one of the main challenges of peacebuilding operations consists in contributing to fill this 'rule of law vacuum'.⁸ In these situations, two main international legal

regimes may help to fill this gap and contribute to rebuilding the rule of law both in the short and long term: IHL and HRL.⁹

Within the framework of this chapter, we will use the notion of IHL in its broad meaning. IHL thus may be defined as ‘a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare’.¹⁰ In this sense, IHL is a synonym of the law of war or the law of armed conflict. Six main treaties constitute the contemporary law of armed conflict: the four Geneva Conventions of 1949 and their two Additional Protocol of 1977.¹¹

Human rights may be defined as the basic rights and freedoms which are inherent to human nature. As such they are universal and encompass civil, political, economic, social and cultural rights. They are aimed at protecting the individuals from abusive interventions by State authorities. They also oblige these authorities to act positively to ensure human integrity and dignity. International human rights are enshrined in two main conventions at the universal level: the UN International Covenant on Civil and Political Rights and the UN International Covenant on Economic, Social and Cultural Rights of 1966.¹² Contrary to IHL, HRL applies both in time of war and peace. However, under certain conditions, some human rights rules may be suspended in time of serious public emergency.¹³

IHL and HRL must be applied bearing in mind the particular objectives to ensure public security during and particularly in the aftermath of conflict, including ‘the pursuit of accountability, truth and reparation, the preservation of peace and the building of democracy’.¹⁴ The implementation of the rule of law must thus be envisaged in a comprehensive strategy aimed at reestablishing peace.

Challenges of Legal Transition in Transitional Situations

The complex nature of peace operations, including post-conflict peacebuilding, involving a range of national and international actors, is mirrored by the complexity of the applicable legal regimes. In addition to local authorities, whose status is not always clearly determined, different international, intergovernmental and non-governmental organisations, acting both under international law and their own internal rules, as well as individual states coming from diverse regions, may be involved in reconstruction missions. Moreover, such operations are characterised by their fluidity. It is often difficult to delimit the framework of an ongoing

emergency situation, which passes from a conflict phase, involving armed action by a number of parties, both governmental and non-governmental, to a post-conflict peacebuilding phase, during which state structures must be restored, and sometimes significantly transformed. In the case of long-term crises, it is difficult to precisely distinguish successive phases requiring either the exclusive application of IHL or other legal regimes, such as HRL. This complexity is increased by the fact that some human rights rules must be respected both in time of peace and war.¹⁵ In the latter case, it is therefore necessary to determine how the two legal regimes should be articulated.

In practical terms, this uncertainty results in a lack of clarity and predictability of applicable rules, including those protecting individual rights, which may provoke a feeling among local populations that interventions are not based on equity and due process. This uncertainty may also result in a lack of clear orientation for security forces, increasing the risk of abuse. Finally, law enforcement risks being characterised by a lack of uniformity, since distinct participants may apply different rules, thus causing discrimination. Such situations raise serious problems, not only because they increase the risk of violations of the rules protecting human dignity and integrity, but also because they may threaten, in the longer term, the peacebuilding process itself. Respect for IHL and human rights is fundamental for strengthening the legitimacy of such interventions. It is of utmost importance for guaranteeing their acceptance by local populations and subsequent support of peace negotiations. Thus, respect for these legal regimes must be an essential condition for sustainable post-conflict peacebuilding.

In legal terms, the complexity of international operations entails a subjective component. The diversity of actors intervening in such operations makes it difficult to identify the legal regimes applicable to each one of them. This illustrates the need for harmonisation, bearing in mind the overarching need to ensure that local authorities will have the legal tools to guarantee security once international actors leave. The objective aspect of legal complexity in such operations is directly linked to their fluidity. The applicable law must adapt to the various stages of the intervention, namely the armed conflict, emergency and post-conflict peacebuilding phases. Although the focus of this chapter is on the post-conflict phase, it is important to recognise that in practice, it is not always easy to clearly distinguish each one of these phases and thus to identify relevant legal regimes. In other words, one of the challenges for the governing authorities in international operations consists in ensuring the transition of law in transitional situations.

The Need for Harmonisation of Applicable Legal Regimes

In order to identify a common legal framework in peace missions, it must first be determined whether IHL and HRL, which were developed primarily to regulate state behaviour, apply to other international actors participating in such operations. To answer this question, it must be established whether these actors have the legal capacity to be bound by international norms and subsequently to consider the legal sources from which specific rules can be identified. Concluding that these legal regimes are inapplicable to those actors would create a legal void, resulting in a lack of protection for the population. Respect for IHL and HRL would thus depend on the goodwill of each organisation involved, increasing the risk of abuse.

A preliminary answer may be found in the International Court of Justice's Advisory Opinion of 11 April 1949, relating to *Reparation for Injuries Suffered in the Service of the United Nations*. The Court recognised that '[the United Nations] has [...] a large measure of international personality and the capacity to operate upon an international plane'.¹⁶ Indeed, in order to fulfil its tasks under the Charter of 1945, the UN must possess a personality distinct from that of its members. This is a fundamental condition, without which the organisation is not given the capacity needed to fulfil its purposes and exercise its functions.¹⁷ The Court thus concluded that the organisation has the capacity to be bound by international rights and obligations.¹⁸ However, contrary to states, the UN only holds the intrinsically limited powers which are attributed to it. These powers appear in its constitutive act, and can be implicitly deduced from the act or derived from evolving practice.¹⁹ Therefore, in order to determine the norms of international law applicable to the UN, one must refer back to its purposes and functions.²⁰

This reasoning supports the argument that international actors can be bound by the norms of IHL and HRL. Given that, in accordance with its purpose to maintain international peace and security,²¹ which may involve the use of military force,²² the UN is likely to become involved in confrontations amounting to armed conflict, the necessary conclusion is that the law governing this type of situation, that is IHL, is applicable to the UN.²³ Similarly, as the UN may be empowered to exercise the prerogatives of public powers in the context of transitional administrations, it may be deduced that they may be bound by the corresponding human rights norms. However, this conclusion remains general and does not offer any orientation as how to determine the precise rules applicable to the broader range of international actors involved in post-conflict peacebuilding. Given that these

organisations are not party to IHL or human rights treaties, it has been widely accepted from consistent practice that international customary law must apply to them, although the exact content of this law still need to be clearly determined.²⁴

Recent UN practice shows that IHL has evolved on this point. The UN Secretary General's Bulletin, adopted on 6 August 1999, is of particular importance. This document sets out 'fundamental principles and rules of international humanitarian law' that are 'applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement'.²⁵ Rather than creating new obligations, it is aimed at providing a coherent, non-exhaustive presentation of those that exist already.²⁶ For this purpose, it draws both on customary and treaty-based law, showing that the UN seeks to apply appropriate norms to its operations in the field, independently of the legal nature of these norms. This trend was also confirmed by the Security Council, which used the Bulletin's wording in one of its recent resolutions.²⁷ This additional step is important, confirming principles previously set out in a purely internal administrative document, therefore strengthening its normative value.

For HRL, however, no such instrument exists. The sources of the rules applicable to international organisations are thus more uncertain in this case and would require further specification. A declaration, similar to the Secretary General's Bulletin, whereby the organisation would pledge generally to respect and implement at least some treaty-based obligations, is therefore highly desirable.

Recognising that some rules of IHL and HRL are applicable is not sufficient to ensure the harmonisation of these legal regimes in a particular operation. It may happen, as for example in Somalia in the early 1990s,²⁸ that individual States intervene independent of the UN in the same operation. Since States are bound by their own national law as well as by international law, different legal norms may be applicable in the same situation. Moreover, in some cases, two intergovernmental organisations, such as the UN and NATO in the transitional administration in Kosovo, may also take part in the same mission under separate legal frameworks. In these situations, where legal uncertainties can have serious practical consequences, it would be important that the UN Security Council, when establishing the mandate of a peace operation, give a clear and comprehensive definition of the applicable legal regime and state that all actors deployed on the territory concerned must abide by this framework. This was not the case, for example, in Kosovo, where the Kosovo Force (KFOR), acting under NATO's

umbrella, was not covered by the UN administration (UNMIK) jurisdiction,²⁹ leading to some confusion.

A decision by the Security Council would give international administrations the power to adopt and interpret their own legislation. The legal framework would be detailed through the adoption of internal regulations and case law decisions. Regarding the mission in Kosovo, UNMIK Regulation 2000/59, based on Resolution 1244, specified that internationally recognised standards applicable in this context were:

- 1 The Universal Declaration of Human Rights;
- 2 The European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Protocols thereto;
- 3 The International Covenant on Civil and Political Rights;
- 4 The International Covenant on Economic, Social and Cultural Rights;
- 5 The Convention on the Elimination of All Forms of Racial Discrimination;
- 6 The Convention on the Elimination of All Forms of Discrimination against Women;
- 7 The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;
- 8 The International Convention on the Rights of the Child.³⁰

The Importance of the Specific Context of Intervention

The need for legal transparency and predictability in international operations also requires particular attention to the specific context of the intervention. In interstate relationships, the threshold of violence, beyond which the existence of an armed conflict is recognised and which justifies the application of IHL, is very low. In the context of internal conflicts, the notion of armed conflict is subject to stricter criteria defined by two interrelated conditions: the intensity of the confrontation and the level of organisation of the non-governmental party.³¹ Such criteria are usually met in peace-enforcement interventions, i.e. when states are given the power to use armed forces in a coercive way to reach the objective defined by the Security Council. Below a certain level of violence and organisation of one of the opponents, a confrontation can no longer legally be characterised as an armed conflict, and the application of IHL can no longer be justified. Such situations are referred to as cases of internal disturbances and tensions³² and the protection of individual rights is mostly determined by human rights instruments.

The law applicable to international operations, in particular to the maintenance of peace and security in such operations, thus varies according to the changes of the circumstances of each specific situation. In this regard, the combination of IHL and HRL is particularly relevant, since they provide rules adapted to various degrees of instability. If the level of an armed conflict is reached, the first body of law is the main legal reference. In situations of public emergency, the protection of the population has to be based on relevant human rights instruments. However, in such situations, and if certain requirements are met, transitional authorities have the possibility to suspend some rights for a specific period of time and in delimited parts of the territory³³ although this derogation cannot be extended to some particularly fundamental rights, such as the right to life or the prohibition of torture.³⁴ When the emergency phase is finished, the derogation is no longer justified and transitional authorities have to apply the complete body of human rights.

International and Local Mechanisms of Implementation

While the level of integration of substantive humanitarian and human rights rules into the legal framework of recent international operations, including the transitional administrations in East-Timor and Kosovo, have been quite satisfactory, an evaluation of corresponding implementation procedures reaches a different conclusion. Both at international and local levels, the implementation systems have been extremely weak, which raises the question of the accountability of international actors participating in these missions.

International Mechanisms of Implementation

Implementation mechanisms exist in both IHL and HRL. However, practice shows that such mechanisms are, in most cases, inefficient. With respect to procedures based on IHL, the mechanism of the International Committee of the Red Cross (ICRC)³⁵ is the only one that actually functions in the situations that we analyse. In 1961, for example, ICRC was given the right to make regular visits to combatants held by the forces of the UN operation in the Congo (ONUC).³⁶ This was also the case in 1999 for persons held by KFOR and UNMIK,³⁷ and those persons detained by UNTAET in East Timor.³⁸ However, other IHL mechanisms, such as the system of Protecting Powers³⁹ or the International Fact-Finding Commission,⁴⁰ remain totally

inefficient. Although the role of the ICRC is essential, it is not sufficient. ICRC's policy gives priority to gaining access to the victims of hostilities gives precedence to negotiation rather than denunciation. It does not seek to determine the responsibilities of the belligerents.⁴¹ Its scrutiny is thus confidential, in principle, and it is extremely circumspect when asked to comment on alleged breaches of IHL. Therefore, the ICRC's activities provide only a limited solution to the need for implementation mechanisms in international operations. Other procedures, those developed under HRL, both at international and regional level, must therefore be taken into account.⁴²

The particular status of international transitional administrations, however, raises some obstacles in this regard. The administration of Kosovo by the UN, for example, has created a new situation that falls to a large extent outside the traditional human rights implementation systems that exist at the international level. Whereas Kosovo is legally under the sovereignty of Serbia and Montenegro, this country has not exercised its jurisdiction on this territory since 1999. Kosovo is not an independent State either, but rather of an intermediate status which does not correspond to the framework of HRL. It is therefore necessary to develop a legal basis for human rights mechanisms to extend their jurisdiction over territories under transitional administration.

First, this should be done at the UN level. Over the years, the UN Commission on Human Rights has established a complex system of special procedures for collecting relevant information and reporting on it annually.⁴³ The legal basis for these mechanisms are resolutions adopted every year by the Commission. This process, which is essentially political in character, offers flexibility. Contrary to treaty-based bodies, whose jurisdictions are strictly limited to State parties and to the implementation of the instrument which they are related to, the mandates of the UN Commission special procedures have gone through significant changes. Over the last few years, their practice, which originally focused on state behaviour, has evolved to include others actors in the scope of their interventions, including transitional administrations. For instance, the Special Rapporteur on human rights in the former Yugoslavia in August and October 2000 issued a detailed analysis of UNMIK and KFOR activities.⁴⁴ Similarly, the Special Rapporteur on torture has confirmed this trend, by intervening directly with UNMIK.⁴⁵

In addition, the practice of these UN bodies is also particularly interesting since it has been based, for several years now, not only on human rights *stricto sensu*, but on IHL norms whenever necessary.⁴⁶ These

procedures may therefore function as an important model for scrutiny of the behaviour of actors involved in international operations, not only when they exercise powers involving the administration of territories, but also when they use force in the context of armed conflict. These mechanisms thus partly compensate for the failure of the IHL implementation system. Their practice, however, has so far been limited to a few cases and their competence could be used in a more systematic way. In addition, despite their numerous advantages, these procedures have only limited impact. Due to the fact that they are part of a state-composed UN body, the follow-up of their conclusions and recommendations can be politically motivated and thus often biased.

Other UN mechanisms should also be envisaged as means to improve implementation of human rights in international operations. Some international conventions concluded under the UN aegis provide for the creation of mechanisms dedicated to verifying respect of determined human rights provisions.⁴⁷ Among their functions, these treaty bodies examine reports presented to them at regular intervals by state parties. These reports cover state implementation of the rights recognised in each treaty while some have also been granted the right to examine complaints lodged by individuals claiming to have been the victim of a breach of the treaty in question.

Given that international treaties define the competence of these bodies, only state parties may be subject to supervisory processes. An extension of this function to transitional administrations is thus problematic, since such administrations are usually, partly or totally, under the control of non-state actors. However, some observations may be formulated under the current state of international law.

The UN Human Rights Committee was recently confronted with the question of its jurisdiction vis-à-vis international operations and used this opportunity to propose a preliminary answer. The International Covenant on Civil and Political Rights, which is the basis for the Committee's jurisdiction, was ratified by Serbia and Montenegro in March 2001. The first report of this country, which was examined by the Committee in July 2004, proposed a detailed analysis of the situation of human rights in Kosovo under international administration.⁴⁸ In its concluding observations on this report, the Committee recognised that the covenant was still applicable to Kosovo and confirmed its jurisdiction over this region,⁴⁹ thereby establishing its supervisory competence over transitional administrations. However, due to the particular status of Kosovo, the Committee decided that it would wait for further information from the transitional authorities before adopting its

conclusions in this specific context. For this purpose, it 'encourage[d] UNMIK, in co-operation with the Provisional Institutions of Self-Government (PISG), to provide, without prejudice to the legal status of Kosovo, a report on the situation of human rights in Kosovo since June 1999'.⁵⁰ Therefore, progress is still cautious, since the Committee only 'encouraged' UNMIK to participate in this process. From a strictly legally point of view, the UN administration is not bound to do it. So far, no follow-up decision was adopted by the Committee on this situation.

Independent of the applicability of human rights conventions to international organisations, the jurisdiction of the Committee could also be established through the treaty undertakings of the States participating in the mission. When states have direct control over the population in a region under transitional administration, it may be considered that they are bound to apply the international treaties that they have ratified. In these cases, the personnel of the mission are not employees of an international organisation, even though they may act under the umbrella of such an organisation, but remain public officers of their states of origin. Thus, these states may be subject to the Committee's supervision, under the condition that they ratified the International Covenant on Civil and Political Rights. In practice, this would mainly be applicable to the military component of international administrations. As civilian agents are usually linked to an international organisation, military personnel remain subordinate to their respective sending States. In other words, this method of applying human rights law is mostly useful for the activities of peacekeeping forces. In practice, it is problematic, since the application of treaty norms depends on the nationality of the personnel in question and whether or not their home state is a party to the relevant instruments. For civilian personnel, the question of the applicability of human rights procedures to international organisations remains relevant.

In the case of KFOR, the command structure led by NATO only plays a coordinating role, since decisions taken by its bodies cannot override the autonomous decisionmaking power of each Member State with respect to its own forces.⁵¹ The question of the application of HRL during field operations must, therefore, be examined for each troop-providing state, rather than in the name of KFOR. International human rights norms apply to KFOR contingents through the conventional engagements of the states participating in military operations. This is a consequence of the fact that, beyond the coordinating role played by NATO, effective command and control over the deployed forces continues to be exercised by home states.

Local Mechanisms of Implementation

It is a rule of international HRL that any person whose rights or freedoms have been violated must have ‘an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity’.⁵² In the practice of international operations, however, such remedies are restricted. This is mainly due to immunity rules protecting members of these operations and the absence of efficient tribunals where the citizens can challenge the decisions that affect them. It is therefore particularly important that accessible domestic mechanisms be established.

In Kosovo, UNMIK regulation 2000/47⁵³ establishes broad immunity from any legal process for both UNMIK and KFOR personnel and property. With regard to UNMIK, this regulation states that: ‘UNMIK, its property, funds and assets shall be immune from any legal process. [...] UNMIK personnel, including locally recruited personnel, shall be immune from legal process in respect of words spoken and all acts performed by them in their official capacity’.⁵⁴ The responsibility of KFOR personnel seems even more difficult to establish, since Regulation 2000/47 underlines that KFOR personnel must respect the applicable laws and regulations enacted by UNMIK ‘insofar as they do not conflict with the fulfilment of the mandate given to KFOR under Security Council Resolution 1244’.⁵⁵ This immunity is extremely broad as it covers both criminal and civil matters. For UNMIK, the immunity can only be waived by the Secretary General himself, which is unlikely to happen except in the most serious criminal cases. Concerning KFOR, Section 6.2 provides that requests to waive the immunity of KFOR personnel shall be referred to the respective commander of the national element of such personnel for consideration.

The main reason for granting immunity for members of international operations is to protect them against interference by the government of the State in which they are located. In the case of transitional administrations, the government functions are controlled by the international authorities themselves. Therefore, Regulation 2000/47 in Kosovo is tantamount to a government granting immunity to itself. In other words, through the adoption of this regulation, UNMIK placed itself above the law.⁵⁶ Moreover, the lack of judicial review of UNMIK and KFOR activities undermines the independence of the judiciary and the necessary separation of powers. It also affects the right of access to the courts, an essential part of the rule of law.⁵⁷

In addition to the immunity regime, other rules also reinforce the lack of access to efficient administrative tribunals.⁵⁸ UNMIK Regulation 2000/47 provides that “[t]hird party claims for property loss or damage and for

personal injury, illness or death arising from or directly attributed to KFOR, UNMIK or their respective personnel and which do not arise from 'operational necessity' of either international presence, shall be settled by Claims Commissions established by KFOR and UNMIK, in the manner to be provided for". First it appears from this wording that a number of actions by the international administration cannot be challenged in judicial proceedings, since it is provided that no compensation is due, if these actions are justified by 'operational necessity.' Moreover, the delimitation of this last notion remains unspecified. Whereas the concept of 'military necessity' already exists under humanitarian law,⁵⁹ the notion of operational necessity seems broad enough to cover most interventions by KFOR or UNMIK, particularly the ones most likely to affect civilian populations and objects. Secondly, as stipulated under Regulation 2000/47, if wrongful activities are not justified by operational necessity, claims must be settled by commissions and following procedures established by KFOR and UNMIK. In practice, these commissions fall short of real administrative tribunals in terms of independence, accountability and transparency. In the case of KFOR, for example, the proceedings remain under its control with both the first instance and the appeal stage managed by KFOR personnel. In addition, the procedure is not binding, only resulting in recommendations of compensation.⁶⁰

Therefore, access to effective internal remedies should be one of the key components of peace operations. As emphasised by the UN Secretary General, 'if the rule of law means anything at all, it means that no one, including peacekeepers, is above the law'.⁶¹ This is a basic condition to ensure the legitimacy of the reconstruction process, and thus its support by the local population. Another important contribution to this objective should also be the establishment of IHL and HRL institutions entitled to report past and present abuse. The UN experience illustrates for instance that national human rights commissions have 'shown promise for helping to restore the rule of law, peaceful dispute resolution and protection of vulnerable groups where the justice system is not yet fully functioning'.⁶²

Similarly, independent ombudsperson institutions have played decisive roles by sensitising local and international actors to human rights issues and denouncing violations, including those committed by peacekeepers. Their competence and capacities should therefore be guaranteed. In this regard, the influence of the ombudsperson in Kosovo has been excessively limited. It is true that his mandate is broad and potentially allows for extensive supervision power. UNMIK Regulation no. 38 provides that the ombudsperson was established 'for the purpose of enhancing the

protection of human rights in Kosovo'.⁶³ In addition, he may 'receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution'.⁶⁴ However, his authority consists in a power of recommendation only, which limits the impact of his activities to what implicated parties are willing to accept. In addition, his competence does not cover activities by KFOR.⁶⁵

Transition of Security Ownership

One of the greatest challenges for international transitional administrations is to achieve sustainable peace. If massive armed intervention by international forces may in the short-term end hostilities and prevent the perpetration of widespread abuse, the ultimate goal of these operations consists in transmitting security and governance responsibilities to local institutions. Peacebuilding missions may only be considered successful when the international institutions can leave, without the country being subjected again to violence. In order to reach this objective, the transition of security ownership from international to domestic authorities must be prepared from the beginning of the operation. Both public and private local actors must actively take part in the peacebuilding process and be trained for this purpose. As confirmed by the UN Secretary General, 'no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable'.⁶⁶

Post-conflict peacebuilding involves a variety of activities, which must be guided by IHL and human rights principles both in the short- and long-term. Peace negotiations, repatriation of refugees, reintegration of former combatants, reconstruction of administrative and judicial structures, economic development, the maintenance of security and order, all these components raise questions which cannot be answered without a clear reference to the relevant legal regimes at each stage of the peacebuilding process. Therefore, IHL and HRL have to be taken into account not only within the limited framework of the international mission – i.e. as long as international structures function in the country – but also in terms of supporting and reinforcing the transfer of power to local institutions.

This is particularly important in post-conflict contexts where local law officers usually remain influenced by the conflict and may be tempted to discriminate against former opposing groups. In particular, police reform is intensely political.⁶⁷ It is a long-term process, which involves reorganising power distribution and changes of mentalities. It is usually aimed at shifting

from 'a model based on repression and social control to prevention and investigation'.⁶⁸

In Kosovo, the impartiality and commitment to human rights of local police officers has been challenged on various occasions. Their performance in crime prevention has been judged unsatisfactory and some cases of serious violations of human rights, including cases of torture and extra-judiciary executions, have been documented.⁶⁹ It is important therefore, that the transmission of responsibilities in the maintenance of peace and security be accompanied by training sessions on human rights for local police forces. In addition, strict oversight procedures must be implemented and disciplinary sanctions applied in case of illegal behaviour. Institutions responsible for these procedures must be 'independent, objective, transparent and effective'.⁷⁰ Long-term peace and security is not sustainable if the local police are perceived as acting with impunity.

Similar concerns have been raised regarding the judiciary in Kosovo. Establishing an effective justice system represents one of the most important challenges of post-conflict reconstruction. In Kosovo, most members of the judiciary had left to Serbia with their files by the time the international administration was in place. UNMIK suffered thus from a serious shortage of qualified judicial personnel. In addition, most available lawyers were of Albanian origin, making it difficult to create a balanced multi-ethnic judiciary, able to avoid political bias and resist intimidation.

The international authorities in Kosovo, at least during the first months of the mission, were confronted with a constant dilemma. On the one hand, they had to enforce peace and order in a region under explosive circumstances. In the framework of this mandate, they carried out numerous arrests and detentions. On the other hand, they were bound to respect the right to challenge the lawfulness of the detention before a judge as well as the right to be tried within a reasonable time or to be released.⁷¹ Due to the lack of judicial structures, these authorities often had to choose between liberating the detainees and keeping them without judicial oversight, thus violating the basic right to protection against arbitrary detention. In practice, both UNMIK and KFOR, arguing that public safety had to be preserved, frequently used administrative detention outside judicial control under conditions which were not compatible with international standards.⁷² This practice continued even when the emergency phase was finished.

In the short-term, a temporary solution to this dilemma may be sought in the employment of international judges and prosecutors. Such a measure may offer a relatively easy answer to the lack of local trained lawyers and to the need for an immediate effective judiciary. In addition, international

experts are less likely to be influenced by political bias or local pressure, especially in sensitive cases. However, this measure also raises problems in practice. It is very difficult for international judges and prosecutors to get knowledge of a foreign legal system in a very short period of time. In Kosovo, even the accessibility to domestic legislation was problematic. Translation into English of the applicable law was rarely available. Moreover, this solution is not sustainable in the long-term and may slow down the transition process. As emphasised by the Human Rights Commissioner of the Council of Europe, 'this sort of permanent umbrella does not favour capacity building of the local judiciary, as they are not given the opportunity to take on sensitive and difficult cases to build their competence, prove their impartiality and, ultimately, gain respect'.⁷³

Therefore, the only sustainable solution in the long-term must be based on the training and increasing participation of the local judiciary. Moreover, the reconstruction of the justice system must be comprehensive, engaging all institutions of the justice sector, including police services, judicial development, legislative improvement, legal education and monitoring procedures.⁷⁴

Conclusion and Policy Recommendations

Respect for IHL and HRL are key components of post-conflict peacebuilding operations. Rather than limiting the security forces' capacities to guarantee the protection of civilian populations in armed conflict and emergency situations, the obligation to abide by these legal regimes is, on the contrary, a key contribution to long-term reconstruction and development. No confidence in the transitional authorities and the future government can be established if the use of force has been indiscriminate, if minorities are not protected, or if individuals are detained without judicial review or if police forces enjoy immunity. Therefore, respect for IHL and HRL is not a separate objective that international operations must seek to achieve but is the common denominator in which both peace-enforcement and post-conflict reconstruction must be rooted.

The combination of these two legal regimes is particularly important in peace operations. They express a balance between the principles of humanity and the effective provision of security, including the necessity to prevent serious and widespread abuse. Furthermore, as this chapter has argued, they are particularly adapted to the need for legal transition. Through their articulation, they offer a global set of rules on the protection of human

dignity and integrity, applicable to each phase of the continuum from war to peace. This is the reason why it is important that all actors involved in such operations be formally and uniformly bound by clear legal norms. In this regard, the UN Security Council, when establishing a mission, must play a key role. Its resolution establishing a particular mission should provide that all actors involved, including international organisations, such as the UN or NATO, as well as individual States, are bound by the same set of IHL and HRL rules. Reference to specific relevant treaties should also be made.

Transition in international operations must reflect the imperatives of local ownership and distinguish between different contexts. While the first step of the intervention, that is the peace-enforcement mission characterised by the use of armed force, is usually under international leadership, post-conflict peacebuilding must focus on reestablishing local capacities as soon as is realistic. If the participation of international experts may contribute to this process in the short-term, such measures may have negative impact in the long-term, reducing incentives to transmit government responsibilities to local institutions. Therefore, in order to remain temporary, the internationalisation of administrative structures must be accompanied by the participation of a variety of local actors. These actors need to be informed, consulted and integrated into the decisionmaking process. They also must be prepared to exercise their future responsibilities, and be adequately trained and supervised for this purpose, in particular with respect to rule of law principles. This is the only way to guarantee the legitimacy and sustainability of the peacebuilding process.

Finally, one of the greatest challenges for international operations is the implementation of law. Both at the institutional and individual level, accountability in case of abuse must be ensured. On an international level, this means that the competence of IHL and human rights mechanisms over these entities must be reaffirmed. The UN procedures, in particular, must extend their jurisdiction to cover other international actors. They also must systematically refer to HRL, in addition to IHL, as indeed they have done in some cases in the past several years. In addition, domestic supervision mechanisms must also be strengthened. The principle of accountability for IHL and human rights violations is one of the fundamental components of the rule of law. This requires the establishment of procedures allowing a real access to impartial and independent tribunals. The mandate of international operations should also stipulate that the competence of those tribunals must extend to all actors participating in peace operations, including international military and police officers. In this regard, immunity rules should strictly be limited to the preservation of the effective functioning of the transitional

administration. On a national level, human rights commissions and/or ombudsperson offices should be established to address past and present IHL and human rights violations. It is particularly important to ensure the functioning of such mechanisms from the early stages of the mission, i.e. when the formal justice system still has to be rebuilt.

Notes

- 1 This contribution is based on an extensive research conducted by Robert Kolb, Gabriele Porretto and the author himself. This research was recently published in French: *L'application du droit international humanitaire et des droits de l'homme aux organisations internationales: Forces de paix et administrations civiles transitoires* (Bruylant: Bruxelles, 2005), 506 pp. The author wishes to thank Alexandre Faite, Legal Adviser at ICRC, for his scientific support in this study.
- 2 For general analyses of this phenomenon, see Kelly, M. J., *Restoring and Maintaining Order in Complex Peace Operations*, (Kluwer: The Hague, 1999); Daudet, Y., 'L'action des Nations Unies en matière d'administration territoriale', *Cursos Euromediterráneos Bancaja de Derecho Internacional* volumen VI (2002), pp. 459-543; Korhonen, O., 'International Governance in Post-Conflict Situations', *Leiden Journal of International Law* vol. 14 (2001), pp. 425-529; Wilde, R., 'From Danzig to East Timor and Beyond: The Role of International Territorial Administration', *AJIL* vol. 95 (2001), pp. 583-606.
- 3 For an overview of these operations, see Bothe, M., Doerschel, T., *United Nations Peacekeeping – A Documentary Introduction* (The Hague, 1999).
- 4 See UN Security Council Resolution 1244 (10 June 1999).
- 5 See UN Security Council Resolution 1272 (25 October 1999). See also the United Nations Transitional Authority in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), established by UN Security Council Resolution 1037 (15 January 1996), para 1.
- 6 For detailed analyses of these transitional administrations, see Brand, M. G., 'Institution-Building and Human Rights Protection in Kosovo in the Light of UNMIK Legislation', *Nordic Journal of International Law* vol. 70 (2001), pp. 461-488; Guillaume, M., Marhic G., Etienne G., 'Le cadre juridique de l'action de la KFOR au Kosovo', *AFDI* vol. 45 (1999), pp. 308-334; Irmscher, T. H., 'The legal Framework for the Activities of the UN Interim Administration Mission in Kosovo: The Charter, Human Rights, and the Law of Occupation', *German Yearbook of International Law* vol. 44 (2001), p. 353-395; Kondoch, B., 'The United Nations Administration of East Timor', *Journal of Conflict and Security Law* vol. 6 (2001), pp. 245-265; Lagrange, E., 'La mission intérimaire des Nations Unies au Kosovo, nouvel essai d'administration directe d'un territoire', *AFDI* vol. 45 (1999), pp. 335-370; Morrow, J., White, R., 'The United Nations in Transitional East Timor: International Standards and the Reality of Governance', *The Australian Yearbook of International Law* vol. 22 (2002), pp. 1-45; Ruffert, M., 'The Administration of Kosovo and East-Timor by the International Community', *ICLQ* vol. 3 (2001), pp. 613-631; Stahn, C., 'The United Nations Transitional Administrations in Kosovo and East Timor: A First Analysis', *Max Planck Yearbook of United Nations Law* vol. 5 (2001), pp. 105-183; Strohmeyer, H., 'Collapse and Reconstruction of a Judicial System: The United

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- 7 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies*, report of the Secretary General, UN doc. S/2004/616 (23 August 2004), para 6.
 - 8 S/2004/616, *op. cit.*, para 27.
 - 9 Other legal regimes are also relevant in this context, although not analysed in the framework of this chapter. The UN Secretary General thus refers to 'the four pillars of the modern international legal system', namely HRL, IHL, international criminal law and international refugee law. See UN doc. S/2004/616, *op. cit.*, para 9. On this issue, see Expert Meeting on Multinational Peace Operations, *Applicability of IHL and International Human Rights to UN Mandated Forces* (ICRC: Geneva, 11-12 December 2003), p. 93.
 - 10 ICRC, 'What is International Humanitarian Law?' (July 2004), URL <[www.icrc.org/web/eng/siteeng0.nsf/htmlall/57JNXM/\\$FILE/What_is_IHL.pdf?OpenElement](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57JNXM/$FILE/What_is_IHL.pdf?OpenElement)>.
 - 11 For a complete list of IHL international instruments, see URL <www.icrc.org/ihl>.
 - 12 See URL <www.ohchr.org/english/law/index.htm>. Other instruments on specific rights, such as the Convention against torture, or determined categories of persons, such as the Convention on the Rights of the Child, have also been developed. Moreover, regional conventions have also been adopted.
 - 13 See Art. 4 of the *UN International Covenant on Civil and Political Rights*. See Doswald-Beck, L., Vità, S., 'International Humanitarian Law and Human Rights Law', *international Review of the Red Cross* no. 293 (March-April 2003), pp. 94-119.
 - 14 UN doc. S/2004/616, *op. cit.*, para 25.
 - 15 Even though some international human rights instruments provide that States Parties may take measures derogating from their obligations in time of public emergency, some fundamental rights must be respected under any circumstances. See for example art. 4 of the *International Covenant on Civil and Political Rights*.
 - 16 ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, Reports 1949 (11 April 1949), p. 179.
 - 17 *Ibidem*.
 - 18 *Ibidem*.
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 - 20 This case-law was later confirmed by the Court. See ICJ, *Legality of the use of nuclear weapons*, Advisory Opinion, Reports 1996 (8 July 1996), para 25.
 - 21 Art. 1, para 1 of the *United Nations Charter*. See Lachs, M., 'Art. 1, para. 1', Cot, J-P., Pellet, A. (eds.), *The United Nations Charter*, 2nd edition (1991), pp. 31ff; Wolfrum R., 'Art. 1', Simma, B. (ed.), *op. cit.*, p. 49ff.
 - 22 Art. 42 of the *United Nations Charter*. See Fischer, G., 'Art. 42', Cot, J-P., Pellet, A. (eds.), *The United Nations Charter*, 2nd edition (1991), pp. 705ff; Frowein, J.A., 'Art. 422', Simma, B. (ed.), *The Charter of the United Nations- A Commentary* (1995), p. 628ff. UN practice, based on Chapter VI of the Charter (peaceful settlement of disputes), also allowed the deployment of peacekeeping forces with the agreement of the host State.

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- 24 See in particular Schindler, D., 'United Nations Forces and International Humanitarian Law', Swinarski, C. (ed.), *Mélanges Pictet* (CICR/Nijhoff: Genève/La Haye, 1984), p. 527; Benvenuti, P., 'The Implementation of International Humanitarian Law in the Framework of UN Peacekeeping', *Law in Humanitarian Crises: How Can International Humanitarian Law Be Made Effective in Armed Conflicts ?* (CE: Luxembourg, 1995), p. 113.
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- 26 Benvenuti, P., 'Le respect du droit international humanitaire par les forces des Nations Unies: La Circulaire du Secrétaire général', *Revue Générale de Droit International Public* vol. 105 (2001), pp. 357s; On the Bulletin, see also Condorelli, L., 'Les progrès du droit international humanitaire et la circulaire du Secrétaire général des Nations Unies du 6 août 1999', *Mélanges Abi-Saab*, (Nijhoff: The Hague), pp. 495-505; Ryniker, A., 'Respect du droit international humanitaire par les forces des Nations Unies', *International Review of the Red Cross* vol. 81, no. 836, pp. 795-805; Zwanenburg, M., 'The Secretary General's Bulletin on Observance by United Nations Forces of International Humanitarian Law: A Pyrrhic Victory', *Revue de droit militaire et de droit de la guerre* vol. 39 (2000), pp. 15-35.
- 27 UN Security Council Resolution 1327 (13 November 2000), chapter I, para 3.
- 28 United Nations, *The United Nations and Somalia : 1992-1996*, The United Nations blue books series, vol. 8 (UN Department of Public Information: New York, 1996), 516 pp.
- 29 UN Security Council Resolution 1244 (10 June 1999).
- 30 Article 1.3 of the Regulation, URL <www.unmikonline.org/regulations/2000/reg59-00.htm>.
- 31 Common Art. 3 of the Geneva Conventions of 12 August 1949. ICTY Appeals Chamber, *Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, case no. IT-94-1-AR72 (2 October 1995), para. 70. See also the conclusions of the ICRC Commission of Experts of 1962, *International Review of the red Cross* vol. 45 (1963), p. 76 ff.; Schindler, D., 'The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols', p. 147; David, E., *op. cit.*, pp. 114ff.
- 32 Art. 1 para 2 of the *Protocol Additional II to the Geneva Conventions of 12 August 1949*, and art. 8 para 2 (f) of the *Statute of the International Criminal Court*. Concerning the concept of troubles and internal tensions, see *inter alia* Pictet, J. (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, *op. cit.*, pp. 52 ff; Eide, A., 'Troubles et tensions intérieurs', UNESCO (ed.), *Les dimensions internationales du droit humanitaire*, (UNESCO: Paris, 1986), pp. 279ff; Momtaz, D., 'Les règles humanitaires minimales applicables en période de troubles et de tensions internes', *International Review of the Red Cross* vol. 80 (1998), pp. 487ff.

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- 46 For details of this practice, see Vité, S., *Les procédures internationales d'établissement des faits dans la mise en œuvre du droit international humanitaire* (Bruylant: Bruxelles, 1999), pp. 66ff.
- 47 The Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee on the

- Elimination of Discrimination against Women. See URL <www.ohchr.org/english/bodies/treaty/index.htm>.
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- 63 *UNMIK Regulation on the Establishment of the Ombudsperson Institution in Kosovo*, UN Doc. UNMIK/REG/2000/38, 30 June 2000, Preamble.
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- 72 For further details, see Ombudsperson Institution in Kosovo, *op. cit.*
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Chapter 10

Promoting Transitional Justice in Post-Conflict Societies

Paul van Zyl

Introduction

Transitional Justice embodies an attempt to build a sustainable peace after conflict, mass violence or systemic human rights abuse. Transitional justice involves prosecuting perpetrators, revealing the truth about past crimes, providing victims with reparations, reforming abusive institutions and promoting reconciliation. This requires a comprehensive set of strategies that must deal with the events of the past but also look to the future in order to prevent a recurrence of conflict and abuse. Because transitional justice strategies are often crafted in situations where peace is fragile or perpetrators retain real power, they must carefully balance the demands of justice with the realities of what can be achieved in the short, medium and long term.

Over the past decade, the field of transitional justice has expanded and evolved in two important respects. First, the elements of transitional justice have moved from being aspirational to embodying binding legal obligations. International law – particularly as articulated by bodies such as the European Court on Human Rights, the Inter-American Court on Human Rights and the Human Rights Committee – has evolved over the past 20 years to the point where there are clear standards regarding state obligations in dealing with human rights abuse and correspondingly clear prohibitions regarding, for example, blanket amnesties for international crimes. This has been supported by the ratification of the International Criminal Court (ICC) by over 100 countries which has both reinforced existing obligations and created new standards, by requiring each signatory to respond appropriately to human rights abuse or face action by the court. A further important development occurred in October 2004, when the UN Secretary General submitted a report to the Security Council setting out for the first time the UN's approach

to transitional justice issues. This is an extremely important development in both operational and normative terms. Second, the deepening of democracy in many parts of the world – particularly Latin America, Asia, and Africa – and the emergence of increasingly sophisticated civil society organisations with expertise in this area has contributed to creating both the institutions and political will required to deal with a legacy of human rights abuse and helped translate policy into action.

This increased attention and commitment to transitional justice issues has been mirrored by the allocation of greater resources and international attention to post-conflict peacebuilding. This requires sustained interventions by both national and international actors on several different levels. Each element has to be carefully coordinated and integrated and matched with appropriate political, operational and financial support from a range of stakeholders. Transitional justice strategies should be understood as an important component of peacebuilding in so far as they address the needs and grievances of victims, promote reconciliation, reform state institutions and reestablish the rule of law.

This chapter will explore in greater detail the many ways in which transitional justice can contribute towards post-conflict peacebuilding. It will start by outlining the key elements of transitional justice and discussing their purpose and impact. It will then outline the ways in which transitional justice can contribute towards peacebuilding. It should be noted that although transitional justice strategies will almost always significantly impact on such efforts, the relationship between these two endeavours both in theory and practice is surprisingly under-researched. This chapter cannot deal with all of these issues in any depth but will point to a number of ways in which post-conflict peacebuilding and transitional justice are interrelated, in the hope of setting an agenda for future research. Finally, the chapter will articulate important lessons from various practical examples where transitional justice strategies have been implemented and on this basis set out several recommendations for policymakers as to how to develop more effective transitional justice policies that in turn will make a constructive contribution to post-conflict peace building.

The Key Elements of Transitional Justice

As stated above transitional justice involves prosecuting perpetrators, revealing the truth about past crimes, providing victims with reparations,

reforming abusive institutions and promoting reconciliation.¹ This section will discuss each element in greater detail.

Prosecution

The prosecution of perpetrators who have committed gross violations of human rights is a critically important component of any efforts to deal with a legacy of abuse. Prosecutions can serve to deter future crimes, be a source of comfort to victims, reflect a new set of social norms, and begin the process of reforming and building trust in government institutions.² It is important however to recognise that criminal justice systems are designed for societies in which the violation of the law is the exception and not the rule. When violations are widespread and systematic, involving tens or hundreds of thousands of crimes, criminal justice systems simply cannot cope. This is because the criminal justice process ought to demonstrate a scrupulous commitment to fairness and due process and this necessarily entails a significant commitment of time and resources.³

It is important to emphasise that recognising criminal justice systems' structural inability to cope with mass atrocity, should not be construed as a delegitimisation of the role of prosecution or punishment in dealing with past crimes. Notwithstanding their high costs and slow progress the two ad hoc tribunals for the former Yugoslavia and Rwanda have made important contributions to the progressive development of international criminal law and the establishment of the International Criminal Court (ICC) would have been extremely difficult, if not impossible, without them.⁴ The importance of the Nuremberg trials or the prosecution of Slobodan Milosevic should not be diminished solely on the basis that they represent only a tiny fraction of the total number of criminally responsible individuals. Trials should not be viewed only as expressions of a societal desire for retribution, they also play a vital expressive function in publicly reaffirming essential norms and values that when violated should give rise to sanctions. Trials can also help to reestablish trust between citizens and the state by demonstrating to those whose rights have been violated that state institutions will seek to protect rather than violate their rights. This may help to restore the dignity of victims and reduce their sense of anger, marginalisation and grievance.

It is nevertheless important to recognise and accept the fact that prosecution can only ever be a partial response to dealing with systematic human rights abuse. The overwhelming majority of victims and perpetrators of mass crimes will never encounter justice in a court of law, and it is

therefore necessary to supplement prosecutions with other complementary strategies.

Truth Seeking

It is important not only to establish widespread knowledge that human rights abuse has occurred, but also for governments, citizens and perpetrators to acknowledge the wrongfulness of this abuse. Establishing an official truth about a brutal past can help inoculate future generations against revisionism and empower citizens to recognise and resist a return to abusive practices.

Commissions can provide victims with a voice in public discourse and their testimony can help rebut official lies and myths regarding human rights abuse. The testimony of victims in South Africa has made it impossible to deny that torture was officially sanctioned and that it happened in a widespread and systematic fashion. The commissions in Chile and Argentina rebutted the lie that opponents of the military regimes fled these countries or went into hiding. They conclusively established that opponents were “disappeared” and killed by members of the security forces as part of an official policy.⁵ Giving victims an official voice can also help to reduce their sense of outrage and anger. While it is important not to overstate the psychological benefits of “speaking out” and it is inaccurate to claim that testifying about abuse is always cathartic, officially acknowledging victims’ suffering will enhance the prospects of dealing constructively with historical grievances.

Truth commissions can also help facilitate and add impetus to the transformation of state institutions. By demonstrating that human rights abuse in the past was not an isolated or atypical phenomenon, commissions can strengthen the hand of those inside and outside a new government who wish to implement real reforms to ensure the promotion and protection of human rights. Conversely, a failure to examine or identify abusive institutions can allow them to continue past practices and in the process entrench their power and deepen distrust and disillusionment amongst ordinary citizens.

Reparation

States bear an obligation under international law to provide reparation to victims of gross violations of human rights. This reparation can take many forms including material assistance (e.g. compensation payments, pensions, bursaries and scholarships), psychological assistance (e.g. trauma

counseling) and symbolic measures (e.g. monuments, memorials and national days of remembrance). The formulation of a comprehensive reparation policy is often both technically complex and politically delicate. Those charged with formulating a just and equitable reparation policy will have to decide whether to differentiate between different categories of victims and amongst victims in each category. For example, they will have to decide whether it is possible or desirable to provide different forms and quantities of reparation to victims who have experienced different types and degrees of torture and whether to use means testing to differentiate between wealthy and poor victims. Each decision has significant moral, political and financial implications.⁶

A central question in the provision of reparation is the definition of victimhood. It is necessary to decide whether reparation should be paid only to victims of gross violations of human rights such as torture, killings and disappearances, or whether also to provide reparation to a broader class of victims, for example those who have suffered systematic racial discrimination or who have lost land or other property. A just and sustainable reparation policy should neither create nor perpetuate divisions amongst different categories of victims, and as well should be feasible and financially realistic.⁷

Institutional Reform

In responding to mass atrocity it is necessary, but not sufficient, to punish perpetrators, establish the truth about violations and provide victims with reparations. It is also necessary to fundamentally change, or in some cases abolish, those institutions responsible for human rights abuse.⁸ Newly established governments have primary responsibility in this regard, but truth commissions can also play an important role. Truth commissions are usually empowered to make recommendations in their final reports regarding legal, administrative and institutional measures that should be taken to prevent the recurrence of human rights abuse.

Governments might also consider adopting vetting programmes, which seek to ensure that persons responsible for human rights abuse are either removed from public service or prevented from being employed in government institutions. The removal of human rights abusers from positions of trust and responsibility is an important part of establishing or restoring the integrity of state institutions. Vetting can also play a role in establishing non-criminal accountability for human rights abuse, particularly in contexts where it is impossible to prosecute all those responsible.⁹ Vetting

programmes should scrupulously protect the due process rights of persons under scrutiny and be used to target only those responsible for human rights abuse, rather than political opponents of the new regime or those who may hold different views and beliefs.

Reconciliation

Reconciliation is an important concept with a controversial pedigree. In some contexts victims oppose “reconciliation” because they associate the concept with enforced forgiveness, impunity and amnesia. In many countries in Latin America those responsible for human rights abuse, particularly military leaders associated with dictatorial regimes, have cynically invoked the concept of reconciliation in order to avoid responsibility for their crimes. If reconciliation is understood in this way then it should rightly be rejected.

There is however a different conception of reconciliation which is important to consider. Societies that emerge from periods of mass atrocity and widespread conflict often contain deep suspicions, grievances and animosities. These divisions almost always endure post-conflict and create the potential for a return to violence and a recurrence of human rights abuse. This is particularly true when conflicts have assumed an identity dimension in which categories such as religion, language, race or ethnicity have been used to sow division and justify human rights abuse. These divisions will not magically disappear under a new democratic order, nor will they necessarily heal with the passage of time. In some cases the electoral arithmetic of democracy can exacerbate these cleavages by delivering all political power to a majority ethnic group leaving a minority group feeling vulnerable and marginalised. If divisions are to be overcome, it will require a constitutional settlement that offers adequate protections and reassurances to vulnerable groups. Leaders inside and outside government will have to take proactive steps to demonstrate that democracy can serve all citizens that peace can yield substantial dividends for all and that diversity can be a source of strength rather than conflict.¹⁰ If reconciliation is to be accepted it cannot amount to ignoring the past, denying the suffering of victims or subordinating the demand for accountability and redress to an artificial notion of national unity.

Transitional Justice in Post-Conflict Peacebuilding

It is somewhat surprising that so little analysis has been devoted to the intersection between transitional justice and post-conflict peacebuilding. Properly understood and implemented, transitional justice is as much forward-looking as it is backward-looking. One of the critical reasons we deal with past abuse is in order to ensure that it does not reoccur. The title of the Argentinean truth commission's final report was "Nunca Mas" (Never Again). However, a commitment to prevention is not the only rationale for dealing with the past. Such an instrumental approach to past atrocity would always subordinate the vindication of victims' rights to an examination of whether this would jeopardise the prospects of peace. This would not only be indefensible as a matter of law and ethics but as a practical matter it would provide perpetrators and tyrants who seek to avoid accountability with an incentive to hold peace processes hostage until they are provided with the necessary assurances.

It is important to accept that tensions exist between peace and justice in the short-term and that in some hard cases it is prudent and defensible to delay justice claims in order to achieve an end to hostilities or a transition to a democratic order. Nevertheless, justice claims should not be deferred indefinitely, not just because of the likely corrosive effect on efforts to build a sustainable peace, but because to do so would be to compound a grave injustice that victims have already suffered. Transitional justice strategies should be an integral part of any effort to build a sustainable peace, but in some circumstances peace and justice may not be completely compatible in the short-term. If justice is deferred, then every effort should be made to ensure that the prospect of achieving accountability in the medium- to long-term are preserved and that as much of the transitional justice agenda as can be achieved in the short-term is implemented.

The following section sets out a number of ways in which the fields of transitional justice and post-conflict peacebuilding intersect. It focuses on ways in which transitional justice strategies can reinforce peacebuilding efforts recognising that in some circumstances these efforts are not perfectly complementary.

Diagnosing the Problem

The development of a post-conflict peacebuilding strategy must be based on a rigorous examination of the causes, nature and effect of the prior conflict. Truth commissions are often well-placed to undertake this form of

examination particularly because they pay special attention both to the testimony and present circumstances of victims of abuse but also because they scrutinise the individuals and institutions responsible for human rights violations. Most commissions gather extensive evidence from thousands of different sources and on this basis are able to generate a comprehensive account of human rights abuse during the period they are mandated to review. Truth commissions also examine the social, structural and institutional causes of conflict and human rights abuse and are able to clarify not only what happened in individual cases but also the broader context which enabled the violations to occur. This diagnostic function can help identify the root causes of conflict and examine the role that external actors and non-state actors have played in fuelling and sustaining conflict. On this basis they can make more effective and informed recommendations as to measures that can be taken to deal with these root causes or reduce the capacity of disruptive actors to perpetuate conflict. The recommendations can be extraordinarily helpful to those involved in developing and executing post-conflict peacebuilding strategies.

State-Building and Institutional Reform

Conflicts have devastating effects on state institutions and a careful process of rebuilding and reform is necessary once hostilities have drawn to a close. Truth commissions and vetting programmes can make an important contribution to state-building and institutional reform by recommending the following measures:

- Identifying institutions that should be reformed or eliminated;
- Making proposals to ensure that the mandate, training, staffing and operations of specific institutions are reformed to ensure that they function effectively as well as promote and protect human rights;
- Removing persons responsible for corruption or human rights abuse from state institutions.

Through their public hearings, truth commissions can also focus governmental and public attention on particular institutions such as the media, prisons, health care institutions and the judiciary thereby catalysing a public debate about the role they played in the past and the measures that should be taken in the future to enhance their effectiveness and their capacity to promote and protect human rights.

Removing Rights Abusers From Political Office

Transitional justice efforts allow citizens to better understand the causes, nature and effects of human rights abuse. They also illuminate and clarify responsibility for this abuse. A strong predictor for renewed or ongoing conflict is the presence of persons in high government positions who are either directly or indirectly responsible for widespread or systematic human rights abuse. Conversely the removal of such persons can make a vital contribution to post-conflict peacebuilding. In Afghanistan, a report issued by the Afghan Independent Human Rights Commission entitled, 'A Call for Justice' that was based on the views of over 6000 Afghans, both inside the country and in refugee communities, identified the fact that perpetrators of serious human rights violations continue to occupy important positions in regional and central government as a major threat to the promotion and protection of human rights.¹¹ The report has led to calls for an initiative to screen key Presidential appointees in order to assess both their competence and integrity. Integrity screening would determine whether a potential appointee has been responsible for either corruption or human rights abuse. While it is too early to tell whether this effort will succeed it would not have even been on the agenda had there not been a process of polling individuals regarding their attitudes to past human rights abuse. A transitional justice initiative put questions of political reform on the national agenda in way that increased the possibilities of successful post-conflict peacebuilding.

Dealing with Individual Victim Grievances and Forging Reconciliation

According to Bigombe, Collier and Sambanis,¹² war-induced grievances are a significant cause of a return to hostilities in post-conflict societies. Peacebuilding strategies should therefore seek to implement a set of policies immediately after conflict that attempt to address and reduce this sense of anger and grievance. Prosecuting those responsible for human rights abuse can reduce victims' desire for revenge – providing it is even-handed and complies with international standards. Truth commissions can provide victims with a safe space to articulate their anger while at the same time offering them an official acknowledgement of their suffering.¹³ Reparation programmes can provide much-needed resources and services to victims who are have experienced direct and indirect loss as a result of conflict and human rights abuse. The combination of these policies can help offset the

sense of anger, neglect and marginalisation experienced by victims and the communities in which they live.

Prosecutions and truth commissions can also help dispel dangerous myths that serve to prolong grievances and fuel future conflicts. In many post-conflict situations, unscrupulous leaders attempt to invent and propagate ‘victim/perpetrator myths’ in which they claim that members of their group (ethnic/linguistic/religious, etc.) are innocent victims and that members of other groups are all culpable perpetrators. These myths are almost always historically inaccurate and serve to perpetuate acrimonious inter-group relationships. Courts can demonstrate for example that not all Serbs were Milosevic supporters or that some Hutus saved Tutsis during the Rwandan genocide. This can help to break down stereotypes that are exploited by ethno-nationalist politicians to gather support and that all too often lead to conflict.

Dealing with Group Dominance

A significant risk-factor in predicting the outbreak or resumption of conflict is the extent to which a homogenous group – ethnic, linguistic, religious, etc. – is willing and able to monopolise political and economic power. This may even be exacerbated by certain democratic systems which hand power to majorities without appropriate checks and balances. A successful post-conflict peacebuilding agenda will have to include political, legal and social measures that guard against the exploitation of the minority by the majority.¹⁴ Truth commissions can help generate national awareness of the insecurities, marginalisation and victimisation of minorities as well as offer policy proposals to ensure their rights are appropriately protected. The delivery of reparation to members of minority groups that have experienced human rights abuse can provide reassurance that the majority recognises them as rights-bearing citizens. Similarly, the prosecution of perpetrators responsible for crimes against minorities can help increase trust in state institutions. Proposals for institutional reform made by truth commissions can refer to the importance of adequate minority representation in institutions such as the police, military and judiciary in order to instil minority confidence in these institutions.

Security Sector Reform

The combination of targeted prosecutions of those who bear the greatest responsibility for human rights abuse, a carefully crafted vetting programme

and a robust truth commission which meticulously documents human rights abuse, can assist enormously in reforming the police, military and intelligence services. The process of security sector reform was greatly enhanced in South Africa by revelations of abuse before the Truth and Reconciliation Commission and by the departure from office of many senior officers whose crimes had been revealed. The exit of these individuals was crucial in transforming the ethos in these institutions and in beginning to restore trust in them. The process of transforming the security sector from a source of oppression and conflict to a set of institutions that protect citizens and uphold rights was given added impetus by transitional justice institutions established after Apartheid.¹⁵

In stark contrast, the Indonesian military (and to a lesser extent sections of its police) have largely escaped any form of scrutiny or accountability for human rights abuse they have committed, starting in 1965/66 and enduring to this day. The shroud of secrecy that has surrounded the killings of hundreds of thousands of alleged Communists in the 1960's, the absence of any meaningful accountability for the crimes that occurred in East Timor (beginning in 1975 and culminating in 1999), and the ongoing violations elsewhere in Indonesia are all linked to a failure to hold the Indonesian Armed Forces (TNI) accountable for its crimes.¹⁶ Until a genuine process of accountability and truth seeking is undertaken, the TNI will continue to serve as a source of conflict and instability in Indonesia.

In Haiti, a vital component of post-conflict peacebuilding remains the establishment of an effective, credible and legitimate police force. The dissolution of the Haitian military has meant that the police are indispensable to combating crime, the maintenance of public order and the protection of human rights. Unfortunately there are grounds to suspect that former members of the military, many of whom are responsible for corruption and human rights abuse, have infiltrated the Haitian National Police (HNP) and if this situation is not rectified it will undermine the operational efficiency of the force as well as its credibility and legitimacy.¹⁷ The United Nations Mission in Haiti (MINUSTAH) has in its mandate the authority to vet members of the HNP to ensure that those responsible for corruption, human rights abuse and other serious misconduct are removed. However the design of any vetting programme cannot focus solely on how to exclude persons responsible for human rights abuse. Those designing a system to remove individuals from critical institutions also need to consider the optimal mandate, composition and governance structure of that institution. In Haiti this has revealed the fact that there is considerable uncertainty as to the actual size of the HNP in part because of a failure to properly register and

issue official identification to police officers. It has also highlighted the need to establish effective internal codes of conduct and oversight mechanisms. In this sense vetting has served as the leading edge of the institutional reform wedge. An effective vetting process may catalyse a more fundamental set of reforms which do not focus exclusively on the past conduct of current police officers, but also help to ensure that the police make an appropriate contribution to post-conflict peacebuilding.¹⁸

Implementing DDR Programmes

Disarmament, Demobilisation and Reintegration (DDR) programmes are an essential part of many post-conflict peacebuilding strategies, and transitional justice institutions, particularly courts and vetting schemes, will significantly impact most DDR programmes. If a court with jurisdiction over persons responsible for human rights abuse signals that it intends to prosecute vigorously all perpetrators, including participants in DDR programmes, then it could serve as a significant disincentive for persons contemplating laying down their arms. Conversely, if all participants in DDR programmes are offered full legal immunity then the chances of them participating (all things being equal) will increase. Both of these scenarios are undesirable for different reasons. No court will ever be able to prosecute all persons responsible for widespread human rights abuse and it is therefore unwise to dissuade people from demobilising based on a threat of prosecution that cannot realistically be fulfilled. On the other hand granting blanket amnesty for gross violations of human rights in order to encourage demobilisation is contrary to international law and will generate substantial resentment in victim communities. It will also instill a sense impunity, which may contribute to a resumption of hostilities.¹⁹ There are of course many more subtle ways to structure the relationship between DDR programmes and courts.

For example, the Commission for Reception, Truth and Reconciliation (CRTR) in East Timor utilised a particularly innovative approach to promoting the reintegration of low-level perpetrators by allowing them to come forward, disclose their crimes and agree to undertake an act of reconciliation (which often includes community service) as a precondition to escaping liability for their crimes.²⁰ By promoting reintegration, the CRTR is not only reducing the likelihood of conflict, it is also saving the new Timorese state the expense and effort of having to prosecute and imprison thousands of low-level offenders. Instead, these individuals are able to remain in their communities and continue to be economically active, and in

some cases, are able to help to repair the damage they were responsible for. This DDR programme is explicitly limited to low-level perpetrators – persons responsible for serious crimes such as murder or rape are still liable for prosecution. In this way a balance is struck between encouraging the reintegration of individuals responsible for certain offences and achieving accountability for those bearing the greatest responsibility.

The relationship between the resources provided to demobilising combatants and reparations provided to victims of human rights abuse requires careful consideration. In many instances, former combatants (a percentage of whom may be responsible for human rights abuse) are offered substantially more generous demobilisation packages than victims of human rights abuse are awarded in the form of reparations. This not only produces a morally asymmetrical result but will almost certainly generate a great sense of injustice amongst victims and cause them to be less receptive to the reintegration of former combatants.

Vetting programmes can also intersect with DDR programmes and may produce unintended and counter-productive results. For example, certain DDR programmes offer skills training programmes designed to facilitate the entry into certain kinds of government employment. Vetting programmes may subject these individuals to screening for involvement in abuses and if they are found to be responsible they could be precluded from obtaining a government job. This raises the prospect of one programme investing scarce resources into the training of an individual for a form of employment that another programme prevents him from accepting.

Restoring the Rule of Law and Confronting a Culture of Impunity

The failure of national authorities in the Federal Republic of Yugoslavia (and until recently its successor state, Serbia and Montenegro) to take responsibility for the human rights violations that occurred during the 1990s has allowed war criminals to wield considerable influence within the country's security services. This allowed forces such as the notorious 'Red Berets' to collude with syndicates responsible for drug-running, human trafficking and organised crime. This network of criminal conduct culminated in the assassination of Serbian Prime Minister Zoran Djindjic – an event that convulsed the entire country. The lesson seems obvious: a failure to confront past abuse allows perpetrators to continue to commit crime thereby creating the prospect of continued conflict and instability. Proactively pursuing accountability and reconciliation will assist in eroding a

culture of impunity and sending a signal about the importance of the rule of law.

Restoring Trust in State Institutions

It is vital following a period of widespread conflict and massive abuse that steps are taken to reform state institutions so that the trust of citizens (both in them and government as a whole) is restored. The restoration of trust in government is essential if it is to fulfil many of its functions at optimal levels. Crime cannot be properly addressed if citizens do not trust the police and taxes will not be collected at sufficient levels without some basic trust in the decency and efficiency of government. Similarly, international and domestic capital will not be attracted if investors are not convinced that a new regime is committed to good governance and the rule of law.

Consolidating Democracy

The consolidation of democracy is a vital component of any post-conflict peacebuilding agenda. While the establishment of democratic institutions and the holding of free and fair elections are not guarantees that a country will not slide back into conflict, democracies are better placed to distribute resources and deal with internal grievances in a manner that avoids conflict and human rights abuse.

Truth commissions and courts can play a powerful role in promoting democracy. Commissions can demonstrate the consequences of repressive and undemocratic rule and create an official record of the human cost of dictatorship and war. By exposing hidden abuse and by documenting the full scale of human suffering that occurs during conflict, truth commissions can strengthen public support for democracy. The prosecution of those responsible for genocide, crimes against humanity, war crimes and other systemic violations can help establish not just individual criminal responsibility but also the breakdown of democratic and rights-respecting institutions that enabled this abuse. These processes can reduce support for undemocratic practices and forms of government and provide citizens with early-warning signals that empower them to resist a return to conflict or oppressive rule.

Lessons from Transitional Justice Processes

A number of lessons can be derived from an examination of different transitional justice experiences as well as how they intersect with post-conflict peacebuilding efforts. First, it is vital that transitional justice strategies emerge from an extensive process of local consultation and that they are based on local conditions. Second, a commitment to establish transitional justice mechanisms should only be incorporated into a peace process if this reflects a bona fide desire to deal with the past on the part of all parties. Peace processes should not overprescribe the exact form and nature of transitional justice processes. Third, transitional justice mechanisms should regard capacity building as a core part of their mandate and an indicator of success should be what they leave behind, not just what they do during their period of operation. Fourth, transitional justice strategies should be as comprehensive as possible and not focus exclusively on only one component of transitional justice such as truth, justice, reparation, institutional reform, or reconciliation. Finally, successor governments should choose their projects wisely, and not pursue projects which they lack the capacity to implement. Each of these lessons are discussed in greater detail below.

Local Ownership and Consultation

There can be no doubt that local ownership and consultation are essential if transitional justice institutions are to be effective and lead to sustainable results. The expansion of the field of transitional justice combined with the proliferation of tribunals, Truth commissions and reparations programmes has generated significant opportunities and risks. The most glaring risk is that the establishment of these institutions is regarded as an operational, technocratic endeavour divorced from a careful process of assessing the political climate and consulting with key stakeholders. As a general rule, the most carefully crafted truth commission mandate will not be effective if sufficient political and popular support is not generated prior to its establishment. Likewise, the impact of a well-functioning court that renders fair justice in every case will be significantly reduced if it is viewed as an external imposition that does not draw on or respond to national conceptions of justice. The truth commissions established in South Africa and East Timor were the product of extensive local consultation and debate and their structure and mandate were strongly influenced by the views of local stakeholders. While local ownership is not in itself a sufficient condition of

success, it provides transitional justice institutions with a vitally important advantage that can be leveraged into real results.

A commitment to local ownership should be distinguished from political or governmental support. The fact that the Cambodian government has belatedly and with considerable ambivalence decided to support the so-called Khmer Rouge Tribunal does not mean that the tribunal was the product of extensive local consultation or that it enjoys popular support. In some cases it may be necessary to circumvent governments with poor human rights track records in establishing transitional justice institutions and instead seek support and legitimacy from other sources such as civil society organisations or victims' groups. The difficulties in establishing transitional justice institutions where the government is either indifferent or hostile should not be underestimated. Nevertheless governments should not in every case be allowed to wield a veto in this regard. The truth commissions established in El Salvador and Guatemala were not the product of extensive local consultation and were also insulated in differing degrees from national ownership and control. Nevertheless they were able to achieve important results because they operated with independence and integrity and because they were able to conduct successful outreach to human rights and victims' groups.

In recent years truth commissions have been established in an increasing number of countries and settings as part of a truth-seeking strategy. While there is much to learn from the experience of other truth commissions, each commission should be based upon thorough local consultation and designed according to local needs. The uncritical transplantation of models from one context to another will simply not work. Truth commissions should also not be established for ulterior motives, such as attempting to discredit political opponents or meet conditionalities imposed on donor support without genuinely attempting to pursue justice or uncover the truth. Truth commissions should not serve as substitutes for justice or as politically convenient compromises between accountability and impunity.

Transitional Justice and Peace Processes

Peace processes often provide ample opportunities to introduce commitments to pursue transitional justice into the national settlement. This is not true in all cases, particularly when all parties to a conflict and subsequent peace process have been implicated in human rights abuse. In such cases all actors may agree that it serves their purposes not to dwell on

past human rights abuse and a peace agreement can result in both amnesia and impunity. In those occasions where parties decide to introduce transitional justice issues into the settlement a number of pitfalls should be avoided.

First, mechanisms such as truth commissions should not be introduced in order to offset decisions to grant amnesty or as efforts to salvage a degree of cosmetic acceptability in an agreement that essentially seeks to bury the past and deny victims their rights to justice, truth and reparation. This was the case in the Lomé Peace Accord that sought to bring an end to the internal armed conflict in Sierra Leone. The fact that the Sierra Leonean truth commission was able to achieve some results was at least partially attributable to the fact that the blanket amnesty contained in the agreement was not respected and the Sierra Leonean Special Court was established to prosecute those bearing the greatest responsibility for human rights abuse. Had this not occurred then the Commission would have operated in a climate of complete impunity and it would have almost certainly been viewed as an inadequate attempt to disguise or compensate for this fact by the signatories to the Lomé Peace Accord.

A second pitfall is attempting to overprescribe the form and nature of a transitional justice institution in the provisions of a peace agreement. In both Liberia and the Democratic Republic of the Congo (DRC) peace agreements provided too much detail regarding the composition of truth commissions to be established in both these countries. The proposed membership of the commissions reflected the composition of the parties to the peace talks thereby subjecting these bodies to a political fragmentation where membership was decided not upon the basis of integrity, independence or a commitment to human rights, but rather loyalty to a particular political party. Peace talks may be essential in bringing a conflict to an end and producing a blueprint for sustainable peace but they are seldom the appropriate forum for deciding on the details of processes to deal with the past – precisely because these processes must not be politicised.

Capacity Building

An effort to develop and implement a transitional justice strategy must place emphasis on building the capacity of local actors and institutions. International donors contributed \$10 million annually for five years (1997-2002) following the genocide in Rwanda in order to support domestic prosecutions. In this period the government conducted almost 7,000 trials.²¹ The credibility of these trials has been diminished because of inadequate due

process protections, politicisation and poor detention conditions. Some of these problems could have been remedied or alleviated with additional or properly targeted resources. During a similar period the ICTR was given close to \$400 million to conduct its proceedings, which resulted in fewer than 10 final convictions and contributed almost nothing to building judicial and legal capacity in Rwanda.²²

Comprehensive Strategies

Five years ago there existed a general misconception that only one institutional initiative could or should be generated in response to mass atrocity. It is now almost universally recognised that prosecutions, truth commissions, vetting institutions and reparation programmes are in most cases complementary and could therefore be established simultaneously. It is therefore important to explore whether and in what ways these institutions should interact. Should truth commissions furnish courts with information to assist prosecutions? Should vetting programmes provide information to truth commissions to allow them to generate an overall picture of the causes, nature and extent of human rights abuse? How should reparation programmes relate to civil suits? This is an extremely important area of study.²³

High Moral Capital, Low Bureaucratic Capacity

Ackerman has coined the phrase that emerging democracies have 'high moral capital but low bureaucratic capacity'. By this he means that post-conflict regimes often enjoy a period of high levels of popular support and trust immediately after the transition. This often provides them with sufficient political capital to embark on major initiatives to deal with a legacy of abuse. However, in designing and implementing these strategies, new regimes should keep in mind not only what is desirable, but also what is possible. New regimes may lack the human and financial capacity to translate laudable policy objectives (robust prosecutions, full reparations, rigorous vetting) into reality. Moral capital can quickly evaporate and the old guard can regain the initiative if new regimes promise more than they can deliver.

Conclusion and Policy Recommendations

Based on a survey of the field of transitional justice and an examination of its link to post-conflict peacebuilding the following conclusions and policy recommendations can be drawn:

- A number of gaps exist between mechanisms of transitional justice and other aspects of post-conflict peacebuilding. The relationship between DDR programmes and transitional justice requires more rigorous analysis, not least because these programmes have the potential to either complement or undermine each other depending on how they are structured.
- In the past, advocates focused their energies on persuading governments that were not prepared to act to implement transitional justice policies. Today governments are far more likely preempt or respond to pressure by adopting half-measures (such as politicised courts or weak truth commissions) that may appear to be legitimate on the surface but are actually cynical efforts to evade responsibility for dealing with the past. This means that practitioners, governments and donors have to be in a position to provide a meticulous analysis of these efforts and undertake sophisticated advocacy efforts in order to ensure that only genuine efforts are supported or promoted.
- The strengthening of international legal obligations and a growing normative consensus that gross violations of human rights should be remedied has generally shifted the emphasis away from deciding whether to address the past, to questions of how this should be done. This creates extraordinary opportunities to examine the intersection between transitional justice and post-conflict peacebuilding in a number of different contexts and establish good practices based on comparative policy analysis. This process cannot simply transplant a successful model from one context to another but must explore the factors that made that model work and ascertain whether they applicable in other circumstances.
- Truth commissions should devote more energy to ensuring that their recommendations are as detailed and specific as possible. Too often commission reports include general recommendations, which are so broad and so obvious that they have little practical impact. Commissions should make recommendations that strengthen the link between dealing with the past and the prospective task of building a

sustainable peace. Transitional justice strategies should be designed to provide added impetus and leverage to post-conflict peacebuilding efforts.

- Donors should view transitional justice strategies and post-conflict peacebuilding as complementary efforts. Both will require sustained and coordinated funding. Certain donors view peacebuilding as safer and less controversial than transitional justice initiatives and are therefore less willing to support the latter. This is a counterproductive approach because transitional justice efforts tend to reinforce post-conflict peacebuilding.
- Approaches to both transitional justice and post-conflict peacebuilding should be as holistic and integrated as possible. An overemphasis on, or neglect of, any one aspect of either strategy will render the overall effort less effective.
- Transitional justice mechanisms should only be incorporated into peace agreements if they embody a genuine desire to deal with the past as opposed to a cosmetic effort to avoid accountability. Peace agreements that contain bona fide commitments to deal with the past should strike the right balance between signalling this commitment in the text of the agreement and not overprescribing details that should emerge from a subsequent process of national consultation.

Notes

- 1 This definition of transitional justice is largely derived from the articulation of a state's legal obligations following gross violations of human rights by the Inter-American Court of Human Rights in the *Velázquez Rodríguez Case*, Inter-American Court Of Human Rights (Series C) (1988). It has largely been endorsed by the Report of the Secretary General on the rule of law and transitional justice in conflict and post-conflict societies (3 August 2004).
- 2 See, for instance, Roht-Arriaza, N. (ed.), *Impunity and Human Rights in International Law and Practice*. (Oxford University Press: Oxford, 1995).
- 3 The International Criminal Tribunal for the Former-Yugoslavia has a staff of over 1,100 persons and has spent more than \$500 million since its establishment in 1991. Since that date it has secured less than 20 final convictions. The International Criminal Tribunal for Rwanda has been in operation for approximately 7 years, has a budget of about \$100 million per annum and has secured less than 10 final convictions. It is unlikely that the Sierra Leone Special Court will be able to convict more than 30 people in its first three years of operations. The Serious Crimes Panels in East Timor have to date convicted 32 individuals (before appeals) and it is not likely that it will be able to more than double that

number during its remaining period of operations. See van Zyl, P., 'Unfinished business: South Africa's Truth and Reconciliation Commission', Bassiouni, C. (ed.), *Post-Conflict Justice* (2004).

- 4 See, Dieng, A., 'International criminal justice: from paper to practice - A contribution from the International Criminal Tribunal for Rwanda to the establishment of the International Criminal Court', *Fordham International Law Journal* vol. 25, no. 3 (March 2002), p. 688-707; Hulthuis, H., 'Operational Aspects of Setting Up the International Criminal Court: Building on the Experience of the International Criminal Tribunal for the Former Yugoslavia', *Fordham International Law Journal* vol. 25, no. 3 (March 2002), pp. 708-716.
- 5 CONADEP (National Commission on the Disappearance of Persons), *Nunca Más: Report of the Argentine National Commission on the Disappeared* (Farrar Straus & Giroux: New York, 1986); Report of the Chilean National Commission on Truth and Reconciliation, translated by Berryman, P.E. (University of Notre Dame Press: Notre Dame, 1993).
- 6 See Gibney, M., 'When Sorry Isn't Enough: The Controversy Over Apologies and Reparations for Human Injustice', *Human Rights Quarterly* (2001), p. 1.
- 7 See Pasqualucci, J.M., 'Victim Reparations in the Inter-American Human Rights System: A Critical Assessment of Current Practice and Procedure', *Michigan Journal of International Law* (Fall 1996), pp. 1-58; Roth-Arriaza, N., 'Reparations Decisions and Dilemmas', *Hastings International and Comparative Law Review* vol. 27, no. 2 (Winter 2004), pp. 157-219; , Roth-Arriaza, N., 'Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic', *Human Rights Quarterly* vol. 27, no. 2 (May 2005), pp. 392-435; Mazrui, A.A., 'The Truth Between Reparation And Reconciliation: The Pretoria-Nairobi Axis', *Buffalo Human Rights Law Review* vol. 10 (2004), pp. 3-14; Magarrell, L., 'Reparations for Massive or Widespread Human Rights Violations: Sorting Out Claims for Reparations and the Struggle for Social Justice', *The Windsor Yearbook of Access to Justice* vol. 22 (2003), pp. 85-98.
- 8 Aolain and Campell speak of the need for such institutional change, 'In the post-transition context, human rights violations that were previously denied can now be recognized (a process that can be encouraged if formerly violent nonstate actors acknowledge their culpability). This move can be expressed as an "acknowledgment v. denial" antinomy. Acknowledgment of such failings paves the way for significant or "transformative" institutional change'. Aolain, F.N., Campbell, C., 'The Paradox of Transition in Conflicted Democracies', *Human Rights Quarterly* vol. 27, no. 1 (February 2005), pp. 172-213.
- 9 See Szczerbiak, A., 'Dealing with the Communist Past or the Politics of the Present? Lustration in Post-Communist Poland', *Europe-Asia Studies* vol. 54, no. 4 (June 2002), pp. 553-572; Flournoy, M.A., 'Dealing with Demons: Justice and Reconciliation', *The Washington Quarterly* vol. 25, no. 4 (Autumn 2002), pp. 111-123. For examples of vetting see, Kritz, N.J., 'Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights', *Law and Contemporary Problems* vol. 59, no. 4 (Autumn, 1996), p. 139.
- 10 See Boraine, A., *A Country Unmasked* (2000), pp. 340-378; Feher, M., 'Terms of Reconciliation', Hesse, C., Post, R. (eds.), *Human Rights in Political Transitions: Gettysburg to Bosnia* (1999), pp. 325-288; Huyse, L., *Reconciliation After Violent Conflict: A Handbook* (International Institute for Democracy and Electoral Assistance,

- 2003), pp. 10-33; Huysse, L., 'Justice after Transition: On the Choices Successor Elites Make in Dealing with the Past', *Law & Social Inquiry* no. 20 (1995), pp. 51-78.
- 11 Afghan Independent Human Rights Commission, 'A Call for Justice: A National Consultation on Past Human Rights Violations in Afghanistan' (2005), URL <www.aihrc.org.af>.
 - 12 Bigombe, B., Collier, P., Sambanis, N., 'Policies for Building Post-Conflict Peace', *Journal of African Economies* vol. 9, no. 3, p. 336.
 - 13 See Stahn, C., 'Accommodating Individual Criminal Responsibility and National Reconciliation: The UN Truth and Commission for East Timor', *American Journal of International Law* (2001), pp. 952-966.
 - 14 For an interesting discussion of intercommunal consensus and interethnic relations in the reconstruction of democracies see: Hislope, R., 'Ethnic Conflict and the "Generosity Moment"', *Journal of Democracy* (1998), pp. 140-53. See for instance Horowitz, D.L., *Ethnic Groups in Conflict* (University of California Press: 1985). See also Price, R., 'Race and Reconciliation in the New South Africa', *Politics and Society* (1997), pp. 149-178.
 - 15 See for instance Vale, P., *Security and Politics in South Africa. The Regional Dimension* (Lynne Rienner: Boulder, 2002). See also Jackson, T., Kotze, E., 'Management and Change in the South African National Defence Force: A Cross-Cultural Study', *Administration and Society* (2005), pp. 168-198.
 - 16 See for instance Honna, J., *Military Politics and Democratization in Indonesia* (Routledge: 2003); Chandra, S., Kammen, D., 'Generating Reforms and Reforming Generations Military Politics in Indonesia's Democratic Transition and Consolidation', *World Politics* (2002), pp. 96-136.
 - 17 See Lane, C., 'Cop Land [Haitian Police Remain Vulnerable to Influence of Corrupt Leaders]', *The New Republic* (1997).
 - 18 See Ahmed, S., 'No Size Fits All: Lessons in Making Peace and Rebuilding States', *Foreign Affairs* (2005), pp. 162-169; Galleguillos, N., 'Re-establishing Civilian Supremacy Over Police Institutions: An Analysis of Recent Attempted Reforms of the Security Sector in Chile', *Journal of Third World Studies* (2004), pp. 57-77.
 - 19 Young, G.K., 'Amnesty and Accountability', *U.C. Davis Law Review* (January, 2002), pp. 427-482.
 - 20 See Smith, C., *op. cit.*; Burgess, P., 'Justice and Reconciliation in East Timor. The Relationship between the Commission for Reception, Truth and Reconciliation and the Courts', *Criminal Law Forum* vol. 15, no. 1/2 (2004), pp. 135-58.
 - 21 For an account of the preparation and structure of domestic prosecutions in Rwanda see Sennett, P.H. et al, 'Working with Rwanda Toward the Domestic Prosecution of Genocide Crimes', *St. John's Journal of Legal Commentary* vol. 12, no. 2 (Spring 1997), pp. 425-447.
 - 22 See Schabas, W.A., 'The Rwanda Case: Sometimes It's Impossible', Bassinouni, M. (ed.), *Post Conflict Justice* (2002), pp. 499-522.
 - 23 As mentioned earlier, the relationship between the Truth Commission and the Special Court in Sierra Leone present an interesting case study on the potential friction between a truth commission and other responses to past atrocities. For an interesting discussion on this topic see, Schabas, W.A., 'Amnesty, the Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone', *U.C. Davis Journal of International Law & Policy* vol. 11, no. 1 (Fall 2004), pp. 145-69; Schabas, W.A., 'A Synergistic

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Chapter 11

Designing Effective Measures against Trafficking in Human Beings

Victor-Yves Ghebali

Introduction

Within the range of security governance concerns, the worldwide scourge of trafficking in human beings (THB) deserves priority attention. First, it illustrates an outstanding category of human rights violations: involving the exploitation of persons as commodities for sexual and/or labour purposes, it amounts to a contemporary form of slavery that article 7(c) of the Rome Statute of the International Criminal Court refers to, under the heading of ‘enslavement’, as a special sub-category of crimes against humanity. Second, being undertaken by specialised groups or networks enmeshed in other criminal trafficking (drugs, weapons, human organs, etc.) that also could occasionally be connected with transnational terrorism, THB poses direct challenges to security sector institutions and, consequently, government authority. The development of widespread public corruption (including the judiciary and blackmailed politicians) combined with the negative effect of money laundering undermines transition processes, from authoritarian rule to democracy, and from centralised to market economy. Third, THB raises undue obstacles to the stabilisation of post-conflict societies that must be addressed through peacebuilding operations. Indeed, post-conflict countries are vulnerable – as a source for victims and traffickers and as transit countries. It is not uncommon that post-war government and security sector officials participate in THB, and the climate of impunity enables this trade, run by organised crime, which can flourish in a post-conflict situation.

In contrast with terrorism or questions relating to national minorities, THB is not elusive at a conceptual level. It has found an accepted international law definition through the United Nations Protocol to Prevent,

Suppress and Punish Trafficking in Persons (2000) – an instrument supplementing (along with two others Protocols) the Palermo Convention against Transnational Organised Crime.¹ The definition was not easily reached. Some countries, where prostitution is legal, supported during the negotiations by a handful of NGOs viewing prostitution as a business activity, tried to limit the definition of THB to coerced prostitution, excluding ‘voluntary prostitution’. The attempt failed. Art. 3 (a) of the Protocol defines THB as involving ‘at a minimum the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’ – a wording encompassing all categories of victims, whether female or male, adult or child. The definition also targets the complete chain of participants in THB (from recruiters to transporters and exploiters) since it clearly refers to ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position to vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’. Finally, the text specifies that any apparent consent from victims to exploitation is vitiated by the use of deception and/or coercion and, thus, has to be considered as ‘irrelevant’.²

In addition to the UN Protocol, ‘soft’ norms have been developed through the UN High Commissioner on Human Rights in 2002 (Recommended Principles and Guidelines on Human Rights and Human Trafficking) and UNICEF in 2003 (Guidelines on the Protection of Child Victims of Trafficking in South Eastern Europe).

THB plagues all regions of the world. At the global level, some 700,000 people – of whom 80% are women – are every year subject to transnational THB alone, not counting an unknown but considerable number of internally trafficked persons.³ Both trends are burgeoning in the Euro-Atlantic area, in particular South Eastern Europe (SEE) which to a greater or lesser extent is still an area of post-conflict rehabilitation.⁴ This chapter outlines the parameters of THB with a particular emphasis on SEE, describes the contribution of institutional actors to a regional strategy and discusses the obstacles hampering the effectiveness of anti-THB policies developed at the national level. Despite its focus on THB in SEE, the lessons learned and policy recommendations which come from this analysis can be more generally applicable, particularly to cases of post-conflict peacebuilding.

Trafficking in Human Beings in a Post-Conflict Setting

SEE serves as a transit zone for THB from some parts of the former Soviet Union (especially Moldova and Ukraine) to Western Europe. At the same time, much trafficking emanates from and takes place within the region. Under the combined effects of the two trends, SEE appears as a sub-regional 'black hole' within Europe. Three main reasons account for that dubious privilege. First, in SEE, women are perceived through the lens of a deep-rooted cultural depreciation and are currently treated as a male's property, servants or even commodities. Second, as elsewhere in Europe, the perverse effects of the transition towards market economy (unemployment, impoverishment, social exclusion, etc.) has especially victimised women and, therefore, increased their socio-economic vulnerability to THB. Third, the breakdown of law and order accompanying the disintegration of Yugoslavia (1992-1995) allowed organised criminal networks engaged in all kinds of trafficking to proliferate and to flourish largely unchecked despite the end of armed hostilities in the region.

Noticeably, most of the political entities of SEE are in transition from war (or insurgency) to peace. Bosnia and Herzegovina, Croatia and the territory of Kosovo represent clear cases of post-conflict societies. The same label can be applied, *mutatis mutandis*, to Albania and Macedonia where post-conflict peacebuilding type activities are still taking place. After rescuing, in coordination with other international institutions, the Albanian State (which collapsed following a general uprising in 1997), the OSCE established a mission in Tirana tasked with a long-term democratic stabilisation programme. In Macedonia, an OSCE Spillover Mission contributes to the implementation of the Ohrid Agreement which put an end to the 2001 ethnic Albanian-led armed insurgency and committed the government to build a multiethnic society. Although representing a qualitatively different case, Moldova cannot be excluded from the picture: since the bloody secession of Transdniestria (1992) and the crystallisation of a so-called 'frozen conflict', it does present some features of a post-conflict country. While not representing a direct causal factor, the deployment of international civilian and/or military operations (by the UN, the OSCE, NATO and the European Union) has also contributed to some extent to THB in all those countries.

Systematic international reporting on THB in SEE began only in 2000.⁵ Unfortunately, whether issued by states, intergovernmental institutions or NGOs, the data on THB from, through, to and within the region remain approximate, fragmented and barely comparable. Available

data concerns identified, assisted female victims of sexual exploitation, which means a minimum number of persons belonging to just one category of victims. Scant information exists on children (trafficked from abusive or dysfunctional families for begging, sexual exploitation, removal of organs for transplants, etc.) or on male adults (exploited for labour purposes) and rarely identified as victims of trafficking.⁶ Almost no information exists about traffickers, who generally operate in small rings with loose structures. Adding to the confusion, data on illegal migration, transborder prostitution etc., are not always distinct from those on THB.

What is clear is that, at varying degrees, almost all areas of the region serve as a recruitment source, transit route and final destination for THB – with Albania and Serbia representing the most egregious cases. The largest percentage of women and girls trafficked for purposes of sexual exploitation are usually recruited in Albania, Bulgaria, Romania and Moldova, and – outside the region – Ukraine. Serbia, Montenegro⁷ and Albania are major countries of destination for the same purposes. Bosnia and Herzegovina, Macedonia, Kosovo and Serbia are the primary places of both transit and destination. Internal trafficking need also be accounted for. To a lesser but growing extent, women are victimised within their own localities, especially in Albania (where men are also exploited for labour), Bosnia and Herzegovina, Macedonia, Serbia, Montenegro and Kosovo.

Initially approached from the exclusive lens of sexual exploitation of women, THB in SEE is now considered in broader terms, that is to say as also concerning girls under 18 years and male adults. However, one important issue remains controversial: the growth of trafficking (at both transnational and internal level) which affects or directly involves persons belonging to the Roma ethnic communities. The problem has to do with a reported lack of interest from the Roma communities to face the issue within their own structures or to address it with international actors. Two contradictory reasons are suggested to explain that reluctance: ‘some argue that it is part of traditional Roma cultural practices, such as early and arranged marriages, unequal position of the family members, using child labour – especially for begging – other, that it is a consequence of belonging to the most highly discriminated and poorest group in the society where trafficking is used a survival strategy’.⁸

Addressing Trafficking in Human Beings: the Regional Level

The countries of the region only began to react in a structured and coordinated way from September 2000, with the creation of a Special Task Force on THB (SPTF) in the framework of the Stability Pact for South Eastern Europe – a process launched in 1999 by the European Union in the aftermath of NATO’s military intervention in Kosovo.⁹ The SPTF provided a framework for periodic regional meetings (including at the ministerial level), the exchange of information, and the coordination of domestic policies. It developed a Regional Plan of Action which offered a template for individual national policies. It issued the Palermo Anti-Trafficking Declaration of South Eastern Europe (December 2000) whose provisions brought some added value to the UN Protocol on Trafficking as concerns the question of socio-economic reintegration of victims.¹⁰ Most importantly (and in addition to awareness-raising at the political level), it identified six priority areas for action, each of which was addressed by institutional actors serving, alone or in tandem, as focal points and lead institutions: prevention, awareness-raising, victim assistance and protection, return and reintegration, legislative reform as well as law enforcement, training and exchange of information (see Table 11.1).

Table 11.1: Priority Areas of Action and Institutional Actors

Priority area	Institutional actors
Prevention	United Nations High Commissioner on Human Rights (UNHCHR) and International Labour Organisation (ILO)
Awareness-raising	United Nations Children’s Fund (UNICEF) and Save the Children
Victim assistance and protection	International Catholic Migration Committee
Return and reintegration	International Organisation for Migration (IOM)
Legislative reform	OSCE’s Office of Democratic Institutions and Human Rights (ODIHR) and Council of Europe
Law enforcement cooperation, training and exchange of information	Southern European Co-operative Initiative (SECI) and International Centre for Migration Policy Development (ICMPD)

From the outset, the anti-THB activities developed within the SPTF were chaired by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and when the SPTF Secretariat was discontinued (in October 2004), its functions were handed over to the OSCE. Indeed, when launching the Stability Pact process, the European Union requested the OSCE to place it under its proper 'auspices', because the Western Balkans countries were OSCE member States and the organisation has long-term field missions operating in each of these countries. In other words, the OSCE offered a more appropriate venue than the European Union for monitoring the Pact's implementation. Another reason was linked to the pioneering contribution of the OSCE to the fight against THB. In cooperation with the United Nations Children's Fund (UNICEF) and the United Nations Office for the High Commissioner for Refugees (UNOHCHR), the OSCE drafts annual reports on the situation of THB in SEE. Within the Eurasian region, the OSCE recognises that THB affects 'all of its participating States' – whether countries of origin, transit and destination – and represents a threat to security 'in [its own] area and beyond'.¹¹ Initially, it approached the issue from a narrow gender perspective, in connection with the protection of women against economic discrimination and all forms of violence.¹² However, since 2000, through several successive Ministerial Council's decisions,¹³ cutting across the three dimensions of its comprehensive security programme, the OSCE arrived at tackling THB as a human security problem. Thus, the Anti-Terrorism Unit and the Strategic Police Matters Unit address the issue in connection with the detection of false passports and through police capacity building and training for law enforcement officials, while the Office of the Coordinator for Economic and Environmental Activities is concerned by the socio-economic roots of THB. A key role is assumed by ODIHR, which hosts Anti-Trafficking and Gender units and whose democratisation programmes currently include concrete anti-THB projects.¹⁴ Finally, whether established for the management of post-conflict situations or for assistance to democratisation, long-term field missions also contribute to the fight against THB through monitoring, practical assistance to governments and support to NGOs for the resolution of individual cases of trafficking.¹⁵

To date, OSCE's specific contribution has taken three main forms. First, the OSCE adopted in 1999 a comprehensive Action Plan to Combat Trafficking in Human Beings that it updated in 2003 and supplemented with an addendum concerning the special needs of children in 2004.¹⁶ Second, in order to raise awareness among its personnel and to ensure that they do not engage in or facilitate any THB activities, it devised stringent Anti-THB

Guidelines for Staff (2001).¹⁷ Third, in 2003, the OSCE set up a Special Mechanism for the Combating of Trafficking in Human Beings consisting of a Special Representative supported by a dedicated structure (the Anti-Trafficking Assistance Unit) of the Vienna Secretariat. The mechanism's aims are to assist governments in the implementation of their international and regional commitments (by means of legislative and varied forms of technical assistance), to coordinate OSCE efforts across the activities of its three dimensions and to cooperate with international agencies and NGOs involved in anti-THB.¹⁸ Furthermore, it should be noted that an OSCE Border Security and Management Concept is under elaboration; scheduled for completion by the end of 2005, its objectives include the prevention and repression of cross-border movements related to THB along with terrorism, organised crime, illegal migration, corruption, smuggling, and trafficking in weapons, drugs and human beings.¹⁹

Alongside the OSCE, the major European security institutions have also been involved in the fight against THB. Through its Committee of Ministers and Parliamentary Assembly, the Council of Europe began to display interest in the matter as early as 1997²⁰ and, currently, is engaged in the drafting of a regional convention expected to develop legal norms for trafficked victims as well as to establish a monitoring mechanism. The European Union's first efforts to develop a comprehensive approach in 1996 came up against the divergence of national legislations. Ultimately, the European Commission issued 'framework decisions' dealing with THB (2002) and the sexual exploitation of children (2004).²¹ NATO joined the movement only in 2004 with the adoption of specific Guidelines for its staff and its military and civilian personnel deployed in the field, as well as for the development of training and educational anti-THB programmes.²² The Alliance's policy stemmed from the need to ensure that the credibility of NATO-led operations in host countries would not be undermined by the possible involvement of peacekeepers in THB and also out of the necessity of coping with a major factor of destabilisation in the fragile States of SEE – through assistance to local law enforcement bodies (for prosecution purposes) and cooperation with civil society groups in the protection of victims. Within and outside the Stability Pact, so many organisations, regional institutions, subregional processes and international NGOs interact in the fight against THB that SEE can be credited for being the most advanced region in the world in terms of a coordinated anti-THB approach.

Addressing Trafficking in Human Beings: the National Level

All SEE countries except Moldova are now parties to the UN Protocol on Trafficking. All have adopted a national plan of action against THB aimed at the prevention of trafficking, the prosecution of traffickers and the protection of trafficked persons (see Table 11.2).

Table 11.2: Major Features of National Plans of Action Against THB

Prevention of THB	Prosecution of traffickers	Protection of and assistance to victims of THB
Measures to address the cultural stereotypes and socio-economic inequalities that render persons vulnerable to THB, as well as the direct causes of the 'demand factor'.	Criminalisation of offences committed by persons or entities, including all direct or indirect accomplices.	Deliverance of provisional identity documents and temporary residence permits.
Awareness-raising campaigns targeting potential victims and the general public, as well as training programmes for law enforcement personnel.	Special penalties for acts of active or passive corruption of public officials.	Establishment of shelters for the provision of medical, psychological, social assistance.
Control of business sectors that could engage in or contribute to THB.	Effective implementation of legal penalties by law-enforcement agencies	Establishment of national referral mechanisms, repatriation, rehabilitation and reintegration programmes
More effective management of borders.	More effective management of borders.	

Prevention of Trafficking

The basic premise of prevention is to address the cultural and socio-economic root causes of trafficking – the 'supply factor' – as well as the immediate causes which triggers the 'demand factor'. For countries of origin, this means programmes for the reduction of the socio-economic inequalities that incite persons to engage in illegal migration and/or prostitution and make them vulnerable to THB: impoverishment, social exclusion, discrimination in the marketplace, lack of educational and vocational training, insufficient development of small and medium-sized

enterprises, etc. As to countries of transit and destination, their own responsibility is to discourage the demand side for sexual exploitation and cheap unprotected labour through measures against prostitution and underground economic activities, as well as to disseminate information concerning legal channels of migration. All concerned countries (whether of origin, transit or destination) are expected to develop programmes aimed at the systematic promotion of equality between the sexes and female empowerment.

The launching of general and specific awareness-raising campaigns, preferably with local NGOs and the media, represent another crucial need. In countries of origin, information campaigns have especially to target potential victims (women, children, migrants, displaced persons, members of national minorities, etc.), reaching out to small villages and remote locations. In other countries, there is a need for training programmes (on human rights as well as on child and gender issues) for officials responsible in the areas of immigration, criminal justice, social services, consular and diplomatic services, etc. Furthermore, the control of business sectors that could engage in or contribute to THB is also necessary in all categories of countries. This concerns bureaus advocating employment abroad and also tourist, au pair, adoption or mail-order bride agencies. In any case, more effective control of borders has to be achieved, especially for preventing any means of commercial transport carriers being used for THB.

As in the case of conflict management, prevention seems to be an ideal method to tackle THB. Nevertheless, the obstacles to anti-THB preventative strategies are considerable. First of all, there is the financial cost of prevention programmes for countries of origin and the reluctance of foreign donors to assume or to share the burden. The resilience of gender-based cultural traditions and the lack of a human rights culture constitute an equally serious impediment. The fact that prostitution is a legal (or a tolerated) business activity in a number of European countries raises another type of obstacle: prostitution feeds the demand for THB and offers welcome avenues for traffickers. Even if all those obstacles were to be reduced to the minimum, a preventative policy would have little chance to succeed in the context of a poorly performing security sector, run by ill-informed, ineffective and/or corrupt law enforcement personnel, and where decisions of the judiciary are seldom abided by.

Prosecution of Traffickers

Viewed from the repressive angle, anti-THB policies concern the security sector in a direct way since they have to address issues related to border control, implementation of law enforcement decisions and moral integrity of public officials. Several obstacles block effective prosecution of offenders. The first is the size of criminal networks engaged in THB: traffickers do not usually form large structured groups, but very small and loose ones operating with constantly changing methods. For that reason, THB activities reap high profits and, in many countries, entail much lower risks and penalties than the trafficking of drugs and weapons.²³ Indeed, fearing retaliation from traffickers, trafficked persons are generally reluctant to cooperate with the authorities of transit or destination countries hence the impunity of traffickers since the victim's testimony is often the only available evidence against them. Besides, the legalisation of prostitution makes it more complex for law enforcement authorities to properly identify and punish the traffickers. In any event, prosecution can barely be expected to be effective in countries where the security sector is dysfunctional, managed by institutions whose weakness or corruption permit traffickers to circumvent border controls and evade penalties pronounced by tribunals. The major obstacle to prosecution lies however in the obsession of transit and destination States with illegal migration, particularly in the context of the protection component of anti-THB policies.

Protection of and Assistance to Victims of Trafficking

Sadly, the human rights dimension represents the most problematic aspect of the fight against THB. From a humane perspective, countries of origin and of transit/destination are expected to protect and assist victims of THB. Their preliminary responsibility should be to deliver provisional documents clarifying the victim's identity and status (in terms of residence, housing, employment, etc.), with due account of potential dangers to the victims safety especially during pre-trial and judicial proceedings. They are also expected to create special shelters (run by governmental officials or civil society bodies) able to provide legal, medical, psychological and social assistance to all victims in full confidentiality and regardless of their willingness to cooperate with official authorities in investigations. Finally, they are supposed to establish (in coordination with civil society institutions and countries of origin) national referral mechanisms facilitating voluntary repatriation processes with due regard to the safety of victims.²⁴ As to

countries of origin, their duty is to facilitate the reintegration of the victims to domestic society and to contribute to their economic and social rehabilitation by means of dedicated procedures and mechanisms. Cooperation among all relevant actors (countries of origin, transit and destination, as well as NGOs and intergovernmental organisations) is obviously critical for the achievement of such goals. Unfortunately, the victims of trafficking do not generally display enthusiasm for either return or reintegration. On the one hand, the basic reasons that incite people to be mired in THB (lack of employment and social marginalisation) will still confront the returnees and, on the other hand, the latter will have to face social stigmatisation or even ostracisation: hence re-trafficking, a problem that reintegration programmes rarely address.²⁵

The obstacles standing in the way of protection and assistance are exactly those which have been identified for prosecution: the elusiveness of small-sized and unstructured trafficking networks, the existence of a legal prostitution business, the dysfunctions of the security sector and, above all, the obsession of states with illegal migration. Transit and destination states often consider THB as an issue of migration (and thus of national security), rather than a human rights violation deserving priority concern. Therefore, the victims of what is an abhorrent slavery-related crime are often treated as offenders guilty of illegal migration in countries of transit and destination – a fact that induces them to turn to NGOs rather than to official public assistance. As matter of fact, despite occasional overlaps, trafficking and illegal migration are distinct phenomena. The latter involves only cross-border smuggling, while the former may also take place within a given country: THB can be both internal and transnational. Furthermore, and contrary to most cases of illegal migration, THB is fraught with coercion and violence.

A telling illustration of the concern of States to protect themselves from illegal migration rather than caring for the victim's rights can be found in the ongoing attempts of the Council of Europe to frame a Convention on action against THB. When in 2005 the Committee of Ministers finally submitted a draft text to the Parliamentary Assembly (which has been requesting such an instrument since 1997), the MPs realised that the core element expected to constitute the added value of a regional instrument – the protection of victims' rights – was absent.²⁶ Therefore, they tabled amendments committing governments to exercise jurisdiction over anyone placed under their authority or effective control and to refrain from detaining, charging or prosecuting victims on the grounds of an illegal entry or for their involvement in any unlawful activities linked to their status as

victims. Other amendments also addressed, *inter alia*, the right of victims to appeal to an independent body against a government's decision not to identify them as such, the granting to all victims of a recovery and reflection period of a least 30 days, as well as access to necessary medical care and not only emergency treatment. However, within the Council of Europe's Ad Hoc Committee on Action against THB, the European Commission opposed most of those amendments on behalf of the Member States of the European Union. It also objected to the scrutiny of the Convention regime through a Council of Europe monitoring mechanism for matters falling within the competence of the European Union. It even went as far as proposing a 'disconnection clause' under which the instrument would not be applicable by the European Union and its member States for issues on which Community or EU legislation was lacking.²⁷

Conclusion and Policy Recommendations

Clearly, anti-THB policies in Europe remain underdeveloped at all three areas discussed above: prevention of trafficking, prosecution of traffickers and protection of trafficked persons. More often than not the major obstacles to anti-THB policies are the same in all three areas. This holds particularly true for repression and protection (see Table 11.3).

Table 11.3: Major Obstacles to Anti-THB Policies

Prevention	Repression	Protection of and assistance to victims
Financial cost of preventative programmes and lack of foreign donors interest to contribute.	Obsession of transit and destination States with illegal migration.	Obsession of transit and destination States with illegal migration.
Resilience of gender-based cultural traditions and lack of a human rights culture.	Small size of unstructured trafficking networks.	Small size of unstructured trafficking networks.
Legalised prostitution.	Legalised prostitution.	Legalised prostitution.
Dysfunction of the security sector (ineffective law enforcement institutions, weak border control, corruption, etc.).	Dysfunction of the security sector (ineffective law enforcement institutions, corruption, weak border control, etc.).	Dysfunction of the security sector (ineffective law enforcement institutions, corruption, weak border control, etc.).

The latest reports on THB suggest that two new trends are now developing in SEE. First, an emergency situation has ceased to exist there, a fact which hints to a global improvement of the situation prevailing in the region.²⁸ Second, THB has become less visible and, at the same time, more sophisticated: in reaction to preventive and/or repressive measures taken at national level, traffickers are quickly and constantly adapting their *modus operandi* through full exploitation of the Internet, the transfer of trafficked women from brothels or bars to anonymous apartments, the recruitment of female pimps and the use of commercial flights instead of overland travel.²⁹ Given the increase of internal trafficking of women and the growing number of trafficked children, it would be wrong to assume that the scourge is on the decline. THB continues to represent a serious threat to the security of individuals and the stability of states in Europe. A main reason for the lack of significant progress has to be attributed to three 'nexus gaps' which generally characterise the anti-THB programmes of action adopted by concerned countries, whether of origin, transit or destination.

(1) *Nexus between the human rights and national security components of anti-THB policies.* The fight against THB is not a matter of human rights versus law enforcement: it concerns State security *through* the assistance to and protection of victims. However, at domestic level, the issue of trafficking continues to be tackled most often by means of measures aimed at the repression of illegal migration and organised crime. Significantly, the Stabilisation and Association Agreements concluded by the European Union with some States of the region (Macedonia and Croatia) refer to THB from the same narrow angle.³⁰ According to the latest joint Report by UNICEF, UNOHCHR, and the OSCE, the neglect of the nexus between human rights and internal state security is not due to insufficient understanding of what is at stake, but rather with 'the paucity of human rights-based strategies and their lack of implementation within a democratisation framework'.³¹ The absence of clear human rights standards for the treatment of victims currently permit national authorities to subject persons to criminal proceedings just because they have been victims of trafficking. Legal prostitution aggravates further the problem. THB and prostitution, which both result in the degradation and abuse of women, are not only morally-correlated phenomena; at a practical level, they intersect: THB cannot flourish without legal prostitution markets which nurture the demand for THB, create convenient legal façades for trafficking and complicate the task of law enforcement authorities to identify and, as a last resort, indict the traffickers. As long as an artificial dichotomy between 'coerced' and

'voluntary' prostitution persists, the fight against THB will have little chance to become fully effective. The need for a European instrument going beyond the minimum standards provided for by universal texts has been met with the adoption, on 3 May 2005, of the Council of Europe Convention on Action against Trafficking in Human Beings. The new instrument is wider in scope than the United Nations document since it concerns not only transnational but also national trafficking (whether or not the latter is conducted by organised criminal groups), covers recruitment by means of the Internet and commits State Parties to adopt measures for discouraging the "demand factor" as concerns sexual exploitation, forced labour and organ removal. The main added value of the Convention lies on the one hand in a human rights perspective and focus on victim protection and assistance through a comprehensive legal framework: Chapter III contains provisions applicable to all kinds of victims, including those with no legal residence permit or even persons not yet been identified as formal victims. On the other hand, Chapter VII establishes a monitoring system involving action from an independent technical body, the Group of Experts against trafficking in human beings (GRETA) and a political dialogue body, the Committee of the Parties.³²

(2) *Nexus between anti-THB and socio-economic policies.* All expert reports routinely recommend long-term prevention programmes to address such root causes of THB as poverty, unemployment, anti-gender discrimination, domestic violence against women and child abuse in countries of origin, as well as restrictive migration and labour policies in countries of destination. Preventative measures envisaged in the action plans of countries of origin have not been, however, consistently implemented so far and, furthermore, UNDP's programmes in SEE do not yet include anti-THB components.³³ As to the countries of destination, they rule out the idea of loosening existing immigration regulations or offering alternative options to migration, such as legal employment quotas in specific market sectors. This appears all the more regrettable given that the tightening of immigration policies within the European Union is certainly not the least significant among the several socio-economic factors which encourage the development of trafficking channels. Restrictive immigration policies incite potential migrants to resort to illegal channels and, thus, fall into the trap of THB. As long as socio-economic and migration agendas do not integrate THB, the fight against that scourge will remain superficial with, at best, limited achievements of a quick-fix type.

(3) *Nexus between anti-THB policies and security sector governance.* THB directly concerns security sector governance. It feeds organised crime, cripples the performance of law enforcement bodies, challenges the authority of the State and erodes the rule of law through the corruption of officials, in particular those of the police and the judiciary. In SEE, where the judiciary appears to be the weakest of all security sector institutions, the limited effectiveness of anti-THB policies has direct implications for regional stability and political integration in the European Union. The resilience of THB hampers the overall progress of SSR in SEE. Conversely, security sector dysfunctions create huge obstacles to the prevention of THB, the prosecution of traffickers and the protection of victims in that region. There is a need to incorporate more systematically anti-THB projects in the SSR programmes implemented in the countries of SEE. For that purpose, the following concrete policy recommendations are proposed:

- First, more needs to be done in mainstreaming training programmes for the police, immigration officers, border guards, judges and other law enforcement personnel. Such training should be sustained, go much beyond simple awareness-raising - leading to in-depth understanding of the abstract and practical tenets of human rights in general and of THB in particular - and include regular follow-up assessments of progress achieved. A genuine knowledge of the nature of THB would allow law enforcement institutions to adopt and to implement consistent standard protocols for the systematic identification of both the traffickers and the victims – or, more simply put, to become more effective and less prejudiced at the same time;
- Second, given that anti-THB is closely linked to the global fight against organised crime, an integrated approach should be promoted. The establishment of national and regional mechanisms providing for a cross-sector cooperation and coordination between police forces, border guards and the judicial system would certainly contribute to increased effectiveness;
- Third, anti-THB deserves to be undertaken as consistently as the fight against terrorism, trafficking in arms or drugs and other forms of organised crime. Projects conducted in the framework of SSR should be targeted at trafficking networks and not just cases. Furthermore, a NATO-sponsored regional structure dedicated to criminal intelligence would be welcome, as much as a body performing early warning functions as regards THB.

The combating of THB necessitates strong political will as much as the appropriate use of significant material resources by a functional security sector. Being a typical security governance problem in post-conflict rehabilitation, THB cannot be approached in a piecemeal fashion. At both national and intergovernmental level, only an integrated and multidisciplinary response has the chance to effectively reduce (if not eradicate) a scourge reflecting the 'ugly face of Europe',³⁴ and certainly, one of the darkest sides of human nature.

Notes

- 1 The Protocol to Prevent, Suppress and Punish Trafficking in Persons entered into force on 25 December 2003 and presently (as of April 2005) links 80 Parties. The Convention against Transnational Organised Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, became effective respectively on 29 September 2003 and 20 January 2004. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition has not yet obtained a sufficient number of ratifications to permit entry into force.
- 2 For more details see Raymond, J. G., 'The New UN Trafficking Protocol', *Women's Studies International Forum* vol. 25, no. 5 (2002), pp. 491-502 and Jordan, A. D., 'The Annotated Guide to Complete UN Trafficking Protocol', URL <www.hrlawgroup.org/initiatives/trafficking>.
- 3 According to UN estimates, there are about 4 million people annually trafficked worldwide. See Hughes, D. M., 'The *Natasha* Trade – The Transnational Shadow Market of Trafficking in Women', *Journal of International Affairs* vol. 53, no. 2 (Spring 2000), pp. 625-626.
- 4 For the purposes of this chapter, the area encompasses the five countries of the Western Balkans (Albania and all the successors States of the former Yugoslavia except Slovenia), Bulgaria, Romania and Moldova (Moldova was granted accession to the Stability Pact on 28 June 2001 in the framework of the EU's new neighbourhood policy). It also includes the internationally-administered territory of Kosovo, which participates to the Stability Pact through the United Nations Interim Mission in Kosovo (UNMIK) in whose framework a Trafficking and Prostitution Investigation Unit exists.
- 5 Comprehensive Reports have been established by Jane Gronow for UNICEF in 2000, see URL <www.unicef.org>, and by Barbara Limanowska on behalf of UNICEF/UNOHCHR/OSCE as from 2002 at URL <www.seerights.org>. See also the 2003 Stability Pact/IOM/ICMC Report focused on victims of trafficking at URL <www.iom.int>, the 2004 Stability Pact's Task Force Report: El-Cherkeh, T. et al, *South Eastern Europe's Struggle Against Trafficking in Persons and EU-Enlargement, Migration and Trafficking in Women : The Case of South Eastern Europe*, Report 247 (Institute of International Economics: Hamburg, 2004). Data on the individual countries

of the region can also be found in the global *Trafficking in Persons Reports* annually published by the US Department of State since 2000, URL <www.state.gov>.

- 6 Limanowska, B., *Trafficking in Human Beings in Southeastern Europe. Focus on Prevention*, UNICEF, UNOHCHR and OSCE/ODIHR publication (2004), p. 65.
- 7 It is to be noted that, in international reporting, Serbia and Montenegro are treated separately due to the different dynamics of THB taking place in each of them and also because of the lack of coordination of their respective anti-THB policies.
- 8 Limanowska, B., *op. cit.*, p. 64.
- 9 The SPTF was created within the Sub-table on justice and home affairs as part of Working Table III which deals with external and internal security issues. Given the multifaceted nature of THB, it coordinated its activities with those of the Pact's Task Force on Gender and Initiative against Organised Crime.
- 10 Limanowska, *op. cit.*, pp. 11-12.
- 11 OSCE Porto Declaration on Trafficking in Human Beings (2002), para I.1.
- 12 See para 40.7 of the Moscow Document on the Human Dimension (1991) and para 24 of the Istanbul Charter for European Security (1999).
- 13 MC(8).DEC/1 of 28 November 2000 (Vienna decision), MC(9).DEC.6 of 4 December 2001 (Bucharest decision), MC(10).JOUR/2, Annex 2, of 7 December 2002 (Porto Declaration), MC.DEC/2/03 of 2 December 2003 (Maastricht decision) and MC.DEC/13/04 of 7 December 2004 (Sofia decision).
- 14 Within the SPTF, ODIHR produced *inter alia* a *Reference Guide for Anti-Trafficking Legislation Review with Particular Emphasis on South Eastern Europe* (2001).
- 15 On the contribution of the OSCE Mission to Moldova, see Kartusch, A., Thompson, K., *Trafficking in Persons, Witness Protection and the Legislative Framework of the Republic of Moldova: An Assessment*, OECD report (2003), URL <www.osce.org/documents/mm/2003/12/3191_en.pdf>.
- 16 Initial Action Plan: ODIHR.GAL/32/00 of 1 June 2000. Revised Action Plan: PC.DEC/557 of 24 July 2003 and MC.DEC/2/03 of 2 December 2003. Addendum concerning children: MC.DEC/13/04 of 7 December 2004.
- 17 PC.DEC/426 of 12 July 2001. A provision on THB was also included in the *Secretariat's Code of conduct for OSCE Mission Personnel* which is an integral part of the Staff regulations (SEC.GAL/87/01 of 19 June 2001).
- 18 For more details on OSCE's contribution to anti-THB, see Kanics, J. et al, 'Trafficking in Human Beings: A Threat Under Control?', *Helsinki Monitor* vol. 16, No. 1 (2005), pp. 53-67. In an effort to foster joint institutional strategies after the closure of the Stability Pact Task Force's Secretariat, the OSCE Special Representative created in July 2004 a special forum ('Alliance Against Trafficking in Persons') meeting annually at expert level and high-level Conference.
- 19 MC.DEC/2/04 of 7 December 2004 (Sofia Ministerial decision) and PC.DEL/134/04 of 1 March 2004 (Secretariat's paper on OSCE related-border activities).
- 20 See for instance Recommendations No R (91) 11 of 9 September 1991, No R (97) 13 of 10 September 1997, No R (2000) 11 of 19 May 2000 and Rec (2001) 11 of 19 September 2001 by the Committee of Ministers, as well as Recommendations 1325 (1997), 1545 (2002) and 1611 (2003) of the Parliamentary Assembly.

- 21 See OJ L 203 of 1 August 2002 (p. 1) and OJ L 13 of 20 January 2004 (p. 44). See also the 2004 Report of the Experts Group to the European Commission on trafficking in human beings, URL <http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum.htm_forum#2610-04>.
- 22 The texts of the three policy papers are available on URLs <www.nato.int/docu/comm/2004/06-istanbul/docu-traffic-app1.htm>, <www.nato.int/docu/comm/2004/06-istanbul/docu-traffic-app2.htm>, and <www.nato.int/docu/comm/2004/06-istanbul/docu-traffic-app3.htm>.
- 23 In 2002, the UN estimated that trafficking was producing an annual 5-7 billion \$ revenues. Raymond, J. G., 'The New UN Trafficking Protocol', *Women's Studies International Forum* vol. 25, no. 5 (2002), p. 492. Present NATO estimations are much higher: around \$ 12 billion.
- 24 See *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons. A Practical Handbook* (OSCE/ODIHR: Warsaw, 2004).
- 25 Limanowska, B., *op. cit.*, pp. 89-90.
- 26 For the text of the draft Convention, see Parliamentary Assembly of the Council of Europe doc. 10389 (4 January 2005).
- 27 For more details, see Parliamentary Assembly of the Council of Europe doc. 10397 (17 January 2005) and doc. 10474 (15 March 2005) ['Vermot-Mangold Reports'] as well as doc. 10433 (25 January 2005) ['McNamara Report']. See also Recommendation 1695 (18 March 2005).
- 28 Limanowska, B., *op. cit.*, pp. 93.
- 29 *EU-Enlargement, Migration and Trafficking in Women*, *op. cit.*, pp. 26 and 96.
- 30 Limanowska, B., *op. cit.*, p. 94.
- 31 *Ibidem*, p. 85.
- 32 As requested by the European Union, the Convention included a disconnection clause stipulating that "without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties, Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case" (§ 3 of art. 40). In a special declaration, the European Union explained that such a clause was meant "to take account of the institutional structure of the Union when acceding to international conventions, in particular in case of transfer of sovereign powers from the Member States to the Community" and that it was necessary "for those parts of the convention which fall within the competence of the Community/Union, in order to indicate that European Union Member States cannot invoke and apply the rights and obligations deriving from the Convention directly among themselves (or between themselves and the European Community/Union). For the text of the Declaration, see Doc. 10584 of the Parliamentary Assembly of the Council of Europe (17 June 2005). For the text of the Convention (with explanatory commentary) see www.coe.int/trafficking
- 33 Limanowska, B., *op. cit.*, p. 86. While a gender impact assessment is current in World Bank programmes, it does not refer to THB (*ibidem*, p. 94).
- 34 Konrad, H., 'Trafficking in Human Beings: The Ugly Face of Europe', *Helsinki Monitor* vol. 13, no. 3 (2002), pp. 260-271.

PART V
CONCLUSION

Chapter 12

Shaping the Security Governance Agenda in Post-Conflict Peacebuilding

Alan Bryden

Introduction

The consequences of not learning from the international community's experience in post-conflict peacebuilding are well illustrated by the number of states where armed conflict has reignited despite such intervention. More positively, set beside the major challenges of building sustainable peace in states emerging from conflict, there are significant opportunities – which could be more effectively exploited – as a result of the major mobilisation of international commitment in post-conflict peacebuilding. This volume has considered, from the perspective of security governance, the range of issues and actors that shape the post-conflict peacebuilding agenda. It has identified key challenges, highlighted good (and bad) practice and has attempted to clarify linkages among elements of the post-conflict peacebuilding agenda. The key – mainly UN – documents included in the annex to this volume are evidence of a growing international consensus on the need for better coordination, cooperation and integration of efforts by a wide variety of actors. Indeed, the creation of a UN Peacebuilding Commission, supported by a Peacebuilding Support Office and Peacebuilding Fund, demonstrate the commitment of the international community to tackle this issue jointly – although there are a number of questions concerning the operational effectiveness of this new structure.

Effective peacebuilding must be underpinned by long-term commitments by external actors that are grounded in legitimacy and reflect the realities of specific post-conflict contexts. The contributions to this volume indicate that there is a need for more effective coordination and cooperation among the various elements of the international community's response at different levels of policy and programming. Applying a security

governance approach, it is argued, provides a useful means to deconstruct the complex, multi-layered architecture of actors and mechanisms interacting in related, yet disconnected, security and development fields. Intuitively, mechanisms addressing all the issues discussed in this volume will contribute to achieving overall goals of peace and stability. However, only by understanding these linkages in conceptual and practical terms will it be possible to integrate efforts more systematically and foster synergies among various stakeholders at the strategic level and in the field.

This concluding chapter begins by highlighting some of the key points drawn from the contributions to this volume. It then assesses some of the cross-cutting issues that link them and the lessons that can be derived from this analysis. Finally – an important point that emerges from this volume – it is suggested that security sector reform (SSR) within a framework of democratic security sector governance offers opportunities to integrate other security-related aspects of post-conflict peacebuilding, which could make an important contribution to broader planning and priority-setting.

Key Points

In analysing the emerging security governance agenda in post-conflict peacebuilding, a number of issues have been discussed in this volume under three overarching themes – security sector reform and governance; disarmament, demobilisation and reintegration; and rule of law and transitional justice.

Security Sector Reform and Governance

Bryden and Hänggi (Chapter 2) note that SSR is a new and still contested concept, but one that has increasing support among a range of stakeholders involved in post-conflict peacebuilding. A key element of the SSR concept is that it goes beyond state-centric approaches, particularly important given that post-conflict contexts are defined by weak or non-existent state structures. The governance dimension is central to the SSR concept – supporting the ‘effectiveness’ of security sector actors without reference to the governance thereof does not constitute SSR. From a governance perspective, the concept addresses key post-conflict actors such as peacekeeping forces and transitional administrations, non-statutory civil society groups and armed non-state actors. This is important, as Holmqvist (Chapter 3) points out, because in practice armed non-state actors tend to be

ignored or underemphasised in peacebuilding efforts on the ground as well as in the normative and legal frameworks that should underpin peacebuilding efforts. Similarly, Caparini (Chapter 4) notes that the role of civil society in post-conflict peacebuilding has been emphasised more in policy documents than in actual practice.

The privatisation and internationalisation of the provision of post-conflict security greatly complicates opportunities for SSR. A central challenge of security sector reconstruction lies in the fact that it is externally induced, funded and supported, creating an inherent tension between local ownership and external assistance. Linked to this is the danger of imposing external models that do not reflect local realities and needs. Also, external actors may provide security and governance while potentially ignoring the necessity of building local capacities to assume these roles. Donor support for civil society building can have similarly counterproductive outcomes, creating a dependency culture of civil society actors depending on donor support which can, in effect, sever the linkages with communities in favour of external funding, agendas and priorities. With regard to the plethora of Western NGOs as well as commercial companies that are involved in peacebuilding efforts, there is a similar danger of staff with limited appreciation of the local context perpetuating inappropriate, externally-driven approaches.

In the case of private security companies (PSCs), the absence of effective regulatory frameworks poses significant problems for establishing the legitimacy for international actions, as well as for encouraging ownership by local authorities. PSCs have been highly involved in the security sector reconstruction of a number of states, notably in the retraining of police, military and intelligence services. However, accountability deficits, a presence that may fuel grievances of locals, and approaches that replace rather than foster local capacity undermine the legitimacy of external interventions – there is obviously a need for greater regulation.¹

Disarmament, Demobilisation and Reintegration

The end of hostilities offers a time-limited opportunity to address the physical legacies of conflict. Demobilisation, disarmament and reintegration (DDR) is one logical consequence of the end of hostilities and is recognised as a core element of post-conflict peacebuilding. However, as Brzoska (Chapter 5) points out, the goals for DDR are case dependent, ranging from simple downsizing or cost-cutting to full-blown peacebuilding. It is therefore an activity that, while clear in terms of its practical steps, is less well-defined

in terms of policy. Child soldiers represent a particular subset of this issue that has specific implications for post-conflict peacebuilding, although as Singer (Chapter 6) points out, very few DDR programmes have specific elements targeting this category of former combatants.

Failure to reintegrate former combatants can be directly linked to increased criminality and a return to violence. In this regard, children have particular reintegration needs if they are to be removed from the conflict cycle and given real prospects for the future. Brzoska's (Chapter 5) observation that the reintegration dimension is the least funded element of DDR by the international community is therefore worrisome. However it is arguably the most challenging element of DDR, requiring the greatest commitment in terms of resources and effort. It is also the most obviously cross-disciplinary element of the process, linking the more immediate requirements of disarmament and demobilisation to the long-term imperatives of economic and social welfare. According to Brzoska this complexity is not reflected by commensurately diverse platforms among external actors with a stake in DDR. Ebo's (Chapter 7) example of the UN Mission in Liberia (UNMIL) providing disarmament and demobilisation support through peacekeeping funding but having to delay reintegration programmes as a result of the need to seek voluntary funding for this element of the process is telling.

The threat of landmines and the presence of small arms and light weapons (SALW) contributes to insecurity and undermines reconstruction and development efforts. They offer two related if qualitatively different challenges to post-conflict peacebuilding. Efforts to address SALW and landmines have in common the need to address their impact rather than numbers of weapons per se. However, Ebo (Chapter 7) points out that anti-SALW measures tend to focus on supply side issues, ignoring the governance deficit – which he identifies as the root cause of SALW proliferation at the national level. Similarly, Bryden (Chapter 8) characterises mine action as a governance challenge with the goal to return responsibility to legitimate and effective national actors.

Apart from the disarmament dimension of these issues, addressing SALW and landmines potentially offers significant confidence-building benefits at the national and community levels. Moreover, Bryden notes that mine action is both an early entry point for the international community in post-conflict peacebuilding and an enabling activity for other peacebuilding efforts, although this is an underexplored area and its potential to contribute to peacebuilding is not fully understood.

The benefits of addressing the human and material legacies of war are to an extent dissipated by a lack of coordination between policy actors and disconnects among different elements of the international response. Slowly disbursed and short-term funding precludes long-term programmatic approaches and undermines work on the ground. Moreover, policy gaps among multi- and bilateral stakeholders reflect a lack of integrated approaches across related issue areas.

Rule of Law and Transitional Justice

Restoring the rule of law and guaranteeing the protection of individuals and communities is a vital precondition of post-conflict peacebuilding and is consequently essential for the development of new national authorities that have the trust of their citizens. It requires comprehensive strategies that address root causes of conflict and are underpinned by legitimacy and accountability. The mechanisms of transitional justice represent a way of addressing these root causes in ways that deal with the past by healing wounds from the previous conflict that would otherwise fester. Trafficking in human beings, though not post-conflict specific, inhibits transitions from war to sustainable peace and is clear evidence of a breakdown in the rule of law. Establishing and protecting the rule of law is therefore a vital security governance issue, which must be founded on effective national executive, legal and judicial institutions. It requires comprehensive strategies that promote accountability, justice, as well as the application of relevant legal and normative frameworks, in particular international humanitarian law (IHL) and human rights law (HRL).

International transitional administrations – as in East Timor and Kosovo – have been created to provide such governance frameworks where national actors are unable to provide for the rule of law and legal structures have been destroyed or neglected. The externally imposed nature of these arrangements means that respect for IHL and HRL, and the equitable provision of justice by these actors, is key to promoting these values in the territories they oversee in order to provide a suitable environment for an eventual handover of ownership to national responsibility.

As Vité (Chapter 9) notes, transitional administrations therefore have a dual responsibility to apply the rule of law to their own conduct and to their administrative functions if the same approaches are to be preserved in the transition of ownership to national actors. In the same way, as van Zyl (Chapter 10) points out, support by the international community for the pursuit of justice through prosecutions, truth commissions, provision of

reparations, reforming institutions and promoting reconciliation requires a sensitive balancing of the imperatives of peace, security and justice. The trade in human beings is driven by and supports organised criminal networks, challenges the authority of the state, and undermines security actors and political authorities corrupted by involvement in this trade. The preponderance of trafficking in human beings, Ghebali (Chapter 11) emphasises, is therefore a clear indicator of defective security sector governance.

In the context of post-conflict peacebuilding, all these dimensions of the rule of law are security governance challenges to be addressed by effective security actors within a framework of democratic oversight and control.

Cross-Cutting Issues

A number of issues have emerged through analysing the different topics in this volume which are common to achieving the broader objectives of post-conflict peacebuilding: framing conditions; external involvement; local ownership; and sequencing. These are discussed below in order to better understand the linkages and potential opportunities for developing synergies. Underlying this analysis is the need to better understand those factors that provide genuine opportunities to build capacity in state and local actors in post-conflict contexts as a precondition for sustainable peace and security. Although the principles of ‘capacity building’ are ubiquitous in policy statements, implementation of these principles is much patchier, raising serious questions for both external and national actors. For this reason, particular emphasis is placed on the intertwined themes of external involvement and local ownership.

Framing Conditions

Knowledge of the specific context for post-conflict peacebuilding is essential for targeted and effective interventions. Beyond the general conditions that apply to all post-conflict contexts, a number of specific security, political and socio-economic framing conditions are particularly relevant. These dimensions are interwoven and deeply ingrained; while they must be taken into account, they can only be influenced to a certain extent by external actors.

In security terms, the duration of a conflict, the level of violence, factionalism, and ethnic or religious dimensions all shape opportunities for post-conflict peacebuilding. In this respect, Ebo (Chapter 7) emphasises the antagonistic effect of ethnic cleavages in Liberia, endemic corruption and the minimal economic prospects in addressing such cleavages. Van Zyl (Chapter 10) stresses the particular importance of reconciliation when there is an identity dimension to the conflict such as religion, race or ethnicity. The cross-border security dimensions of conflict are particularly important with soldiers and arms flowing to and from different conflict zones. Holmqvist (Chapter 3) describes a pattern of conflict migration where armed non-state actors in West Africa are supported by neighbouring countries and re-recruited across borders. In the case of Guinea, ex-fighters were subsequently recruited after going through a DDR process in Liberia.

The nature and extent of political development prior to the conflict and how that was reflected in the pre-conflict security sector will shape expectations and possibilities for the post-conflict political dispensation. Weak states, characterised by corruption and clientism, that do not provide security or democratic governance enable armed non-state actors and are mistrusted by their citizens. A repressed civil society will therefore generally lack capacity and any culture of monitoring leaders will be absent. As Holmqvist (Chapter 3) notes, local populations' perceptions of state security forces, or feelings of impunity more broadly, impact on their willingness to support or join armed groups. An understanding of these underlying reasons for the existence and longevity of such groups are essential in order to devise effective strategies to address them.

The available social and economic capital is a strong factor in influencing the potential for post-conflict peacebuilding. This is particularly clear in the context of DDR where the absence of jobs and economic opportunities encourages criminality, creates 'violence entrepreneurs' who have little option but to fall back on skills gained during conflict and generates a vicious circle where the resultant sense of fear encourages people to retain weapons. Similarly, Ghebali (Chapter 11) cites impoverishment, social exclusion and discrimination as the main factors pushing women in South Eastern Europe towards prostitution and the dangers of trafficking. Singer (Chapter 6) concurs that orphans, street children and refugees are particularly at risk of child soldier recruitment. Health issues can also be an important framing condition. As Brzoska (Chapter 5) points out, many demobilised Ugandan soldiers in the early 1990s were HIV-positive, leading to a spread of the disease in the countryside following their demobilisation. Finally, cultural values and perception may also have a strong role to play

with Ghebali (Chapter 11) arguing that human trafficking in South Eastern Europe is propped up by a general cultural attitude that denigrates the role of women in society.

External Involvement

A key cross-cutting issue in post-conflict peacebuilding is the very nature of external involvement and the means by which the international community can assist national and local actors in very different post-conflict contexts. On one level, the effectiveness of external involvement depends on the ability and willingness of local actors to absorb and engage with the influx of assistance. The pre-conflict history of external involvement plays an important role in this context as acceptance of foreign involvement builds on its perceived legitimacy on the ground. The UN with its non-partisan mandate is best placed to be accepted as a legitimate international aide in post-conflict reconstruction. It is in a similar vain that Holmqvist (Chapter 3) wishes the UN to carefully look after its image as a non-partisan and neutral actor. On another level, the nature of external involvement is an issue of coordination (and sometimes competition) between stakeholders with very different objectives, approaches and cultures, but it is also an issue of cooperation in ensuring that different mechanisms and activities are logically sequenced and genuinely reflect the needs of conflict-affected societies. Directly linked to this is the challenge of building capacity and infusing a sense of ownership among national and local actors. The UN has a central role in this context. This results in a dual requirement of ensuring coordination within the UN system, as well as with the array of international and regional organisations, international financial institutions, bilateral donors, NGOs and representatives of affected countries in setting policy and implementing programmes.

Effective interventions can only be achieved if there is adequate coordination at the level of strategic policy setting. The role of the UN in governing mine action described by Bryden (Chapter 8) – including responsibility for policy, coordination, norms and standards setting and implementation – casts in relief the difficulties of juggling internal coordination, bilateral donors and a host of other actors. In Kosovo, two intergovernmental organisations – the UN and NATO – contribute to peacebuilding under separate legal frameworks. The situation is further complicated by the application of national law to individuals from each of the nations providing support to these operations. Administrative bottlenecks and policy disagreements between peacekeeping forces, transitional

authorities and agencies with narrower mandates are the equivalent found in field operations and could be alleviated by better coordinating mechanisms at the strategic level.

Peace 'building' has a long-term horizon which is not necessarily reflected in the agenda setting or financial planning of donors. Gareth Evans, President of the International Crisis Group, reflecting on the international community's peacebuilding efforts to date, suggests that 'the failure to follow through ... is the most depressingly familiar reason for the recurrence of avoidable conflict'.² Resource mobilisation is a key factor but resources will be (and have been) wasted without priorities based on the local context which provide support to national authorities. Slow disbursement of donor funds is a recurring theme described in specific terms in the DDR programme in Liberia (Chapter 5) and the mine action programme in Kosovo (Chapter 8).

Ensuring that commitments are effectively implemented requires professional staff with a range of expertise to facilitate a multidisciplinary approach. In a number of post-conflict peacebuilding activities such as SSR (Chapter 2), DDR (Chapter 5), and mine action (Chapter 8), an over-reliance on military or former military personnel has not tended to encourage appreciation of the socio-economic or capacity building dimensions of these issues. Experience from the development world can be particularly useful in building capacity with national actors. Relevant experience from organisations such as the ICRC – for example in reaching out to non-state armed groups – and certain NGOs, who can have a strong appreciation of local contexts is therefore essential. Caparini (Chapter 4) notes the potential benefits of donor approaches that emphasise community driven reconstruction (CDR) where local involvement in decision-making is as important as the results of the project themselves.

Broad political or military powers and a sound resource base will not be sufficient without taking account of the deeply engrained and distinct framing conditions which apply in each post-conflict context. Interventions need to be tailored to local realities and grounded in legitimacy – as evident by the differing experiences of SSR in Iraq and East Timor (Chapter 2). Similarly, Caparini (Chapter 4) describes an interventionist approach in Bosnia and Herzegovina, characterised as a 'quasi-protectorate', that has seen decision making by the High Representative blocking the development of democratic practice among elected officials. Vité (Chapter 9) points out that broad immunity from prosecution for UNMIK and KFOR personnel, covering both criminal and civil matters, is tantamount to a government granting immunity to itself. This undermines nascent judicial structures in

the province because it is seen to set the transitional administration above the law demonstrating a lack of equity and due process. Similarly, Holmqvist (Chapter 3) uses the case of Iraq where contractors have been granted immunity from local prosecution as an example of a host state's inability to influence such actors on its territory.

The support by the international community for civil society shares the same dangers that cover external interventions more broadly: local and national actors will meet donor requirements before the needs of their own constituencies. They are also vulnerable to changes in levels of donor funding which has implications for both capacity and credibility. Finally, Caparini (Chapter 4) notes that the favouring of a select civil society 'elite' by the international community risks moving attention away from issues of broader participation. This raises the larger issue of capacity building among local actors in post-conflict peacebuilding. Although individual successes in areas such as mine action, DDR and SALW are noted, these localised examples cannot disguise the fact that this has not been conducted effectively by the international community. This is directly linked to expertise gaps and a lack of appreciation of different contexts. Holmqvist notes (Chapter 3) that the increasing use of PSCs in a range of peacebuilding activities risks jeopardising this legitimacy given the accountability deficits which surround the use of these organisations. In particular, the use of PSCs, while providing custom solutions for external actors across a range of services, tend to replace rather than enhance local capacities, lack knowledge of local contexts and, in the absence of regulatory frameworks, their conduct is not bound by international or national legal regimes. This is paralleled, as in Iraq, in the use of multi-national companies for a range of reconstruction activities which lack transparency and accountability and tend not to consult or employ local actors in a way that build capacity.³

Local Ownership

The legacies of conflict include weak or illegitimate governance institutions, a lack of political space, and security actors that have been skewed to regime interests rather than those of the state and its citizens. This context frames the openings for building local capacity in post-conflict peacebuilding. There is an inherent tension between the need to build local capacity and the reality that in post-conflict contexts the provision of both security and governance is, at least initially, in the hands of external actors. Such tensions can be exacerbated, as described by Holmqvist (Chapter 3), if responsibility for security is outsourced to private security companies which fill an evident

security deficit but rarely reflect local needs and are not bound by individual legal accountability.

It is widely recognised that civil society has a key role in SSR and post-conflict peacebuilding more broadly through promoting dialogue and reconciliation as well as holding national and international actors accountable. The media can play a particularly important role in raising awareness – such as on human trafficking – monitoring government decisions and applying pressure. The UN in particular has recognised the need to reach out to civil society by linking representatives into formal dialogues, consultations and decision-making processes. However, there is a concern that such participation does not genuinely influence decision-making processes or truly open up the political space for these actors. Referring to the ethnic divisions that remain in Bosnia and Herzegovina and have been enshrined in the Dayton Agreement,⁴ Caparini (Chapter 4) underlines that building civil society capacity is not an alternative to addressing these underlying issues but must be conducted in parallel to broader political reform.

Establishing sustainable national authorities and supporting domestic constituencies is a precondition for moving from immediate post-conflict to longer-term development priorities. Vité (Chapter 9) notes that the use of international judges and prosecutors may be a short term answer to a lack of capacity but they often lack knowledge of local legal systems and risk to create a ‘permanent umbrella’ that does not favour capacity building in the local judiciary. The alternative is perpetuating the ‘de facto multilateralist states’ found in Kosovo and Bosnia and Herzegovina. It is also important to be clear about the kinds of national capacity that need to be built. Building governance capacity in security organisations and oversight bodies must be done in parallel to broader political and socio-economic development with societal as well as institutional repositioning essential to restore faith in reconstituted national authorities. In this respect, participative approaches involving a range of civil society actors are imperative. More broadly, van Zyl (Chapter 10) notes that public attention focussed through trials, truth commissions and public hearings offers mechanisms to catalyse public debate and give the public a voice in addressing the recent past. According to Holmqvist (Chapter 3), a precondition for reinstating a state monopoly on the use of force is increased dialogue between the state and armed groups. It is also important that capacity building efforts are not directed solely at the national level but are felt at the community level.

However, it should not be assumed that reconstituted national authorities will make the right choices. Brzoska (Chapter 5) notes that

decisions about force numbers agreed between former warring parties are frequently based on the need to provide patronage and protect interests. These interests, albeit by national actors, are imposed 'from above,' lack broader participation and favour leaders rather than their citizens. They therefore do not pass a basic test of security sector governance. Van Zyl (Chapter 10) contrasts the truth commissions established in South Africa and East Timor which were structured around local consultation and debate with the ambivalent approach of the Cambodian government to the 'Khmer Rouge tribunal'.

Similarly, Bryden (Chapter 8) describes the 'Samaritans Dilemma', that donors' contributions to mine action can actually deter self-help by national authorities. The case for developing effective oversight mechanisms in parallel to improving 'effectiveness' is therefore uncontested in order to address issues of corruption and clientism. In this regard, van Zyl (Chapter 10) concludes that vetting procedures, an important dimension of transitional justice, can be a highly effective tool in removing rights abusers from office. There is a need to engage more fully regional and sub-regional actors who are often influential and have an intimate understanding of local contexts. This is particularly important because of the regional dynamics of conflicts and the cross-border nature of such challenges as arms and human trafficking. In West Africa, the creation of the West African Civil Society Forum (WACSOFF) and the West African Network for Peacebuilding (WANEP), with the support of ECOWAS, offers innovative ways to bring peacebuilding stakeholders closer. The growing regional involvement of new EU Member States in Central and Eastern Europe is proving a valuable means of transferring knowledge and experience to countries with similar legacies and antecedents.

Sequencing

Sequencing of post-conflict peacebuilding activities in an 'ideal' post-conflict peacebuilding model should interweave national level policy development, and constitutional and legal reform within a framework of local capacity building. This requires an integration of different peacebuilding activities to avoid examples such as in Liberia where police reform was not backed up by investment in corrections authorities or in Sri Lanka where roads were cleared of landmines for refugee return but the settlements at the other end remain uncleared, resulting in casualties.

In practice, there can be significant grey areas between conflict, emergency and post-conflict phases. Sequencing therefore involves the need

to balance reform and reconstruction with the overall requirement to preserve peace. Van Zyl (Chapter 10) notes that links between transitional justice and broader post-conflict peacebuilding need to be better understood given the very clear link between war-induced grievances and a return to war in post-conflict countries.

The importance of peace agreements in facilitating post-conflict peacebuilding is widely acknowledged. That such agreements are not a *deus ex machina* is self-evident. UN Secretary General Kofi Annan acknowledges this in his May 2005 explanatory note on the Peacebuilding Commission: 'several of the most violent and tragic episodes of the 1990s occurred after the negotiation of peace agreements – for instance in Angola in 1993 and Rwanda in 1994'.⁵

However, such agreements represent a commitment by new national authorities and consequently provide certain opportunities. Information is a key resource and Bryden (Chapter 8) demonstrates the value of enshrining obligations to provide relevant data on the location and use of landmines in peace agreement for the effectiveness of mine action. Peace Agreements may also be used to acknowledge issues that might otherwise remain hidden. Singer (Chapter 6) highlights the Lomé Accord which ended the conflict in Sierra Leone was the first such document to recognise the existence of child soldiers as a specific category of combatants, offering hope that their particular needs will be addressed.

Links between DDR and the broader post-conflict peacebuilding agenda should be considered in a more explicit fashion by international actors involved in DDR. Brzoska (Chapter 5) points out that the compartmentalisation of these related issues is unfortunate because decisions on numbers of combatants to be demobilised will have a significant impact on the parameters for security sector reconstruction. Later priorities such as the composition and numbers of security forces could therefore be addressed at the outset of DDR activities.

A key issue of sequencing concerns the question of when to hand over responsibility to local actors. There are no fixed answers to this question but experiences such as the handover of mine action responsibilities in Kosovo in 2001 (Chapter 8), which then returned to the UN Special Representative less than three years later, caution against handing over responsibilities for political reasons or in the absence of adequate local capacity. This highlights a temptation to hand over responsibility for political reasons which must be avoided. Similar challenges in Iraq and Afghanistan must be based, within an appropriate legal framework, on the governance capacities of national

authorities to assume these roles or the international community will be obliged to return and finish the job.

Finally, Brzoska (Chapter 5) makes the point that the leverage of the international community could be better used to influence former warring parties in peace agreements and other decisionmaking frameworks. In this respect, the influence of the international community, as a provider of security and through the disbursement of funds, should not be underestimated.

Integrating Role of SSR

The SSR concept bridges security policy, peace and democracy promotion and development assistance. This cross-sectoral character is useful because it links different activities across the post-conflict peacebuilding agenda. By virtue of its emphasis on governance rather than government, it reaches out to actors beyond the state such as non-statutory civil society organisations and armed non-state actors, encompassing both security and democratic deficits. This holistic perspective integrates partial reforms of security sector actors such as the military, police or intelligence services with the requirements of democratic governance. As Bryden and Hänggi (Chapter 2) note, it therefore spans a wide array of activities from political dialogue, policy and legal advice, training programmes to technical and financial assistance.

SSR must deal with the broader categories of activities in post-conflict peacebuilding. If not necessarily applicable in development or transitional contexts, issues such as DDR (Chapter 5), transitional justice (Chapter 10) and human trafficking (Chapter 11) are component parts of security sector reconstruction. Applying principles of security governance to these broader areas provides a means to assess performance through the broader peacebuilding agenda. Brzoska (Chapter 5) argues that the institutions of security sector governance offer an opportunity to develop synergies between DDR and SSR – both concern the same sets of actors, and broader SSR concerns could be integrated in peace negotiations and other decisions relating to DDR.

Although detailed integration of these concerns may be unrealistic in complex post-conflict contexts, some problematic decisions could be avoided, such as using former soldiers in police forces which Brzoska points out in certain cases – such as Haiti and El Salvador – saw candidates with inappropriate skills sets or a history of war crimes adding to insecurity. Van

Zyl (Chapter 10) makes the point that transitional justice mechanisms such as truth commissions and vetting processes could make a much greater contribution to SSR. Specifically, this would inform: identifying institutions that need reform; providing specific proposals for such reform; and identifying and removing inappropriate post holders such as individuals with a history of war crimes. The institutional reform dimension is particularly important for military, police and intelligence agencies in SSR processes. Van Zyl (Chapter 10) emphasises that the failure of police reform in Haiti cannot be attributed to individuals but to wider problems of governance, composition and mandate. Similarly, Bryden (Chapter 8) argues that the absence of any convincing examples where ownership of, and responsibility for, mine action has been handed back to national actors is in large part a result of governance deficits in the security sector and particularly its executive and legislative oversight functions.

Armed non-state actors (Chapter 3) may control land and therefore possibilities for aid delivery or the return of refugees and internally displaced persons. A governance perspective must therefore take account of non-state armed actors who remain outside of international legal frameworks and are frequently unrecognised by national authorities even though they may de facto control significant territories. These actors need to be addressed in DDR efforts (Chapters 5 and 6), specifically their conspicuous use of small arms (Chapter 7) and landmines (Chapter 8). Moreover, organised criminal networks, such as those involved in human trafficking (Chapter 11), represent a direct challenge to democratic security sector governance through fostering corruption and undermining political institutions.

In sum, SSR in post-conflict settings – security sector *reconstruction* – provides a frame of reference for all these concerns.

Conclusion

This volume highlights an emerging security governance agenda which offers important opportunities to link, sequence and optimise the various elements of post-conflict peacebuilding. It has sought to analyse good (and bad) practice and to identify relevant policy guidance. A number of recommendations have emerged specific to individual issue areas. But, taken collectively, the fundamental message of these contributions calls for integrated, holistic and long-term approaches to interventions in post-conflict states. Indeed, in the face of very grave challenges, the positive message that emerges from analysis of these issues is that there is a great deal to be

learned across different issue areas in terms of good practice and cross-fertilisation of expertise which can be used to further overall peacebuilding goals. The decision to create the UN Peacebuilding Commission recognises this challenge and offers a potentially valuable mechanism to integrate different actors and approaches. However, the success of improved coordination will be measured on the ground where success is difficult to quantify and failure is all too evident.

Notes

- 1 See: Caparini, M. Schreier F. 'Privatising Security: Law, Practice and Governance of Private Military and Security Companies'; *DCAF Occasional Paper* No. 6 (Geneva Centre for the Democratic Control of Armed Forces: Geneva, 2004)..
- 2 Evans, G., 'A Make or Break Year for the UN : Reforming the 60 Year Old', Second Sean Lester Lecture (Dublin City University: Dublin, 24 June 2005), available at URL <www.crisisgroup.org/home/index.cfm?id=3256&l=1>.
- 3 See: Singer P.W., 'The Private Military Industry and Iraq: What Have We Learned and Where to Next?', *DCAF Policy Paper* (Geneva Centre for the Democratic Control of Armed Forces: Geneva, 2004).
- 4 See: Caparini, M., 'Security Sector Reform and Post-Conflict Stabilization: The Case of the Western Balkans', Bryden, A., Hänggi, H. (eds.), *Reform and Reconstruction of the Security Sector* (Lit: Münster, 2004), pp.151-155
- 5 United Nations General Assembly, UN Doc. A/59/2005/Add.2 (23 May 2005), p.1.

ANNEX

(A) 2005 World Summit Outcome

Final document of the High-level Plenary Meeting of the General Assembly

United Nations General Assembly

A/60/L.1

15 September 2005

(Excerpts)

Peacebuilding

97. Emphasizing the need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, recognizing the need for a dedicated institutional mechanism to address the special needs of countries emerging from conflict towards recovery, reintegration and reconstruction and to assist them in laying the foundation for sustainable development, and recognizing the vital role of the United Nations in that regard, we decide to establish a Peacebuilding Commission as an intergovernmental advisory body.
98. The main purpose of the Peacebuilding Commission is to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery. The Commission should focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundation for sustainable development. In addition, it should provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, develop best practices, help to ensure predictable financing for early recovery activities and extend the period of attention by the international community to post-conflict recovery. The Commission should act in all matters on the basis of consensus of its members.
99. The Peacebuilding Commission should make the outcome of its discussions and recommendations publicly available as United Nations documents to all relevant bodies and actors, including the international financial institutions. The Peacebuilding Commission should submit an annual report to the General Assembly.
100. The Peacebuilding Commission should meet in various configurations. Country-specific meetings of the Commission, upon invitation of the Organizational Committee referred to in paragraph 101 below, should include as members, in addition to members of the Organizational Committee, representatives from:
 - a. The country under consideration;
 - b. Countries in the region engaged in the post-conflict process and other countries that are involved in relief efforts and/or political dialogue, as well as relevant regional and subregional organizations;
 - c. The major financial, troop and civilian police contributors involved in the recovery effort;

- d. The senior United Nations representative in the field and other relevant United Nations representatives;
 - e. Such regional and international financial institutions as may be relevant.
101. The Peacebuilding Commission should have a standing Organizational Committee, responsible for developing its procedures and organizational matters, comprising:
- a. Members of the Security Council, including permanent members;
 - b. Members of the Economic and Social Council, elected from regional groups, giving due consideration to those countries that have experienced post-conflict recovery;
 - c. Top providers of assessed contributions to the United Nations budgets and voluntary contributions to the United Nations funds, programmes and agencies, including the standing Peacebuilding Fund, that are not among those selected in (a) or (b) above;
 - d. Top providers of military personnel and civilian police to United Nations missions that are not among those selected in (a), (b) or (c) above.
102. Representatives from the World Bank, the International Monetary Fund and other institutional donors should be invited to participate in all meetings of the Peacebuilding Commission in a manner suitable to their governing arrangements, in addition to a representative of the Secretary-General.
103. We request the Secretary-General to establish a multi-year standing Peacebuilding Fund for post-conflict peacebuilding, funded by voluntary contributions and taking due account of existing instruments. The objectives of the Peacebuilding Fund will include ensuring the immediate release of resources needed to launch peacebuilding activities and the availability of appropriate financing for recovery.
104. We also request the Secretary-General to establish, within the Secretariat and from within existing resources, a small peacebuilding support office staffed by qualified experts to assist and support the Peacebuilding Commission. The office should draw on the best expertise available.
105. The Peacebuilding Commission should begin its work no later than 31 December 2005.

(B) Statement by the President of the Security Council

United Nations Security Council
S/PRST/2005/30
12 July 2005

At the 5225th meeting of the Security Council, held on 12 July 2005, in connection with the Council's consideration of the item entitled "The maintenance of international peace and security: the role of the Security Council in humanitarian crises: challenges, lessons learned

and the way ahead”, the President of the Security Council made the following statement on behalf of the Council:

“The Security Council reaffirms the purposes and principles enshrined in the United Nations Charter and bears in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security.

“The Security Council remains deeply concerned by the devastating humanitarian, political and economic consequences of armed conflicts; and stresses the overriding political and moral imperatives to prevent the outbreak and escalation of armed conflicts and humanitarian crises, and the benefits therein for peace and development and friendly relations among all States.

“The Security Council acknowledges the importance of helping to prevent future conflicts through addressing their root causes in a legitimate and fair manner.

“The Security Council reiterates the importance it attaches to the promotion and urgent restoration of justice and the rule of law in post-conflict societies and in promoting national reconciliation, democratic development, and human rights. The Council recognizes that ending impunity is important in peace agreements, and can contribute to efforts to come to terms with past abuses and to achieve national reconciliation to prevent future conflict. The Security Council recalls that it has repeatedly emphasized the responsibility of States to end impunity and bring to justice those responsible for genocide, war crimes, crimes against humanity and serious violations of international humanitarian law.

“The Security Council further recognizes the increasing importance of civilian aspects of conflict management in addressing complex crisis situations and in preventing the recurrence of conflict and acknowledges the importance of civilian-military cooperation in crisis management. When approving a United Nations operation, the Council should take into account the essential role of military and civilian police in assisting the stabilization of crisis situations and the maintenance of security. At the same time, the Council acknowledges that the Special Representative of the Secretary General assisted by civilian advisers could play a key coordination role in the provision of humanitarian assistance, the re-establishment of public order, the functioning of public institutions, as well as rehabilitation, reconstruction and peace building, which lead to long-term sustainable development.

“The Security Council stresses the need to ensure adequate and timely financing for peacebuilding priorities at all stages of the peace process, and stresses the need for sustained financial investment in peacebuilding over the medium to longer-term period of recovery. It recognizes the importance of rapid initiation of peacebuilding activities to meet immediate needs and encourages the building of capabilities that can be incorporated rapidly.

“The Security Council takes note with interest of the important proposal by the Secretary General to establish a Peacebuilding Commission and shares the objective of improving United Nations capacity to coordinate with donors and troop contributors and to perform peacebuilding activities, in particular from the start of peacekeeping operations through stabilization, reconstruction and development. The Security Council recognizes the important role that this body could play to bridge the gap between maintenance of

international peace and security and the work of humanitarian and economic development assistance.

“The Security Council acknowledges that in post conflict societies successful peacebuilding rests on the premise that protection of civilians, the promotion of the rule of law and transitional justice, disarmament, demobilization, repatriation, reintegration and rehabilitation of former combatants, security sector and democratic, economic and social reform are integrated elements and that national ownership plays an important role which should be supported by the international community, including the regional organizations.

“The Security Council emphasizes that security sector reform is an essential element of any stabilization process in post-conflict environments, underlines that it is inextricably linked with promotion of the rule of law, transitional justice, DDR and the protection of civilians, among others, and acknowledges the need for more adequate preparation, including mobilization of necessary planning resources, and more coherent approaches by the United Nations and the international community in addressing these issues.

“The Security Council acknowledges the need to give adequate attention to security sector reform in the future, drawing on best practices that have been developed in this area. The Security Council stresses also the need seriously to consider the promotion of the rule of law and transitional justice, the DDR process and security sector reform, their inter-linkage and the availability of adequate resources, when approving the necessary mandates for United Nations operations.”

**(C) Remarks to the Open Meeting of the Security Council on
“Maintenance of International Peace and Security – The Role of the
Security Council in Humanitarian Crises: Challenges; Lessons learned;
the way ahead”**

Statement by Mr. Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations

United Nations Security Council

S/PV.5225

12 July 2005

(Excerpts)

Please allow me to begin with a word of thanks to the Greek presidency for convening this thematic debate and for inviting me to contribute to one aspect of it, namely, the challenges currently faced by United Nations peacekeeping operations in promoting the rule of law, disarmament, demobilization and reintegration (DDR) and security sector reform in post-conflict situations. I would like to take this opportunity to focus in particular on the interlinkages among those three issues and on the need for more focused discussion of security-sector reform, which has received little attention in such forums in the past. The

challenges in this area are indeed formidable. But, before delving into the details, I would like to make three general observations.

First, the good news: the total number of active armed conflicts in the world is actually in steady decline. In fact, the 28 or so countries of the world currently affected by some form of active armed conflict represent a 30-year low. The Security Council lies at the heart of that decline, particularly since the end of the cold war. The members of this body have seized opportunities to broker agreements to end civil wars and to send multidimensional peacekeeping operations to assist with their implementation. In several of those cases – Namibia, El Salvador, Mozambique and Cambodia, for example – peace prevails, albeit amid other serious challenges facing those countries more than a decade after United Nations peacekeepers departed.

One hopes that 10 years from now the same will be said about Timor-Leste and Sierra Leone. The Peacebuilding Commission proposed by the Secretary General, if created, could certainly help increase that likelihood by ensuring sustained and coordinated international attention in the post-peacekeeping phase.

Second, while there are enough examples to demonstrate that this is not mission impossible, there should be no illusions about how difficult and precarious the undertaking is. The tragedy of Srebrenica, to which the Secretary General just referred, still serves as a constant reminder ten years later of how an already dire situation can descend into conscience-shocking acts of savagery in a matter of days or hours. When we think that the worst is over, it is important to remember precisely at that point that the threat of mass killings, new waves of ethnic cleansing and/or the resumption of full-scale hostilities is likely still present in many peacekeeping contexts. Small missteps and the misreading of events can spell disaster, and they have.

Moreover, the jobs are getting increasingly difficult. Although no one associated with the operations in Mozambique or Cambodia would ever say that those were easy cases, they now appear to be so, relative to the scale, scope and complexity of the challenges United Nations peace operations currently face in the Democratic Republic of the Congo and the Sudan, for example.

In order to be better prepared for the unexpected, the High-level Panel and the Secretary General have recommended the creation of a strategic reserve capacity, ready to be called upon on short notice to reinforce a mission facing an unforeseen crisis. One of the highest priorities of the Department of Peacekeeping Operations in the coming year is to work with Member States to define the concept of operations of the strategic reserve.

Third, however robust United Nations peacekeeping operations military capabilities might be, they alone cannot ensure security in post-conflict environments absent the right political strategy and the political will of the relevant national and international actors. As a result of either international or internal pressure – or both – the main protagonists to the conflict must be ready to make the painful political and personal compromises necessary to maintain peace. They must transform themselves into leaders or give way to others able and willing to do the things required in order to engender the trust of former enemies, bring a war-torn society together around a common agenda and steer the delicate balance between promoting national reconciliation and unity, on the one hand, and accountability for war crimes and grave abuses of human rights on the other.

Those exceptionally trying demands require exceptional individuals to step forward. No amount of international assistance in the areas of the rule of law, disarmament, demobilization and reintegration and security sector reform can substitute for effective national leadership. If the basis for political compromise at the national and international level

is wanting, in all likelihood a United Nations peacekeeping operation will be fighting an uphill battle, to put it mildly, to maintain a secure environment.

I have offered those three observations up front to stress that the right political context is often a necessary precondition for achieving a secure environment in a post-conflict setting. But while it may be a necessary condition, it is not a sufficient condition. Much more work is actually required in the field of national institution-building. Indeed, a country emerging from conflict cannot hope to consolidate peace, develop sustainable institutions or achieve economic prosperity if its citizens are too fearful to walk freely in the streets or lack access to social and legal services or political processes. Nor can a State rebuild itself and avoid a relapse into conflict if its population is threatened by police, armed forces or intelligence units that are not held accountable and are unprofessional, poorly resourced and poorly disciplined, untrained in international standards or lacking in effective management and oversight structures. And although stabilization in the immediate aftermath of conflict is a critical aspect of security, longer-term efforts addressing the entire range of security actors and judicial and law enforcement institutions are just as critical, if not more so.

In short, if peace is to be lasting, the short-, medium- and long-term security and justice needs of both the State and its population must be addressed equally. On those fronts, there are several areas that deserve further study and potential improvement.

First, our efforts in the security and justice sectors have tended to be driven by peace agreements, which address those issues in the context of ending a conflict. As during the conflict, parties to the agreement are often driven by their own personal agendas, and those do not always reflect all the elements that are crucial for sustainable peace. Peace agreements articulate in some detail the incorporation of militia forces into a new police force or army, the apportionment of senior-level appointments among warring factions and the harmonization of ranks.

However, those elements, while important, do not lay a strong basis for the consolidation of State and human security in the post-conflict setting. Insufficient attention is accorded to a comprehensive national security review process to identify the threats, whether internal or external, to State and human security and the development of a security architecture that is responsive to identified threats. As a result, both the international community and the host countries are ill prepared to tackle critical challenges such as corruption, cross-border narcotics and arms and human trafficking. Peace-agreement-driven approaches have in some instances even led the international community to support the reform of State institutions that had lost their legitimacy in the eyes of the population. It is therefore not surprising that those same countries have had a high propensity for relapsing into conflict.

Secondly, as in many other areas of peacebuilding, international efforts related to the security and the justice sectors are often disjointed. First, the United Nations bilateral donors and other actors at times pursue their own objectives without buying into a single agreed-upon framework or approach, and, due to competition for donor funds, the various actors are often not forthcoming about the projects that they are planning, which leads to uneven or duplicative assistance.

Thirdly, within the United Nations there is no agreement on a single system-wide approach on these issues. In some cases, we have specific operational capacities in one part of the system, whereas the corresponding capacity to support management, oversight and accountability mechanisms may be nonexistent or lie in a different part of the United Nations system. In other key areas, such as defence reform or some aspects of the justice sector,

capacity is altogether lacking. That has led to an absence of strategic coherence among the various links in the chain of activities.

Fourthly, international approaches in support of security sector reform in post-conflict countries often apply foreign models and standards, which may be politically unpalatable or, practically speaking, unsuitable or unrealistic in the light of the realities on the ground.

And finally, existing approaches tend to be more applicable to developing countries than to post-conflict countries, as those approaches involve lengthy processes that are not tailored to situations where the road map for political and institutional change is often set out in a negotiated and time-limited peace agreement.

In seeking to address those challenges, the international community might reconsider whether it is always realistic to seek to rebuild, reform or restructure a country's defence, police, courts and penal system while simultaneously seeking to re-establish security, keep the political process on track, facilitate the return of displaced populations, conduct elections and restore basic services.

In some cases, it may be appropriate to start early on complex tasks such as rebuilding courts and training police so that we do not miss the window of opportunity for action. Otherwise, violent, corrupt and inept approaches may become entrenched, and we may later have little or no opportunity to have a significant impact. In other cases, however, we may need to re-examine the sequence of activities so that the peacekeeping operation focuses on stabilization while a proper assessment of threats and needs is conducted and appropriate international, regional and local partners are identified to rebuild the security infrastructure and institutions in a sustainable fashion. We need to think these questions through carefully so as to ensure that we spend our efforts and resources on viable processes and institutions that can be sustained beyond the brief lifespan of a peacekeeping operation.

For the United Nations system, another key to better delivery is to continue to strive to carry out our mandates in as integrated a manner as possible. We have recognized that strong synergies and links exist between the development and security agendas, but we must make greater strides in integrating our development partners at the initial stages of planning for peacekeeping operations. That would ensure that our joint efforts are guided by a coherent, long-term strategy, and would allow smooth handovers to national and development partners once the peacekeeping mandate is over. We must ensure that we involve not only technical experts, but also civilians and others with a big-picture perspective, in our strategic and operational planning and activities.

At the same time, we must seek the greater integration of capacities within the United Nations system, which would require the assignment of clear responsibility for specific activities; the development of repositories of best practices, including diverse models of reforming the security sector; and effective coordination that brings together United Nations, bilateral and other efforts, including with respect to resource mobilization.

Equally, we must differentiate between areas where the United Nations system has, or should further develop, the capacity to carry out operational tasks and deliver programmes, and other areas where we could most usefully engage knowledgeably with host countries and bilateral and multilateral partners that have the requisite experience or capacity. As such, our role would be to advocate for assistance from those with something to offer and to ensure that what is promised and delivered responds to the actual needs of the host country. One key area that deserves examination is defence reform, where the United Nations currently has limited capacity.

As we reflect on how the United Nations might better contribute to the justice and security sectors in post-conflict environments, we might build on our recent experience in the

area of disarmament, demobilization and reintegration (DDR), which also involves multi-actor, multidimensional activities that stretch beyond the lifespan of a peacekeeping mission.

In April 2004, the Department of Peacekeeping Operations initiated an inter-agency process that brought together 14 United Nations departments, agencies, funds and programmes to jointly develop a set of policies, guidelines and procedures called the integrated DDR standards. Although that is a United Nations process, we also tapped into the rich experience of the beneficiaries of DDR programmes, Member States, non-governmental organizations and the World Bank. In one year, the inter-agency working group has developed a comprehensive set of 30 DDR models that cover the full spectrum from strategic to tactical-level issues. We have consulted the drafts widely, tested them in an inter-agency simulation exercise, piloted them in our Haiti and Sudan peacekeeping missions and made significant improvements in the way that DDR programmes are funded. We expect to publish the first edition of the standards, which will lay out the agreed United Nations approach for DDR, this fall. That substantive guidance on DDR will be available to all those who need it in the international community. In addition, the inter-agency working group on DDR is developing a Web-based United Nations resource centre and a joint training strategy for DDR practitioners.

On the basis of this agreed United Nations approach to DDR, we are now well placed to streamline our activities, maximize our effectiveness and minimize unnecessary duplication at Headquarters and in the field. It may be worth exploring whether United Nations efforts in the justice and security sectors might benefit from a similar comprehensive approach. Of course, that would require expertise and resources which the United Nations does not currently have.

We are fortunate that our multidimensional peacekeeping operations generally have solid mandates to support justice- and security-related programmes on the ground, even if we often experience shortfalls in staffing and funding. A greater focus by the Security Council on the specific DDR, rule-of-law and security related needs in particular settings would provide us with even stronger and more precise mandates that would better address the needs of post-conflict countries. In the meantime, the United Nations system must continue to work on rationalizing its approaches, integrating its resources and capacities and delivering a single and comprehensive United Nations response for the Governments and populations that we are called upon to assist. That would also enable the United Nations system to maintain the level of political attention that is needed and to draw upon donor funding in a coordinated manner. The reform or formation of national security and justice sectors requires long-term commitment. A single United Nations approach is surely the best way to ensure the coherence and sustainability of these efforts well after the peacekeepers have left the country.

(D) Concept Paper for the July 12th Security Council Thematic Debate on “Maintenance of International Peace and Security. The Role of the Security Council in Humanitarian Crises: Challenges; Lessons Learned; the Way Ahead”

Permanent Mission of Greece to the United Nations
7 July 2005

1. The 1990s witnessed a series of violent humanitarian crises that caused death and immense suffering to millions of people around the world (Somalia, Haiti, Rwanda, former Yugoslavia).

The UN made many efforts to improve its system and respond effectively to these challenges. The Security Council (SC) became the principle organ for organizing the international efforts in crises management and peacebuilding.

The number of UN peacekeeping operations increased considerably and became multifunctional as they have a broader mandate than ending hostilities. Their mission is a combination of military and civilian tasks with the aim to build long lasting peace in conflict torn societies and to prevent further outbreaks of violence or its escalation. This is because in most cases a country coming out of conflict has a very big chance to relapse into conflict within the first five (5) years. The reasons behind this are worthy of investigation in order to better understand which elements promote lasting peace and which either inhibit it or are simply ignored.

A greater involvement of regional organizations to meet the rising demands became soon an urgent need and many regional organizations enhanced their capacities in these areas. The United Nations themselves had to make some institutional reforms to deal with the new realities.

2. The proposed thematic debate can focus on recent SC efforts to break the conflict cycle in conflict affected societies and prevent them from relapsing to such crises.

SC Resolutions on East Timor, Democratic Republic of Congo (DRC), Haiti, Liberia, Sudan, Cote d'Ivoire, among others, as well as peace agreements and peacekeeping (PK) mandates, contain elements for long term peace and stability.

In recent years, the SC has recognized that the prevention of a return to conflict often hinges on the extent to which three key pillars of post-conflict security are adequately addressed, namely: The promotion of the Rule of Law; Security sector reform; and the Disarmament, Demobilization and Reintegration (and repatriation if applicable) of ex-combatants. Yet, the approach being taken in these three areas varies considerably in many places where UN operations have been established in the past 5-6 years.

- **The Rule of Law:** The promotion of democracy and good governance in conflict affected countries could open political space and help alleviate many of the ethnic tensions. Promotion

of human rights, constitution-making, transitional justice mechanisms, legal and penal reform are important rule of law aspects in post conflict environment.

Transitional societies must be supported in their efforts to reform their institutions in order to establish a more human, just and democratic order. In this respect, the breaking of impunity through prosecution, trial and punishment as well as the exclusion of perpetrators of human rights crimes from the newly reconstituted institutions are essential elements for creating long lasting peace. To these ones should also add the ultimate objective of achieving reconciliation within those societies.

- Security Sector Reform: Military, Training of police forces.

It has been recognized that security in post conflict environment is crucial for peacemaking and peace implementation. However, security sector reform is one area that has not been focused on; its linkages to the other two areas, the requirement to work with bilateral partners on reform, and the continuum in which security sector reform should take place i.e. from the outset of peacekeeping work through to the development phase. Discussion could focus on the “best practices”, “lessons-learned” and inherent challenges in this area which the Security Council should take cognizance when mandating future UN and related peacekeeping operations.

Discussion could also address the restructuring of security institutions such as the military and police. Police operations and activities should provide legal protection to individuals (accountability). Civilian oversight in order to secure democratic control and (police) accountability is also important component of such reforms.

- Disarmament, Demobilization and Reintegration (DDR):

DDR are crucial components of peace agreement. There are many actors involved in DDR programs (national authorities, UN agencies, International Financial Institutions etc.). However, national ownership of the process is very important (see Mozambique).

DDR programs should be included in peace agreements and be part of an overall recovery strategy that encompasses economic development, security sector reform, the integration of refugees and internally displaced persons, and justice and reconciliation.

The reintegration of ex-combatants in the civilian life should be given special attention as they pose serious threat to peace and security. There is an ongoing debate as to whether ex-combatants should be prioritized over refugees and internally displaced persons (Sierra Leone).

3. Lessons learned: Assessment on the effectiveness of the above measures and need to reinforce them in the future.

Although, the above mentioned three pillars are contained in the majority of the SC resolutions, with different degree of emphasis depending on the specific country situation, their implementation is not always successful. The mandate and the strength of the

peacekeeping mission, the follow up of the SC and the full cooperation by the respective government are important elements for an effective process.

Likewise, lasting peace is not exclusively dependant on SC initiatives, but on a variety of other factors such as: the actual involvement of regional organizations, the quality of the peace agreements, the history and the nature of the conflict, the involvement of regional organizations or the neighboring countries in the peace process, the support by international and local actors and the consistency in the flow of donor aid (concerns regarding cases in which the flow is initially good – yet the absorbing capacity of the conflict area may be poor – but then tends to be minimized over time, or in South Sudan, where the infrastructure is inadequate to welcome returning IDPs).

4. The way ahead:

- The importance of further strengthening the above three pillars in achieving long lasting peace.
- Has the Security Council given adequate attention to security sector reform, or to the inter-linkages between rule of law, DDR, and security sector reform? If so, in which cases? If not, how might it do so better in future?
- Is a more active engagement of the Security Council required in war affected zones for the early prevention of conflicts or further outbreaks?
- The role of international and local actors in implementing the above pillars.

(E) Conflict Prevention and Peace Building: What Counts as ODA?

OECD

3 March 2005

A secure environment is fundamental to long-term growth, sustainable development and poverty reduction in developing countries. The work of the OECD Development Assistance Committee (DAC), including its document *Security System Reform and Governance: Policy and Good Practice in 2004* and the results of a recent Senior Level Forum in Fragile States co-sponsored with EC, UNDP and the World Bank, emphasises that OECD countries need to apply whole-of-government approaches that respond to the needs of partner countries and their populations.

Within such an approach, resources come from a variety of government budgets, notably those for defence, diplomacy and development. It is therefore important to have clarity on what activities should qualify as development spending internationally. This is determined by the DAC, which is responsible for the definition of Official Development Assistance (ODA) – a measure of donor flows that are for ‘the promotion of the economic development and welfare of developing countries’. The directives that cover what can be reported as ODA

exclude the supply or financing of military equipment or services and use of military personnel to control civil disobedience. These exclusions remain. In an 18-month process, culminating in the DAC High Level Meeting of Ministers and Heads of Aid Agencies on 3 March 2005, the DAC has been examining the existing references in the directives to expenditure relating to conflict prevention and peacebuilding to see if they can be clarified, in particular explicitly to cover improved civilian control over the security system, civilian peacebuilding, child soldiers, and small arms.

In its review, the DAC was guided by the need to preserve the credibility and integrity of ODA statistics and the understanding that only certain specific activities in the areas of security and development will be ODA eligible or will come from ODA/aid budgets. Consensus has been reached on technical co-operation and civilian support for six items:

1. **Management of security expenditure** through improved civilian oversight and democratic control of budgeting, management, accountability and auditing of security expenditure.
2. **Enhancing civil society's role in the security system** to help ensure that it is managed in accordance with democratic norms and principles of accountability, transparency and good governance.
3. Supporting legislation for preventing the recruitment of **child soldiers**.
4. **Security system reform** to improve democratic governance and civilian control.
5. **Civilian** activities for **peacebuilding, conflict prevention and conflict resolution**.
6. Controlling, preventing and reducing the proliferation of **small arms and light weapons**.

The Ministers and Heads of Aid Agencies also discussed two other items - training the military in non-military matters, such as human rights, and extending the coverage of peacekeeping activities. (For the latter, and only in specific circumstances, incremental costs of the deployment of military personnel from DAC member countries are reportable as ODA.) While everyone accepted that effective support in these areas helps to promote peace and security, many did not consider that training the military in non-military matters, such as human rights, and extending the coverage of peacekeeping activities were an appropriate use of ODA budgets. They also noted that, unlike the six items agreed on which expenditures are relatively modest, these items currently involve large sums, mostly from defence budgets. It was agreed, however, to assess members' positions on these two issues again in 2007.

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About DCAF

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector.

To this end, the Centre develops and promotes appropriate norms at the international and national levels, determines good practices and relevant policy recommendations for effective governance of the security sector, and provides in-country advisory support and practical assistance programmes to all interested actors.

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