Constructing Justice and Security after War

Charles T. Call

United States Institute of Peace Press
Washington, D.C.

The views expressed in this book are those of the author alone. They do not necessarily reflect views of the United States Institute of Peace.

United States Institute of Peace
1200 17th Street NW, Suite 200
Washington, DC 20036-3011

© 2007 by the Endowment of the United States Institute of Peace.
All rights reserved.

First published 2007

Printed in the United States of America

Cover photographs courtesy of the National Civilian Police of El Salvador and Georges Gobet/AFP/Getty.

The paper used in this publication meets the minimum requirements of American National Standards for Information Science—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984.

Library of Congress Cataloging-in-Publication Data

Constructing justice and security after war/ [edited by] Charles T. Call. p. cm

Includes bibliographical references and index.
ISBN-13: 978-1-929223-89-3 (softcover : alk. paper)
ISBN-10: 1-929223-89-7 (softcover : alk. paper)
ISBN-13: 978-1-929223-90-9 (hardcover : alk paper)
ISBN-10: 1-929223-90-0 (hardcover : alk paper)
1. Postwar reconstruction. 2. Postwar reconstruction—Case studies.
I. Call, Charles
HV639.C67 2006
363.34'988—dc22

2006015924

Contents

Foreword v
Richard H. Solomon
Acknowledgements xi
Contributors xv
1. Introduction: What We Know and Don't Know about Postconflict Justice and Security Reform 3
Charles T. Call

PART I LATIN AMERICA AND THE CARIBBEAN

2. The Mugging of a Success Story: Justice and Security Reform in El Salvador 29
Charles T. Call
3. Justice and Security Reform after Intervention: Haiti 69
Sandra Beidas, Colin Granderson, and Rachel Neild
4. Business as Usual? Justice and Policing Reform in Postwar Guatemala 113
William D. Stanley

PART II AFRICA

5. Criminal Justice after Apartheid: Police and Justice Reform in South Africa 159
Janine Rauch
6. Postgenocide Justice and Security Reform: Rwanda 193
Charles Mironko and Ephrem Rurangwa

PART III THE BALKANS AND BEYOND

7. Too Little, Too Late? Justice and Security Reform in Bosnia and Herzegovina 231
Michael H. Doyle
8. From Elation to Disappointment: Justice and Security Reform in Kosovo 271
Colette Rausch
9. Lawyers, Guns, and Money: Justice and Security Reform in East Timor 313
Ronald A. West
10. Engendering Justice and Security after War 351
Tracy Fitzsimmons

Part IV Conclusion

11. Conclusion: Constructing Justice and Security after War.....375
Charles T. Call

Index.....411

Foreword

PRESIDENT GEORGE W. BUSH QUOTED PALESTINIAN Authority President Mahmoud Abbas in a speech at the National Defense University on March 8, 2005, saying that "we cannot build the foundations of a state without the rule of law and public order." Although the importance of rule of law may seem self-evident, many groups—from policymakers to scholars—have only recently recognized that building effective and legitimate state institutions on a legal foundation is one of the best ways to heal the effects of past wars and to prevent future wars. In fact, countries emerging from war comprise more than one-third of all new conflicts, and millions of people annually suffer the consequences of these wars: displacement, fear, insecurity, disease, injury, and death. It is all the more tragic when—as in twenty-first century Haiti, Liberia, Georgia, and Lebanon—the same populace experiences war only a few years after it welcomed peace.

Constructing Justice and Security after War, edited by Charles T. Call, addresses what both scholars and practitioners now recognize as a foundation of effective peace: effective, legitimate, and rights-respecting systems of justice and physical security. This volume provides nine case studies by distinguished contributors, including scholars, criminal justice practitioners, and former senior officials of international missions, most of whom have closely followed or been intimately involved in these processes. The wide-ranging case studies address whether and how societies emerging from armed conflict create systems of justice and security that ensure basic rights, apply the law effectively and impartially, and enjoy popular support. The authors provide detailed evidence of the overwhelming challenges involved, the efforts—and sometimes surprising ineptitude—of international actors who seem to learn little from previous experiences, and the resistance to and complexity of change. The studies examine the importance of social, economic, and cultural factors as well as institutional choices regarding the form, substance, and sequence of reforms.

This important volume provides useful information about a range of cases that are not often considered together. While many of the lessons learned are not new, the wealth of comparative data and informed analysis also brings some key issues into stark relief, some of which seem so obvious that one is taken aback by the degree to which the same problems emerge in different contexts. A driving hypothesis of the volume is that the transition itself creates a window of opportunity to push for reforms that would otherwise be very difficult to achieve. While there are many ways to achieve policy change, it is reasonable to expect that the shock of war and external intervention could be a catalyst to force a state to accept significant reforms to police and justice laws and institutions. The opportunity for change soon after a conflict ends should be seized, because the moment will not last.

A new and important insight that this volume makes clear is the role of any peace agreement in subsequent reform. Although it is sometimes difficult to reach detailed agreements, the clearer and more specific they are on reform, the greater the chances of success. The vagueness of Guatemala's accords impeded reform, for example, while El Salvador's peace agreement was easier to implement because security reforms were clearly delineated. The Dayton Peace Accords barely mentioned judicial and police reforms, leaving an array of international agencies to gradually develop the necessary strategies to establish the rule of law. In part because of the gradual development of judicial and police procedures, those who worked in police and judicial institutions were tempted by corruption and fearful of retribution, thus allowing rampant corruption and organized crime to seize the country. The cases of Kosovo, Haiti, and Rwanda sadly show that the absence of a peace agreement, and the victory by one side in an armed conflict, does not necessarily pave the way for successful security or judicial reforms.

The cases in this volume remind us that postconflict reform efforts are intensely political and not just technical exercises of tinkering with constitutions, laws, or practices. Resistance to reform will inevitably emerge from those who stand to lose from the demise of the old system.

Another essential theme the authors present is the importance of public awareness and intense citizen involvement in the reform process if there is to be any chance of success. The question of how to build public trust is discussed throughout the book, as is the need for awareness and education campaigns that are locally driven but supported by international actors. While reform processes will never be without difficulties, citizen participation must be established to ensure sustainability.

The involvement of civil society is crucial to the success of reform, but it is very hard to manage. Community participation was attempted in reforming the police force of South Africa, for instance, but community–police forums collapsed, and public rhetoric became increasingly reactionary in response to rising crime rates. Participation has been attempted in locations such as Haiti, Kosovo, Rwanda, Sierra Leone, and Afghanistan, but no matter the country, it is not easy to implement. Involvement requires many consultations, meetings, and related discussions. Indeed, countless hours may be spent in attempts to increase participation, but in the end many often still feel forgotten. This is when the drive for "efficiency" and the need to feel the country is making progress take over and participation is no longer deemed essential. Steps must be taken to ensure that participation is not discounted or discarded in postconflict societies.

Also of significant importance are composition and vetting—who are the police and judicial personnel? This concept is tightly linked to popular support. For instance, South Africa opted not to vet, or "screen," serving officials to see if they were suitable to continue working in the police, courts, and prisons, a decision that may have deepened the problems related to community involvement and crime that South Africa experienced. Vetting of both police and judicial institutions remains a major transitional justice issue, and community support for reformed state agencies will suffer if citizens are compelled to work with those who have committed transgressions against them.

Police reform is especially important because it affects many other areas of reform. Police and judicial reform must be linked in a manner that is real, pragmatic, and organic, not merely rhetorical. This volume also makes clear that both police and judicial reforms

must take gender issues into account, going well beyond simply incorporating women into police forces and judicial institutions. With well-crafted programs, international support can have an especially significant long-term impact on women's security and their access to justice, contributing to greater equality.

While it is important that police forces be vetted and corrupt or inappropriate officers be removed, it must noted that corruption is common in states that are in disarray, and organized crime is often a new challenge requiring a creative response from a neophyte police force. Several cases in the volume show that international organizations must take greater account of the power, wealth, and violence of transnational organized crime in every phase of postconflict processes.

Finally, the volume shows that international actors can either facilitate or hinder the implementation of reforms, depending on who is involved and whether they can successfully extricate themselves from the country when—and often if—peace is established. The cases of Kosovo and East Timor indicate that the decision of international actors to be (temporarily) the judges and the street police of a foreign society should only be made as a last resort. And when such international transitional administration of justice and internal security occurs, the degree of attention paid to getting the right personnel, preparing them well, monitoring them carefully, and, above all, building local capacities to replace these international actors will all contribute to the eventual success of a peace operation.

Past Institute volumes that have addressed issues related to postconflict planning include *Engineering Peace: The Military Role in Postconflict Reconstruction,* by Colonel Garland H. Williams, which offers a framework for addressing postconflict reconstruction, and *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War,* by Michael J. Matheson, which examines the UN Security Council's new, expansive exercise of legal authority in the post–Cold War period and its devising of bold and innovative methods to stop nascent wars and "threats to the peace." *Constructing Justice and Security after War* adds another level to the study of one of the most important issues of our time. As

these case studies demonstrate, expectations for rapid change are high, and disappointment and frustration are all but certain, sometimes making it difficult for the citizens of a country recovering from war to appreciate any positive changes. I hope that those involved in planning and implementing postconflict international involvement will read this volume and take some of its lessons to heart as they pursue their own work.

RICHARD H. SOLOMON, PRESIDENT
UNITED STATES INSTITUTE OF PEACE

Acknowledgements

ANY EDITED VOLUME IS A DAUNTING AND collective undertaking, and I am grateful to an array of people who supported them and this endeavor. First, I thank the circle of scholars and policymakers who expressed support for a serious, comparative effort to analyze policing and justice reform efforts jointly, rooted not only in the planning documents of international agencies, but in the results on the ground across regions and countries. I am also grateful to the contributors, who showed patience and diligence in the repeated drafts in a lengthy process. The interaction among us helped the final product.

Over a period of years, a number of individuals and officials kindly provided interviews that contributed to my ability to conclude this project and to the ideas in my contributions here. These people include numerous unnamed officials and individuals in Haiti, Guatemala, South Africa, and Afghanistan. My thanks also to the following list of individuals, which is not comprehensive:

In El Salvador: Public Security Commissioner Salvador Samayoa; Directors-General of the PNC Rodrigo Avila and Mauricio Sandoval; numerous PNC deputy commanders; Supreme Court Magistrate and former Ombudsperson Victoria de Aviles; Ruben Zamora; Hector Dada; Francisco Altchul; Jose Miguel de la Cruz; and Loly de Zuniga.

UN officials based in the United States: Mark Kroeker, former deputy commissioner of the Civilian Police in the UN Mission in Bosnia and current police adviser to the UN Secretary General; his predecessors as chief of the UN Civilian Police Unit in New York, Om Prakash Rathor and Halvor Hartz, as well as Harry Broer and Gerry Beekman, both officers in that unit; Chris Coleman, then of the Peacekeeping Department's Best Practices unit; and Jamal Benomar, Eva Buzsa, and Francis James of UN Development Programme.

In Bosnia and Herzegovina: Jacques Paul Klein, special representative of the secretary general; Dennis Laducer, deputy commissioner of the International Police Task Force; Civil Affairs chief

David Harland; and Robert Gravelle, Civil Affairs officer in Sarajevo and later helpful in Liberia; Donald S. Hayes, principal deputy high representative; Michael G. Karnavas, chairman of the Brčko Law Revision Commission; and Bisera Turkovic, director of the Center for Security Studies.

In Kosovo: President Ibrahim Rugova; Ramush Haradinaj, then-deputy commander of the Kosovo Protection Corps; Christopher Albiston, UNMIK police commissioner; his human rights adviser Elizabeth Griffin; Thomas Hacker, deputy UN police commissioner; Kosovo Police School Director Steve Bennett; and William Irvine, chief of UN Penal Management Division.

The advice of colleagues and friends—including Bill Stanley, Sue Cook, David Holiday, Sanjeev Khagram, Antonio Donini, Madalene O'Donnell, Eric Scheye, Rama Mani, Peter Andreas, Nina Tannenwald, Keith Brown, Graham Day, John Walsh, Otwin Marenin, Bob Perito, Gordon Peake, Jim Ron, and the late Maggi Popkin—was especially helpful.

A stint as visiting fellow at the United States Institute of Peace in 2002–2003 offered a pleasant environment, for which I thank Joe Klaits, John Crist, and their excellent administrative staff. My thanks to Nigel Quinney and Amy Benavides, who worked on behalf of the United States Institute of Peace Press to get the volume to print quickly. Thanks are also due to a number of people who made administrative aspects smoother, including Professor Melissa Labonte, Judy Barsalou, Sheila Fournier, and April Hall.

Research and writing were supported by a solicited grant (#SG-89-01) from the Institute, which also assisted in the organization of a conference of the participants cosponsored by the Institute and Brown University's Watson Institute for International Studies. In addition, a Research and Writing Grant from the John D. and Catherine T. MacArthur Foundation supported the editor's research for the volume. I am grateful for these financial expressions of support, which were indispensable, as well as to the feedback from the conference participants.

Two contributions appeared previously elsewhere and are reprinted with permission. My case study of El Salvador first appeared as "Democratization, War, and State-Building: Constructing the

Rule of Law in El Salvador," *Journal of Latin American Studies* 35:4 (November 2003). The chapter by Tracy Fitzsimmons appeared in a largely similar form as "The Postconflict Postscript: Gender and Policing in Peace Operations," in Dyan Mazurana, Angela Raven-Roberts, and Jane Parpart (eds.), *Gender, Conflict and Peacekeeping* (Boulder: Rowman Littlefield, 2005, pp. 185–201).

One contributor in particular, Tracy Fitzsimmons, was indispensable to my completing this volume, and her participation, support, and patience are deeply appreciated. Finally, I thank my parents, David and JoAnn Call, for their abiding support, and dedicate this volume to them.

Contributors

Charles T. Call is assistant professor of International Peace and Conflict Resolution at American University and senior adviser on peacebuilding to the International Peace Academy. In 2004 he worked as peacebuilding consultant to the UN Department of Political Affairs. Before that, he coordinated the Governance in War-Torn Societies Project at Brown University, where he published articles in *Global Governance*, *Comparative Politics*, and the *Journal on Latin American Studies*. His field research on police reforms includes work in Central America, Haiti, Afghanistan, Bosnia, Kosovo, South Africa, and the West Bank. He has served as consultant on police and justice reform issues to the U.S. Justice Department, the UN Development Programme, the Ford Foundation, the European Commission, and the U.S. Agency for International Development (USAID). He holds a Ph.D. in political science from Stanford University and a B.A. with honors from Princeton University.

* * *

Sandra Beidas served for several years in the Organisation of American States (OAS)/UN International Civilian Mission in Haiti, principally in coordinating monitoring, analysis, and reporting. She then became chief of the Human Rights Section of the UN International Civilian Support Mission in Haiti. She has subsequently worked with the Child Protection Section in the UN peacekeeping mission in the Democratic Republic of the Congo and as chief of protection with Office of the High Commissioner for Human Rights–Nepal.

Michael H. Doyle has been working in the Balkans since 1997. During his tenure as senior political analyst for the International Crisis Group from 2000 to 2003, he produced policy papers on a range of issues, including Bosnian constitutional change, justice for war crimes, and ethnic reconciliation in southern Serbia. Since 2004, he has been with the Office of the High Representative in Sarajevo,

advising on rule of law reforms and specifically the restructuring of Bosnia's police forces.

Tracy Fitzsimmons is vice president for academic affairs and professor of political science at Shenandoah University. With regional expertise in Latin America, she has taught courses on world politics, Latin American politics, global democratization, political economy of development, and international perspectives on women and justice. Her research has taken her to Chile, Costa Rica, El Salvador, Haiti, Mexico, Guatemala, Dominican Republic, Croatia, and Bosnia. She has published a book and numerous reviewed articles and book chapters with a research focus on democratization, civil society, and global higher education. She is a graduate of Princeton University (B.A. in politics) and Stanford University (M.A. in Latin American studies; Ph.D. in political science).

Colin Granderson is the assistant secretary-general, Foreign and Community Relations, at the Caribbean Community (CARICOM) Secretariat. He was named ambassador at large of Trinidad and Tobago in 1993, where he was the executive director of the OAS/UN International Civilian Mission in Haiti. He earlier served as the coordinator of the OAS civilian presence in Haiti and was designated head of mission of the OAS election observation mission for the December 1995 presidential elections and also for the partial legislative and local government elections of April 1997 in Haiti. He has headed election observation missions for the OAS for general elections in Suriname and Guyana, and since joining the CARICOM Secretariat he has participated in election observation missions in Jamaica and The Turks and Caicos Islands. Additionally, he was a member of the advisory panel known as the Brahimi Commission that was convened by the UN secretary-general in March 2000 to review UN peace operations and make recommendations.

Charles Mironko is a social anthropologist specializing in comparative genocide, in particular the Rwandan genocide of 1994. He was a visiting fellow at the Watson Institute for International Studies from 2001 to 2003 and received his Ph.D. from Yale in 2004. He also has

served as associate director, Genocide Studies Program, Yale University, and chief, Culture Section, Organization of African Unity, Addis Ababa, Ethiopia. He is currently the humanitarian affairs officer for the African Union Mission in the Sudan (AMIS), Darfur.

Rachel Neild is senior advisor with the National Criminal Justice Reform Program of the Open Society Justice Initiative. Justice Initiative's projects address ethnic profiling by police in Europe and support police accountability and transparency in Africa, Latin America, and Eastern Europe. She was formerly the director of the Public Security Reform Program at the Washington Office on Latin America, monitoring international police assistance and promoting democratic policing reforms in Central America, Haiti, and Mexico. She previously worked with the Inter-American Institute for Human Rights, Costa Rica, and the Andean Commission of Jurists, Peru, and has been a consultant on human rights and policing reforms for the Inter-American Development Bank, the Organisation for Economic Co-operation and Development, USAID, and the Canadian nongovernmental organization Rights and Democracy, among others. She has published numerous papers and reports on these issues and has served on a number of advisory boards.

Janine Rauch has degrees in criminology from the University of Cape Town, South Africa, and from Cambridge University, England. She has researched and published extensively on police reform and crime prevention in South Africa. After South Africa's first democratic election in 1994, she was appointed as an adviser to the Minister of Safety and Security. Since 2003, she has worked as an independent consultant, advising various government and donor agencies in Africa on crime reduction and security sector reform strategies.

Colette Rausch is deputy director of the United States Institute of Peace Rule of Law Program. She served with the Organization for Security and Co-Operation in Europe (OSCE) Mission in Kosovo, first as head of the Rule of Law Division and then as director of the Department of Human Rights and Rule of Law. She also served as the U.S. Justice Department's resident legal adviser in Bosnia and

later as a program manager establishing criminal justice programs in post-conflict countries, including Kosovo. She also held positions as a federal prosecutor in Las Vegas, Nevada, and as head of the Nevada State Attorney General's Office Telemarketing and Consumer Fraud Unit. Her publications include "The Assumption of Authority in Kosovo and East Timor: Legal and Practical Implications," in *Executive Policing: Enforcing the Law in Peace Operations*, Renata Dawn, ed. (Stockholm International Peace Research Institute, 2003).

Ephrem Rurangwa is the joint general staff in charge of administration and personnel at Rwanda Defence Force Headquarters. From 2000 to 2003, he was the deputy commissioner general for operations of the Rwanda National Police, where he was responsible for implementing a major reform of the institution and later became the deputy commissioner for administration and personnel from 2004 to 2005. He previously served as a doctor in the Rwanda Patriotic Front in the armed struggle. He worked as head of medical services in the National Gendarmerie and later served as acting chief of military intelligence. He holds an M.D. from the Medical School of the University of Burundi.

William D. Stanley is associate professor of political science at the University of New Mexico. His research focuses on political violence, conflict resolution, and institutional reforms, with an emphasis on Central America. His articles have appeared in *International Organization*, *International Peacekeeping*, *Global Governance*, *Studies in Comparative International Development*, and other journals. He has published a book, *The Protection Racket State: Elite Politics, Military Extortion, and Civil War in El Salvador* (Temple University Press, 1996), as well as numerous chapters in edited volumes.

Ronald A. West is an independent consultant who has been working in the field since 1998. With an emphasis on community security and development, as well as institutional development of police forces, West has consulted on projects for the United Nations, USAID, and the World Bank in Haiti, East Timor, the Philippines, Jamaica, Sri Lanka, and Honduras. His work has covered various aspects of

program design, management, and technical assistance, including service as chief of party on USAID-funded initiatives in East Timor and Jamaica. Prior to serving as a civilian police advisor to the United Nations International Police Assistance Mission in Haiti, West was a police officer in San Francisco. He received his M.A. from New York University in January 2000 and was awarded a fellowship by the Social Science Research Council in 2002. During the fellowship, West was based at Columbia University's Salzman Institute for War and Peace Studies. While there, he authored two works: a chapter on post-conflict reconstruction of the justice system in East Timor (forthcoming from the United States Institute of Peace Press) and a policy guide on police accountability and community policing funded by USAID and published by the National Democratic Institute for International Affairs.

Constructing Justice and Security after War