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The Rule of Law and Security Sector Reform: Conceptualising a Complex Relationship

Christoph Bleiker and Marc Krupanski



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INTRODUCTION¹

The rule of law (RoL) and security sector reform (SSR) are both critically important components of effective peacebuilding. On a conceptual level the two are mutually reinforcing and intertwined, while on a practical level their complementary application is indispensable. However, despite their commonalities, the relationship between RoL and SSR in peacebuilding contexts remains poorly articulated and understood. Further, only limited attempts have been made to understand this relationship. Certainly, the RoL-SSR relationship is only one of many in peacebuilding, but it is one of particular importance. Thus confusion and ambiguity regarding the links between the two concepts (by researchers, policy-makers and practitioners) are especially problematic. Conceptual clarity, translated into programme design, constitutes a fundamental precondition for effective programming. This SSR Paper provides the necessary building blocks to move towards this goal by examining the relationship between RoL and SSR within a peacebuilding context and developing a heuristic framework to rationalise the relationship on a conceptual level. Indeed, as demonstrated through the heuristic framework developed here, on a conceptual level RoL and SSR are interdependent and mutually reinforcing. Establishing this framework can therefore prove useful for policy guidance and coherent and coordinated implementation on the ground.

Since the late 1990s, calls have increased for the development and implementation of holistic RoL and SSR strategies to inform coherent and

coordinated approaches on the ground. This became increasingly apparent in light of the need for a comprehensive and strategic approach to security and justice more broadly. The call for holistic approaches to peacebuilding in general and RoL and SSR in particular was fuelled by a continued piecemeal approach to internationally-supported peacebuilding. However, despite these recommendations, the conceptual linkages between RoL and SSR remain unclear and poorly articulated. In part this is due to the fact that, conceptually, they have different origins. RoL and SSR have been developed, shaped and applied by a variety of policy communities with differing rationales. As a result, there is no shared or unified understanding of the two concepts and even less so of their relationship. Consequently, when different proponents of the RoL and SSR policy fields seek to promote so-called 'holistic' conceptual and strategic frameworks, it does not necessarily mean that they are talking about the same approaches, processes and activities. Even less that their suggested assistance frameworks are inclusive or their proposed approaches can be coordinated.

The term 'holistic' has been invoked often yet rarely defined. This paper proposes an understanding that refers to a broad and interconnected range of activities and actors grounded in a shared theory of change. In other words, this paper provides the conceptual tools to substantiate a 'holistic' approach to RoL and SSR within a peacebuilding framework through capturing the breadth and interconnectedness of different issues and actors, promoting outcome-oriented approaches that link goals to context driven needs, and as a consequence helping to bridge oft-cited policy-practice gaps. Such conceptual clarification is a prerequisite for effective programme design and implementation, thus the paper is intended to make an extremely timely new contribution, developed from a conceptually grounded analysis, that moves beyond assumptions and perceptions-driven approaches to effective RoL and SSR programming in peacebuilding contexts.

Before outlining the paper's structure, it is first helpful to provide basic definitions and assumptions that will frame the discussions and analysis. At this point, basic definitions of the rule of law and security sector reform will be provided; greater complexity and breadth regarding their definitions will be discussed in respective sections.

The rule of law, in essence, is a conceptual framework for a society in which the state adheres to the law, ensures equality before the law,

provides efficient and impartial justice and safeguards human rights. In this sense, it carries with it a normative foundation resembling Western state-based governance and liberal peacebuilding frameworks. All of the state's organs, especially those in charge of justice and security delivery, such as the military, intelligence, police, judiciary and prisons, as well as traditional and customary justice providers, are expected and required to promote and adhere to the rule of law in order to support sustainable peace and development.

Security sector reform strives to enable 'the efficient and effective provision of state and human security within a framework of democratic governance'.² Concerned institutions may include the armed forces, police, judiciary, legislature, armed non-state actors and civil society, among others. Likewise, the range of activities covered in SSR programmes is diverse and includes overarching activities (such as security sector reviews) and activities related to civilian management and democratic oversight of security and justice institutions (such as parliamentary oversight), as well as related activities in post-conflict environments (such as control of small arms and light weapons) and cross-cutting issues (such as gender equality). SSR envisions a society in which security institutions and providers maintain a people-centred approach and are governed by and subject to democratic oversight and the rule of law. In practice, there is much debate concerning these terms (such as which actors constitute the security sector), which will be taken up in more detail in later sections.

RoL and SSR activities often take place in a broader peacebuilding context. Thus, to understand better the relationship between the two, it is helpful to situate them first within a peacebuilding context. The core assumption underlying this approach is that improved peacebuilding performance requires strategic coordination among the main actors involved. Coordination can only happen on the basis of a common vision that creates a shared understanding of the processes and activities necessary to achieve these goals. Therefore, one of the core building blocks for improved coordination³ and integration⁴ is an understanding of the goals, processes and activities of peacebuilding and, more specifically, the goals and frameworks of the RoL and SSR fields, as well as the way in which they relate to each other.

This paper focuses on externally assisted RoL and SSR efforts in peacebuilding contexts, thus donor perspectives serve as the reference

point for the analysis. In particular, the focus of this analysis relates to holistic understandings as promoted by the United Nations (UN). Since the analytical focus is on peacebuilding contexts, the paper does not attempt to address RoL-SSR relationship challenges in other contexts, such as development or democratisation (although of course the analysis would prove useful should it be taken up in subsequent research). Thus this paper aims to provide conceptual clarity and a framework of analysis that can better inform and facilitate coherent and coordinated RoL and SSR peacebuilding efforts on the ground.

In order to discuss holistic definitions of the RoL and SSR concepts and develop a heuristic framework for the analysis of the relationship between the two in peacebuilding contexts (for both research and policy purposes), the paper uses a range of primary and secondary sources. Following this introduction, Sections 2, 3 and 4 introduce a conceptual discussion and analysis of peacebuilding, RoL and SSR. These sections serve as the necessary preconditions for Section 5, which introduces a heuristic framework for rationalising the RoL-SSR relationship, as well as for the review and recommendations found in the conclusion of the paper,.

Section 2 introduces the peacebuilding context. This discussion provides an important context for the subsequent review and analysis of RoL and SSR, as well as their relationship, to take place. In particular, the discussion of peacebuilding as a multidimensional activity is crucial to situate the connection between and the importance of RoL and SSR within peacebuilding design and programming. Section 3 then introduces a discussion on the conceptual evolution and understandings of the rule of law, as well as its meanings in practice. This section highlights the varying understandings and applications of the rule of law concept in order to lay the foundation for the RoL-SSR heuristic framework established in Section 5. Next, Section 4 discusses the conceptual evolution and understandings of security sector reform. Like the previous section, it reviews the conceptual understandings and applications of SSR in order to set the foundation for the RoL-SSR heuristic framework. Since Sections 2, 3 and 4 provide a review of peacebuilding, RoL and SSR, those already well versed in these concepts may choose to jump ahead to Section 5. However, we encourage readers to engage with these sections as they provide the necessary conceptual foundation for the analysis presented later.

Section 5 introduces the central contribution of this paper, namely the exploration of the conceptual relationship between RoL and SSR from three different perspectives, which are prevalent in research and policy discourses (building upon the conceptual analysis and discussions presented in Sections 2, 3 and 4): a peacebuilding perspective, an end-state perspective and a process perspective. Taken together, the final part of this section compiles these perspectives into a heuristic framework of analysis, which has the potential to provide a tool for situating the RoL-SSR relationship and thereby facilitating the discourse across communities and possibly even coherence and coordination with peacebuilding activities. This section highlights the similarities and linkages between RoL and SSR within peacebuilding contexts in order to remove lingering conceptual ambiguities and promote heightened awareness of their mutual benefits and dependencies.

Finally, the concluding section reviews the analysis and key findings developed in this paper, with a vision for continued research and investigation.

THE PEACEBUILDING CONTEXT

To understand better the relationship between RoL and SSR, it is helpful to situate it within the broader concept and context of peacebuilding. Peacebuilding constitutes a central context in which RoL and SSR activities are undertaken and provides an encompassing framework to analyse the interdependencies between RoL and SSR approaches. Thus, in order to analyse these interdependencies, the peacebuilding concept requires clarification first. This section introduces the peacebuilding concept and then presents a discussion of peacebuilding as a multidimensional activity, concluding with consideration of its remaining conceptual and practical ambiguities, especially in terms of how these relate to understanding the RoL-SSR relationship.

Understanding peacebuilding

In simple terms, peacebuilding is an analytical and strategic framework for promoting sustainable peace in societies engaged in, emerging from or potentially entering violent conflict. In practice, peacebuilding most often takes place at the final stages of conflict or immediately following a cessation of violence, and aims to build lasting social and governance structures for a sustained peace. It incorporates an analytical framework regarding the sources of and solutions to conflict, as well as practical approaches to prevent conflict and build lasting peace and development, which typically focus on stabilisation, reconstruction and institution-

building. Conceptually and in practice, peacebuilding embodies a broad range of activities and actors in varying temporal, political and social contexts. The peacebuilding spectrum is evidenced in part by the wide array of understandings and definitions of the concept, which reflect the different mandates and institutional interests of the many actors involved. In fact, the definitions and conceptions not only vary between the multiplicity of bilateral and multilateral actors, but also at times within these organisations themselves and among different entities. In addition, peacebuilding closely relates to and overlaps with other concepts such as peacemaking and peacekeeping, a fact which, while trying to present a holistic framework for peace and development promotion, may serve to undermine its conceptual clarity. Considering this, 'peacebuilding' serves as an umbrella term that is used to help security- and development-related actors find a common denominator for strategic design and practical implementation.

The UN, for instance, which has led the development of both peacebuilding's conceptual framework and its application in practice (through Secretary-General reports and engagement by the Department of Peacekeeping Operations – DPKO – and the UN Development Programme, among others), has maintained a broad understanding of peacebuilding, in part to permit space for its different entities' varying mandates, organisational interests and comparative advantages.⁵ However, the UN's peacebuilding focus tends to concentrate on measures to 'address core issues that effect the functioning of society and the State, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions'.⁶

Within its broad perspective, peacebuilding has come to be understood as an encompassing approach to tackle the root causes of conflict and violence and assist a society engaged in or emerging from conflict to build institutions, cultures and social, political and economic capacities necessary for a successful transition to a sustained peace and sustainable development. This broad conception includes frameworks for conflict prevention, conflict management and post-conflict reconstruction while maintaining a long-term perspective with activities targeted towards addressing and alleviating the root causes of conflict. Within an analysis of conflict as a spectrum or cycle where 'post-conflict' contexts can simultaneously be 'pre-conflict' contexts, peacebuilding thus assumes both

prevention and reconstruction.⁷ The understanding of peacebuilding evolved and widened in large part as a response to an evolving understanding of conflict, which has been increasingly viewed in terms of multiple stages and as a conflict cycle,⁸ as well as due to innovation of a broader set of activities on the ground.⁹

Because of the range of contexts that fit within a peacebuilding framework, it can be difficult to draw a clear line between peacebuilding and other donor interventions such as humanitarian action, peacekeeping and development. Often this is not possible; and arguably it is not desirable, either, because a strategic peacebuilding approach requires a holistic perspective and should not a priori exclude development or humanitarian programming, for instance, from its considerations.¹⁰ Thus it can be argued that it is not the label that characterises an approach or a programme as 'peacebuilding', but rather the way it is conceived and implemented and the goals it seeks to achieve, particularly its long-term goals and vision.¹¹ Indeed, peacebuilding represents a holistic conceptual framework and a long-term approach to conflict prevention and recovery, and embodies a broad range of approaches, processes and stages to create lasting institutions and structures for a society to self-sustain a durable peace and development.

Peacebuilding as a multidimensional activity

While it is important to keep in mind the breadth of the peacebuilding concept, it is also necessary to limit the scope of the term to some extent in order to ensure conceptual clarity and thus retain the concept's analytical and practical utility. In this regard, conceptual clarity is best achieved by asking for the envisaged end-state of peacebuilding, i.e. the nature and characteristics of the peace to be achieved. Clarity in terms of the end-state can help to design and implement the dimensions and activities that a peacebuilding approach encompasses.

The nature and degree of the envisaged peace can be illustrated on a continuum ranging from the minimalist version of creating a negative peace, i.e. the absence of war, to the maximalist version of establishing a positive peace characterised by societal harmony and peace-enhancing institutions (usually benchmarked with the establishment of a market economy and democratic system). However, Doyle and Sambanis present a

useful 'middle way' that is defined by the absence of direct violence (negative peace) and some sort of minimal democratic participation, which can be labelled as a 'qualified positive peace'.¹² To achieve this end-state, the peacebuilding concept entails a multiplicity of activities that are most often categorised within the four dimensions of socio-economic development, security and order, governance and democratic participation, and justice and reconciliation.¹³

At an operational and short- to medium-term level, a multidimensional approach to peacebuilding strives to create a secure and stable environment in which the state is able to deliver security services in accordance with the rule of law and human rights; an environment is created for dialogue, reconciliation and the establishment of legitimate governance bodies, institutions and functions; and lastly, a framework is provided for donors and international actors to engage in the field in a coherent and coordinated way.¹⁴

Importantly for the purposes of this paper, RoL and SSR promotion are regularly identified as core, critical elements of this peacebuilding approach. As will be noted further below with the help of a comprehensive peacebuilding framework, these dimensions represent strategic end-states in themselves, whose combined pursuit is thought to be leading to the realisation of the overarching goal of sustainable peace and development.

Therefore, in line with this understanding and approach, it is helpful to understand peacebuilding as a multidimensional activity. As outlined in the UN's Capstone doctrine, which details the strategic and analytical framework for the DPKO in particular, peacebuilding rests upon four critical areas: security and public order; rule of law and respect for human rights; political representation and participation; and socio-economic development.¹⁵ As can be evidenced with this description and detailed later in this paper, RoL and SSR concerns, goals and activities are core to the peacebuilding agenda as they contribute to these critical areas.

Understanding peacebuilding as a multidimensional activity¹⁶ is central to advancing a holistic peacebuilding strategy, establishing greater connection and clarity between conceptual and practical design, promoting coherence and cooperation at the country level and, as it relates to the focus of this paper, advancing the objectives of RoL and SSR and understanding their beneficial relationship. Rather than being viewed as singular enterprises or a series of autonomous or disconnected activities,

for peacebuilding to be successful as it is conceived conceptually, it must be designed and implemented in a dynamic, multifaceted, multidimensional way. This helps to ensure coherence among the range of activities, and maximise the mutual benefits and impacts that each type of activity and approach can and should have on one another. Building upon the definitions of coordination and integration provided in regards to conceptual approaches, in simple terms coordination refers to the effort to be informed of each approach and any overlapping goals, with the objective of avoiding redundancy or harm and identifying shared preconditions and necessary sequencing that mutually benefit each approach; integration refers to the effort to synthesise shared activities and goals and develop shared strategies to prevent redundancy and promote collaborative programming.

Rather than existing as stand-alone components, each of these four identified critical areas (security and public order, rule of law and respect for human rights, political representation and participation and socio-economic development) must be engaged and promoted in support of one other to achieve peacebuilding's larger, ultimate objectives. This requires coordination and integration at a high strategic level to address difficult questions of sequencing and prioritisation, as well as on-the-ground cooperation and collaboration.¹⁷ If these questions and issues are not addressed adequately, peacebuilding efforts risk being *ad hoc*, piecemeal and ultimately ineffective. Further, a piecemeal approach could potentially do more harm than good, while a coordinated and integrated approach to peacebuilding will not just enhance the performance of peacebuilding in general, but the specific concerns, objectives and conceptual clarity of RoL and SSR activities as well.

One way to approach a robust, coordinated and integrated effort for multidimensional peacebuilding is by identifying and employing shared principles and best practices that have evolved over time and are now widely recognized by most institutions engaged in peacebuilding activities. In part this understanding motivated and led to the development of the Capstone doctrine. In the document, these principles and practices informed and are highlighted by the four critical areas of peacebuilding outlined in the Capstone doctrine and detailed above.

As noted in the Capstone doctrine, in operation such multidimensional peacebuilding activities include 'Disarmament,

demobilization and reintegration (DDR) of combatants; Mine action; Security Sector Reform (SSR) and other rule of law-related activities; Protection and promotion of human rights; Electoral assistance; and Support to the restoration and extension of State authority.¹⁸ As explicitly detailed here and discussed later, RoL and SSR form central components of a multidimensional peacebuilding approach. Further, and in accordance with a multidimensional approach, these are to be coordinated and pursued in support of each other.

For the moment and in light of the multidimensional perspective, it is important to note that peacebuilding objectives and desired social and political conditions such as democratic governance, professional management of (governmental) institutions, access to basic services, human rights and gender are cross-cutting issues that link not only RoL and SSR but other peacebuilding dimensions.¹⁹ Of course, while the demands and effects of such elements are evident at the intersection of RoL and SSR promotion, they are also exogenous to these two fields and are shaped and applied in other practices and policy fields as well.

The multidimensional framework of peacebuilding that is detailed by the likes of the UN is part of a conceptual strategic approach to and analysis of peacebuilding that is designed to help guide and influence practical efforts. As a prelude to the subsequent analysis, one can begin to see not only the place of RoL and SSR as part of a multidimensional peacebuilding approach, but the critical overlaps and linkages between the two. Indeed, the UN (through many of its core bodies) has addressed the issues of RoL and SSR in a variety of reports, resolutions and statements and has also pointed to their interconnections, especially in peacebuilding contexts.²⁰ For example, the Security Council noted in 2005 that the promotion of RoL and SSR are integrative elements of peacebuilding and made clear that SSR is 'inextricably linked with promotion of the rule of law' and other peacebuilding activities.²¹

Conceptual and practical ambiguities

Although the concept and practice of peacebuilding have benefited from over two decades of research, policy and practitioner input, certain ambiguities and challenges remain that threaten the realisation of its envisioned potential. As a result, a brief discussion of these ambiguities is

important. Likewise, RoL and SSR approaches are faced with similar challenges, as will be made evident in this paper. In part this is due to the pervasive lack of conceptual clarity and the related consequences across various dimensions of peacebuilding. This sub-section provides a preliminary basis for understanding the problem of conceptual clarity and its underlying root causes, and begins a discussion as to the potential answers to this problem.

One challenge concerns the underlying assumption, design and overall goal. Richmond, Paris and others, for instance, have criticised a 'peacebuilding consensus' which aims at promoting a liberal peace.²² Paris, who ultimately remains supportive of the peacebuilding agenda, argues that the liberal peacebuilding endeavour itself can lead to tensions and fuel conflict unless it first creates the necessary institutions to absorb the destabilising shocks of marketisation and democratisation, which are at the heart of the liberal peace concept. Many of the typical elements used to mark progress, such as elections, may not actually mean there is sufficient institutional or social capacity for a sustained peace and development. Thus the liberal peacebuilding model is in danger of being superficial and creating a 'virtual' peace – one marked by a lack of local ownership and legitimacy – instead of a 'virtuous' peace.²³ The prevalence of 'virtual' results in the wake of many interventions helps to explain the poor track record of international peacebuilding efforts over the last years and decades. In part, the critiques of the liberal peace agenda reflect the lack of conceptual clarity and the continued distance between policy and practice. In addition, these critical analyses are an important reminder of inherent challenges of international peacebuilding assistance.

Perhaps most importantly, the chronic ambiguity of the term 'peacebuilding' is linked to the common confusion between outcome-based peacebuilding strategies, which build on a clear theory of change,²⁴ and peacebuilding strategies which focus on outputs that are hoped to contribute to a sustainable peace.²⁵ Greater clarity in regard to strategic outcome orientation of results-based programming can help alleviate this confusion.²⁶ According to this perspective, peacebuilding interventions should be planned and implemented in a strategic way that is based on envisioning an outcome, i.e. change that is likely to make a significant contribution to the writ-large goals. Only in a second step should programme planners identify the processes and activities necessary to

achieve these outcomes. In practice, however, programme design often follows the opposite approach, whereby planning is driven by existing mandates, jurisdictions and resources and oriented towards controllable outputs rather than relevant 'change-generating outcomes'. There is often a 'strategic gap' resulting from poorly conceived, inadequate, incorrect or simply non-existent theories of change, i.e. intervention strategies.²⁷ Such reductionist approaches tend to fail to meet the intended societal objectives and goals of peacebuilding (and RoL and SSR) efforts, as they are not coherent, comprehensive or strategic.

These variations in concepts and designs make it extremely difficult to achieve coherent, coordinated and complementary approaches in peacebuilding programming, be it in the area of SSR or RoL promotion or any other component of peacebuilding. A lack of clear understanding of the concepts and the necessary coherent, strategic policy frameworks can result in ineffective programming at the field level. While this is true for the components of a multidimensional peacebuilding approach, such as SSR and RoL, in and of themselves, it applies even more strongly when attempts are made to approach them in combination and in a complementary way.

In addition to the need for more clearly articulated strategic and conceptual design, greater effort is still needed in coordination and coherence of multidimensional activities on the practical level. To a great extent, the lack of programme funding, technical expertise and conceptual clarity (the last of which this paper strives to help provide, at least in regards to RoL and SSR) contributes to a lack of comprehensively integrated activities. Indeed, the need for coordinated and holistic approaches, albeit not their definitions, has been made throughout the UN, including the Secretariat, the General Assembly and the Security Council, and in a variety of reports, resolutions and statements.

For example, as early as 2001 the Security Council discussed the topic of a comprehensive approach to peacebuilding and pointed to the need 'for enhancing peace-building activities by formulating a strategy based on the interdependence between sustainable peace, security and development in all its dimensions'.²⁸ In his guidance note on integrated missions of January 2006, the Secretary-General remarks:

Integration is the guiding principle for the design and implementation of complex UN operations in post-conflict situations and for linking the different dimensions of peacebuilding (political, development,

humanitarian, human rights, rule of law, social and security aspects) into a coherent support strategy.²⁹

Furthermore, in his June 2009 report on 'peacebuilding in the immediate aftermath of conflict', the Secretary-General mentions the continuing incoherence of mandates, guiding principles, governance structures and financing arrangements as well as the differences in cultures and notions of how to engage in peacebuilding.³⁰ Recognising the need for unity of effort and greater coherence across the UN system, the report sets out an agenda to strengthen the UN's peacebuilding efforts. While this agenda entails promising measures, their actual impact on the identified gaps, once they have been implemented and operationalised, remains to be seen.³¹ This recognition has led the Secretary-General to emphasise the importance of holistic approaches to SSR and RoL, as well as to make structural adjustments at the UN Headquarters level to support such approaches and improve coordination.

To improve the performance of peacebuilding initiatives, greater interorganisational coordination is needed. Certainly, this is not a new realisation and has been noted elsewhere.³² Nonetheless, efforts to improve coordination have often been poorly designed or did not adequately address on-the-ground operating environments and organisational tensions and realities. To address coordination gaps and shortcomings, a number of measures can be taken, such as the promotion of a shared understanding of the need for coordination and a common vision of peacebuilding's end-state; fostering of a planning culture within organisations; recognition of opportunistic and powerful interests of donor states; and the establishment of regularly situated support processes and mandates, as opposed to *ad hoc* endeavours, to promote communication and coordination.³³

In sum, coordination between different organisations involved in peacebuilding remains a major challenge both among international actors in general and within the UN system in particular. The multiplicity of organisations involved, the functional overlaps and the lack of shared conceptual understandings and common visions of end-states and the processes necessary to achieve them constitute major obstacles to increasing coherence and coordination. Thus the need for improved conceptual clarity refers to an understanding of the complementarity of interdependent peacebuilding activities (i.e. acknowledgement of

functional overlaps) as well as an understanding of the strategic integration thereof (i.e. acknowledgement of the need for shared strategies through the adoption of an outcome perspective and results-based programming). For instance, regarding the establishment of broadly accepted norms and policies for SSR and RoL promotion, Samuels notes that in the case of SSR there is some consensus and understanding, especially within the OECD, whereas common understanding of the goals and strategies for justice reform must first be developed to provide effective assistance.³⁴ While this observation will certainly be criticised by both SSR and RoL practitioners for going either too far or not far enough, one thing is for sure: there is room for improvement regarding the establishment of a shared understanding of goals, strategies, processes and activities of SSR and RoL promotion.

Despite these challenges, notable progress has been made to clarify and simplify a peacebuilding framework and agenda. Indeed, peacebuilding has emerged as a conceptual and analytical framework and agenda for action. The experience to date has helped to identify good practices, core concepts, principles and areas of action necessary for success (i.e. sustained peace and socio-economic development). In this sense, peacebuilding is viewed as a multidimensional activity that includes and depends upon RoL and SSR within its core definition. Having reviewed the emergence of the peacebuilding agenda and its conceptualisation as a multidimensional activity, the context has been set in which to explore the emergence and understandings of the rule of law and security sector reform, and their relationship to each other. Indeed, conceptually and in practice, RoL and SSR are at the core of the peacebuilding agenda. Moving forward, as elaborated in subsequent sections, RoL and SSR find a shared place, overlaps and mutual benefits within a peacebuilding framework and agenda.

THE RULE OF LAW

In 1998 Thomas Carothers argued in a provocative *Foreign Affairs* article, 'one cannot get through a foreign policy debate these days without someone proposing the rule of law as a solution to the world's troubles'.³⁵ Indeed, RoL has been invoked repeatedly in a range of contexts, to the point that some have considered it a catch-all phrase without precise conceptual or practical delineations.³⁶ Nonetheless, while the rule of law remains a contested concept, policy-makers and practitioners alike find agreement on the intrinsic value and necessity of 'the rule of law' as a critical peacebuilding component for promoting and maintaining a lasting peace and development. Indeed, nearly across the board³⁷ within the liberal peacebuilding agenda, RoL is understood as a central element of a stable, well-governed and 'modern' democratic society. Thus it is deemed worthwhile and necessary to promote and secure it, especially in post-conflict and transition societies. The contested nature of the concept, however, has resulted in different meanings and understandings ranging from narrow to broad, as will be discussed in greater detail here. When it comes to the planning and implementation of RoL activities, policy communities often have diverging and at times conflicting opinions as to the substance, sequence and priority of reform measures as well as to questions of resource allocation. There is a multiplicity of approaches to defining the rule of law. The differences in definitions and the lack of clarity can lead to misunderstandings, disagreements and even conflicting agendas at headquarters and in the field.

One reason to explain these conflicting approaches and understandings is the continued ambiguity regarding RoL at the conceptual, strategic and policy levels. As the 'Rule of Law Inventory Report' of The Hague Institute for the Internationalisation of Law remarks, 'the variety on the level of more specific rules and arrangements would perhaps be manageable if there were consensus among scholars over the meaning of the rule of law on an abstract level', which does not yet exist.³⁸ Indeed, in response to the complexity of the tasks on the ground, policy-makers and practitioners call for a broad understanding of the concept. This section attempts to provide a foothold for a more digestible and clear conceptual framing of RoL. It discusses the origins and evolution of the concept, outlines select meanings and understandings of RoL and finally describes RoL in (peacebuilding) practice. It posits that a broad understanding of RoL reflects the holistic nature of the concept, and attempts to reduce the complexity of this through a practitioner-based illustration.

Origins and evolution

The concept of the rule of law has existed since antiquity. It can be found in the writings of Plato and Aristotle as well as early Christian philosophers, who all presented a vision of society based upon 'law as a system of rules whose source lay outside of the ruler himself'.³⁹ The central idea was, and still is, that both government and citizens are bound by and must act in accordance with the law. Established laws were, in many respects, to govern the government as well as the citizens. In a simple sense, the rule of law was conceived to ensure the protection of citizens from the arbitrary rule of government.

In the twentieth century the evolution of RoL discourse has been heavily policy driven. Within the framework of international peace and development work, it was not until the 1960s and early 1970s that a RoL-related framework and discourse gained significant and central traction in policy. This approach emerged from a largely US-driven effort to support developing countries in the reform of their judicial and legal systems with a view to enhancing their economic development. However, the approaches within this 'law and development phase', which was declared to be a failure even by its key supporters, need to be distinguished from the broader rule-of-law programming that emerged in the 1970s and 1980s.⁴⁰

By the end of the twentieth century the concept of RoL had become more defined in terms of the norms of 'democracy' and 'human rights'.⁴¹ Over time, the convergence of international democracy and human rights promotion under the umbrella of international development assistance led to an increasingly articulated set of explicit standards whose implementation in transitioning and developing countries was promoted in the form of substantive RoL programmes. The aim of such development assistance was to promote democracy, good governance and human rights with a view to eliminating abusive state policies as well as supporting economic development and poverty reduction. Today, promoting the rule of law continues to be seen as a critical component for development practitioners who focus on democratisation and the protection of fundamental human rights.⁴² Under this normative framework, as well as more traditional security interests, criminal justice reform and transitional justice efforts became core components of RoL discourse and practice. Although there were some 'early' engagements in the area of RoL promotion by different actors, the involvement of multilateral agencies in RoL reforms only took off during the last 20 years.⁴³

The (re-)emergence of the RoL concept in assistance to transitioning and developing countries started in the aftermath of the Cold War. Carothers argues that the rule of law, while scarcely being a new idea, was experiencing a revival.⁴⁴ He identifies the source of the growing attention to the rule of law as the economic and democratic transitions of formerly autocratic and repressive states, starting in the 1970s and 1980s in Latin America and continuing in the countries of the former Soviet Union, Eastern Europe, Asia and Africa. Indeed, as will become evident in the following section on SSR, RoL and SSR bear common precedents in the history of reform activities, especially in the early 1990s, when peacebuilding was just beginning to coalesce as a distinct international agenda.

In these transition contexts, aid practitioners saw RoL as a necessary and promising way to support economic development and democratic change. The rationale was as follows:

on the one hand rule-of-law development would facilitate economic transitions to the market model, by helping achieve legal and institutional predictability and efficiency in a variety of areas crucial to the operation of a market economy. And on the other hand, it would help bolster fledgling democratic experiments by under

girding new constitutions, electoral regimes, and citizens' assertion of political and civil rights.⁴⁵

Hence, the revival of the concept and the growing attention it received by international policy circles was due to its promise of being 'an elixir for countries in transition'.⁴⁶ Billions of dollars were invested in aid and development programmes related to the drafting of laws and criminal justice reform (including judiciary, corrections and policing), in particular.⁴⁷

Likewise, international donors devoted greater attention to RoL assistance as a response to the increasing amount of intra-national conflict in the aftermath of the Cold War. As peacebuilding efforts emerged in response to these conflicts, RoL promotion was viewed as a core element of stabilisation, conflict resolution and reconstruction activities in conflict and post-conflict settings.⁴⁸ The principal reason for this was the belief that RoL offers an urgently needed and promising way of non-violent conflict resolution and prevention.

After Secretary-General Boutros-Ghali recognised in his 1992 'Agenda for Peace' the connection between RoL and the achievement of peace and security,⁴⁹ there has been a growing focus on the role of RoL reform in international peacekeeping and peacebuilding efforts through to the present.⁵⁰ RoL programmes in peacebuilding contexts have ranged from missions with light footprints (assisting local actors in their reform efforts) to the full-fledged administration of justice and security by external actors, as evidenced in the cases of Kosovo and East Timor.⁵¹ The breadth and depth of activities varied accordingly, and also depended on the specific peacebuilding contexts.

More recently, the 2004 report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies attempted to formulate a common language for RoL and a normative framework for RoL-related engagement.⁵² The framework includes the four pillars of international law – international humanitarian law, international human rights law, international criminal law and international refugee law – as well as the Charter of the United Nations. Since this report, the UN discourse on RoL has continued to evolve as more intentional RoL-related activities took place and reinforced its centrality in peacebuilding efforts. This is reflected in a number of reports and resolutions, such as the 2005 World Summit Outcome (Resolution 60/1) and annual reports of the Secretary-General on strengthening and coordinating UN RoL activities.⁵³ In

his March 2012 report the Secretary-General called for the adoption of a programme of action for the rule of law, the initiation of a process to establish clear RoL goals and the establishment of mechanisms to bolster further RoL dialogue.⁵⁴

Since the 2004 report, UN-supported RoL activities have been identified as 'ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality'.⁵⁵ In addition, the understanding of RoL has been developed in terms of identified threats to it, namely organised crime, illicit trafficking and issues related to economic and social justice. In part, this has contributed to the vagary of the concept (much as it has with SSR, as discussed later).

The interest in promoting and establishing RoL is not only rooted in a desire to encourage peace, stability and development in the host country, but also includes more traditional security and economic interests of donor and host states. Indeed, RoL is viewed as intimately connected to other political, social and economic concerns. For instance, economic globalisation played an important role in RoL promotion, since economic interests pressured governments to implement reforms and strengthen their justice systems in order to attract foreign investment and allow them to participate in international markets.⁵⁶ As part of the normative liberal governance and peacebuilding model, RoL frameworks often include property rights norms framed within a liberal economic model.

In addition, traditional security concerns emanate from the belief that states and societies with weak RoL structures pose significant threats to international peace and security.⁵⁷ Weak (ineffective or illegitimate) RoL can result, for example, in a lack of accountability for serious crimes and a disempowered civil society, which can lead to an increase in and legitimisation of armed violence (such as from terrorists or warlords) as a way to counter a perceived illegitimate state and obtain justice and accountability. In addition, corruption and crime were identified as severe problems in transitioning societies that international RoL promotion could help address.⁵⁸

Perhaps the most recent driving factor for increased attention to RoL reforms emerged with the US-led so-called 'war on terror' and the interventions in Afghanistan and Iraq. The 9/11 attacks and subsequent terrorist attacks on Western societies encouraged the idea that fragile

states lacking rule of law may pose a threat to donor states' security and regional stability. According to Charles Call, such events in the twenty-first century have further strengthened the 'new rule-of-law consensus'.⁵⁹

Meanings and understandings

Many policy-makers and practitioners agree that there is no uniform conception of 'the rule of law'. As a recent research project found, the term 'is used to define a number of concepts, it is tied to a variety of aims and it operates at different levels'.⁶⁰ The failure to understand and reconcile the variety of applications creates much confusion over the meaning, goals, instruments and conditions of RoL promotion among policy-makers, researchers and practitioners.

Thus while a RoL 'consensus' may exist regarding the popularity of the term, RoL often serves as an umbrella for different policy communities with varying motivations and rationales. For instance, the business community and economic analysts as well as the development community promote a particular version of the rule of law as a prerequisite for economic growth and prosperity (i.e. based on a belief in property rights protection as a fundamental necessity for liberal economic prosperity).⁶¹ Meanwhile, human rights advocates regard the concept as a critical component in the protection of fundamental human rights (i.e. based on the significance of equality and non-discrimination before the law). For their part, peacebuilding and conflict resolution practitioners see the rule of law as a critical component in their efforts to address the root causes of conflict and establish a sustainable peace (i.e. because the tensions of horizontal inequalities or social divisions – ethnic, religious or otherwise – are exacerbated by dysfunctional justice systems and generalised impunity). Finally, international and national security experts increasingly value and promote the rule of law as an element of counterterrorist and counterinsurgency strategies that help to tackle the root causes of extremist violence (i.e. as a way to strengthen the state monopoly on legitimate use of violence and thereby marginalise violent political challenges to the state or channel them into state-based dispute resolution mechanisms).

It is no surprise that these different communities, given their varied backgrounds, have differing rationales motivating their involvement with

RoL promotion in fragile, post-conflict or developing states. The underlying rationales (and their respective activities and potentially varying objectives) subsumed under the rubric of 'rule of law' include economic development (RoL contributes to predictable and enforceable laws for contracts and foreign investment); democratisation (RoL promotes respect of human rights and mechanisms for government accountability); poverty reduction (greater and equal access to justice systems for the poor and reduction of crime remove barriers and traps that disproportionately affect the poor and maintain conditions of poverty); and peacebuilding (RoL processes, including transitional justice, writing of constitutions and legislation, help to remove sources of conflict).⁶²

To appreciate the complexity and comprehensive nature of the term, it is useful to introduce a number of common distinctions in regards to RoL understandings, namely the rule of law at the international versus national level; thin versus thick conceptions of RoL; formal versus substantive understandings; and process-based versus end-state-based perspectives on the concept.⁶³ This paper posits that a holistic end-state-based perspective can allow for a broader understanding of RoL while maintaining practical utility.

The first distinction is relatively clear, straightforward and limited in its relevance for this discussion. While the rule of law at the international level deals, in simple terms, with the role of international law in international relations, the rule of law at the national level deals with rule of law issues in a country. The focus of this paper is primarily limited to the national level of RoL promotion in the context of peacebuilding. The three remaining interconnected, but nevertheless discrete, distinctions provide a useful framework for reviewing various understandings of RoL promotion in peacebuilding contexts, and are discussed in more detail.

Many researchers have used the distinctions between 'thin versus thick' and 'formal versus substantive' conceptions of RoL as a standard way to illustrate and analyse the broad spectrum of RoL definitions.⁶⁴ Using this analytical approach, the different definitions can be assessed on a continuum along which both formal and substantive aspects of the rule of law can be 'thinner' or 'thicker'. A thin version of RoL includes a limited (more technical) set of processes and desired end-states, while a thicker version includes a broader (more political) set.⁶⁵ As detailed in Figure 1, there are three levels of formal rule of law that range from the thinnest,

Figure 1: Spectrum of rule of law definitions

ALTERNATIVE RULE OF LAW FORMULATIONS		
Thinner -----> to -----> Thicker		
FORMAL VERSIONS:	1. Rule-by-Law	2. Formal Legality
	– law as instrument of government action	– general, prospective, clear, certain
SUBSTANTIVE VERSIONS:	4. Individual Rights	5. Right of Dignity and /or Justice
	– property, contract, privacy, autonomy	6. Social Welfare
		– consent – determines content of law – substantive equality, welfare, preservation of community

Source: Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004, p. 91).

‘rule by law’, via an intermediate version of ‘formal legality’ to a thicker version of ‘democratic rule of law’.⁶⁶

The thinnest conception of *rule by law* means that the government stands above the law and is not accountable to it, but exercises its power through or via laws. In this conception the law is merely an instrument of government action, and the exercise of governmental power is not subject to the law or bound by it. Hence, the law does not impose any limitations on government action. However, it does include a minimum of protections and rights in regard to individual property rights and contracts.

The second version, *formal legality*, is only concerned with formal conditions of the rule of law and is neutral as far as substance is concerned. According to this minimalist version of the rule of law, everyone, including the government, has equal status under the law. At its core, formal legality ensures ‘predictability’, which means that people can plan their activities with advance knowledge of potential legal implications. Formal legality requires laws ‘to be general in their scope, prospective in their application, clear in the formulation, and certain in their application’.⁶⁷ This means that the law does not require having a moral substance. The only condition is that laws be applied in a procedurally correct way; whether or not they are perceived to be fair and just is, at this level, irrelevant.

As the thickest version of the formal types of rule of law, *democratic rule of law* focuses on the consent of the persons affected by the law enacted. This version emphasises the importance of accessible, transparent mechanisms for legal and political change, thus takes into account participatory processes in law making. However, it is important to keep in mind that democracy is merely a process to determine the contents of the law, and not a guarantor of 'morally good laws' or broad normative benchmarks (e.g. human rights and gender equality).⁶⁸

While some scholars and policy-makers deliberately stick to a purely formalistic, i.e. procedural and institutional, conceptualisation of the rule of law for the purpose of clarity, most researchers and practitioners argue that for RoL to have a real effect on the ground in view of the goals of the peacebuilding agenda, the concept requires explicit substance. Otherwise, one can readily imagine an abusive or illegitimate government that fully complies with the formal aspects of the rule of law but discriminates against minorities or exercises excessive punishment for minor crimes. This is essential to the understanding of RoL in peacebuilding contexts. Another reason is that for people to enjoy formal justice (within a Western normative framework), some minimal substantive conditions need to be in place. At least four can be identified: the right to a fair trial; access to justice or legal aid; a certain level of education for people to be able to obey and invoke the law; and some minimal civil rights such as free speech, a free press and freedom of assembly.

Similar to the formal spectrum of RoL definitions, there is a continuum of substantive aspects that can be systematised on a thinner-to-thicker spectrum. The substantive spectrum ranges from thin accounts of 'individual rights in property, contract, privacy and autonomy' to intermediate versions emphasising the 'rights to human dignity and justice' and thick versions of 'social welfare rights', entailing substantive equality, preservation of community and the full realisation of individual and collective human dignity.⁶⁹

In addition to the substantive elements of the rule of law, there is a set of substantive conditions deemed necessary for successful and lasting RoL promotion at the national level. First is the establishment of a recognised and legitimate RoL culture, in which legal structures are respected and trusted by society. Second, the establishment of an effective and legitimate security environment subject to good governance is deemed

a necessary condition. It has been widely recognised that without basic legitimate security provision, efforts to reform political institutions and promote RoL and national reconciliation are destined to fail – and vice versa, as without RoL security provision cannot function.⁷⁰ However, security delivery should be in line with principles of a people-centred approach and accountable to democratic oversight and governance. Finally, some degree of economic development is often viewed as a necessary condition for successful RoL promotion as, simply put, the establishment of a sustainable and independent judiciary and correction and police reform cost money.⁷¹ However, more than this, the increase of legitimate economic opportunities and secure work may prevent a turn to illegitimate and illegal means to maintain livelihoods.

The final distinction, and most useful for this discussion, concerns a process-based versus end-state-based perspective of RoL. According to this analytical distinction, a process- (or institutional-) based perspective means one can conceive of RoL promotion simply in terms of the component, technical parts and activities that are deemed necessary to establish ‘rule of law’. An end-state-based perspective means one thinks of the rule of law as an end goal that is composed of different interdependent, but distinct, social conditions and relations, or in other words political and social change. Often these are defined not as a single, unified good, but composed of multiple, interdependent social goods, namely a government bound by law, equality before the law, law and order, predictable and efficient rulings, and upholding human rights.

When assessing the two, a number of flaws can be attributed to a process-based perspective that hinder its ability to deliver lasting peace and development under a locally owned, legitimate and authentic RoL framework.⁷² A process-based view emphasises the institutional attributes that are regarded as necessary for the rule of law to prevail. The underlying assumption is often that strengthening the relevant institutions will automatically create a functioning justice system and hence establish the rule of law. While policy-makers and researchers have favoured the first category of definition, practitioners of RoL assistance programmes tend to rely on the second category (the overlap between RoL and justice system reform in SSR will be an element of the later analysis).⁷³ Because institution-based definitions tend to conflate ends with activities and processes, and can fail to impart norms through capacity building, they cause a loss of

conceptual clarity and can lead practitioners to focus their programme implementation on inputs and outputs instead of outcomes.

This points to a larger problem inherent in any development and peacebuilding intervention. Practitioners tend to focus on programmatic areas where they have experience and core competencies, and base their programmes on inputs and planned outputs that they can readily measure and control, instead of taking strategic envisaged outcomes and end-states and developing programmes from there. This approach is often tied to donor funding schemes, which promote and demand such disciplinary perspectives and output-oriented measures. This questionable rationale, together with a lack of conceptual clarity, renders RoL peacebuilding assistance 'compartmental' and uncoordinated, and therefore often ineffective. Further, the bias towards segmented approaches with a narrow focus on institution building alone (without a broader social change focus) bears the risk that reforms will lack sustainable impact and ignore the establishment of indispensable governance and accountability mechanisms.

The causal relationship between implementation processes and the envisaged goals is usually not straightforward and needs to be conceptualised and assessed through clear and adequate 'theories of change'. Merely building institutions is too simplistic and narrow a view of RoL promotion and usually constitutes an insufficient or even inadequate theory of change. Unfortunately, despite more than 20 years of experience, the field of RoL assistance is still operating from a 'disturbingly thin base of knowledge',⁷⁴ and this is particularly true as regards the question how change in the rule of law occurs.

As a means to bridge the gap between process-based and end-state-based perspectives, a synergistic approach has been offered.⁷⁵ Such an view allows for broad understandings of the concept while maintaining practical utility. This approach is one that is end-state based and strategic (maintains overarching goals), adaptive and dynamic (builds upon existing cultural and institutional resources while recognising RoL promotion as a continual process), and systemic (recognises connections across institutions – justice, security, legislative – and the need for integrated reform).

This approach is also based upon a definition of RoL that highlights its strategic goals:

The 'rule of law' describes a state of affairs in which the state successfully monopolizes the means of violence, and in which most people, most of the time,

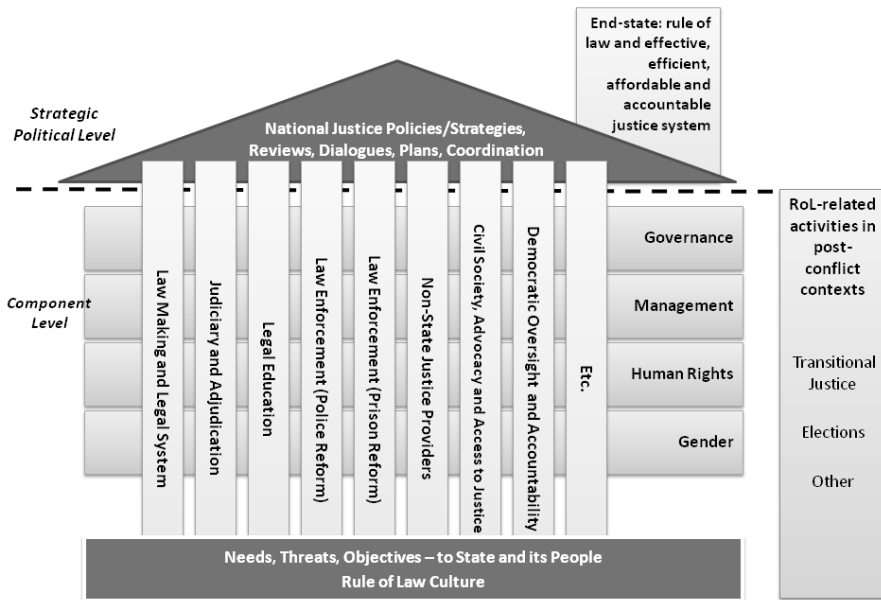
choose to resolve disputes in a manner consistent with procedurally fair, neutral, and universally applicable rules, and in a manner that respects fundamental human rights norms (such as prohibitions on racial, ethnic, religious and gender discrimination, torture, slavery, prolonged arbitrary detentions, and extrajudicial killings). In the context of today's globally interconnected world, this requires modern and effective legal institutions and codes, and it also requires a widely shared cultural and political commitment to the values underlying these institutions and codes.⁷⁶

The approach creates the basis for a holistic framework that is very similar to the holistic SSR process set out in the following section. According to this approach, RoL promotion means reforming the justice, security and legislative institutions, and empowering civil society participation in a strategic, adaptive and systematic way.⁷⁷ These reform efforts should adopt a human security approach in order to reflect the security and justice needs of ordinary people, especially marginalised and vulnerable peoples, and be designed in a way that allows for effective local participation and decision-making.

Although RoL, both conceptually and in practice, includes a broad range of security and justice providers, justice system reform is a centrepiece of RoL activities (as well as SSR, as discussed later).⁷⁸ Such reform considers the whole scope and depth of the justice system and addresses it on different levels, paying particular attention to the role of informal and traditional justice institutions and non-statutory organisations in general.⁷⁹ Of course, the holistic approach should also seek to reform and strengthen the institutions related to the four main capacities of the formal justice system – law making, law enforcement, adjudication and legal education. However, it means that institutional reform activities need to be guided by an overarching strategy, be integrated and take into account interdependencies and trade-offs, be embedded in the larger political system, be built on existing cultural foundations, be financially sustainable and enjoy public legitimacy. In addition, such an approach needs to be context-specific, paying attention to both the particularities of the peacebuilding environment and the characteristics of the current phase of transition.⁸⁰ Certainly, such an effort will be challenging and sensitive, as different perspectives may compete against one another, thereby demanding careful political dialogue and confidence-building measures.

Because of the critical importance of justice system reform (which includes elements that are also central to the security sector, such as law

Figure 2: A holistic understanding of the rule of law



Analogously adapted from: United Nations Security Sector Reform Inter-Agency Task Force, *One-day Sensitization Briefing on Security Sector Reform (SSR) and the United Nations Emerging Approach*, 2009, slide 18.

enforcement, corrections, judiciary, non-state justice providers and corrections), the relationship between the justice system and the concept of rule of law promotion is illustrated with the help of the image in Figure 2.⁸¹

This image illustrates the different elements of a holistic concept of RoL promotion, as sketched out above, and indicates the similarities as well as some differences when compared to a holistic SSR concept and the related SSR image (see Section 4 and Figure 3). The top level of the 'house' reflects the strategic, political-level perspective, with the roof representing the need for strategic coordination and integration efforts and the 'chimney' representing the end-state goals. The middle contains the component levels to support and reach the RoL end-state with the help of coordinated efforts on the political and strategic level. The vertical columns include the various activity areas and the related justice and security

providers, while the horizontal columns represent typical aspects of cross-cutting reform components (governance, management, human rights and gender). These are buttressed on the side by additional RoL-related activities, including transitional justice and electoral assistance. Finally, the base level represents the environment analysis and needs assessment that would inform particular reform strategies. These would include an assessment of the needs, threats and objectives to the state and its people in promoting a lasting RoL culture and reaching the RoL 'end-state'.

The rule of law in (peacebuilding) practice

The distinctions and analyses made above now help to assess some of the many different RoL frameworks brought to the table by a multiplicity of donor agencies and organisations.

After the first RoL programmes developed and implemented by USAID in Latin America, many bilateral and multilateral organisations followed suit. Depending on their specific contexts and mandates, multilateral organisations like the UN, the World Bank, the Organization for Security and Co-operation in Europe (OSCE), the European Union (EU) and many others developed their own approaches.⁸² Over the last 20–30 years the number of donors and implementing agencies in the RoL field has multiplied, and so have their approaches and activities: the 'rule of law assistance directory', launched by the International Development Law Organization in autumn 2007, lists more than 2,500 different RoL projects conducted by more than 500 different actors, i.e. donor and implementing agencies.⁸³ Since 2004 the Security Council has made references to RoL in over 160 resolutions and mandated support for it within peacekeeping and special political missions in Afghanistan, Burundi, the Central African Republic, Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Guinea-Bissau, Haiti, Iraq, Liberia, Sierra Leone, South Sudan, Sudan and Timor-Leste.⁸⁴

Looking back on RoL programming of the last two decades, many researchers and practitioners have drawn a sobering conclusion. For instance, Samuels notes that despite an ample number of activities, the RoL field 'remains somewhat ad hoc, with little centralized or institutionalized strategy or expertise despite a surge in interest and actors entering the field'.⁸⁵ Additionally, she observes that despite a good amount of 'lessons-

learned' efforts, assistance programmes in post-conflict or fragile situations have had little sustainable impact, especially in terms of the 'big-picture aims of rule-of-law reform'.⁸⁶ Although challenges to effective RoL promotion have been identified repeatedly in a number of evaluations, they continue to affect RoL programming.⁸⁷ Two of the most salient challenges are the lack of coordination, especially in contexts with an abundance of actors, and the general lack of a common agreement on the goals of RoL reform.⁸⁸ This picture of dysfunctional and ill-conceived approaches was confirmed by a high-level seminar on 'Rule of Law in Fragile and Conflict-Affected Situations' organised by the World Bank in July 2009.⁸⁹ These challenges have prompted the anticipated September 2012 high-level meeting of the General Assembly on the rule of law, as well as recommendations from the Secretary-General in March 2012.

In particular, the lack of coherent strategies and coordinated approaches among different RoL actors – on the general policy level as well as in peacebuilding interventions – has been identified by many policy-makers and practitioners as a key problem in RoL assistance. This seems to be a direct consequence of the multiplicity of existing frameworks and approaches that are guided by different underlying rationales, reflect a varying combination of formal and substantive elements, and envisage different goals and implementation processes.

A review of a selection of normative policy frameworks proposed by various academics, think tanks and donor institutions clearly shows that there is no consensus regarding the aims, contents and mechanisms of RoL promotion.⁹⁰ Neither is there any agreement on goals and activities, nor in terms of the scope, sequence and depth of implementation approaches. However, despite the many differences between the frameworks, there are also interesting similarities and some space for common ground.

In an effort to explain these problems, and after reviewing RoL-related activities, it appears there has been an analytically weak conflation between the various understandings described above where 'thin' and process perspectives are prioritised and mistakenly understood as 'thick' and end-state perspectives to RoL. This can lead to ill-conceived RoL programmes. As Stromseth et al. note, 'This conflation of the formal and substantive aspects of the rule of law has led to a simplistic emphasis on structures, institutions, and the "modernization" of legal codes, in a cookie-cutter way that has generally taken little account of the differences

between societies.’ In addition, it has resulted in a RoL ‘standard assistance menu’ that includes mostly technical approaches focused on professionalisation of legal services and justice and security institutions, rewriting laws and increasing legal access by supporting donor-identified non-governmental organisations. Despite its prevalence, such a standardised approach has been roundly criticised as not having worked well in any place where it has been implemented.⁹¹

If a holistic or ‘synergetic’ approach were to be developed and adopted, RoL activities could move beyond technical approaches, recognise their dependency on political and social efforts, and be designed holistically as efforts aimed at political and social change. This certainly makes RoL promotion a highly sensitive and challenging activity, especially in peacebuilding contexts, but one that can be guided with clear and holistic goals, grounded in authentic local ownership and participation, and work towards a self-sustaining RoL culture.

In summary, two main understandings of and approaches to RoL have dominated its conceptual evolution and meaning. On the one hand there is a broad understanding inspired by an end-state concept of the rule of law and its component goals. RoL promotion inspired by this broad conception focuses on the long-term strategic outcomes and vision as its starting point, and identifies necessary building-block activities to reach these outcomes. These include a functioning justice system and adherence to RoL by security and justice providers especially, and embody normative endeavours such as human rights promotion, gender equality and democratisation. In many ways this understanding more closely resembles a holistic understanding of RoL. On the other hand there is a somewhat ‘reductionist’ approach which focuses on the institutional aspects of the security and justice system. According to this understanding, RoL promotion should prioritise its efforts on building the central institutions of the justice system, focusing on activities and outputs rather than building from a long-term strategic vision (end-state) of RoL. At the conceptual level it includes a broad range of actors (especially non-statutory security providers) and promotes and necessitates broad social change. The difference between these two understandings indicates the existence of a strategic gap between the policy and programming approaches of some agencies of the RoL community, and, as we will see in Section 4, the same is the case with SSR approaches.

Thus, despite the decades of discourse regarding the RoL concept, the term continues to include a variety of understandings and approaches that can be complementary as well as contradictory and conflicting, especially in relation to SSR. Nonetheless, progress has been made to unify the concept, especially in terms of its idealised and strategic end-state. The next section, which reviews the conceptual evolution and meanings of SSR, begins to make evident the positive links and similarities between the two concepts within a broader peacebuilding framework. These links include similar actors of focus, activities and, most importantly, a shared vision of reform.

SECURITY SECTOR REFORM

Security sector reform emerged as an entirely policy-driven concept in the 1990s, and has since entered the agendas of most bilateral and multilateral donor agencies involved in peacebuilding and development assistance. Over the course of the past two decades and the conceptual debates and development of SSR, a noticeable consensus has emerged accepting a broad or comprehensive version. Similar to the debates and challenges regarding RoL, SSR practitioners and policy-makers struggled with a ‘thin’ versus ‘thick’ or process/institution-based approach and end-based approach. Indeed, varying understandings of and approaches to SSR still exist (especially in regards to a ‘stripped-down’ institution and capacity-building focus versus a broader social change version) that pose significant obstacles between SSR’s conceptual framework and its realisation in practice. However, at a conceptual level a much greater consensus exists regarding SSR than RoL, as discussed previously.

The concept of SSR was developed in response to the notion of a dysfunctional security sector and its negative implications for sustainable peace and development. At its very core, it is based on the idea of reconstructing and/or reforming the security sector in order to enhance the effective, efficient and legitimate provision of security not just to a state but to its people (i.e. a people-centred approach), and create a safe and secure environment for sustainable development. In this regard, SSR as a concept refers to approaches and processes aimed at establishing a well-governed security sector that is accountable to the people and capable of providing

security effectively and efficiently and in accordance with democratic principles. More will be said later about the actors and activities contained by this concept.

The end-state that practitioners hope to achieve via the process of SSR can be reflected by the normative understanding of the concept of 'security sector governance' (SSG) in the sense of good governance. SSG is understood as the 'formal and informal structures and process of security provision, management, and oversight within a country' and adhering to the principles of good governance.⁹² The normative assumptions of this framework include the principles of democratic control, oversight and accountability, and adherence to the rule of law. While the two concepts of SSR and SSG provide a useful distinction (although simplified) in terms of a process versus end-state perspective, the SSR concept as it is promoted today has come to include both views: an end-state perspective referring to a well-governed security sector and a process-based perspective referring to the approaches, mechanisms and activities necessary to achieve this end-state.⁹³

Origins and evolution

Since the late 1990s SSR has assumed an increasingly prominent role on the international policy agenda. Although the term was not used officially until the end of the 1990s, some of the activities and approaches related to it had been present for a long time (and often considered part of RoL activities). On the one hand, the SSR concept was reflected by the often-multidimensional activities of peace operations; on the other hand, it was reflected in a limited way by the support given by major powers to security services in allied or friendly countries coupled with governance reform elements. However, in both cases the focus of pre-SSR activities was more on the professionalisation of security services and the efficient and effective provision of state security than on the governance aspect of SSR and the provision of human security, i.e. the defining and comparative advantage of SSR.⁹⁴

The 1980s and 1990s saw a number of developments that were decisive for the emergence of the SSR concept and the related policy agenda during the late 1990s. First, with the end of the Cold War the concepts of 'development' and 'security' experienced substantive changes,

which nurtured the convergence of the two communities and led to an increasingly broad recognition and assumption of the so-called 'security-development nexus'.⁹⁵ The traditional concept of security which took the state as its referent object (i.e. focusing on 'national security') became widened and deepened in response to a greater recognition of the changing nature of conflict and structural violence as well as increased vocal analysis from global South policy-makers and practitioners. Thus the security concerns of individuals and groups became of heightened importance under the analytical framework and agenda of 'societal security' and 'human security'.⁹⁶ Likewise, the concept of development was increasingly broadened under the framework of 'human development' and came to include issues such as democratic governance, public sector reform and conflict prevention and transformation.⁹⁷ Simply put, such a broadened policy agenda became possible due to the disappearance of political constraints imposed by the Cold War confrontation between the great powers. Against this background, 'security' – in both its state-centric and its people-centred conceptions – came to be seen as an important precondition for stable and sustained socio-economic development.⁹⁸ The development community not only recognised that its efforts required a secure environment, but started to embark on security-related activities in order to contribute actively to the (re-)establishment of such an environment.⁹⁹ A further step towards the notion of a security-development nexus and the importance of democratic accountability of security forces came with the co-location of security and development actors in peace operations and post-conflict environments.¹⁰⁰

Second, these developments in the security and development assistance communities were further spurred by the growing number of international peace operations and their increasingly broad mandates after the end of the Cold War. As noted in Section 2, in recognition of the need to address the root causes of conflict and lay the structural foundations for sustainable peace, peace operations moved away from 'traditional peacekeeping' and increasingly developed in the direction of multidimensional strategies that were characterised by a longer-term perspective and addressed the root causes and multiple dimensions of the conflict, including the dimension of security and security governance.

Third, another source of input to the SSR concept stems from the enlargement of Euro-Atlantic institutions and their involvement in

supporting the transition from authoritarian rule in Central and Eastern European countries. In view of a future accession of these transition countries, both NATO and the OSCE pressed for the establishment of democratic civil-military relations; the EU and the Council of Europe expanded this approach to include non-military reform areas, such as the police, border guards and judicial institutions. Indeed, SSR evolved beyond and encompasses a conceptual framework that extends beyond mere civil-military relations.

The fourth factor for explaining the adaptation of the SSR concept by many state donors (particularly defence ministries) has to do with traditional security interests and relevant perceived emergent security threats, such as transnational terrorism and transnational organised crime. After the 9/11 attacks in New York and Washington, mature democracies started to realise again that SSR is not only necessary in the context of peacebuilding and development, but also in the context of domestic security.

Within international development assistance, the term was introduced and popularised by the UK Department for International Development in 1999. Later, SSR-related activities qualified as official development assistance, which significantly opened the way for a number of bilateral donor countries and multilateral development actors to become 'legitimately' involved in its promotion.¹⁰¹ For bilateral donors, increased engagement with SSR has been seen across development, foreign affairs and defence ministries.¹⁰² In addition, international organisations, starting with the Organisation for Economic Co-operation and Development (OECD) and followed by organisations such as the EU, and later the UN, adopted SSR in their policy agendas and started ambitiously promoting the concept.

After its emergence, the SSR concept was particularly shaped and promoted through the agenda of the Development Assistance Committee (DAC) of the OECD.¹⁰³ The OECD DAC's definition of the security sector includes core security actors, management and oversight bodies, justice and RoL institutions, and non-statutory security forces. This expansive view of the sector was an important conceptual measure to illustrate the diversity of meanings of 'security', the importance of governance bodies as part of a security sector and the dependencies and connections between various security providers and oversight bodies. In fact, this definition is reflective of the governance element of the concept as well as a holistic

approach to reform. The latest policy landmark regarding the ongoing acceptance, evolution and conceptualisation of SSR is the first UN report on SSR released by the Secretary-General in January 2008,¹⁰⁴ which proved critical for mainstreaming SSR conceptually and practically within the UN system, especially in its peacebuilding efforts. However, as discussed later, the UN accepted a slightly different definition, particularly in terms of what actors constitute the security sector.

To date, the SSR policy framework has become well accepted in international peacebuilding efforts, but the concept retains ambiguities in terms of the way it is understood and approached by different actors.¹⁰⁵ The differing understandings of the term and its continued conceptual ambiguity can be explained by the diverging rationales and backgrounds of different policy communities involved in SSR initiatives.

The analysis of the origins and emergence of the SSR concept helps to illustrate not just the different policy communities involved in SSR promotion, but also their differing rationales and motivations. While the objectives of security and development communities may align broadly under a general SSR framework, important differences and tensions remain when it comes to prioritising different areas for reform. The reason is that SSR provides a framework for strengthening both state security and human security, which can be at odds with one another in terms of needs and perspectives, as well as the mandates of the donor agencies (e.g. where donors may need to prioritise state institutions and interests over traditional or community security providers and interests). While the tension is likely to remain, it can be minimised by recognising the interdependent and mutually reinforcing relationship between state security and human security.¹⁰⁶

The advantage of SSR as a concept is that it cuts across all these different policy communities and rationales and provides an overarching framework to include them. Yet while this comprehensive approach can foster a convergence of understandings and approaches, it can also disguise a continued lack of common understanding and differences in policy and programming priorities and thereby hinder increased coordination. This potential division between policy communities and practitioners requires close collaboration and joint approaches to policy development and programming. In practice, however, this is often difficult to achieve due to differences in mandates and institutional interests as well as diverging

understandings. This makes increased cooperation and integration on the policy level and within peace operations on the ground a challenging and often daunting task.

Meanings and understandings

Policy-makers and practitioners have proposed many varying definitions of SSR, particularly in regard to which institutions and actors make up the security sector and what kind of approaches and activities the SSR process entails. There is a continuum of understandings, ranging from a narrow and state-centric view of security and the security sector to a broader people-centred and governance-oriented understanding that includes a broad range of actors and stakeholders. In many ways, such distinctions reflect those within the RoL concept (thin versus thick, formal versus substantive, process versus end-state). Although a broad definition of the security sector has become increasingly accepted, at least on the conceptual level, the scope of what actors constitute the sector remains contested.

The broad understanding of the SSR concept is closer to the norm in terms of policy design, as reflected in the policies and approaches of many of the international organisations engaging in SSR.¹⁰⁷ The first authoritative broad and comprehensive definition of SSR was provided by the OECD DAC Guidelines on security system reform¹⁰⁸ and governance:

‘Security system reform’ is another term used to describe the transformation of the ‘security system’ – which includes all the actors, their roles, responsibilities and actions – working together to manage and operate the system in a manner that is more consistent with democratic norms and sound principles of good governance, and thus contributes to a well-functioning security framework.¹⁰⁹

In the light of this definition, the security sector includes all the institutions and entities – in both public and private sectors – that are concerned with the provision of security and justice to the state and its people:

- *Core security actors:* armed forces; police service; gendarmeries; paramilitary forces; presidential guards; intelligence and security services (both military and civilian); coastguards; border guards; customs authorities; and reserve and local security units (civil defence forces, national guards and militias).
- *Management and oversight bodies:* the executive, national security advisory bodies, legislative and select committees; ministries of defence, internal affairs and foreign

affairs; customary and traditional authorities; financial management bodies (finance ministries, budget officers and financial audit and planning units); and civil society organisations (civilian review boards and public complaints commissions).

- *Justice and the rule of law*: the judiciary and justice ministries; prisons; criminal investigation and prosecution services; human rights commissions; ombudspersons; and customary and traditional justice systems.
- *Non-statutory security forces*: liberation armies; guerrilla armies; private security and military companies; and political party militias.¹¹⁰

To these four categories of security sector actors must be added a fifth, which while not specifically mentioned by the OECD DAC Handbook is usually considered as a separate and included group within the security sector:

- *Non-statutory civil society groups*: professional groups; the media; research organisations; advocacy organisations; religious organisations; non-governmental organisations; and community groups.¹¹¹

The OECD DAC definitions reflect a broad understanding of SSR and the security sector, as they not only include the core security actors but also take into account the roles of democratic governance and non-state actors and include aspects and institutions of the legal system.

Such a broad conception of the security sector (as well as security) is particularly necessary to guide external assistance in peacebuilding contexts, where the state institutions are weak or non-existent, where non-state actors play a pivotal role and where the security and justice needs of the population require measures that go well beyond the traditional assistance to state security forces and relevant oversight bodies – or when the state’s statutory security forces are largely responsible for insecurity at the community (or national) level.¹¹²

However, while there may be a growing convergence around the broader conception among many intergovernmental organisations involved in SSR, it is important to note that not all external actors share this understanding of the concept. For instance, there is divergence over which actors constitute the security sector. While a broader understanding of the sector, as detailed above, has become increasingly prominent, some donors, including the UN, focus their efforts on state security institutions and providers, excluding armed non-state actors, for instance. Indeed, the

place of armed non-state actors, particularly guerrilla and insurgency groups, as well as civil society organisations as legitimate security sector actors and providers, remains contested. In addition, as Hänggi and Scherrer note, ‘The broader understanding is not, however, the consensus choice of the entire SSR community: on the one hand, there is concern that the justice sector might become “securitized” by its incorporation in the SSR concept, whereas others fear a lack of clarity and focus if the security sector is not confined to core security actors.’¹¹³ Such a (misguided) fear of securitisation extends to many development practitioners, who remain wary of engaging with SSR programmes as a means to advance development objectives despite the fact that as a concept SSR emerged from the development community.¹¹⁴ This indicates that while a common SSR community is emerging, it is not necessarily unified in its interpretations or knowledge of the concept, because different members – both individuals and institutions – have different backgrounds, interests and preconceived notions in development, democracy promotion, security, conflict transformation or human rights and justice.

The divergence in understanding of SSR is reflected in the gap between policy and practice. As discussed below, in practice many SSR initiatives have failed to incorporate a broad understanding of the security sector, a people-centred approach to security and the end-state perspective of SSG. Instead, similar to the previous discussion on RoL, much focus has been on ‘quick fixes’ and stabilisation efforts focused on institutional capacity building and programmatic outputs, rather than political and social change and programmatic outcomes.

To understand better the divergence between the generally accepted conceptual design of SSR and its limited application in the field, it is helpful to consider its holistic, end-state perspective. As opposed to a process-based perspective, an end-state and thick perspective of SSR aims to contribute to a ‘safe and secure environment for people and states’ through the promotion of a ‘well-functioning security framework’.¹¹⁵ In this regard, the support of external actors to partner countries should focus on four overarching objectives:

- 1) Establishment of effective governance, oversight and accountability in the security system;
- 2) Improved delivery of security and justice services;

- 3) Development of local leadership and ownership of the reform process; and
- 4) Sustainability of justice and security service delivery.¹¹⁶

As became clear in the definitions of SSR and the security sector, the core objective of SSR is to enhance the effectiveness, efficiency and affordability of the security sector within a broader framework of democratic governance that ensures civilian oversight and democratic control. The understanding is that a well-governed security sector that is responsive to the needs of the people and is 'locally owned' will contribute to improved and sustainable provision of security and justice services.

Put simply, an ideal SSR process aims at enhancing both the capacity of the security sector and its legitimacy. The two core dimensions of activities could therefore be described as 'capacity building' and 'governance', reflecting the twofold purpose of supporting the (re-) establishment of a professional and well-governed security sector. The rationale, i.e. the theory of change, underlying these direct objectives is that a professional (efficient, effective and affordable) and well-governed (democratically accountable and legitimate) security sector will contribute to a number of related or higher-level goals – such as socio-economic development, stable governance, the rule of law, gender equality, democratisation and human rights – and ultimately to sustainable peace and development. In this regard, good 'security sector governance' is the key objective of SSR and a normative end-state of the process that encompasses clear structures, processes, values and attitudes shaping decisions about security and their implementation. Indeed, this is inherent within the SSR/SSG policy concept.

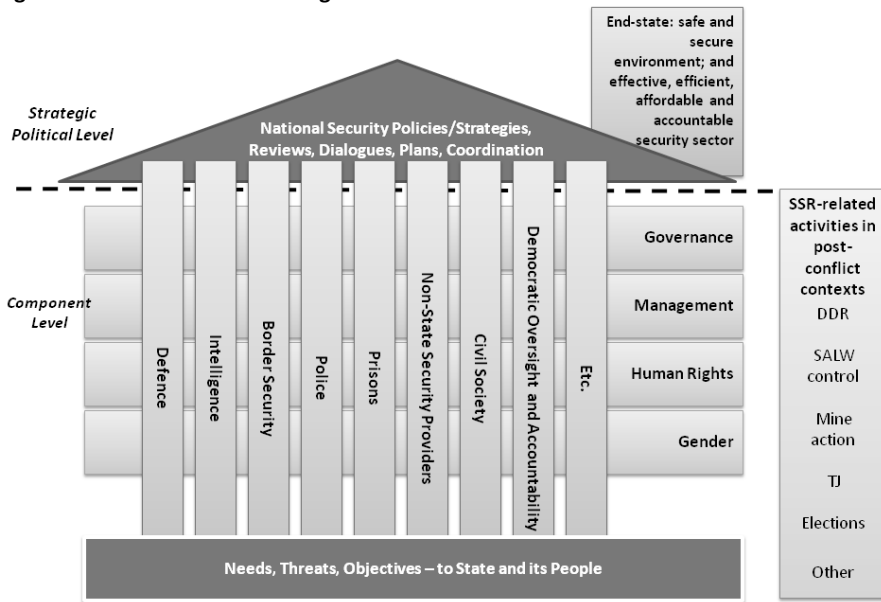
Within peacebuilding contexts and in practice, 'SSR is closely linked to related activities such as disarmament, demobilization, and reintegration; small arms control, and transitional justice.'¹¹⁷ In the context of multidimensional peacebuilding activity, as posited by the Capstone doctrine, SSR activities relate to and include professionalisation of security sector institutions through (institutional) capacity building, democratic governance and, of course, SSR-related activities. Together with the two categories of 'overarching' and 'cross-cutting' activities, this gives a 'tool-box' of SSR activities in a peacebuilding environment:

- *Overarching activities*, such as security sector reviews and their development, needs assessments and development of SSR strategies and national security policies

- *Activities related to security- and justice-providing institutions*, such as restructuring and reforming national defence, police and other law enforcement agencies as well as judicial and prison systems
- *Activities related to civilian management and democratic oversight of security and justice institutions*, including executive management and control, parliamentary oversight, judicial review, oversight by independent bodies and civil society oversight
- *Activities related to SSR in post-conflict environments*, such as DDR (disarmament, demobilisation and reintegration), SALW (small arms and light weapons) control, mine action and transitional justice
- *Activities related to cross-cutting concerns*, such as gender issues and child protection¹¹⁸

Like the heuristic image of RoL (Figure 2), the UN Inter-Agency SSR Task Force illustrates these five categories of activities in the form of a house and adds some additional areas, such as human rights (cross-cutting issue), elections (SSR-related activities) and non-state security providers (see Figure 3). Furthermore, the illustration includes a foundational category that points to the centrality of a locally owned and needs-driven approach which is responsive to the needs, threats and objectives of concern to a particular state and its people. The illustration depicts the activities related to civilian management and democratic oversight as crosscutting issues, together with human rights and gender. The ‘roof of the house’, i.e. the issue of strategic security sector coordination, has long been a critical gap in UN support to SSR. In fact, this additional category of SSR assistance has not been systematically addressed until recently – neither on the level of integrated field missions nor with corresponding support structures at the headquarters level.¹¹⁹ While the UN has already been active in the above-mentioned assistance categories, although to varying degrees, it seems to have left unaddressed the important area of systematic and strategic coordination of SSR activities at the field level.¹²⁰ Recently, however, this gap has been recognised, and it is hoped that the holistic SSR framework provided by the UN Secretary-General’s SSR report will serve as a good basis for closing the gap at the operational level and lead to more systematic consideration of the need for developing holistic, locally owned and affordable national security strategies.¹²¹ The newly created SSR Unit within the UN system has begun to play an important role in closing this gap based on the Secretary-General’s SSR report.

Figure 3: A holistic understanding of SSR



Adapted from: United Nations Security Sector Reform Inter-Agency Task Force, *One-day Sensitization Briefing on Security Sector Reform (SSR) and the United Nations Emerging Approach*, 2009, slide 18.

Finally, it is important to note that the depicted image of SSR does not include an explicit justice reform pillar, as usually included by other organisations and scholars.¹²² To be clear, justice reform is a critical element of the SSR concept. However, the model includes many institutions and elements that are component parts of the justice system and RoL promotion, such as police, prisons and civil society. In addition, the crosscutting reform issues – governance, management, human rights and gender – are the same as in the area of RoL promotion and justice system reform. Indeed, a holistic approach to SSR includes ‘justice’ providers within the concept of the security sector. At its simplest level, the judiciary and police can be considered part of the security sector as they ‘defend and interpret the laws under which the security services operate’.¹²³ In addition, law enforcement and corrections services are often performed by principle domestic security providers and are typically the focus of reform and governance efforts, especially in post-conflict contexts. SSR includes

questions of appropriate staffing and sizing as well as proper conduct in line with norms of human rights, democratic oversight and gender equality. These questions affect police, corrections and judiciary just as they do military or intelligence or other security providers, for instance. The overlaps with RoL become apparent when looking at the conceptualisation of RoL promotion in the previous section, and are analysed in more details in Section 5.

While the inclusion of a broad set of actors (traditional security institutions, justice institutions, intelligence services, legislature, civil society and non-statutory armed actors) and cross-cutting issues (governance, management, human rights and gender equity) is critical for a holistic understanding of SSR, another condition needs to be fulfilled for a SSR programmatic approach to be holistic. It can be argued that comprehensive conceptualisation of the security sector does not automatically translate into holistic programmes that yield a relevant and sustainable effect on the conflict dynamics. For example, ensuring democratic oversight is a precondition for a safe and secure environment, but it is not sufficient in itself. A holistic approach requires a clear theory of change: a strategy to link the different components of an SSR initiative so they have relevant and positive effects on the conflict.

Security sector reform in (peacebuilding) practice

Despite the efforts to outline and articulate a common holistic language and understanding of SSR, recent studies and stock-taking exercises suggest that the good intentions of a holistic and integrated approach have hardly been realised in the field and SSR initiatives remain partial and limited, indicating a policy-practice gap.¹²⁴ Rather than supporting a ‘thick’, holistic or end-state perspective, most SSR activities in peacebuilding contexts reflect a thin, institutional or process-based approach. This is evidenced, for example, by the limited notion of the security sector. Many initiatives tend to be limited to specific security providers, usually the military and the police. Such an approach may focus on training and capacity building of state security providers or a single institution, often at the expense of traditional or community security providers and oversight bodies such as the legislature, ombuds institutions and civil society, not to mention an integrated approach cutting across a number of institutions. The focus on

state security institutions can limit the ability of these reform initiatives to represent adequately the security needs and perspectives of local communities. The failure to capture and support oversight capacities of civilians threatens the promise of democratic governance, control and accountability, and the failure to address multiple institutions ignores the ways in which these are interconnected and affect broader governance issues. In addition, SSR initiatives have often failed to engage intelligence services, a critical component of SSR design¹²⁵ but often dismissed within SSR practice as being marginal, due to the highly secretive and sensitive nature of intelligence within government activity. And many SSR initiatives have failed to address gender inequalities, especially gender and sex-based violence, instead relying simply on increasing the number of women in security institutions and designing reform programmes, especially seen in DDR initiatives, that are essentially gender blind.¹²⁶

Whether aimed at providing immediate stabilisation or simply modernising and equipping traditional statutory security institutions, by failing to incorporate a broader understanding of the sector, a people-centred view of security and the goals of SSR, such 'light' approaches fail to support SSG, which lies at the very heart of SSR conceptual design.¹²⁷ While the SSR concept has become well established as a holistic policy framework and is seen as a crucial element in peacebuilding processes, its achievements on the ground remain limited.

In addition, in practice there is often a lack of sufficient donor coordination, resulting in suboptimal SSR. Based on a number of case studies, Schnabel and Born identify the sources of missing coordination in the 'diverging views and understandings about the role and reform of the security sector', and note that the lack of an overarching concept of SSR can result in a suboptimal 'sectoral', i.e. segmented, approach, as was the case in Timor-Leste.¹²⁸ Regarding the lack of coordination, one practitioner noted that 'Donor policy communities remain to some degree locked within their respective thematic invisible cages, which makes coherence, coordination and complementarity all the more difficult to achieve.'¹²⁹ Removing silos both across and within organisations is crucial to achieve a more holistic SSR in practice that reflects its normative conceptual framework.

The holistic conception of SSR has two important implications for practitioners. First, SSR cuts across a variety of policy areas and

consequently engages in reform activities that lie beyond the traditional security sector and overlap with other areas of the peacebuilding environment (e.g. socio-economic development, human rights, rule of law, democratisation and governance). Since there may be other reform actors active in these policy areas who may have different objectives, this can create the risk of duplication or even competing or conflicting agendas. The broad approach to SSR automatically includes a broad range of policy communities that have their own understandings and do not necessarily share the holistic view on SSR. This explains why the concept remains contested, although there are some tendencies of convergence around a holistic concept – as exemplified by the recent UN SSR report and the OECD DAC SSR Handbook.¹³⁰

Second, it is in the nature of the holistic SSR concept to strive for coordination and integration. Although improved coordination may help to overcome programmatic conflicts, it may also exacerbate tensions: while most organisations are fine with the idea of coordination, hardly any organisation wants to be coordinated. Thus while the holistic SSR concept has a great potential for coordination, it may also meet with fierce resistance when it is confronted with other concepts, such as the rule of law, asserting their own claim to coordination.

In sum, the holistic nature of the SSR concept seems to build a useful basis for increased cooperation and integration, at least on a conceptual and policy level. In practice, the concept still requires further consolidation to ensure comprehensive and coordinated approaches and avoid segmented, piecemeal approaches that have typified most SSR-related activities. Similar to the previous discussion of RoL, there are two main understandings of and approaches to SSR. However, unlike the differences over the RoL concept, on a conceptual level much greater consensus and agreement have been reached in regard to the breadth and depth of SSR objectives (especially good security governance) and components (a broad range of actors). But divisions still persist over which actors constitute the security sector (e.g. a broad understanding promoted by the OECD DAC and a narrower state focus promoted by the UN), as well as lingering gaps between the conceptual rendering of SSR and its practical application. Thus on the one hand there is a broad understanding inspired by an end-state conception of SSR and its component goals and actors, and incorporating the promotion of (good) security sector governance as a critical, indeed the

fundamental, purpose of SSR. Without this aspect, reforms cannot be considered SSR. SSR embodies a set of highly sensitive (political) processes aimed at long-term, strategic objectives for sustainable social change. On the other hand there is a reductionist focus on technical approaches to and limited institutional aspects of the security sector. According to this understanding, SSR focuses on building the capacities of central institutions of the security system to promote stabilisation rather than engaging a holistic view of the sector and working towards the conceived end-state of (good) security sector governance. Like the challenges facing the conceptual understanding of RoL, this difference represents a strategic gap between concept and practice that continues to hinder successful SSR delivery and promotion.

Having established the central perspectives of the RoL and SSR concepts, the next section analyses the ways in which these perspectives share objectives, vision, values and processes. It places the perspectives within a heuristic framework of analysis to connect the dots more easily between the two concepts and promote heightened coordination and integration, with the objective of enhancing their conceptual integrity and, hopefully, their successful delivery in practice.

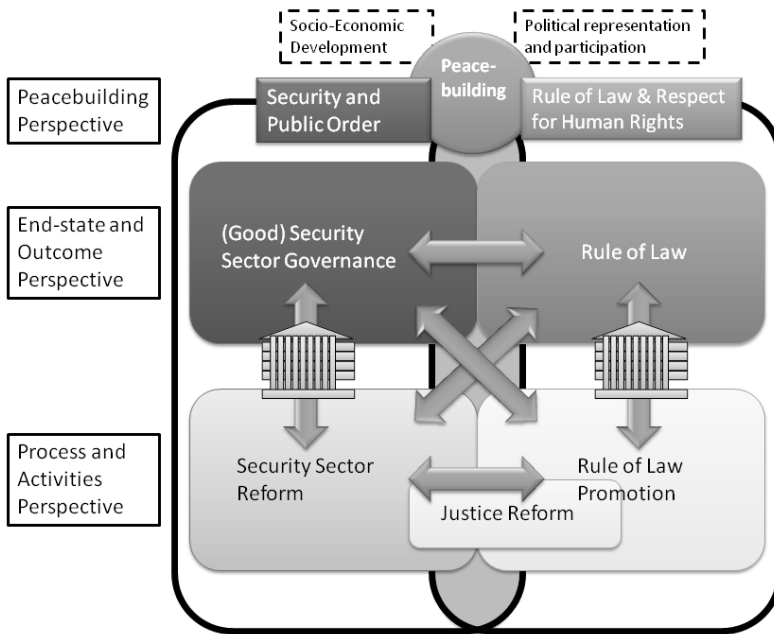
THE RELATIONSHIP BETWEEN THE RULE OF LAW AND SECURITY SECTOR REFORM

Forming the central contribution of the paper, this section explores the conceptual relationship between RoL and SSR from three different perspectives (peacebuilding, end-state and process) which are prevalent in academic and policy discourses and presented in Sections 2–4. Taken together, these perspectives can constitute a multidimensional framework of analysis with the potential to be a useful tool for situating references to the RoL-SSR relationship. In establishing such a framework, it is hoped to help encourage dialogue across communities of policy-makers and practitioners and potentially enhance coherence and coordination within peacebuilding activities.

The model offered in Figure 4 is used as a reference point to examine the various perspectives, building upon the views of peacebuilding, RoL and SSR presented previously. Then the section examines the RoL-SSR relationship from the three perspectives of peacebuilding, end-state and process. It concludes with discussion of a heuristic framework of analysis (visualised in Figure 5).

Figure 4 depicts a 2x3 matrix that helps to analyse the conceptual relationship between RoL and SSR across a general peacebuilding perspective, an end-state perspective and a process perspective. The framework reflects the core aspects of a ‘truly’ holistic concept – i.e. coordination and complementarity across different conceptual areas, and strategic outcome-based orientation across different perspectives based on

Figure 4: Comparison of RoL and SSR perspectives



Source: Authors' illustration

context-specific needs – to illustrate the complex yet positively interlinked relationship between the RoL and SSR concepts.

Viewed horizontally, this model for a holistic conceptual framework contains the central goals, outcomes, processes and activities of RoL and SSR, particularly within peacebuilding contexts, and illustrates the two concepts' complementarity and hence the potential for 'horizontal integration'. Viewed vertically, it illustrates the strategic relationship between the different perspectives and the need for 'vertical integration', i.e. a strategic outcome orientation that follows a circular process where the goals are inspired by context-specific security and justice needs on the ground and the specific processes and activities for implementation are derived from strategically prioritised goals. Finally, viewed diagonally, the framework represents the mutual dependence between different perspectives as well as the particular RoL and SSR activity areas.

To disentangle the multilayered and complex, yet mutually beneficial, conceptual relationship between RoL and SSR we will show the connections through these perspectives. Of course, it is important to note that in practice it is not possible to delineate firmly between these perspectives of the relationship, since they influence and flow into each other. However, the purpose here is to contribute to better conceptual framing of the RoL-SSR relationship, and these distinctions prove useful in the discussion to simplify our analytical process and make it clearer.

The RoL-SSR relationship from a peacebuilding perspective

The first perspective of the RoL-SSR relationship is from the general peacebuilding level (as introduced in Section 2). This perspective contains the overall ('higher-order') goals of peacebuilding interventions. As noted in the model (and discussed earlier), these goals include social and economic development, political representation and participation, security and public order, and the rule of law and respect for human rights. These overall goals represent a multidimensional approach to peacebuilding, in which RoL promotion and SSR play central and pivotal roles.

Certainly, all these dimensions are interdependent: one cannot be strengthened without simultaneously enhancing another. This is particularly true for the RoL and SSR contributions to peacebuilding. For instance, security and public order as ensured by a well-governed and reformed security sector require effective and authentic rule of law and respect for human rights. Without genuine RoL, security providers run the risk of being unaccountable and unresponsive to parliamentary oversight in particular, as well as the needs of the people they serve, especially marginalised groups and communities, since they cannot be held accountable for their own actions (corruption, abuse, misconduct) or those of others (through effective law enforcement and crime prevention). Likewise, effective and authentic RoL, as well as respect for human rights, depends upon reform of previously bloated, unaccountable or oppressive components of the security sector, such as the military, police or intelligence. Management and oversight bodies and civil society organisations must be empowered to effect authentic governance and inform national and local security priorities in order to support human rights protections, transitional justice, reconciliation and lasting RoL.

Moreover, as discussed in the respective sections, RoL and SSR are highly important, mutually dependent and mutually beneficial for achievement of the other two higher-order goals of peacebuilding, namely socio-economic development and good political governance.

These mutually contingent and reinforcing relationships are captured by the four core components of a multidimensional peacebuilding framework, as discussed earlier and detailed in the Capstone doctrine and elsewhere. As an initial measure towards advancing a peacebuilding agenda, basic security and public order are a critical baseline. Indeed, basic security and physical safety are the preconditions for any peacebuilding activity as well as the longer-term establishment of sustainable peace and development in a post-conflict society.¹³¹ However, to make a sustained and positive contribution to meaningful peace and development for all of the people in a society, it is important that a normative rights-based framework grounded in principles of good security governance and the rule of law characterises security and safety. Thus by working towards a safe and secure environment and promoting good security sector governance, SSR not only builds the foundations for the achievement of the rule of law but also constitutes one of the preconditions for the achievement of other peacebuilding goals. As SSR is intended to be a locally owned and participatory process, including addressing the security needs and demands of marginalised and vulnerable populations, it can help address sources of conflict and insecurity and integrate a people-centred approach to security within the design, objectives and framework of statutory security providers.

Likewise, RoL is an important element in ensuring people's safety and security. Particularly in its thicker versions, as discussed earlier, RoL 'contributes to the integrity and security of the person, providing individuals with legal instruments and judicial mechanisms to protect themselves against the abuse of power'.¹³² As part of their design, RoL measures constitute an important non-violent conflict resolution mechanism that, when efficient, can prevent a return to violence as a means of conflict resolution. Moreover, the rule of law is not only a precondition for the lasting success of international peacebuilding initiatives in general, but also its own success depends on the achievements of other peacebuilding dimensions.¹³³

In sum, the conceptual frameworks of SSR and RoL, which include security and justice-related concerns (as explicitly detailed in a

multidimensional peacebuilding approach), are interdependent and mutually reinforcing, as both are firmly rooted within a liberal peacebuilding paradigm. While this can be said for all peacebuilding dimensions and their characterising elements and conditions, the relationship is arguably even stronger in the case of SSR and RoL, since security and justice delivery are at the very core of a state's functions and significantly overlap in terms of implementation, thus constituting highly political tasks. Further, the effective and efficient delivery of security and justice is a foundation upon which all other peacebuilding tasks can be built and sustained. Therefore, the promotion of SSR and RoL is very sensitive in nature, but it is also very urgent, given the importance of access to effective security and justice services for citizens and the fact that weak governmental institutions are often at the source of insecurity and injustice.

The RoL-SSR relationship from an end-state perspective

The second perspective of the RoL-SSR relationship is from the view of the end-state (or outcome) envisaged by a peacebuilding intervention, particularly in relation to justice and security. This end-state should not be confused with the overall goals of peacebuilding; it defines the particular objectives of intervention, rather than the overall societal change to be achieved in the long run (e.g. sustainable peace and development). In other words, these are the conditions necessary ultimately to achieve the higher-order goals of peacebuilding and its security- and justice-related concerns. The focus here is on shared principles and crosscutting issues, as well as shared end-states or outcomes. The ways in which activities and processes in one policy field affect those in another field are analysed in the next subsection.

Holistic RoL and SSR conceptual frameworks ideally share the same foundations that build the basis for any peacebuilding intervention: responsiveness to the needs and objectives of a state and its people, following established principles¹³⁴ and taking into account the realities of a conflict and post-conflict context. These foundational elements provide the context for and feed into the strategic elements sketched out in the 'roof' and 'foundation' of the RoL and SSR images in Figures 2 and 3.

The compatible relationship between RoL and SSR is most evident in light of the three end-states (or outcomes) that help to achieve the higher-

order goals of peacebuilding: security and public order, the rule of law and respect for human rights, political representation and participation and socio-economic development. These three shared end-states are public order and a functioning criminal justice system; professional institutions, i.e. efficient and effective institutional capacities; and democratic governance, i.e. civilian oversight, control and accountability of security and justice institutions.

To begin with the first, there is important convergence of the RoL and SSR concepts in the shared concern for public order and the (criminal) justice system.¹³⁵ Public order is typically understood in international development contexts as ‘a condition in which laws are enforced equitably; the lives, property, freedoms, and rights of individuals are protected’, violence has been reduced and criminality is pursued through a system of due process.¹³⁶ More ambitiously, and within the normative framework of RoL and SSR, especially in peacebuilding contexts, this also means that past crimes, abuses and injustices are accounted for and the state is subject to the same degree of legal and democratic scrutiny as its citizens. It represents an ideal condition in which people are able to pursue and sustain their livelihoods, their human development is supported and their human security needs addressed.

This definition shows that public order and its various sub-components and activity areas are at the heart of the intersection between the RoL and SSR concepts. Thus it is important to maintain a comprehensive approach to public order that addresses all interrelated elements of the criminal justice system, and in particular law enforcement, judiciary and corrections. These sectors and foci of reform are an integral part of both a comprehensive RoL and a holistic SSR conceptual framework. Likewise, other security institutions must be held to account under good governance structures. Consequently, parliamentary and civil society oversight mechanisms should be enhanced to provide this.

Second, RoL promotion and SSR place strong emphasis on the strengthening and professionalisation of institutions – mostly focusing on formal, but to an increasing extent informal and customary, institutions. According to this approach of ‘institutional capacity building’, external assistance seeks to render security and justice institutions more effective and efficient and aims at improving their service delivery capacity. It also strives to provide safeguards for its members and include gender

mainstreaming efforts. Given the shared concern for institutional capacity building, RoL and SSR practitioners are likely to embark on similar or identical activities to (re-)build institutions and improve their management; and given the thematic overlaps indicated above, RoL promotion and SSR may even seek to work on the same institutions.

Third, the holistic conception of RoL and SSR requires ensuring democratic governance of these institutions. One element of democratic oversight and accountability of (governmental) institutions is a well-governed and functioning justice system with a robust legal framework.¹³⁷ This explains why SSR, from a governance perspective, requires the rule of law. On the other hand, the RoL community also has an interest in oversight and accountability because the rule of law, by its very logic, requires control mechanisms. As developed in concept, these control mechanisms do not necessarily need to be democratic, depending on whether the conceptions of the rule of law are thinner or thicker. However, as noted earlier, within a peacebuilding framework democratisation continues to be a standard normative approach. Thus, given the shared interest in democratic governance, RoL and SSR practitioners are likely to work on the same institutions, seeking to achieve the same outcomes of oversight and control, adopting the same or similar approaches and implementing identical activities.

Regarding these three outcome areas where there are strong overlaps between the two concepts, it could be argued that if an approach is 'truly holistic', the activities undertaken and results achieved should be more or less the same, regardless of whether a programme is planned and implemented by RoL or SSR practitioners. In this context and as noted earlier, 'truly holistic' means the approach is designed in a strategic way and shaped by local and national needs so it reflects relevant particular contexts and concerns, which ultimately will assist in its successful and sustained realisation.

The RoL-SSR relationship from a process perspective

The third perspective can be found on the process level and refers to the approaches, mechanisms, institutions and activities envisaged to promote the rule of law and conduct SSR, as well as to their connections with the outcome level.

A holistic approach to peacebuilding requires not only responsiveness to the realities and needs on the ground, but also the development of a strategic framework in collaboration with national and local partners that helps to guide and integrate the multiplicity of peacebuilding activities. Such strategic frameworks can deal with specific sectors or areas of concern, but should ideally encompass the whole peacebuilding spectrum. This means developing a unified and comprehensive strategy where different programmes and initiatives account for one another in their planning and design stage in order to maximise potential cross-beneficial outcomes and minimise duplications and potential harm. While there have been initial experiences with poverty reduction strategies and strategic peacebuilding frameworks, academics and practitioners alike contend that there remain important gaps as regards to nationally owned plans for peacebuilding assistance in general and RoL promotion and SSR in particular.¹³⁸ However, given their interdependent nature, RoL and SSR should ideally be integrated in the same assistance framework, so this area would constitute not just an overlap but in fact a space where the development of RoL and SSR intervention strategies could be approached in a complementary and integrated way. This could lead to meaningful shared strategies and begin to break down existing silos that result from a lack of coordination and integration.

In terms of the related activities of RoL and SSR, the practitioners in both fields share a concern for transitional justice and electoral assistance.¹³⁹ Although these activity areas are not at the core of RoL promotion and SSR, they remain relevant for a multidimensional peacebuilding endeavour. Conceptually, the SSR and RoL frameworks also share a concern for the role of non-state actors and civil society organisations as service providers, overseers of formal institutions, reform partners, advocates of norms and standards, evaluators of programmes – and potential spoilers.¹⁴⁰

In some of the illustrated cross-cutting issues, both the SSR and RoL frameworks – at least in their holistic conception – seek to integrate a service delivery mentality that is responsive to people’s needs, actively promote the respect for human rights and incorporate a gender mainstreaming approach to address lasting inequalities and gender and sexual-based violence.

Activities aimed at re-establishing public order in peacebuilding contexts include those designed to (re-)establish a functioning criminal justice system in sectors such as policing, criminal justice institutions and prison reform. In the case of RoL promotion, activity areas include legislation and the reform of legal frameworks, reform of justice institutions that are not part of the criminal justice system and legal education; for SSR, activity areas can be found in defence reform, intelligence reform and border management.

Conceptually, both RoL and SSR, especially when viewed in a peacebuilding context, consider security and justice to be interdependent and mutually reinforcing. Because of this, reforms of institutions and activities aimed at 'security' or 'justice' concerns are interdependent and mutually reinforcing. For example, continued corruption (in security services) or the prevalence of sexual and gender-based violence in some (post-)conflict situations pose problems that require a multifaceted response cutting across both RoL and SSR concepts. Such a comprehensive response to corruption, for example, will include narrow SSR ('light') activities (e.g. defence reform) and narrow RoL activities (reform of legal framework, establishment of independent anti-corruption institutions), but also requires shared activity areas such as promoting legitimate public order (policing and criminal justice reform), professionalisation of security forces (expanding the efficiency and effectiveness of police and armed forces) and the democratic oversight and control of the security forces (legal frameworks, criminal justice, military justice, ombudspersons, parliamentary oversight, civil society oversight, etc.). Indeed, such comprehensive approaches can positively impact on a number of crosscutting issues and concerns (e.g. gender inequality, human rights, violence reduction) rather than singular issues. This contributes to an intersectional and force multiplier effect – i.e. identifying the ways in which multiple issues and concerns (gender equality, human rights, ethnic violence) are dynamically related to and influence one another rather than being viewed as isolated and static issues of social exclusion, conflict, etc. – and programmes can be designed to influence multiple issues by addressing cross-cutting needs and problems and contribute to a positive impact beyond the specifically designed outcome.

Another field of convergence between RoL and SSR from a process perspective lies in the necessity for political dialogue to enhance or

encourage the will of national authorities to progress on sensitive issues, such as improving accountability of security and justice providers to the people they serve, especially marginalised and vulnerable populations. Naturally, such reform efforts challenge often well-entrenched power structures, especially when security and justice providers have served their own interests or only those of the elite, or when parliaments and civil society are politically weak in comparison to the executive and its security and justice institutions. The security sector (including both security and justice providers) has often been relied upon in conflict contexts as a means to solidify power of national elites or select populations, thus the reform of this sector in both RoL and SSR efforts for the purposes of peacebuilding is a highly political endeavour requiring careful dialogue and participation across local stakeholders in order to discourage spoilers and encourage the voices of marginalised populations. RoL and SSR efforts could mutually benefit from their shared recognition of the political nature of reform and engage in cooperative and coordinated efforts to encourage meaningful dialogue.

Similar to this is the shared recognition of the necessity of authentic local ownership of RoL and SSR efforts. Indeed, both concepts make local ownership a vital cornerstone that can decide the fate of not just the RoL or SSR efforts but also the larger peacebuilding agenda. While recognising the need for state agents and political elites to participate and lead the design of the reform processes, the concepts demand the inclusion of marginalised and vulnerable populations. In conflict and post-conflict settings these are often ethnic or racial minorities, women and youth. Without a doubt, due to their common interest in this, both RoL and SSR practitioners can ensure inclusive approaches through collaborative programme design and implementation.

These basic examples illustrate the general interdependence of the RoL and SSR concepts from a process perspective. We do not intend to describe specific relationships, or discuss questions of sequencing and prioritisation or obstacles to implementation in highly politicised environments – which certainly demand greater attention in subsequent research. The aim is to introduce such common aspects on a conceptual overview level as a starting point for further investigation and more detailed conceptual development in the future. The purpose is to show how SSR and RoL promotion are interdependent on the process level and point

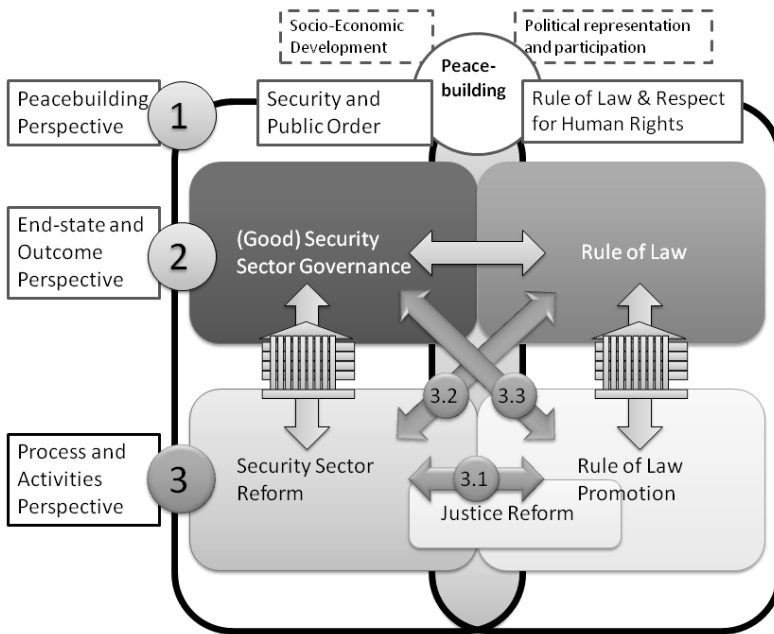
out the overlaps where the two fields basically share an interest in the same activity areas – although they may not share the same approach as to how to implement a programme. As has been shown in the analysis of overlaps at the end-state level, there are shared outcomes and objectives between the SSR and RoL fields, and as a consequence the two fields also share interest in all the specific activities necessary to achieve these outcomes.

Towards a heuristic framework of analysis

Building upon Figure 4 and the discussion of the various perspectives, the model in Figure 5 provides a heuristic framework of analysis to situate references to the RoL-SSR relationship, facilitate discourse across the two communities and potentially enhance coherence and coordination in peacebuilding activities. The model highlights the links between each of these perspectives, especially those at process and end-state levels. It demonstrates the relationships across the perspectives, and can serve as a guide for identifying shared goals, conditions, activities and processes.

To explain the model, the discussion focuses on the combined process and end-state perspectives. This helps to illustrate the ways in which these perspectives intersect and relate to one another. In simple terms, the model attempts to capture the various perspectives of RoL and SSR within a peacebuilding framework and illustrate their commonalities, linkages and interdependencies. It shows that, rather than conflicting with one another and despite the existence of various perspectives, RoL and SSR are highly compatible and mutually beneficial concepts that make critical contributions to the overall liberal peacebuilding agenda. The discussion of Figure 4 detailed the similarities, interdependencies and mutual benefits of RoL and SSR that can be found in each of the three perspectives. Figure 5 situates these perspectives and illustrates the potential to integrate them to develop a holistic approach to RoL and SSR within peacebuilding. It focuses in particular on the value of coordinating and integrating end-state and process perspectives of RoL and SSR. It is hoped that this model can capture the interconnectedness of different issues and actors, promote strategic outcome-oriented approaches based upon context-driven needs and help to bridge lingering gaps between policy and practice. The

Figure 5: Relationships between the Rule of Law and SSR



Source: Authors' illustration.

following discussion explains the model by highlighting critical explanatory examples.

For starters, looking at arrow 3.1, and taking into account the various areas of overlap on the end-state and process levels, arguably the strongest overlap can be found in 'capacity building of justice institutions' in general and criminal justice institutions in particular. This area is often titled 'justice reform' or 'justice sector/system reform',¹⁴¹ and illustrates what probably constitutes one of the greatest potentials for collaboration as well as for conflicts and turf battles among different agencies engaged in RoL and SSR promotion. Because of the continuing terminological confusion and lack of conceptual clarity, some speak of justice reform but mean broader RoL promotion, while others speak of RoL promotion but mean the narrow capacity building of (criminal) justice institutions, and still others refer to it meaning an activity area of SSR. As an example, in his edited volume on

'post-war security and justice reconstruction', Call deliberately refrains from using the term 'rule of law' and instead uses the UN Development Programme's terminology of 'Justice and Security Sector Reform'.¹⁴² Call's reason for this has to do with his own particular view of RoL promotion; he criticises the concept for being 'reductionist' and suggests an exclusive focus on security and justice reform and their intersections. However, for the exact same reasons other scholars such as Samuels or Kleinfeld suggest the opposite terminological choice. Criticising security and justice reform as being institution-biased and reductionist, they promote a conceptual turn towards a holistic, i.e. strategic and outcome-oriented, conception of RoL promotion.¹⁴³ This example seems to indicate that scholars and practitioners may share the same concerns, but the continued terminological confusion makes it difficult to create common visions and strategies of how best to approach ongoing challenges and gaps in SSR and RoL promotion.

When the activity area of 'justice (sector) reform' is situated in the general framework of RoL promotion and SSR, it becomes clear that, depending on the perspectives, justice reform can mean different things to different people. However, it is also clear that these perspectives are all somewhat 'reductionist' if they do not take into account the big picture and in particular the distinction between the end-state and process levels. If we make this distinction, it becomes apparent that this reform area is concerned with activities and institutions that are similar and often identical, and crucial to achieving envisaged end-states of both SSR and RoL promotion – i.e. a 'safe and secure environment' guaranteed by effective security sector governance as well as 'the rule of law'. However, it also becomes evident that measures in the area of justice reform or institutional capacity building in general will not be sufficient to bring about either end-state, and will require the implementation of other activities and the achievement of additional outcomes and conditions.

If this distinction between process and end-state perspective is not made, practitioners risk confusing means with ends; and while they recognise that they are working on similar or the same activity areas, they are less aware of the potential added value of their collaboration than they are concerned with 'turf'. Put differently, if peacebuilding organisations lose their broader strategic orientation and remain locked in their stovepipes, it is far more likely that tensions will arise if they seek to work

on the same or related activity areas. This points again to the crucial importance of strategic coordination and guidance, which serve to implement activities across different assistance sectors or segments; and also to the importance of results-based programming processes that are inherently outcome-oriented and build a strategic focus into programme design and implementation.

Pursuant to this analysis, the following terminology will hopefully serve to clarify ambiguities: security sector reform and RoL promotion describe the processes that aim at achieving the end-states of 'the rule of law/respect for human rights' and a 'good governance of the security sector', as reflected by the idea of security sector governance. Conceptualised from a holistic perspective, both SSR and RoL promotion mean much more than the narrow or even 'reductionist' idea of institutional capacity building in the justice and security sectors.

Moving forward, arrow 3.2 represents the ways in which SSR processes can directly or indirectly contribute to RoL processes and an envisioned end-state. Obviously, SSR activities contribute *directly* to the RoL process in the overlapping areas where the activities and desired outcomes are similar or identical. SSR activities *indirectly* contribute to the RoL process by working towards the SSR end-state, and hence by providing safety and security for the conduct of RoL activities. Looking in the opposite direction, this category also describes potential ways in which the RoL end-state influences the conduct of SSR processes.

Where there are overlaps in terms of envisaged outcomes, SSR activities *directly* contribute to the RoL process and thus help to realise not only SSR but also RoL end-states (under the condition that approaches are truly holistic, working together rather than against each other). A truly holistic framework is less concerned with the background or mandate of a peacebuilding agency as long as it implements the activities necessary to achieve the envisaged outcomes. If there are shared goals and activities across mandates, collaboration and partnership should be encouraged. The door should not be closed simply at limited mandate boundaries, but rather policy-makers and practitioners should seek out collaboration and develop innovative analyses to identify ways in which mandates may overlap and positively impact one another (or at a minimum do no harm to each other). For example, once a need for additional investigative capacities for the police has been identified, it would ideally trigger a joint response by those

agencies that have a comparative advantage in this particular peacebuilding context and for this particular activity, regardless of whether they originally have a background in SSR, RoL, human rights or governance. Such a strategically coordinated response, albeit still hypothetical, is most likely to happen in the identified areas of overlap (public order, institutional capacity building and democratic governance).

In terms of *indirect* contributions, SSR 'core' and 'related' activities (such as DDR, small-arms control and mine action) foster general security improvements and contribute to increasing the physical safety of individuals. Thus they not only help to establish an environment conducive to RoL reform activities but also foster RoL outcomes. For example, provision of physical security to people is an important contribution to ensuring the RoL condition 'access to justice'.¹⁴⁴ People will not go to courthouses or trust representatives of the legal apparatus if they risk their lives on the way, or risk retaliation for seeking justice.

On the other hand, as discussed earlier RoL as an end-state provides the conducive environment necessary for the conduct of SSR reforms. Of course, the rule of law is always an ongoing endeavour and is never achieved fully, and much less so in peacebuilding environments. However, the implementation of rule of law to any degree will support the establishment of a well-governed security sector. RoL provides mechanisms not only to ensure the accountability of the security sector but also to control the reform process itself. Unless RoL is already respected in the early phases of peacebuilding, it is difficult to create or strengthen a culture conducive to the rule of law. In this regard, the rule of law also needs to be respected by external (security) actors, e.g. SSR practitioners, peacekeepers, etc. If external peacebuilding actors want to strengthen RoL, they must not only strengthen the institutions in question but also the related cultures; and they must certainly not undermine the existing RoL culture through illegal behaviour or excessive use of force.¹⁴⁵ Both the existing and envisaged rule of law provide guidelines for the conduct of SSR and other related peacebuilding activities (e.g. DDR, small-arms control, transitional justice, truth and reconciliation efforts, among others).

Arrow 3.3 represents the ways in which RoL processes can contribute directly or indirectly to SSR processes aimed at good governance of the security sector. Similar to arrow 3.2, RoL activities *directly* contribute to improving SSG in the overlapping areas where the activities and envisaged

outcomes are similar or identical. RoL activities *indirectly* contribute to the SSR process by working towards the RoL end-state and hence providing a framework for the conduct of SSR activities. This framework includes the establishment of the laws, institutions and cultures necessary to conduct appropriate SSR activities; it also ensures the oversight and accountability of the security sector and the reform process that aims at strengthening it. In this regard, the RoL process works towards achieving its own end-state, which provides the enabling environment necessary for the conduct of SSR activities.

On the other hand, this category also shows how the SSG end-state creates an enabling environment for RoL processes. As illustrated above, efforts that aim to establish a well-governed security sector will also contribute to the enabling environment necessary for the conduct of RoL activities and the realisation of the respective outcomes and end-states.

These many relationships cutting across the SSR and RoL fields – horizontally on the same level, but also diagonally on different levels – may appear confusing at first sight. This is exactly the point where apparently many policy-makers and practitioners seem to struggle when it comes to establishing a shared conception of the relationships between SSR and RoL. Even if they personally have a very clear understanding of the multilayered and crosscutting relationships, there is certain to be someone else who sees it differently but claims the same clarity of understanding.

In response, the proposed model aims to provide a heuristic framework for locating these perspectives to identify potential overlap and encourage a unified strategy and common vision, as well as the necessary collaboration and coordination to design and implement integrated programmes in the field. Indeed, whether viewed from a peacebuilding, end-state or process perspective, or more ambitiously a holistic stance which coordinates and integrates the various perspectives, RoL and SSR should be pursued in tandem and as complementary and jointly planned and conducted activities. At a conceptual level, both RoL and SSR share common strategic goals, values and processes that offer, if not demand, greater collaboration and unity of effort. Thus it is the hope here that having outlined and detailed the conceptual perspectives of RoL and SSR and the ways in which these perspectives are interdependent and mutually beneficial, one step is taken closer to this effort.

CONCLUSIONS

As demonstrated throughout this paper, RoL and SSR are viewed within peacebuilding contexts in a number of different ways. Because of this lack of a unified vision or conceptual clarity, the many overlaps, mutual benefits for peacebuilding objectives and complementary aspects of the two concepts have often gone unnoticed by some in the policy and practitioner communities. RoL and SSR constitute core components of an effective, multidimensional peacebuilding approach. Establishing a stronger understanding of each concept is a necessary first step in developing better articulated and designed peacebuilding strategies and more successful implementation of RoL and SSR efforts on the ground.

The relationship between RoL and SSR, particularly in peacebuilding contexts, is multilayered and complex, and therefore best approached from a holistic perspective. This has important implications for coordination and programming across RoL, SSR and other peacebuilding efforts. However, the call for 'holistic' understandings of and approaches to RoL, SSR and peacebuilding has often been made without a clear understanding of what holistic actually means. To overcome this ambiguity, the paper provides the conceptual tools to substantiate a 'holistic' approach to RoL and SSR within a peacebuilding framework by capturing the breadth and interconnectedness of different issues and actors, promoting outcome-oriented approaches that link goals to context-driven needs and as a consequence helping to bridge policy-practice gaps.

To this end, Sections 2–4 provided an overview of the conceptual evolution and understandings of peacebuilding, RoL and SSR, as well as the conceptual and practical place of RoL and SSR within a peacebuilding framework. As these sections showed, the concepts have often been invoked by a range of actors with diverse perspectives and purposes. However, conceptually both RoL and SSR share similar historic roots and purposes and have evolved out of shared contexts and experiences on the ground. During the course of their evolution, their meanings expanded with the range of actors engaged and experiences in the field. These varying perspectives were captured broadly as a peacebuilding perspective, end-state perspective and process perspective.

Despite the varying meanings and perspectives, rather than inherently conflicting, the discussions in Sections 3 and 4 began to show the common place and function of RoL and SSR within an understanding of peacebuilding as a multidimensional activity. In turn, Section 5 illustrated the linkages between RoL and SSR across these perspectives and the potential for collaboration and integration. Bringing the two concepts together, RoL and SSR are shown to be intertwined, interdependent and mutually reinforcing, especially from the peacebuilding and end-state perspectives. Likewise, linkages and interdependent characteristics are also found within the process-based perspective, which prioritises institutional capacity building. However, despite these interdependences and linkages, the analysis conducted here demonstrated that conflicts and tensions are likely to emerge as practitioners and policy-makers fail to coordinate their efforts from a strategic perspective – i.e. within a shared theory of change and desired outcomes or end-states – and are unwilling to harmonise and build cooperation, with a view to the greater ‘peacebuilding goods’, instead of exclusively focusing on their organisational interests and agendas.

Despite their positive linkages, a coordinated and integrated approach to RoL and SSR remains elusive within and between the two fields, which carries the potential for tension and conflict at the policy and practical levels. Three interrelated factors help explain why the relationship remains ambiguous and contested despite efforts to strengthen coordination and integration. First, RoL and SSR continue to be conceptually ambiguous on their own, given the various policy communities and perspectives related to the concepts; second, when efforts have been made to link the concepts, conceptual ambiguity has increased due to poor

articulation of their multilayered relationship; and third, often these conceptual ambiguities meet particular organisational cultures, mandates and interests, which increases the risk of confusion and ambiguity (which at times is done intentionally in order to make space for these cultures and interests). While there are promising efforts to strengthen coherence and coordination of RoL and SSR assistance through the promotion of holistic frameworks, the conceptual ambiguities and ‘real-world constraints’ have remained, constituting important obstacles that can potentially hinder or undermine these efforts.

In light of these challenges, the conceptual framework presented in Section 5 serves two purposes. One is to illustrate the complex relationship and explain the potential origins of this conceptual ambiguity and the consequences in terms of coordination and programming; second, it provides the basis for shared understandings among policy-makers and practitioners regarding the beneficial relationship between RoL and SSR. This should allow policy-makers and practitioners to find common ground and identify overlapping interests within process, end-state or peacebuilding perspectives. Hopefully it will also promote outcome-oriented approaches that link goals with context-driven needs and overlapping processes, and thus facilitate coherent and coordinated implementation on the ground.

The question of what the relationship between the RoL and SSR concepts looks like and how it is understood by policy-makers and practitioners can be answered simply as follows. The relationship is complex and multilayered; it is interdependent and calls for integrated approaches, especially holistic RoL and SSR frameworks; yet it remains unnecessarily contested and ambiguous, due to the persistent lack of conceptual clarity within the RoL concept and significant policy-practice gaps for both RoL and SSR. In this sense, SSR is clear at the end-state level but not on the process level; while RoL is less clear on both. While the interdependent relationship between RoL and SSR has been more widely accepted within an end-state perspective, its perceived scope seems to be narrower and more selective within the process perspective. In part this can be explained by different and often competing organisational mandates, cultures and interests of those engaged in RoL and SSR promotion.

This leads to the follow-up question of how the conceptual relationship between RoL and SSR can be better understood. An initial

answer is provided with the heuristic framework developed and explained in Section 5. Again, this framework attempts to map the different perspectives of RoL and SSR and their relationship in order to highlight overlaps and complementarities. Ideally, this serves as a foothold from which more coordinated and cohesive strategies and programme designs can be developed and implemented.

A final and related question, how this better understanding should foster coordination and integration of RoL and SSR approaches, demands greater attention. While the conceptual framework provided in this paper can contribute to shared understandings, it only provides a first step towards more holistic approaches. Thus a key question that remains is *how* to overcome differences in understandings across the different donor agencies in general, and how this can happen not only on a conceptual level but also at the practical level. Further policy-oriented empirical research is required to suggest pragmatic ways that build on the basis of shared conceptual understandings but move beyond to foster real-world cooperation and integration of structures, policies and programmes on both policy-making and programming levels. This study hopes to have contributed to this endeavour by suggesting a heuristic framework for both policy-makers and practitioners engaged in RoL and SSR promotion within peacebuilding contexts to identify common strategic goals and outcome-oriented approaches based upon context-driven needs and utilising overlapping processes and methods for implementation.

Without a doubt, rule of law and security sector reform constitute critical elements of effective multidimensional peacebuilding. At a conceptual level they share common normative frameworks and desired outcomes as well as shared values and methodologies for implementation. In fact, each is dependent upon the other for its own success. As a result, RoL and SSR should be pursued in tandem and as complementary and jointly planned and conducted activities. However, before this can happen their conceptual meanings and similarities need to be better articulated and understood. The heuristic framework developed here hopes to contribute to this effort.

NOTES

- ¹ A great number of people have helped with this research project. We would like to thank colleagues at the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Center for Security Studies at ETH Zurich for their invaluable advice, insights and ideas. We are also very grateful to the practitioners and interview partners who shared their insights and experience.
- ² Heiner Hänggi, 'Conceptualising Security Sector Reform and Reconstruction', in Alan Bryden and Heiner Hänggi (eds), *Reform and Reconstruction of the Security Sector* (Münster: LIT Verlag, 2004), p. 3.
- ³ By 'coordination' we mean the networking and managing of distinct actors and activities in a shared context to achieve common goals. Actors and activities are connected and informed of one another, yet remain autonomous in distinct activities from each other. At a conceptual level, 'coordination' refers to sharing strategic plans and policies in order to be mutually informed and identify potential areas of overlap, redundancy or conflict.
- ⁴ By 'integration' we mean having distinct actors engage in collaborative programme design, implementation and evaluation based upon shared processes and goals. In this case, and contrary to coordination, actors engage in joint, collaborative activities and programming. At a conceptual level 'integration' refers to the synthesising of overlap analysis and goals to build a shared strategic framework and policy.
- ⁵ Michael Barnett, Hunjoon Kim, Madalen O'Donnell and Laura Sitea, 'Peacebuilding: What Is in a Name?', *Global Governance*, 13(1), 2007, pp. 37, 42–43. In general, the UN system stills retains the original formulation set out by former Secretary-General Boutros-Ghali in his 'Agenda for Peace', where he defined peacebuilding as 'action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict'. Report of the Secretary-General, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping', UN Doc. A/47/277 – S/24111 (17 June 1992), para. 21.
- ⁶ UN Department of Peacekeeping Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* (New York: UNDPKO, 2008), p. 18. Commonly known as the Capstone doctrine.
- ⁷ Barnett et al., note 5, pp. 37, 42.
- ⁸ See Chester A. Crocker, Fen Osler Hampson and Pamela Aall, 'Introduction', in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds), *Turbulent Peace – The Challenges of Managing International Conflict* (Washington, DC: US Institute of Peace Press, 2001), p. xxviii, for an illustration and conceptualisation of the conflict cycle and the corresponding crisis management responses as set out in Report of the Secretary-General, note 5 (i.e. preventive diplomacy, peacemaking, peacekeeping and peacebuilding).
- ⁹ Vincent Chetail, 'Introduction: Post-Conflict Peacebuilding – Ambiguity and Identity', in Vincent Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon* (Oxford: Oxford University Press, 2009), pp. 4–7; Neclâ Tschirgi, *Post-Conflict Peacebuilding Revisited:*

Achievements, Limitations, Challenges (New York: IPA Security-Development Program, 2004), p. 2–3.

¹⁰ For relevant counterarguments see Chetail, *ibid.*, p. 6–7.

¹¹ For a more detailed account of this argument see Christoph Bleiker, ‘The Relationship Between Security Sector Reform and the Rule of Law in the Context of United Nations Peacebuilding’, unpublished paper, University of St Gallen, 2010.

¹² Michael W. Doyle and Nicholas Sambanis, *Making War and Building Peace: United Nations Peace Operations* (Princeton, NJ: Princeton University Press, 2006).

¹³ Many scholars arrive at very similar categorisations and present laundry lists of the different activities within each identified dimension. Barnett et al., note 5, p. 45ff, distinguish four different categories of peacebuilding activities: security and military; social, developmental and humanitarian; political and diplomatic; and justice and reconciliation. David uses three peacebuilding dimensions: security-transition, socio-economic transition and democratic transition. Charles-Philippe David, ‘Does Peacebuilding Build Peace? Liberal (Mis)steps in the Peace Process’, *Security Dialogue*, 30(1), 1999, pp. 29–37. Schwarz distinguishes between the three categories of security, welfare and representation. Rolf Schwarz, ‘Post-Conflict Peacebuilding: The Challenges of Security, Welfare and Representation’, *Security Dialogue*, 36(4), 2005, pp. 433–442. In its peacebuilding report, the Utstein Group uses the four categories of security, socio-economic foundations, political framework and reconciliation and justice. Dan Smith, *Towards a Strategic Framework for Peacebuilding: Getting Their Act Together: Overview Report of the Joint ‘Utstein’ Study of Peacebuilding* (Oslo: PRIO, 2004), pp. 20, 27–28. The World Bank uses a four-dimensional framework of security, economic recovery, good governance and social stability. UN Department of Peacekeeping Operations, *Handbook on United Nations Multidimensional Peacekeeping Operations* (New York: Peacekeeping Best Practices Unit, 2003), pp. 182–185.

¹⁴ UN Department of Peacekeeping Operations, note 6, p. 23.

¹⁵ *Ibid.*, p. 25, details these as: ‘(a) Restoring the State’s ability to provide security and maintain public order; (b) Strengthening the rule of law and respect for human rights; (c) Supporting the emergence of legitimate political institutions and participatory processes; [and] (d) Promoting social and economic recovery and development, including the safe return or resettlement of internally displaced persons and refugees uprooted by conflict.’

¹⁶ A significant foundation for this understanding was established in the 2004 Utstein report, which reviewed the peacebuilding experience of Germany, the Netherlands, Norway and the UK. Smith, note 13.

¹⁷ Analysing such questions in further detail is beyond the scope of this paper, but the enormous complexity of conceptualising and comparing just two dimensions of peacebuilding indicates the difficulties of designing a holistic and strategic approach to peacebuilding in post-conflict societies. Furthermore, this statement only takes into account a conceptual perspective, leaving aside the many difficulties related to the implementation of such a holistic approach on the ground through the work of a

multiplicity of actors with diverging understandings of both the process and activities to be implemented and the end-states to be achieved.

¹⁸ UN Department of Peacekeeping Operations, note 6, p. 26.

¹⁹ In hope of greater conceptual simplicity, these crosscutting and intersectional conditions are illustrated by RoL and SSR images in Figures 2 and 3 and the combined peacebuilding-RoL-SSR image in Figures 4 and 5.

²⁰ How the UN and its different entities understand and address the relationship of the two concepts is analysed in the next section in more detail.

²¹ Presidential Statement of the UN Security Council, 'The Maintenance of International Peace and Security: The Role of the Security Council in Humanitarian Crises – Challenges, Lessons Learned and the Way Ahead', UN Doc. S/PRST/2005/30 (12 July 2005).

²² Oliver P. Richmond, *The Transformation of Peace* (New York: Palgrave Macmillan, 2005); Roland Paris, *At War's End: Building Peace After Civil Conflict* (Cambridge: Cambridge University Press, 2004). The 'liberal peace' concept essentially is based upon the belief that the best pathway to securing a sustained peace is through the promotion of democratisation, the rule of law, human rights, free and globalised markets and neoliberal economic development.

²³ Richmond, *ibid.*, pp. 177–180, 202–207.

²⁴ By 'theory of change' we refer to the underlying strategy or programme logic that sets out the goals of a peacebuilding endeavour and defines the processes and measures to achieve those goals. For an introduction to the 'theory of change' concept and its application in a peacebuilding context, see for example: Cheyanne Church and Mark Rogers, *Designing for Results: Integrating Monitoring and Evaluation in Conflict Transformation Programs* (Washington, DC: Search for Common Ground, 2006), pp. 10–24.

²⁵ Chetail, note 9, pp. 7–8, 25–26; Thomas Carothers, 'The Problem of Knowledge', in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006), p. 27.

²⁶ The term 'results-based programming' means that peacebuilding interventions should be planned and implemented in a strategic, i.e. outcome-oriented, way. Results-based programming envisions an outcome and then derives the necessary processes and activities to achieve this outcome while at the same time thinking about the contribution to the higher-order peacebuilding goals. For an introduction to results-based programme design, see for example Church and Rogers, note 24, pp. 25–42. Results-based programming usually distinguishes between three levels of results, namely the output, outcome and impact levels. OECD DAC, *Glossary of Key Terms in Evaluation and Results-Based Management* (Paris: OECD, 2002). The 'output level' refers to the direct results of a programmatic intervention – and its processes, activities and inputs – which are relevant to the achievement of outcomes. The 'outcome level' refers to the envisaged effects of an intervention. 'Outcomes' are the short- and medium-term results of the programme outputs and cannot be directly controlled by the implementers. The 'impact

or goal level' refers to the long-term effects of the intervention and the higher-order objective(s) to which an intervention is intended to contribute.

²⁷ See for example Smith, note 13.

²⁸ Presidential Statement of the UN Security Council, 'Peace-building: Towards a Comprehensive Approach', UN Doc. S/PRST/2001/5 (20 February 2001).

²⁹ UN Secretary-General, 'Note of Guidance on Integrated Missions', (17 January 2006), para. 4.

³⁰ Report of the UN Secretary-General, 'Peacebuilding in the Immediate Aftermath of Conflict', UN Doc. A/63/881 – S/2009/304 (11 June 2009), para. 24.

³¹ *Ibid.*, paras. 26–79.

³² Anna Herrhausen, *Organizing Peacebuilding: An Investigation of Interorganizational Coordination in International Post-Conflict Reconstruction Efforts* (Frankfurt am Main: P. Lang, 2009); Roland Paris, 'Understanding the Coordination Problem in Postwar Statebuilding', in Roland Paris and Timothy D. Sisk (eds), *The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations* (New York: Routledge, 2009), pp. 53–78.

³³ Herrhausen, *ibid.*, pp. 30–33.

³⁴ Kirsti Samuels, 'Justice Sector Development Assistance in Post-Conflict Countries In Search of Strategy', Mark Sedra (ed.), *The Future of Security Sector Reform* (Waterloo, ON: CIGI, 2009), p. 169–176.

³⁵ Thomas Carothers, 'The Rule-of-Law Revival', in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006), p. 3; Thomas Carothers, 'The Rule of Law Revival', *Foreign Affairs*, 77 (2), March/April 1998.

³⁶ Jane Stromseth, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions* (Cambridge: Cambridge University Press, 2006), p. 58–61.

³⁷ These communities are constituted by policy-makers and practitioners from the fields of business and economics, human rights, democratisation and governance, development, security, conflict resolution and peacebuilding, etc.

³⁸ Hague Institute for the Internationalisation of Law, *Rule of Law Inventory Report: Academic Part* (The Hague: HiIL, 2007), p. 10.

³⁹ Melissa Thomas, 'Rule of Law in Western Thought', World Bank Factsheet, Washington, DC (undated), p. 1–2 Starting with ancient Greek and Christian philosophers, many academics have addressed the meaning of the rule of law. A detailed discussion of historical accounts is beyond the scope of this paper. For a detailed overview of the historical development of the term, see for example Brian Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004). For the purposes of this paper, we concentrate on the most recent efforts of academics to conceptualise the term 'rule of law'.

⁴⁰ Samuels, note 34.

⁴¹ Stromseth et al., note 36, pp. 58–62.

⁴² Ibid.

⁴³ Charles T. Call, 'Introduction: What We Know and Don't Know About Post-Conflict Justice and Security Reform', in Charles T. Call (ed.), *Constructing Justice and Security After War* (Washington, DC: USIP, 2005), p. 5.

⁴⁴ Carothers, note 35, p. 5.

⁴⁵ Thomas Carothers, 'Rule of Law Temptations', *Fletcher Forum of World Affairs*, 33 (1), 2009, p. 49.

⁴⁶ Carothers, note 35, p. 7.

⁴⁷ Call, note 43, p. 4.

⁴⁸ Neil Kritz, 'The Rule of Law in Conflict Management', in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds) *Leashing the Dogs of War: Conflict Management in a Divided World* (Washington, DC: USIP, 2007), p. 403.

⁴⁹ Report of the Secretary-General, note 5, para. 59, notes that 'There is an obvious connection between ... the rule of law and ... the achievement of true peace and security in any new and stable political order.'

⁵⁰ Stromseth et al., note 36, p. 62; Samuels, note 34.

⁵¹ Stromseth et al., *ibid.*, p. 63.

⁵² Report of the UN Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', UN Doc. S/2004/616 (23 August 2004).

⁵³ Report of the UN Secretary-General, 'Strengthening and Coordinating United Nations Rule of Law Activities', UN Doc. A/63/226 (6 August 2008); Report of the UN Secretary-General, 'Annual Report on Strengthening and Coordinating United Nations Rule of Law Activities', UN Doc. A/64/298 (17 August 2009); Report of the UN Secretary-General, 'Strengthening and Coordinating United Nations Rule of Law Activities', UN Doc. A/65/318 (20 August 2010); and Report of the UN Secretary-General, 'Strengthening and Coordinating United Nations Rule of Law Activities', UN Doc. A/66/133 (8 August 2011).

⁵⁴ Report of the UN Secretary General, 'Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels', UN Doc. A/66/749 (16 March 2012).

⁵⁵ Report of the UN Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies', UN Doc. S/2011/634 (12 October 2011), para. 4.

⁵⁶ Stromseth et al., note 36, p. 58–59; Call, note 43, p. 5.

⁵⁷ See, for example, Report of the UN Secretary-General, note 55, para. 6.

⁵⁸ Carothers, note 35, p. 6–7

⁵⁹ That is, the broad recognition of the need for 'rule of law' for effective state building, security and development. Call, note 43, p. 4–5.

⁶⁰ Hague Institute for the Internationalisation of Law, note 38, p. v. In 2006 and 2007 the Hague Institute for the Internationalisation of Law, with the International Law and Development Organization, started a research project to gather existing knowledge on the rule of law and its promotion. This exercise resulted in a 'rule of law inventory report', which consists of an 'academic part' and a 'practical part'.

⁶¹ Stromseth et al., note 36, p. 58–61.

- ⁶² Samuels, note 34.
- ⁶³ See below for a more detailed discussion of the issue of narrow, institution-based approaches to the rule of law. Some of the prominent commentators criticising this narrow focus include Carothers, note 25; Stephen Golub, 'A House Without a Foundation', in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006), pp. 105–136; Frank Upham, 'Mythmaking in the Rule-of-Law Orthodoxy', in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006), pp. 75–104; Rachel Kleinfeld Belton, 'Competing Definitions of the Rule of Law: Implications for Practitioners', Carnegie Paper No. 55, Washington, DC (January 2005).
- ⁶⁴ See for example Rama Mani, 'Exploring the Rule of Law in Theory and Practice', in Agnès Hurwitz and Reyko Huang (eds), *Civil War and the Rule of Law: Security, Development, Human Rights* (Boulder, CO: Lynne Rienner, 2008), pp. 22–26; Erik G. Jensen, 'Justice and the Rule of Law', in Charles T. Call and Vanessa Wyeth (eds), *Building States to Build Peace* (Boulder, CO: Lynne Rienner, 2008), p. 123; Stromseth et al., note 36, pp. 68–77; Call, note 43, pp. 6–9.
- ⁶⁵ Tamanaha, note 39, p. 91–92.
- ⁶⁶ Jensen, note 64, p. 123.
- ⁶⁷ *Ibid.*, p. 123.
- ⁶⁸ Tamanaha, note 39, p. 99–101.
- ⁶⁹ *Ibid.*, p. 91; Samuels, note 34.
- ⁷⁰ Stromseth et al., note 36, p. 134. For their discussion on security as a precondition for the rule of law and peacebuilding in general, see pp. 134–177.
- ⁷¹ For a critical discussion about the role of the rule of law in promoting economic development see for example Golub, note 63; Upham, note 63. For an overview of recent research on the issue see Robert L. Nelson and Lee Cabatingan, 'Introductory Essay: New Research on the Rule of Law', preliminary draft prepared for World Justice Forum, Vienna, 2–5 July 2008, pp. 9–12.
- ⁷² Of course, the meanings of 'local ownership', legitimacy and authenticity can and have demanded studies in their own right. For an initial reference to this broader discussion, see for example Timothy Donais (ed.), *Local Ownership and Security Sector Reform* (Münster: LIT Verlag, 2008).
- ⁷³ Belton, note 63, p. 16.
- ⁷⁴ Carothers, note 25, p. 27.
- ⁷⁵ Stromseth et al., note 36, pp. 80–84. The term 'synergism' stems from the fields of biology and theology; the authors use it because it captures different characteristics of a constructive approach to building the rule of law. According to Stromseth et al., such an approach is ends-based and strategic, it is adaptive and dynamic, and it is systemic. This paper uses the term 'holistic' interchangeably with 'synergistic' to illustrate that the same idea is underlying an ideal RoL or SSR process.
- ⁷⁶ *Ibid.*, p. 78.

⁷⁷ Ibid., pp. 80–84, 181–188.

⁷⁸ Intelligence services, armed forces and other security institutions all must be subject to the rule of law in terms of operational constraints, available legal action (areas of redress) and governance and oversight mechanisms.

⁷⁹ In a relatively recent paper, Scheye proposes a needs-based and problem-solving approach to RoL promotion in fragile and post-conflict states. Such an approach encourages practitioners to undertake RoL reforms in a multilayered way, considering not only formal state institutions but also the variety of non-state actors and informal institutions. Eric Scheye, 'Rule of Law in Fragile and Conflict-Affected Countries: Working Within the Interstices and Interfaces', unpublished paper prepared for World Bank Headline Seminar on 'Rule of Law in Fragile and Conflict-Affected Situations', Washington, DC, 21 July 2009. For a similar argument suggesting a multilayered approach to both justice and security delivery see Bruce Baker and Eric Scheye, 'Multilayered Justice and Security Delivery in Post-Conflict and Fragile States', *Conflict, Security and Development*, 4(7), 2007, pp. 503–528.

⁸⁰ The priorities and needs of a state and its citizens are likely to be different depending on whether the country finds itself in the immediate aftermath of conflict or in a stabilisation and reconstruction phase, or has already entered a longer-term peacebuilding and development phase.

⁸¹ It is important to note that this model does not claim to be comprehensive, but rather serves to show some aspects of the relationship between the security sector and the justice system.

⁸² Samuels, note 34.

⁸³ International Law and Development Organization, *Rule of Law Inventory Report: Practice Part – The IDLO Rule of Law Portal* (Rome: IDLO, 2007), pp. 4–7.

⁸⁴ Report of the UN Secretary-General, note 55, para. 10.

⁸⁵ Kirsti Samuels, 'Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt', Social Development Papers no. 37 (Washington DC: The World Bank, October 2006), p. 6.

⁸⁶ Ibid., p. 15.

⁸⁷ Ibid., pp. 15–23. For another account of implementation challenges and dilemmas in RoL promotion see Vera Gowlland-Debbas and Vassilis Pergantis, 'Rule of Law', in Vincent Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon* (Oxford: Oxford University Press, 2009), pp. 330–333.

⁸⁸ Samuels, note 34.

⁸⁹ World Bank, 'Rule of Law in Fragile and Conflict-Affected Situations', seminar overview and agenda, World Bank Headline Seminar, Washington, DC, 21 July 2009.

⁹⁰ The frameworks reviewed include US Institute of Peace, *Guiding Principles for Stabilization and Reconstruction* (Washington, DC: USIP, 2009); Pilar Domingo, 'Why Rule of Law Matters for Development', Opinion Piece No. 131, Overseas Development Institute, London (2009); Center for Law and Military Operations, US Army, *Rule of Law Handbook: A Practitioner's Guide for Judge Advocates* (Charlottesville, VA: Center for

- Law and Military Operations, 2009); Per Bergling, Erik O Wennerström and Richard Zajac Sannerholm, 'Rule of Law in Public Administration: Problems and Ways Ahead in Post-Conflict Peace-building', *Hague Journal on the Rule of Law*, 2, 2010, pp. 171–202; US Agency for International Development, *Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework – A Guide for USAID Democracy and Governance Officers* (Washington, DC: USAID, 2008); Richard Sannerholm, 'Legal, Judicial and Administrative Reform in Post-Conflict Societies: Beyond the Rule of Law Template', *Journal of Conflict and Security Law*, 12(1), 2007, pp. 78–92; Stromseth et al., note 36, pp. 178–248; David Tolbert and Andrew Solomon, 'United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies', *Harvard Human Rights Journal*, 19(1), 2006, pp. 29–62.
- ⁹¹ Stromseth et al., *ibid.*, p. 74–75.
- ⁹² Heiner Hänggi, 'Security Sector Reform – Concept and Contexts', in *Transformation: A Security Sector Reform Reader* (Pasig City, Philippines: INCITEGov, 2012), p. 38.
- ⁹³ The distinctions between SSG and SSR, i.e. an end-state versus process perspective, are taken up in Section 5. For a detailed conceptualisation of the two terms and how they relate to each other see Heiner Hänggi, 'Making Sense of Security Sector Governance', in Heiner Hänggi and Theodor Winkler (eds), *Challenges of Security Sector Governance* (Münster: LIT Verlag, 2003), pp. 3–23.
- ⁹⁴ This distinction is explained in Section 4.
- ⁹⁵ Albrecht Schnabel, 'The Security-Development Discourse and the Role of SSR as a Development Instrument', in Albrecht Schnabel and Vanessa Farr (eds), *Back to the Roots: Security Sector Reform and Development* (Münster: LIT Verlag, 2012), pp. 32–34.
- ⁹⁶ UN Development Programme, *Human Development Report* (New York: Oxford University Press, 1994); Heiner Hänggi, 'Approaching Peacebuilding from a Security Governance Perspective', in Alan Bryden and Heiner Hänggi (eds), *Security Governance in Post-Conflict Peacebuilding* (Münster: LIT Verlag, 2005, p. 6; Nicole Ball and Dylan Hendrickson, 'Trends in Security Sector Reform: Policy, Practice and Research', CSDG Papers No. 20, King's College, London (2009), p. 12–13.
- ⁹⁷ Heiner Hänggi, 'Security Sector Reform', in Vincent Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon* (Oxford: Oxford University Press, 2009), p. 337–338; Ball and Hendrickson, *ibid.*, p. 9–10.
- ⁹⁸ Robert Egnell and Peter Haldén, 'Laudable, Ahistorical and Overambitious: Security Sector Reform Meets State Formation Theory', *Conflict, Security and Development*, 9(1), 2009, p. 30; Sean McFate, 'Securing the Future: A Primer on Security Sector Reform in Conflict Countries', USIP Special Report, Washington, DC (2008), p. 4–5.
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- ¹⁰⁰ DCAF, 'Security Sector Governance and Reform', DCAF Background Paper, Geneva (2009), p. 4.
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- ¹⁰² Schnabel, note 95, pp. 41–45.
- ¹⁰³ See Alan Bryden, 'From Policy to Practice: The OECD's Evolving Role in Security System Reform', DCAF Policy Papers no. 22 (Münster: LIT Verlag, 2007) for a detailed account of the role of the OECD DAC and some of its most prominent members in the further promotion and implementation of the SSR concept; OECD DAC, *OECD/DAC Handbook on Security System Reform: Supporting Security and Justice* (Paris: OECD, 2007).
- ¹⁰⁴ Report of the UN Secretary-General, 'Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform', UN Doc. A/62/659 – S/2008/39 (23 January 2008).
- ¹⁰⁵ Mark Sedra, 'E-Conference Report; The Future of Security Sector Reform', summary report of e-conference on the Future of Security Sector Reform, 4–8 May 2009, pp. 1f, 9.
- ¹⁰⁶ Nicole Ball, 'The Evolution of the SSR Agenda', in Mark Sedra (ed.), *The Future of Security Sector Reform* (Waterloo, ON: CIGI, 2009), p. 7.
- ¹⁰⁷ For a description of the role of intergovernmental organisations in SSR and their understandings of the concept see, for example, David Law, 'Intergovernmental Organisations and Their Role in Security Sector Reform', in David Law (ed.), *Intergovernmental Organisations and Their Role in Security Sector Reform* (Münster: LIT Verlag, 2007), pp. 3–23; DCAF, 'Developing a Security Sector Reform Concept for the United Nations', expert workshop proceedings, Bratislava, 7 July 2006, pp. 87–101.
- ¹⁰⁸ The term 'security system reform' has been adapted by some donors, such as the OECD, yet conceptually means the same as security sector reform. 'System' is preferred by some donors due to the belief that it better reflects the broad and interconnected range of security actors than 'sector' does.
- ¹⁰⁹ OECD DAC, *Security System Reform and Governance: A DAC Reference Document* (Paris: OECD, 2005), p. 20.
- ¹¹⁰ OECD DAC, note 103, p. 22.
- ¹¹¹ Albrecht Schnabel, 'Ideal Requirements Versus Real Environments in Security Sector Reform', in Hans Born and Albrecht Schnabel (eds), *Security Sector Reform in Challenging Environments* (Münster: LIT Verlag, 2009), p. 9.
- ¹¹² For a description of the particularities of the post-conflict environment and fragile state contexts, see for example OECD DAC, *Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience* (Paris: OECD, 2008); David Law, 'The Post-Conflict Security Sector', DCAF Policy Paper No. 14, Geneva (2006), p. 1–6.
- ¹¹³ Heiner Hänggi and Vincenza Scherrer, 'Towards an Integrated Security Sector Reform Approach in UN Peace Operations', *International Peacekeeping*, 15(4), 2008, p. 488.
- ¹¹⁴ Vanessa Farr, Albrecht Schnabel and Marc Krupanski, 'It Takes Two to Tango: Towards Integrated Development and SSR Assistance', in Albrecht Schnabel and Vanessa Farr (eds), *Back to the Roots: Security Sector Reform and Development* (Münster: LIT Verlag, 2012), pp. 330, 339.

- ¹¹⁵ OECD DAC, note 109, pp. 16, 20.
- ¹¹⁶ OECD DAC, note 103, p. 21.
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- ¹¹⁹ Adedeji Ebo and Kristiana Powell, 'Why is SSR Important? A United Nations Perspective', in Mark Sedra (ed.), *The Future of Security Sector Reform* (Waterloo, ON: CIGI, 2009), pp. 45–58; information derived from interviews with practitioners.
- ¹²⁰ DCAF, note 107, pp. 80–85.
- ¹²¹ Ebo and Powell, note 119.
- ¹²² See for example OECD DAC, note 103, 182–198; Hänggi and Scherrer, note 118, p. 17–18.
- ¹²³ DCAF, note 100, p. 2.
- ¹²⁴ Schnabel and Born, note 118; Sedra, note 105.
- ¹²⁵ Schnabel and Born, *ibid.*, pp. 24–25.
- ¹²⁶ For more detailed examination of this see for example Heidi Hudson, 'A Bridge Too Far? The Gender Consequences of Linking Security and Development in SSR Discourse and Practice', in Albrecht Schnabel and Vanessa Farr (eds), *Back to the Roots: Development and Security Sector Reform* (Münster: LIT Verlag, 2012), pp. 77–114; Henri Myrntinen, 'Guerrillas, Gangsters and Contractors: Integrating Former Combatants and Its Impact on SSR and Development in Post-conflict Societies', in Albrecht Schnabel and Vanessa Farr (eds), *Back to the Roots: Development and Security Sector Reform* (Münster: LIT Verlag, 2012), pp. 225–247.
- ¹²⁷ For more discussion on SSR 'light' approaches see Schnabel and Born, note 118, pp. 22–29.
- ¹²⁸ *Ibid.*, pp. 23–24.
- ¹²⁹ As cited in Sedra, note 105, p. 9.
- ¹³⁰ Hänggi, note 97, p. 339; Report of the UN Secretary-General, note 104; OECD DAC, note 103.
- ¹³¹ The rationale is that security guarantees a 'negative peace', which is a precondition for any international assistance and for the establishment of a positive, i.e., sustainable peace and long-term development. The term 'negative peace' means the absence of violent conflict and direct violence against the state and its citizens. For a conceptualisation of the terms 'negative' and 'positive' and their respective counterparts, 'direct violence' and 'indirect' or 'structural violence', see the works of Galtung, who coined the terms. Johan Galtung, 'Introduction: Peace by Peaceful Conflict Transformation: The Transcend Approach', in Charles Webel and Johan Galtung (eds), *Handbook of Peace and Conflict Studies* (London: Routledge, 2007), pp. 14–34.

- ¹³² Swiss Development Corporation, 'Rule of Law, Justice Sector Reforms and Development Cooperation', SDC Concept Paper, Bern (2008), p. 9.
- ¹³³ As Stromseth et al., note 36, p. 349, put it: 'rule of law assistance is part and parcel of the larger post-intervention rebuilding effort. Just as the larger effort will not succeed unless rule of law takes hold, so too will rule of law efforts fail if the larger effort to restore peace and foster democratic governance does not succeed.'
- ¹³⁴ The lessons learned from past peacebuilding and development interventions have helped to identify a broad range of principles and best practices that should guide any external programme intervention, regardless of the policy area in which it takes place. For a detailed list of such principles see US Institute of Peace, note 90, pp. 11–23.
- ¹³⁵ Reflecting on the two conceptual sections, this thematic convergence occurs as a result of broadened SSR and RoL frameworks and the corresponding focus on human security, where the protection of individuals and their access to basic public services (e.g. security and justice) are at the centre of concern.
- ¹³⁶ US Institute of Peace, note 90, p. 39.
- ¹³⁷ Schnabel, note 111, p. 6–7; Alan Bryden, 'Shaping the Security Governance Agenda in Post-Conflict Peacebuilding', in Alan Bryden and Heiner Hänggi (eds), *Security Governance in Post-Conflict Peacebuilding* (Münster: LIT Verlag, 2005), p. 257–258.
- ¹³⁸ The strategic gaps and lack of national strategies have been mentioned and illustrated in Sections 2–4.
- ¹³⁹ Electoral assistance is often deemed important to support non-violent efforts to (re-)establish the state within normative democratic mechanisms.
- ¹⁴⁰ OECD DAC, note 103, p. 224.
- ¹⁴¹ See for example *ibid.*, pp. 182–198.
- ¹⁴² Call, note 43, pp. 6–9.
- ¹⁴³ Samuels, note 85; Belton, note 63.
- ¹⁴⁴ US Institute of Peace, note 90, pp. 86–92.
- ¹⁴⁵ Stromseth et al., note 36, pp. 310–316.

The Rule of Law and Security Sector Reform: Conceptualising a Complex Relationship

Christoph Bleiker and Marc Krupanski

There is a clear need to better understand the relationship between two concepts at the heart of peacebuilding: the Rule of Law (RoL), and Security Sector Reform (SSR). If it is acknowledged in principle that they are interdependent, in practice enduring conceptual ambiguities and contradictions undermine latent synergies. As a consequence, international donor agencies are under increasing pressure to demonstrate the benefits of their RoL and SSR assistance. This SSR Paper moves the RoL-SSR debate forward through examining these activities jointly within a peacebuilding context. It proposes a heuristic framework that helps to rationalize this relationship on a conceptual level, demonstrating that RoL and SSR are interdependent and mutually reinforcing. The resulting framework provides a basis for the development of coherent policies that can support the development of coordinated, complementary programmes on the ground.

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