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# Beyond the Post-Conflict Checklist: Linking Peacebuilding and Transitional Justice through the Lens of Critique

Dustin N. Sharp\*

## Abstract

*While historically seen as being in competition with the demands of peace, transitional justice is increasingly accepted as an important element of post-conflict peacebuilding. Along with the demobilization and disarmament of ex-combatants, security sector reform, rule of law programs, and elections, it has now joined a virtual checklist of initiatives to be carried out in post-conflict countries. The growing sense of shared space between transitional justice and post-conflict peacebuilding initiatives has sparked new interest in sounding out potential connections between both fields. Although the pursuit of synergies is a worthwhile goal, I argue that in developing these connections we must also be attentive to mutual shortcomings. Transitional justice and post-conflict peacebuilding have historically proceeded on separate tracks, yet there has been a remarkable similarity in the critiques and concerns that have been leveled against both fields. More integrated approaches to peacebuilding and transitional justice may exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them. Seeking synergies through the optics of these historic concerns and critiques could be one technique of resistance to these tendencies, leading to the development of innovative techniques for building peace with justice in conflict's wake.*

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## Table of Contents

I. Introduction.....	166
II. Origins and Growth of Peacebuilding and Transitional Justice.....	171
A. The Growth and Expansion of Peace Operations .....	171
B. Transitional Justice: From the Exception to the Mainstream .....	174
III. Parallel Critiques of Peacebuilding and Transitional Justice .....	178
A. The Critique of Liberal International Peacebuilding.....	179
B. Politics as Neutral Technology .....	182
C. The “Local” versus the “International”.....	183
IV. Building Linkages between Peacebuilding and Transitional Justice.....	185
A. Acknowledging Both Tensions and Complementarity .....	186
B. Building Linkages through the Lens of Critique .....	191
V. Conclusion.....	195

### I. INTRODUCTION

Since the end of the Cold War, programs and interventions associated with both international peacebuilding and transitional justice have increasingly followed in war’s wake.<sup>1</sup> Today, there is a growing demand for post-conflict peacebuilding initiatives, partly for humanitarian reasons, and partly for strategic reasons arising out of the conceptualization of failed and conflict states as a global security issue.<sup>2</sup> At the same time, the growth of transitional justice practices may be creating a “justice cascade,” a new global norm of accountability that helps give rise to new trials and truth commissions year after year.<sup>3</sup> More and more, the question is not whether there will be some kind of

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<sup>1</sup> I discuss evolving definitions of “international peacebuilding” in Section II. In general, however, this article focuses on international peacebuilding initiatives and definitions central to the United Nations (UN) system as opposed to the various types of interpersonal, community-level, and “track-two” peacebuilding that are done by individuals, religious groups, and nongovernmental organizations (NGOs).

<sup>2</sup> See Edward Newman, Roland Paris, and Oliver P. Richmond, *Introduction*, in Edward Newman, Roland Paris, and Oliver P. Richmond, eds, *New Perspectives on Liberal Peacebuilding* 3, 9 (UN 2009).

<sup>3</sup> See generally Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (Norton 2011) (arguing that a global crescendo of human rights prosecutions demonstrates the emergence of a new international norm of accountability); Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (Routledge 2d ed 2011) (discussing the phenomenon of truth commissions and their spread throughout the world).

justice in the aftermath of conflict, but what the timing, modalities, and sequencing might be.<sup>4</sup>

In the post-conflict context, transitional justice and peacebuilding initiatives often share the same temporal and geographic space, and several United Nations (UN) peace operations have been given a mandate to address transitional justice as well as more general peacebuilding activities.<sup>5</sup> Despite this, peacebuilding and transitional justice have not always been seen as part of the same enterprise,<sup>6</sup> and linkages between them have not generally received a great deal of attention by scholars.<sup>7</sup> Indeed, despite proximities of time and space, there has historically been little coordination between traditional pillars of post-conflict peacebuilding, such as the demobilization, disarmament, and reintegration (DDR) of ex-combatants, security-sector reform (SSR), and transitional justice initiatives.<sup>8</sup>

There are signs that this historic, separate-tracks approach to peacebuilding and transitional justice programs is changing. Although peace and justice have at times been thought to be in tension with one another, rhetorically at least, they are now seen as mutually supportive.<sup>9</sup> There is a growing interest in both academic and policy communities in exploring potential theoretical and

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<sup>4</sup> The various mechanisms associated with transitional justice are frequently applied in both post-conflict and post-authoritarian scenarios. Because this article focuses on the overlaps between transitional justice and post-conflict peacebuilding, however, I refer here to post-conflict transitional justice.

<sup>5</sup> Examples include the UN Mission in Kosovo (UNMIK) and the UN Transitional Authority in East Timor (UNTAET).

<sup>6</sup> Scholars and policymakers have long examined the possibility for tensions between peace and justice initiatives, manifested in the so-called “peace versus justice” debate. See, for example, Chandra Lekha Sriram, *Confronting Past Human Rights Violations: Justice vs Peace in Times of Transition*, 1–2 (Frank Cass 2004). In recent years, however, transitional justice advocates have tended to see the various and sometimes contradictory goals of transitional justice as complementary. See Bronwyn Anne Leebaw, *The Irreconcilable Goals of Transitional Justice*, 30 Hum Rts Q 95, 98 (2008).

<sup>7</sup> See Paul van Zyl, *Promoting Transitional Justice in Post-Conflict Societies*, in Alan Bryden and Heiner Hänggi, eds, *Security Governance in Post-Conflict Peacebuilding*, 209, 210 (DCAF Yearly Books 2005).

<sup>8</sup> See Lars Waldorf, *Introduction: Linking DDR and Transitional Justice*, in Ana Cutter Patel, Pablo de Greiff, and Lars Waldorf, eds, *Disarming the Past: Transitional Justice and Ex-Combatants* 14, 16 (International Center for Transitional Justice 2009) (discussing lack of coordination between transitional justice and DDR); Alexander Mayer-Rieckh and Roger Duthie, *Enhancing Justice and Development Through Justice-Sensitive Security Sector Reform*, in Pablo de Greiff and Roger Duthie, eds, *Transitional Justice and Development: Making Connections* 214, 222 (International Center for Transitional Justice 2009) (noting that the practices of SSR and transitional justice “rarely interact, either in practice or in theory”).

<sup>9</sup> The mutual complementarity of peace, justice, and democracy has arguably been a UN doctrine at least since the 2004 publication of a landmark report on transitional justice. See United Nations, *Report of the Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc S/2004/616 at 1 (2004) (asserting that “[j]ustice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives”).

programmatic linkages between peacebuilding and transitional justice.<sup>10</sup> Some in those communities have called for better coordination in order to facilitate complementarity.<sup>11</sup> At a policy level, there are early indications that this is in fact taking place. For example, in 2006 the UN Department of Peacekeeping Operations set forth guidance encouraging greater linkages between DDR programming and transitional justice.<sup>12</sup> Together with this new enthusiasm, some have urged caution, pointing to the need to manage potentially significant tensions between peacebuilding and transitional justice projects and programs.<sup>13</sup>

Building peace with justice is a complex and long-term endeavor that calls for holistic solutions that address crosscutting challenges. While peacebuilding is ultimately a broader notion, both peacebuilding and transitional justice are open-ended concepts with substantial overlap that “are contrived to achieve a common purpose”: long-term positive peace.<sup>14</sup> Both seek to rebuild social trust and social capital and attempt to address problems of governance, accountability, and the need for institutional reform. To these same ends, promoting synergies between peacebuilding and transitional justice programs and initiatives is a worthwhile goal for policymakers, academics, and practitioners alike. Indeed, the UN has recently overhauled its “peacebuilding architecture” with the creation of a Peacebuilding Commission (PBC) precisely

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<sup>10</sup> See, for example, Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice* 13 (JAD-PbP Working Paper Series No 1, May 2009) (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities); Alan Bryden, Timothy Donais, and Heiner Hänggi, *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding* (Geneva Centre for the Democratic Control of Armed Forces Policy Paper No 11, Nov 2005) (examining policy linkages between SSR, DDR, rule of law initiatives, and transitional justice); see also van Zyl, *Promoting Transitional Justice* at 210 (cited in note 7) (arguing that “[t]ransitional justice strategies should be understood as an important component of peacebuilding”).

<sup>11</sup> See, for example, Johanna Herman, Olga Martin-Ortega, and Chandra Lekha Sriram, *Beyond Justice versus Peace: Transitional Justice and Peacebuilding Strategies*, in Karin Aggestam and Annika Björkdahl, eds, *Rethinking Peacebuilding: The Quest for Just Peace in the Middle East and the Western Balkans* 48, 50 (Routledge 2013) (observing the importance “to find commonalities between the transitional justice and peacebuilding processes, particularly since activities in the field often overlap”).

<sup>12</sup> United Nations Department of Peacekeeping Operations (DPKO), *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, § 2.10 (DPKO 2006).

<sup>13</sup> See generally Herman, Martin-Ortega, and Sriram, *Beyond Justice versus Peace* (cited in note 11) (discussing the potential tensions between transitional justice, rule of law assistance, DDR, and SSR).

<sup>14</sup> Gerhard Thallinger, *The UN Peacebuilding Commission and Transitional Justice*, 8 German L J 681, 696 (2007). The term “negative peace” refers to the absence of direct violence. It stands in contrast with the broader concept of “positive peace,” which includes the absence of both direct and indirect violence, including various forms of “structural violence” such as poverty, hunger, and other forms of social injustice. See generally Johan Galtung, *Violence, Peace, and Peace Research*, 6 J Peace Rsrch 167 (1969).

to avoid fragmented and duplicative efforts in the peacebuilding arena, broadly conceived.<sup>15</sup>

And yet, as this Article will argue, developing more integrated approaches to peace and justice issues in the post-conflict context may create its own problems and challenges. In particular, there is a danger that as transitional justice is mainstreamed into emerging best practices for post-conflict reconstruction by the PBC and other UN policy organs, together with DDR, SSR, rule of law assistance, and elections, it will increasingly come to be seen as yet one more box to tick on the “post-conflict checklist,” a routine part of the template deployed in the context of post-conflict peace operations.<sup>16</sup>

In this regard, it is worth noting that traditional international peacebuilding programs—including DDR, SSR, and rule of law assistance—as well as a number of transitional justice initiatives have been subject to powerful, parallel critiques: that they are too often externally driven, being planned and implemented in a top-down and state-centric manner that gives insufficient voice and agency to those most affected by the conflict;<sup>17</sup> that they are biased toward Western approaches, giving too little attention to local or indigenous peace and justice traditions;<sup>18</sup> that they are presented as technocratic, neutral, and

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<sup>15</sup> See Dustin Sharp, *Bridging the Gap: the United Nations Peacebuilding Commission and the Challenges of Integrating DDR and Transitional Justice*, in Chandra Lekha Sriram, et al, eds, *Transitional Justice and Peacebuilding on the Ground: Victims and Ex-Combatants* 23, 24–25 (Routledge 2012).

<sup>16</sup> The problem of template-based or one-size-fits-all peacebuilding initiatives is a frequent trope in both academic and policy literature. See, for example, Roger Mac Ginty, *Indigenous Peace-Making versus the Liberal Peace*, 43 *Cooperation and Conflict: J of the Nordic Intl Studies Assn* 139, 144 (2008) (observing the existence of “set templates” and a “formulaic path” in internationally sponsored peacebuilding); Edward Newman, “*Liberal*” *Peacebuilding Debates*, in Newman, Paris, and Richmond, eds, *New Perspectives on Liberal Peacebuilding* 26, 42 (cited in note 2) (noting that “[a] core problem of contemporary peacebuilding is its tendency to be formulaic”); International Crisis Group, *Liberia and Sierra Leone: Rebuilding Failed States*, Crisis Group Africa Report No 87 at 9 (2004) (criticizing a mechanistic “operational checklist” approach to post-conflict peacebuilding in which the international community assumes it can safely withdraw after rote implementation of a series of initiatives: deployment of peacekeeping troops, disarmament, demobilization and reintegration of ex-combatants, the repatriation and return of refugees and internally displaced persons, security sector and judicial reform, transitional justice initiatives, and, finally, a first election).

<sup>17</sup> See, for example, Oliver Richmond, *The Romanticisation of the Local: Welfare, Culture, and Peacebuilding*, 44 *Intl Spectator: Ital J Intl Aff* 149, 161–63 (discussing the tendency toward top-down institution building in a variety of “liberal” interventions); Kora Andrieu, *Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm*, 41 *Security Dialogue* 537, 541 (2010) (noting that “transitional justice seems to be strongly under the influence of [a] top-down state-building approach.”)

<sup>18</sup> See, for example, Mac Ginty, 43 *Cooperation and Conflict: J of the Nordic Intl Stud Assn* at 144–45 (cited in note 16) (noting that Western approaches to peacebuilding “risk[] minimizing the space for organic local, traditional or indigenous contributions to peace-making”); Wendy Lambourne, *Transitional Justice and Peacebuilding After Mass Violence*, 3 *Intl J Transitional Just* 28, 32–

apolitical solutions to highly contested or contestable political issues and choices;<sup>19</sup> and that they ultimately reflect not local needs and realities, but a dominant “liberal international peacebuilding” paradigm that seeks to foster Western, market-oriented democracies in the wake of conflict without considering the tensions this may unleash in the immediate aftermath of conflict.<sup>20</sup> Considered together, there is reason to worry that better integration and coordination between peacebuilding and transitional justice might exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them.

As academics and policymakers begin to sound out linkages and synergies, viewing transitional justice and peacebuilding overlaps through the prism of these critiques might help us to strengthen policies that seek to promote complementarity. At the same time, addressing some of these critiques may cast doubt upon the prospects of more coordinated approaches to post-conflict peacebuilding altogether. The types of locally owned, context-specific, and bottom-up solutions frequently advocated in the literature may take us beyond the “post-conflict checklist,” but they also call into question the role of international organizations and international standards that are typically part and parcel of international post-conflict assistance. Yet from a pragmatic and realist standpoint, a balance between local and international agency in post-conflict programming seems both inevitable and desirable, and both “locals” and “internationals” have a stake in finding creative solutions to peacebuilding and transitional justice challenges, and learning from and applying the lessons of best practices elsewhere.<sup>21</sup>

Ultimately, striking a better balance might involve more hybridized forms of peacebuilding and transitional justice that involve a mixture of conventional and local practices and models.<sup>22</sup> While this Article will not attempt to set forth a

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34 (2009) (calling for a revalorization of local and cultural approaches to justice and reconciliation).

<sup>19</sup> See, for example, Newman, “*Liberal*” *Peacebuilding Debates* at 42 (cited in note 16) (critiquing attempts to “de-politicize” peacebuilding and present it as a technical task”); Patricia Lundy and Mark McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, 35 *J. L. & Soc’y* 265, 276–77 (2008) (arguing that “wider geo-political and economic interests too often shape what tend to be represented as politically and economically neutral post-conflict and transitional justice initiatives”).

<sup>20</sup> See generally Roland Paris, *At War’s End: Building Peace after Nationalist Conflict* (Cambridge 2004); Chandra Sriram, *Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice*, 21 *Global Soc’y* 579 (2007).

<sup>21</sup> See Laura Arriaza and Naomi Roht-Arriaza, *Social Reconstruction as Local Process*, 2 *Int’l J. Transitional Just.* 152, 153 (2008) (arguing for strategies that “incorporate a perspective that encompasses bottom-up local efforts as well as top-down state-driven or internationally driven ones”).

<sup>22</sup> See Newman, Paris, and Richmond, *Introduction* at 16 (cited in note 2).

comprehensive and integrated approach along these lines, it will argue that attentiveness to some of the parallel critiques leveled against both peacebuilding and transitional justice interventions could lead to shifts that would strengthen policy in both areas in the process of promoting linkages. The possibility of integrating local reconciliation practices into both transitional justice mechanisms and reintegration schemes for former combatants is one such possibility that will be briefly examined in this Article.

This Article will proceed in five sections. In Section II, I discuss the origins and evolution of both peacebuilding and transitional justice since the end of the Cold War. In Section III, I evaluate some of the broad and parallel critiques that have been leveled against peacebuilding and transitional justice. In Section IV, I examine the possibility for greater coordination between peacebuilding and transitional justice, looking to potential tensions and complementarity at a programmatic level, particularly through the lens of the longstanding critiques discussed in Section III. I argue that greater attention to these critiques might help to inspire modes of coordination and complementarity that will avoid some of the dangers of a standardized, checklist approach to post-conflict peacebuilding. Section V concludes the Article.

## II. ORIGINS AND GROWTH OF PEACEBUILDING AND TRANSITIONAL JUSTICE

The growth and expansion of international peacebuilding efforts associated with the end of the Cold War has been paralleled by an explosion of interest in the various mechanisms associated with transitional justice. In post-conflict countries today, there is an increased likelihood that at least some of the various programs and initiatives associated with both international peacebuilding and transitional justice will be marshaled as part of a response to violent conflict. The following section briefly outlines the origins of both fields with a view to understanding the critiques that will be discussed in Section III of this Article.

### A. The Growth and Expansion of Peace Operations

With the end of the Cold War, the world experienced a rapid expansion in international peacekeeping and peacebuilding, and UN peace operations quickly grew in both sophistication and complexity. The thick, multi-dimensional mandates associated with UN missions today stand in contrast to the relatively thin approaches previously taken. During the Cold War, peacekeeping actions placed a premium on neutrality, consent, and minimum

force— notions all central to traditional conceptions of sovereignty.<sup>23</sup> So-called “first generation”<sup>24</sup> or consensual peacekeeping often involved interposition of forces for the monitoring of ceasefires geared toward containing conflicts and maintaining stability.<sup>25</sup> Such practices were largely based on the felt importance of maintaining international security between states as opposed to the intra-state conflict and civil wars that we often associate with conflict today.<sup>26</sup> Rather than attempting to address “root causes” or to resolve conflict, the driving idea was to contain international instability in an era when a larger confrontation between great powers was to be avoided at all costs.

If these early peacekeeping efforts were relatively minimalist and involved the avoidance of domestic politics, the end of the Cold War brought about a huge shift in the approach to conflict management, and the UN increasingly found itself called upon in these next generation initiatives to address underlying economic, social, cultural, and humanitarian problems premised on the idea that managing the often internal conflicts of the post-Cold War world required a multi-faceted approach. Thus, from managing conflict *between* states, there was a shift to the perceived need to build peace *within* states, from traditional acts of *peacekeeping* authorized under Chapter VI of the UN Charter,<sup>27</sup> to more complex, and, from a traditional Westphalian perspective, more intrusive acts of *peacebuilding* that were frequently authorized under Chapter VII.<sup>28</sup> This shift was bolstered by the belief that threats to security come not just from interstate wars, but also from weak, failing, and conflict-prone states, and, particularly in the post-9/11 world, non-state actors.<sup>29</sup>

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<sup>23</sup> See Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* 238 (Oxford 2004).

<sup>24</sup> Some refer to three different generations of peacekeeping, which evolved in quick succession in the early 1990s. See, for example, *id.* Others, such as Roland Paris, simply distinguish between “traditional” peacekeeping and “peacebuilding operations.” See Roland Paris, *Peacekeeping and the Constraints of Global Culture*, 9 *Eur J Intl Rel* 441, 448–50 (2003).

<sup>25</sup> Examples of this approach to peacekeeping include the UN Military Observer Group in India and Pakistan (established in 1949) designed to monitor a ceasefire, the UN Peacekeeping Force in Cyprus (established in 1964) established to prevent fighting between Turk and Cypriot communities, and the UN Disengagement Observer Force (established in 1974) after the disengagement of Israel and Syria from the Golan Heights.

<sup>26</sup> See Newman, Paris, and Richmond, *Introduction* at 6 (cited in note 2).

<sup>27</sup> United Nations Charter Art 11, ¶1.

<sup>28</sup> Examples of more complex, multi-dimensional peace operations include Cambodia, Angola, Burundi, Central African Republic, Liberia, Mozambique, Rwanda, Sierra Leone, Chad, Sudan, Côte d’Ivoire, Democratic Republic of the Congo, Somalia, Kosovo, El Salvador, Guatemala, Haiti, Timor-Leste, Bosnia and Herzegovina, Eastern Slavonia, and Croatia.

<sup>29</sup> See Newman, Paris, and Richmond, *Introduction* at 9 (cited in note 2).

The concept of “post-conflict peacebuilding” that has come to be associated with multi-dimensional UN peace operations is often attributed to UN Secretary-General Boutros Boutros-Ghali and his 1992 *Agenda for Peace* report, which defined it as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid relapse into conflict.”<sup>30</sup> Since that time, the concept has been institutionalized across a number of organizations outside of the UN system that use it to frame and organize a variety of post-conflict activities.<sup>31</sup> The term has come to comprise efforts to disarm previously warring parties, reintegrate former soldiers into society, demine and destroy weapons, rebuild the security and judicial sectors, repatriate or resettle refugees, and engage in various forms of democracy and governance assistance, including monitoring elections.<sup>32</sup>

Twenty years after the UN offered its initial definition, the term peacebuilding has, if anything, come to be construed in even more expansive terms. According to a recent UN working definition, peacebuilding “involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development.”<sup>33</sup> This definition is spectacularly broad and, together with the shift from first to successive generations of peacekeeping, could be seen as demonstrating a growing commitment on the part of the UN system to the idea of building “positive peace,” rather than simply maintaining “negative peace.”<sup>34</sup>

The increasingly broad mandates and obligations of UN peacekeeping missions across the world to include various aspects of peacebuilding and statebuilding<sup>35</sup> were not initially met with a significant evolution of the UN’s institutional doctrine or structure, leading to redundant and ad hoc efforts and a

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<sup>30</sup> United Nations, *Agenda for Peace, Preventative Diplomacy, Peacemaking and Peace Keeping*, UN Doc A/47/277-S/24111 at 6, ¶ 21 (1992).

<sup>31</sup> See Michael Barnett, et al, *Peacebuilding: What Is in a Name?*, 13 *Global Governance* 35, 45–48 (2007).

<sup>32</sup> See United Nations, *United Nations Peacekeeping Operations: Principles and Guidelines* 26 (United Nations 2008), online at [http://pbpu.unlb.org/pbps/library/Capstone\\_Doctrine\\_ENG.pdf](http://pbpu.unlb.org/pbps/library/Capstone_Doctrine_ENG.pdf) (visited Apr 8, 2013).

<sup>33</sup> Id at 18.

<sup>34</sup> See generally Sharp, *Bridging the Gap* (cited in note 15).

<sup>35</sup> For a discussion of the evolution of peacebuilding and statebuilding discourse, see generally John Heathershaw, *Unpacking the Liberal Peace: The Dividing and Merging of Peacebuilding Discourses*, 36 *Millennium: J Intl Studies* 597 (2008). In general, while peacebuilding is the more inclusive term, statebuilding tends to focus more narrowly on rebuilding the core institutions and apparatuses of a modern, liberal state in the aftermath of conflict.

general lack of coordination.<sup>36</sup> However, the seemingly inevitable involvement in increasingly complex post-conflict initiatives eventually culminated in the 2005 creation of the UN Peacebuilding Commission (PBC), which has been tasked with facilitating integrated approaches to post-conflict reconstruction throughout the UN system and beyond.<sup>37</sup> Today, the coordination, direction, and implementation of the vast majority of on-the-ground peacekeeping missions across the world is done by the UN Department of Peacekeeping Operations (DPKO), and many such missions today have significant peacebuilding components.<sup>38</sup>

## B. Transitional Justice: From the Exception to the Mainstream

While definitions of transitional justice vary and have evolved over time, most of them attempt to capture a legal, political, and moral dilemma about how to deal with historic human rights violations and political violence in societies undergoing some form of political transition.<sup>39</sup> The institutional mechanisms most closely associated with the field are trials and truth commissions, though reparations, lustration, and broader institutional reform are also central.<sup>40</sup> Taken

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<sup>36</sup> Liliana Lyra Jubilut, *Towards a New Jus Post Bellum: The United Nations Peacebuilding Commission and the Improvement of Post-Conflict Efforts and Accountability*, 9 Minn J Int'l L 26, 31 (2011).

<sup>37</sup> See General Assembly Res No 60/180, UN Doc A/RES/60/180 at 2, ¶¶ 1–2 (2005); Security Council Res No 1645, UN Doc S/RES/1645 at 2, ¶¶ 1–2 (2005). The UN's new peacebuilding architecture also includes a Peacebuilding Support Office (PBSO), which acts as a secretariat to the PBC, and serves the UN secretary-general in coordinating UN agencies in their peacebuilding efforts, as well as a Peacebuilding Fund (PBF), administered by the PBSO, intended to address immediate peacebuilding needs in countries emerging from conflict, and thereby fill a critical gap in post-conflict project financing.

<sup>38</sup> Of course, beyond DPKO, full implementation of peace operations around the world is also the work of many UN agencies, ranging from the Department of Political Affairs (DPA) and the United Nations Development Programme (UNDP) to the Office of the High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR).

<sup>39</sup> For a review of how definitions of transitional justice have evolved over time, see Rosemary Nagy, *Transitional Justice as a Global Project: Critical Reflections*, 29 Third World Q 275, 277–78 (2008).

<sup>40</sup> According to a landmark 2004 UN report, transitional justice comprises

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

United Nations, *The Rule of Law and Transitional Justice in Post-Conflict Societies* at 4, ¶8 (cited in note 9).

together, transitional justice is often said to be both backward looking, insofar as it is closely associated with justice and accountability for previous human rights violations, and forward looking, insofar as its advocates often claim that justice is essential to prevent recurrence and to lay the groundwork for longer term peace and stability.<sup>41</sup>

As with peacebuilding, the birth and rapid growth of transitional justice is closely associated with political currents near the end of the Cold War. Specifically, as a field of policy, practice, and study, transitional justice has its origins in the so-called “third wave” of democratic transitions that swept Eastern Europe and Latin America in the late 1980s and 1990s.<sup>42</sup> Indeed, the origins of transitional justice in the deliberations of how new democracies ought to respond to massive human rights violations is key to understanding the parameters and practices of the field.<sup>43</sup> Early thinking about justice in transition often focused on the need to deliver enough justice to contribute to building a new democratic order, without at the same time endangering the democratic transition itself.<sup>44</sup> Like its parent field of human rights, transitional justice was preoccupied with accountability for abuses. It also sought to achieve justice in

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<sup>41</sup> See, for example, Andrieu, 41 *Sec Dialogue* at 538 (cited in note 17) (noting that transitional justice has both forward- and backward-looking aspects); Mayer-Rieckh and Duthie, *Enhancing Justice and Development* at 224 (cited in note 8) (arguing that it would be a mistake to see transitional justice as solely backward looking); Andrew Valls, *Racial Justice as Transitional Justice*, 36 *Polity* 53, 58 (2003) (arguing for a balanced approach to transitional justice that takes into account both forward- and backward-looking dimensions).

<sup>42</sup> See generally Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, in Neil J. Kritz, ed, 1 *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* 65 (United States Institute of Peace 1995). While the term “transitional justice” was coined some twenty years ago, it has been argued that transitional justice did not coalesce as a distinct “field” until sometime after 2000. See Paige Arthur, *How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 *Hum Rts Q* 321, 329–32 (2009) (tracing the history of the use of the term “transitional justice”); Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field,”* 3 *Intl J Transitional Just* 5, 7 (2009) (arguing that transitional justice did not emerge as a distinct field until after 2000). Of course, the practices associated with transitional justice go back for centuries if not millennia. See generally Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge 2004) (reviewing historic practices now associated with the modern field of transitional justice).

<sup>43</sup> See Thomas Hansen, *The Vertical and Horizontal Expansions of Transitional Justice: Explanations and Implications for a Contested Field*, in Susanne Zistel, et al, eds, *Transitional Justice Theories 1, 2* (Routledge forthcoming 2013) (prepublication version on file with author).

<sup>44</sup> Political scientists of the period focusing on the dilemmas of transitional justice analyzed the role of bargains between elite groups in striking a balance between the demands of justice and the needs of the democratic transition. See generally Huntington, *The Third Wave* (cited in note 42); Guillermo O’Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, in Kritz, ed, 1 *Transitional Justice* 57 (cited in note 42).

ways that would facilitate a transition not just to democracy but to something resembling Western liberal democracy.<sup>45</sup>

In the quarter century that has followed the emergence of transitional justice discourse and practice, it has evolved from a discourse of exception and deviation—something thought to be different from ordinary forms of justice to be deployed on an ad hoc basis during a period of rupture—to something that has in many ways been institutionalized, regularized, and mainstreamed.<sup>46</sup> Increasingly, the question is not whether some kind of justice will be delivered during periods of transition but what the sequencing and modalities might be.<sup>47</sup>

The upward trajectory and expansion of the field are in part reflected in its embrace by a landmark 2004 report by the UN secretary-general.<sup>48</sup> Indeed, over the last twenty years, the UN system as a whole has become heavily involved in a number of transitional justice processes around the world. The international criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) were both created by the Security Council. In Sierra Leone, East Timor, Cambodia, Bosnia, and Lebanon, the UN created hybrid international tribunals. Today, the Office of the High Commissioner for Human Rights has the lead responsibility for transitional justice issues, having supported transitional justice

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<sup>45</sup> See Arthur, 31 Hum Rts Q at 325–26 (cited in note 42) (arguing that transition to democracy was the “dominant normative lens” through which political change was viewed in the early years of transitional justice practice and scholarship); see also Lundy and McGovern, 35 J L & Socy at 273 (cited in note 19) (arguing that “[t]ransition,” as normally conceived within transitional justice theory, tends to involve a particular and limited conception of democratization and democracy based on liberal and essentially Western formulations of democracy”). For an argument that mainstream human rights practice of the period also sought to replicate essentially Western liberal models of governance, see generally Makau wa Mutua, *The Ideology of Human Rights*, 36 Va J Intl L 589 (1996).

<sup>46</sup> See, for example, Ruti G. Teitel, *Transitional Justice in a New Era*, 26 Fordham Intl L J 893, 894 (2002) (noting the emergence of a “steady state” phase of transitional justice in which “the post-conflict dimension of transitional justice is moving from the exception to the norm”); see also Nagy, 29 Third World Q at 276 (cited in note 39) (noting the standardization of transitional justice); Kieran McEvoy, *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34 J L & Socy 411, 412 (2007) (observing that “[t]ransitional justice has emerged from its historically exceptionalist origins to become something which is normal, institutionalized and mainstreamed”). For an argument that transitional justice is not exceptional, and that the so-called dilemmas of transitional justice are in fact little more than the dilemmas of “ordinary” justice, see generally Eric A. Posner and Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 Harv L Rev 762 (2003).

<sup>47</sup> See Nagy, 29 Third World Q at 276 (cited in note 39)

<sup>48</sup> See generally United Nations, *The Rule of Law and Transitional Justice in Post-Conflict Societies* (cited in note 9).

programs in some twenty countries around the world.<sup>49</sup> The Bureau of Crisis Prevention and Recovery (BCPR) at the UN Development Programme also works to support transitional justice efforts. Although it does not have an explicit mandate to work on transitional justice issues and its record of practice is only beginning to be established, the newly created PBC has already identified support for transitional justice initiatives as key to peacebuilding.<sup>50</sup>

As transitional justice practices have become increasingly normalized and embraced by key global institutions like the UN, the field has begun to move beyond its roots and association with the political transitions of the late 1980s and 1990s to Western liberal democracy, and it has become associated with post-conflict peacebuilding situations more generally, even including those that do not involve a liberal transition.<sup>51</sup> With this expansion have come calls to broaden the parameters of transitional justice work. Thus, arguments have been made that there should be greater linkages between transitional justice and development work,<sup>52</sup> anti-corruption efforts,<sup>53</sup> security sector reform,<sup>54</sup> the DDR of former combatants,<sup>55</sup> and other peacebuilding activities.<sup>56</sup> At the level of

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<sup>49</sup> See United Nations, *Message by Ms. Navanethem Pillay at the Special Summit of the African Union* (Oct 22, 2009) online at <http://www.unhcr.ch/hurricane/hurricane.nsf/0/110E705F1034E048C1257657005814CE?opendocument> (visited Apr 9, 2013).

<sup>50</sup> For example, in Burundi, one of the first two countries added to the PBC's agenda, the commission identified lack of accountability for human rights abuses as a cause of the conflict and continued impunity as a factor contributing to potential relapse into conflict. With this in mind, support for transitional justice initiatives forms one of the pillars in Burundi's strategic framework for peacebuilding. See United Nations, *Strategic Framework for Peacebuilding in Burundi*, UN Doc PBC/1/BDI/4 at 7, ¶ 16, 9–10, ¶¶ 30–31 (2007).

<sup>51</sup> One prominent example is Rwanda, which, despite its association with several forms of transitional justice (ranging from the International Criminal Tribunal for Rwanda, to domestic prosecutions, to a nationwide accountability process known as *gacaca* loosely based on Rwandan tradition), could hardly be considered democratic. See generally Phil Clark and Zachary D. Kaufman, eds, *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond* (Columbia 2009).

<sup>52</sup> See generally de Greiff and Duthie, eds, *Transitional Justice and Development* (cited in note 8); Roger Duthie, *Toward a Development-Sensitive Approach to Transitional Justice*, 2 Intl J Transitional Just 292 (2008); Rama Mani, *Dilemmas of Expanding Transitional Justice, or Forging the Nexus Between Transitional Justice and Development: Editorial*, 2 Intl J Transitional Just 253 (2008).

<sup>53</sup> See generally Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, 2 Intl J Transitional Just 310 (2008).

<sup>54</sup> See generally Mayer-Rieckh and Duthie, *Enhancing Justice and Development* (cited in note 8); Corey Barr, *Making Connections: Bridging Transitional Justice and Security Sector Reform to Confront Conflict-Related Sexual and Gender-Based Violence*, 26 PRAXIS: Fletcher J Hum Security 5 (2011); Eirin Mobekk, *Transitional Justice and Security Sector Reform: Enabling Sustainable Peace* (Geneva Centre for the Democratic Control of Armed Forces Occasional Paper No 13, Nov 2006).

<sup>55</sup> See generally Sharp, *Bridging the Gap* (cited in note 15); Patel, de Greiff, and Waldorf, eds, *Disarming the Past* (cited in note 8).

institutional mechanisms and practice, transitional justice has expanded well beyond trials and truth commissions, and there is an increasing interest in the embrace of more traditional and indigenous forms of justice and reconciliation work.<sup>57</sup> Yet despite this expansion across multiple dimensions, in many ways transitional justice institutions and mechanisms retain some of the hallmarks and limitations of the field's origins in the democratic transitions of the late 1980s and 1990s, as discussed in Section III.

### III. PARALLEL CRITIQUES OF PEACEBUILDING AND TRANSITIONAL JUSTICE

As post-conflict peacebuilding and transitional justice have expanded and to some degree become both normalized and institutionalized in the post-Cold War era, they have also been subject to trenchant critiques from academics, activists, and policymakers. While the programs associated with international peacebuilding assistance, such as DDR and SSR, have historically had little connection to transitional justice initiatives, either in terms of theory or policy and practice, many of the critiques leveled against international efforts in both domains strongly echo each other. Particularly given calls for greater linkages between peacebuilding and transitional justice, these parallel critiques bear close examination.

I have grouped the critiques into three loose general categories below: (a) the critique of liberal international peacebuilding; (b) the critique of politics as neutral technology; and (c) the debate about local versus international. These groupings are not meant to be definitive, and the critiques explored below are in no way exhaustive. For some scholars, such as Roland Paris, these critiques should all be disentangled from each other and do not necessarily go hand in hand.<sup>58</sup> For others, many of the concerns raised below cannot be disassociated from what has become known as the critique of liberal international peacebuilding.<sup>59</sup> What can be fairly said is that the critiques discussed below

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<sup>56</sup> See Sriram, Martin-Ortega, and Herman, *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice* at 13 (cited in note 10) (discussing general linkages between transitional justice and a broad set of peacebuilding activities).

<sup>57</sup> Sierra Leone, East Timor, and Rwanda are but three examples of the incorporation of local tradition into larger transitional justice processes. See generally Patrick Burgess, *A New Approach to Restorative Justice: East Timor's Community Reconciliation Process*, in Naomi Roht-Arriaza and Javier Mariezcurrena, eds, *Transitional Justice in the Twenty-First Century* (Cambridge 2006); Christopher J. Le Mon, *Rwanda's Troubled Gacaca Courts*, 14 Hum Rts Brief 16 (2007); Augustine S.J. Park, *Community-Based Restorative Transitional Justice in Sierra Leone*, 13 Contemp Just Rev 95 (2010).

<sup>58</sup> See Roland Paris, *Saving Liberal Peacebuilding*, 36 Rev Intl Studies 337, 363 (2010).

<sup>59</sup> See generally Neil Cooper, Mandy Turner, and Michael Pugh, *The End of History and the Last Liberal Peacebuilder: A Reply to Roland Paris*, 37 Rev Intl Studies 1995 (2011).

often share substantial overlap but that the groupings nevertheless serve a useful role for purposes of discussion and analysis.

### A. The Critique of Liberal International Peacebuilding

For the last two decades, international post-conflict peacebuilding efforts have most often taken place in developing rather than developed countries.<sup>60</sup> For explanation, one could point to evidence suggesting that poor countries are more prone to civil wars, but a fuller understanding would also need to account for the entrenched global power dynamics and Security Council vetoes that make interventions predicated on building peace and justice more likely in the smaller, poorer countries of the world.<sup>61</sup> Given these trends, it appears that both peacebuilding and transitional justice interventions will have a greater footprint in the developing world than the developed world for the foreseeable future.<sup>62</sup>

With these broad trends as a backdrop, the critique of liberal international peacebuilding posits that in practice, peacebuilding interventions have largely been premised on a model of liberal internationalism that conceives of market-oriented economies and Western-style liberal democracy as the unique pathway to peace.<sup>63</sup> The interventions contrived to bring about just such a liberal peace are seen to constitute a sort of modern-day *mission civilisatrice*.<sup>64</sup> Yet because many of the post-conflict and developing countries in which peacebuilding interventions take place have a historical and cultural grounding that varies from that of the Occident, some argue that the emphasis on elections, democracy, and free markets associated with the typical package of post-conflict peacebuilding

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<sup>60</sup> Examples are not in short supply, and include multi-dimensional UN peace operations in Cambodia, Angola, Burundi, Central African Republic, Liberia, Mozambique, Rwanda, Sierra Leone, Chad, Sudan, Côte d'Ivoire, Democratic Republic of the Congo, Somalia, Kosovo, El Salvador, Guatemala, Haiti, and Timor-Leste.

<sup>61</sup> See Paul Collier, et al, *Breaking the Conflict Trap: Civil War and Development Policy* 22 (World Bank and Oxford 2003) (arguing that civil wars are more likely in low-income countries).

<sup>62</sup> For an argument that at least some of the patterns that have led to international interventions in the past are changing, see generally Scott Straus, *Wars Do End! Changing Patterns of Political Violence in Sub-Saharan Africa*, 443 *Afr Aff* 179 (2012). Straus argues that wars, major forms of large-scale organized political violence, and episodes of large-scale mass killing of civilians are declining in frequency and intensity in Sub-Saharan Africa. See generally id. It is worth noting, however, that, according to Straus, other forms of political violence, such as electoral violence and violence over access to livelihood resources, are increasing or persistent. Even the low-level insurgencies that Straus lists as exemplary of future trends, such as Darfur and the Lord's Resistance Army in Uganda, have resulted in various forms of international intervention.

<sup>63</sup> See Roland Paris, *Peacebuilding and the Limits of Liberal Internationalism*, 22 *Intl Sec* 54, 56 (1997).

<sup>64</sup> See generally Roland Paris, *International Peacebuilding and the "Mission Civilisatrice"*, 28 *Rev Intl Studies* 637 (2002).

interventions can be both dangerous and destabilizing.<sup>65</sup> The critique suggests they are potentially dangerous and destabilizing because rapid economic and political liberalization can give rise to grievances and political competition with which the often fragile or shattered institutions in post-conflict countries are as yet too weak to cope.<sup>66</sup>

The combined effects of peace operations and development assistance facilitated by liberalizing international financial institutions such as the World Bank and the International Monetary Fund may therefore be to create instability and even a return to conflict.<sup>67</sup> For this reason, some critics of liberal international peacebuilding have advocated “institutionalization before liberalization,” a focus on strengthening the institutions of economic and political governance prior to full liberalization.<sup>68</sup> Of course, the disastrous rush to elections as a departure strategy that has been associated with some early UN peace operations has in fact been moderated in recent years with an increased emphasis on institution building, including broad categories of programming such as rule of law assistance, DDR, and SSR.<sup>69</sup> Nevertheless, some critics argue that even in its current form, international peacebuilding may involve the imposition of Western institutional preferences that, at their core, are still largely premised on “neoliberal policies of open markets . . . and governance policies focused on enhancing instruments of state coercion.”<sup>70</sup> Equally worrisome, the strongest critics argue, is that there is little space to dissent from the prevailing and hegemonic international peacebuilding paradigm.<sup>71</sup>

Applying the critique of liberal international peacebuilding to transitional justice, Chandra Sriram argues that mainstream justice strategies “share key assumptions about preferable arrangements, and a faith that other key goods—

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<sup>65</sup> See generally, Paris, *At War's End* (cited in note 20).

<sup>66</sup> See generally *id.*

<sup>67</sup> Without attempting to discern the cause, it is worth recalling in this regard that a significant portion of civil wars reignite within a period of five years of their supposed settlement. See Paul Collier and Anke Hoeffler, *On the Incidence of Civil War in Africa*, 46 *J Conflict Resol* 13, 17 (2002); Astri Suhrke and Ingrid Samset, *What's in a Figure? Estimating Recurrence of Civil War*, 14 *Intl Peacekeeping* 195, 197–98 (2007).

<sup>68</sup> See Paris, 22 *Intl Sec* at 57–58 (cited in note 63).

<sup>69</sup> For a critique of the rush to rapid elections, see Chesterman, *You, The People*, at 204–35 (cited in note 23).

<sup>70</sup> See Cooper, Turner, and Pugh, 37 *Rev Intl Studies* at 1995 (cited in note 59); Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, *Promoting the Rule of Law: From Liberal to Institutional Peacebuilding*, in Chandra Lekha Sriram, Olga Martin-Ortega, and Johanna Herman, eds, *Peacebuilding and the Rule of Law in Africa: Just Peace?* 1, 1–2 (Taylor & Francis 2010) (arguing that promoting institutionalization as a response to the critique of liberal international peacebuilding may also entail an imposition).

<sup>71</sup> See Cooper, Turner, and Pugh, 37 *Rev Intl Studies* at 1995 (cited in note 59)

democracy, free markets, ‘justice’—can essentially stand in for, and necessarily create peace.”<sup>72</sup> To the contrary, Sriram argues that transitional justice processes and mechanisms may, like liberal peacebuilding, destabilize post-conflict and post-atrocity countries because “calls for justice are likely to generate tensions and exacerbate conflicts that have the potential to undermine peacebuilding.”<sup>73</sup> And as with the other components of liberal peacebuilding, transitional justice strategies are often rooted in Western modalities of justice imposed from the outside.<sup>74</sup>

While transitional justice processes have historically been linked to an emphasis on building Western-style democracies, these processes have not traditionally been associated with the push for free markets.<sup>75</sup> Sriram therefore notes that transitional justice might not be as subject to this aspect of the critique of liberal international peacebuilding.<sup>76</sup> However, it is worth noting that while trials and truth commissions around the world have tended to focus on accountability for violations of physical integrity (murder, rape, torture, disappearances) and civil and political rights more generally, issues of economic and distributive justice and economic and social rights, have often been placed in the background of transitional justice practice and concern.<sup>77</sup> The effect has at times generated outrage over acts of physical violence conceived of as exceptional evils, while leaving the larger economic and social status quo intact, perhaps thereby obfuscating and legitimating patterns of economic violence that may be equally devastating.<sup>78</sup> In this sense, transitional justice has paralleled the neoliberal market orientation that is featured in the critique of liberal international peacebuilding. Thus, it would seem that the paradigmatic “third wave” transitions at the origins of transitional justice, transitions from authoritarianism and communism to market-oriented, Western-style democracy, were crucial not only to structuring the initial conceptual boundaries of the field but also remain relevant to understanding the field’s existing practices today.<sup>79</sup>

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<sup>72</sup> Sriram, 21 *Global Socy* at 579 (cited in note 20).

<sup>73</sup> *Id* at 583.

<sup>74</sup> See *id* at 591.

<sup>75</sup> See *id* at 580.

<sup>76</sup> See Sriram, 21 *Global Socy* at 580 (cited in note 20).

<sup>77</sup> See Zinaida Miller, *Effects of Invisibility: In Search of the “Economic” in Transitional Justice*, 2 *Intl J Transitional Just* 266, 275–76 (2008).

<sup>78</sup> Dustin N. Sharp, *Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice*, 35 *Fordham Intl L J* 780, 781–82 (2012).

<sup>79</sup> Arthur, 31 *Hum Rts Q* at 326 (cited in note 42).

## B. Politics as Neutral Technology

A second criticism of both international peacebuilding and transitional justice that is related to but distinguishable from the critique of liberal international peacebuilding is the argument that they are both presented as technocratic, neutral, and apolitical solutions to highly contested or contestable political issues and choices. In other words, the choice as to the modalities of better forms of governance and questions that arise out of a desire for justice (for example, justice for whom, for what, and to what ends?) are highly political choices that have important consequences for the distribution of political, economic, social, and cultural power in the post-conflict context.<sup>80</sup> Yet, a perennial feature of the various components of post-conflict peacebuilding, such as rule of law and democracy assistance, is that they are often imagined as fundamentally apolitical and neutral technologies—a misperception that obfuscates the difficult tradeoffs that need to be made to further important post-conflict objectives such as development, security, and human rights protection.<sup>81</sup> Thus, critics of both peacebuilding and transitional justice have argued that the fundamentally political nature of both enterprises needs to be brought to the surface.<sup>82</sup>

The need to more openly assess the tensions, tradeoffs, and debates that undergird peacebuilding and transitional justice interventions is all the more plain if we take seriously the notion that they serve to replicate essentially Western liberal economic and governance models. In this regard, it is important to examine the discourse of the local that has emerged in recent years in the critique of both peacebuilding and transitional justice.

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<sup>80</sup> See Nagy, 29 *Third World Q* at 280–86 (cited in note 39) (employing the categories of when, whom, and what in order to interrogate the limits of mainstreamed transitional justice).

<sup>81</sup> See Balakrishnan Rajagopal, *Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination*, 49 *Wm & Mary L Rev* 1347, 1349 (2008) (arguing that renewed enthusiasm for building the rule of law in the post-conflict context represents a “desire to escape from politics by imagining the rule of law as technical, legal, and apolitical”); Ole Sending, *Why Peacebuilders Fail to Secure Ownership and Be Sensitive to Context* 8 (Security in Practice, NUPI Working Paper 755, 2009) (observing that the ends of liberal international peacebuilding are often imagined to be “a-historical and pre-political”).

<sup>82</sup> See, for example, Newman, “*Liberal*” *Peacebuilding Debates* at 42–43 (cited in note 16), (critiquing attempts to “de-politicize” peacebuilding and present it as a technical task”); Lundy and McGovern, 35 *J L & Socy* at 277 (cited in note 19) (arguing that the “rise in interventionism, based on Western conceptions of justice, has also been paralleled by reluctance on the part of many rule of law experts to acknowledge the political dimensions of such activities” and that “[e]xpressing transitional justice questions as a series of technical issues offsets this potentially troubling recognition”); Leebaw, 30 *Hum Rts Q* at 98–106 (cited in note 6) (arguing that the seeming consensus as to the goals of transitional justice masks a deeper politicization and debate, but that it has become difficult to assess the tensions, trade-offs, and dilemmas associated with transitional justice to the extent that they have been re-conceptualized in apolitical terms).

### C. The “Local” versus the “International”

A third set of concerns leveled against both international peacebuilding and transitional justice broadly addresses the extent to which an appropriate balance has been struck between the “local” and the “international” in terms of agency, input, and authority over post-conflict planning and programming. Concerns about striking the right balance take a number of rhetorical forms, and include the worry that post-conflict agendas are “externally driven,” that they are planned and implemented in a “top-down” manner, or otherwise fail to give sufficient agency to local actors with respect to core issues and choices.<sup>83</sup> A related concern is the extent to which mainstream peacebuilding and transitional justice initiatives are biased toward Western approaches, giving too little attention to local practices of promoting peace, justice, and reconciliation.<sup>84</sup> In recent years, exploration of the complexity of the discourse of the local has experienced renewed interest in academic circles.<sup>85</sup> At rhetorical level at least, the importance of local or national ownership has now become a virtual UN mantra in official policy documents.<sup>86</sup> Yet despite all of the attention, the precise meaning of the discourse of local ownership in peacebuilding remains imprecise and poorly understood.<sup>87</sup>

Broadly speaking, the mobilization of the concept of the local in the context of peacebuilding debates might be viewed as an argument over strategy

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<sup>83</sup> See, for example, Richmond, 44 *Intl Spectator: Ital J Intl Aff* at 161–63 (cited in note 17) (discussing the tendency toward top-down institution building in a variety of “liberal” interventions); Andrieu, 41 *Sec Dialogue* at 541 (cited in note 17) (noting that “transitional justice seems to be strongly under the influence of [a] top-down state-building approach”); Sriram, 21 *Global Socy* at 591 (cited in note 20) (noting that “[t]ransitional justice, and in particular trials, are frequently imported from the outside and occasionally externally imposed”).

<sup>84</sup> See, for example, Mac Ginty, 43 *Cooperation and Conflict: J of the Nordic Intl Studies Assn* at 144–45 (cited in note 16) (noting that Western approaches to peacebuilding “risk[] minimizing the space for organic local, traditional or indigenous contributions to peace-making”); Lambourne, 3 *Intl J Transitional Just* at 30 (cited in note 18) (calling for a revalorization of local and cultural approaches to justice and reconciliation).

<sup>85</sup> See generally, for example, Timothy Donais, *Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes*, 34 *Peace & Change* 3 (2009); Richmond, 44 *Intl Spectator: Ital J Intl Aff* 149 (cited in note 17); Simon Chesterman, *Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations*, 1 *J of Intervention and Statebuilding* 3 (2007).

<sup>86</sup> See, for example, United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* at 7, ¶ 17 (cited in note 9) (arguing that the UN must “learn better how to respect and support local ownership, local leadership and a local constituency for reform”); United Nations, *Report of the Secretary General on Peacebuilding in the Immediate Aftermath of Conflict*, UN Doc A/63/881-S/2009/304 at 4, ¶ 7 (2009) (observing that “[t]he imperative of national ownership is a central theme of the present report”).

<sup>87</sup> See Chesterman, 1 *J of Intervention and Statebuilding* at 7–10 (cited in note 85) (reviewing the evolution of the concept of local ownership).

in which context-specific solutions are pitted against a perceived standardization or a checklist approach to post-conflict programming.<sup>88</sup> Yet the discourse of the local could also be thought of as one of resistance to the perceived hegemony of liberal international peacebuilding itself insofar as it is conceived of or forms part of a larger effort to reconstitute post-conflict societies in the image of Western liberal democracies. At a deeper level, the local versus international debate might also be thought to capture one of the essential dilemmas and contradictory goals of post-conflict interventions in general. That is, while such interventions must be responsive to local context, traditions, and political dynamics in order to be perceived as legitimate, they often seek to challenge and transform many of the dynamics that may have led to the conflict in the first place, which can include traditional practices and power structures.<sup>89</sup> Even were this not the case, in the immediate post-conflict aftermath, the very local political and cultural structures that might have ordinarily served as an interface point between the local and the international have often broken down, making it that much more difficult to find the ideal balance between local and international agency. Indeed, the very notion of intervention is predicated on some idea of local failure, which may imply the need for something outside of the local to set things right again.

Along with the rise of the discourse of the local in academic and policy circles, many are quick to warn that it is important not to essentialize or romanticize the local.<sup>90</sup> In the field of transitional justice, for example, local justice and reconciliation practices have in some instances accompanied more standard (or Western) transitional justice interventions in intriguing ways that hint at great potential for furthering reconciliation and accountability.<sup>91</sup> At the same time, local practices can occasionally be difficult to reconcile with international principles.<sup>92</sup> Supposedly local practices may also be subject to

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<sup>88</sup> See Lundy and McGovern, 35 *J L & Socy* at 271 (cited in note 19) (criticizing the “one-size-fits-all” and “top-down” approaches to transitional justice).

<sup>89</sup> See Leebaw, 30 *Hum Rts Q* at 117 (cited in note 6).

<sup>90</sup> See Donais, 34 *Peace & Change* at 11–13 (cited in note 85); Richmond, 44 *Intl Spectator: Ital J Intd Aff* at 153 (cited in note 17) (discussing the various unhelpful ways in which internationals tend to romanticize the local).

<sup>91</sup> In East Timor, for example, the Community Reconciliation Process brought together aspects of local justice, arbitration, and mediation in order to bring perpetrators and former combatants into dialogue with their estranged communities. See generally Burgess, *New Approach to Restorative Justice* (cited in note 57). In Sierra Leone, the non-governmental organization Fambul Tok (“Family Talk” in the local Krio language) has worked to address some of the shortcomings of the national truth and reconciliation commission by implementing a program of local ritual and truth telling at the village level. See generally Park, 13 *Contemp Just Rev* 95 (cited in note 57).

<sup>92</sup> Roger Duthie, *Local Justice and Reintegration Processes as Complements to Transitional Justice and DDR*, in Patel, de Greiff, and Waldorf, eds, *Disarming the Past* 190, 243–45 (cited in note 8).

capture by elites who would use them for their own political purposes. In Rwanda, for example, the local dispute-settlement practice of *gacaca* was modified and adopted at a national level to address justice and reconciliation issues that followed in the wake of the 1994 genocide. While this development was initially heralded by some, it has also been observed that *gacaca* has been implemented in ways that, while they serve the interests of the Kagame government, may not fully serve the needs of community justice and reconciliation.<sup>93</sup> Thus, as the Rwanda case illustrates, the turn to the local in matters of peacebuilding and transitional justice offers no easy solutions, and ultimately the concepts of both local and international might be marshaled to further important emancipatory goals in the post-conflict context.<sup>94</sup>

#### IV. BUILDING LINKAGES BETWEEN PEACEBUILDING AND TRANSITIONAL JUSTICE

Although international peacebuilding and transitional justice efforts parallel each other in many ways, ranging from shared historical origins in post-Cold War dynamics and political currents to similarities in the sharp critiques that these efforts have generated, peace and justice initiatives have not always been seen to walk hand in hand. Indeed, over the last twenty-five years, the “peace versus justice” debate, in which the imperatives of justice are thought to threaten possibilities for peace and stability, has proved to be an enduring one, seeming to erupt nearly every time an international tribunal indicts a high-level official or former warlord.<sup>95</sup>

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<sup>93</sup> For example, crimes committed by the Rwandan Patriotic Front, the Tutsi-led military force that stopped the genocide, are excluded from the *gacaca* process. See Le Mon, 14 Hum Rts Brief at 18 (cited in note 57). For a rosier assessment at the outset of the implementation of *gacaca*, see generally Timothy Longman, *Justice at the Grassroots? Gacaca Trials in Rwanda*, in Roht-Arriaza and Mariezcurrena, eds, *Transitional Justice in the Twenty First Century* 206 (cited in note 57).

<sup>94</sup> Sharp, 35 Fordham Int'l L J at 800 (cited in note 78).

<sup>95</sup> See, for example, Louise Arbour, Editorial, *Justice v Politics*, NY Times (Sept 16, 2008) online at <http://www.nytimes.com/2008/09/16/opinion/16iht-edarbour.1.16197765.html> (visited Apr 10, 2013) (justifying her controversial decision to indict Slobodan Milošević even though it was criticized at the time for threatening the peace process); IRIN Humanitarian News & Analysis, *Liberia: ECOWAS Chairman Urges UN to Lift Taylor Indictment*, online at <http://www.irinnews.org/Report/44642/LIBERIA-ECOWAS-chairman-urges-UN-to-lift-Taylor-indictment> (visited Apr 10, 2013) (discussing the argument of the then chairman of the Economic Community of West African States, President John Kufuor of Ghana, that the UN should set aside the indictment of Charles Taylor by the Special Court for Sierra Leone on the grounds that it was necessary to facilitate a negotiated settlement to Liberia's civil war); Jeffrey Gettleman and Alexis Okeowo, *Warlord's Absence Derails Another Peace Effort in Uganda*, NY Times A9 (Apr 12, 2008) (discussing the refusal of the leader of the Lord's Resistance Army to attend peace negotiations due in part to indictments from the International Criminal Court).

Perhaps in part as a result of these perceived tensions, scholars and practitioners of transitional justice have not historically tended to ground their research or praxis in vocabularies of peace or peacebuilding.<sup>96</sup> To a large extent, the connections between peacebuilding and transitional justice have been “under-researched.”<sup>97</sup> Yet despite these historic tensions, current UN doctrine holds that peace and justice are mutually supportive, even if the timing, modalities, and sequencing of peace and justice initiatives need to be carefully considered.<sup>98</sup> More recent transitional justice scholarship has tended to play down the potential for conflict between peace and justice.<sup>99</sup> At the same time, the shared space and common goals of peacebuilding and transitional justice in the post-conflict context have led to an increasing interest by both academics and policymakers in exploring the possibilities for linkages and complementarity.<sup>100</sup>

### A. Acknowledging Both Tensions and Complementarity

Given many of the shared goals of peacebuilding and transitional justice—rebuilding social trust and social capital, addressing problems of governance and accountability, and fostering institutional reform, to name only a few—the desire to promote linkages and complementarity seems eminently sensible. And yet, a closer examination reveals that many of the traditional programmatic components of international post-conflict peacebuilding have the potential to both complement and conflict with transitional justice initiatives.<sup>101</sup>

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<sup>96</sup> See Andrieu, 41 Security Dialogue at 539 (cited in note 17) (noting that “few transitional justice scholars have yet situated their research in the context of peacebuilding, seeing it instead through the dominant lens of legalism and human rights”); Lambourne, 3 Intl J Transitional Just at 29 (cited in note 18) (noting that “few researchers have analyzed the relationship between justice, reconciliation and peacebuilding”). A notable exception to this trend is Rama Mani whose pioneering work took a much more holistic approach to issues of justice and peace in the post-conflict context. See generally Mani, 2 Intl J Transitional Just 253 (cited in note 52).

<sup>97</sup> See van Zyl, *Promoting Transitional Justice* at 210 (cited in note 7).

<sup>98</sup> See UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* at 8, ¶ 21 (cited in note 9).

<sup>99</sup> See Leebaw, 30 Hum Rts Q at 96, 98 (cited in note 6).

<sup>100</sup> See, for example, Sriram, Martin-Ortega, and Herman, *Evaluating and Comparing Strategies of Peacebuilding and Transitional Justice* at 13 (cited in note 10) (discussing increasing linkages between transitional justice and a broader set of peacebuilding activities); Bryden, *Shaping a Security-Governance Agenda in Post-Conflict Peacebuilding* at 20–22 (cited in note 10) (examining policy linkages between SSR, DDR, rule of law initiatives, and transitional justice); van Zyl, *Promoting Transitional Justice* at 210 (cited in note 7) (arguing that “[t]ransitional justice strategies should be understood as an important component of peacebuilding”).

<sup>101</sup> See generally Herman, Martin-Ortega, and Sriram, *Beyond Justice versus Peace* (cited in note 11) (discussing the potential tensions between transitional justice, rule of law assistance, DDR, and SSR).

As but two examples, I briefly outline here the potential for tension and complementarity between transitional justice and programs relating to the disarmament, demobilization, and reintegration of former combatants and security sector reform more generally.

In the last twenty years, DDR programs have become a regular feature of post-conflict peacebuilding.<sup>102</sup> Of recent peacekeeping missions, at least seven of those established by the UN Security Council included DDR in their mandate.<sup>103</sup> While programs vary in terms of their modalities, the basic goal of all such programs is to assure security and stability in the post-conflict context by removing weapons from the hands of former combatants and helping them to integrate socially and economically into society.<sup>104</sup> If done well, DDR programs have the potential to contribute to the very stability that might be thought essential to getting larger development and justice initiatives off the ground. While few would therefore dispute the need for such programs, they have often been criticized for a short-term “guns for cash” approach that may shortchange some of the longer-term and more challenging goals of DDR, particularly the reintegration of former combatants back into the community.<sup>105</sup>

Despite increasingly global experience and expertise with DDR, it has been hard to overlook the disappointing results of many DDR programs, ultimately leading the UN and others to stress the need for a more “integrated” approach.<sup>106</sup> But while more integrated approaches sound laudable in the abstract, such efforts have the potential to create enormous challenges when

<sup>102</sup> Between 1994 and 2005, thirty-four different DDR programs were created around the world. Waldorf, *Linking DDR and Transitional Justice* at 18 (cited in note 8). For a more detailed exploration of tensions and complementarities between DDR and transitional justice in broad comparative terms, see generally Chandra Lekha Sriram and Johanna Herman, *DDR and Transitional Justice: Bridging the Divide?*, 9 *Conflict, Security & Dev* 455 (2009).

<sup>103</sup> These are the United Nations Assistance Mission in Sierra Leone (UNAMSIL, 1999), the United Nations Mission in the Democratic Republic of the Congo (MONUC, 1999), the United Nations Mission in Liberia (UNMIL, 2003), the United Nations Mission in Côte d'Ivoire (UNOCI, 2004), the United Nations Stabilization Mission in Haiti (MINUSTAH, 2004), the United Nations Operation in Burundi (UNOB, 2004), and the United Nations Mission in the Sudan (UNMIS, 2005).

<sup>104</sup> See *IDDRS* at § 1.2 (cited in note 12).

<sup>105</sup> United Nations Development Programme, *Practice Note: Disarmament, Demobilization and Reintegration of Ex-Combatants* 18 (UNDP 2005).

<sup>106</sup> See United Nations, *Report of the Secretary-General: Disarmament, Demobilization and Reintegration*, UN Doc A/60/705 at 4 ¶ 9(b) (2006); Mark Knight and Alpaslan Özerdem, *Guns, Camps and Cash: Disarmament, Demobilization and Reinsertion of Former Combatants in Transitions from War to Peace*, 41 *J Peace Rsrch* 499, 513 (2004). The felt need for better integration helped in part to spur the publication of the Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS), a policy guide that sets forth best practices for DDR programming and the various ways in which it can and should be linked with other post-conflict programmatic areas, including transitional justice. See generally, *IDDRS* (cited in note 12).

dealing with fields such as DDR and transitional justice that, historically, have enjoyed few connections at the level of policy and practice.<sup>107</sup> The historical separation between DDR and transitional justice may in part reflect a perception that they are meant to serve different constituencies for different purposes. Thus, while transitional justice mechanisms are often viewed as victim oriented, DDR is seen to serve the needs of former perpetrators.<sup>108</sup> While transitional justice focuses on justice and accountability for past violations, traditional approaches to DDR focus on military and security objectives.<sup>109</sup>

With this backdrop in mind, it is not hard to imagine that the existence of robust accountability mechanisms might make some former combatants reluctant to come forward and lay down their arms. Moreover, to the extent that those who need to be disarmed are either embedded in state security forces or stand to be integrated into reconstituted state security forces as part of a larger SSR program, this too makes the prospects for restoration of the rule of law difficult since the very forces responsible for enforcing the law have the most to lose from the accountability measures that are part and parcel of transitional justice.<sup>110</sup> Beyond this, the provision of reinsertion and reintegration benefits to former combatants, a typical feature of many DDR programs, can be contrasted with the relative paucity and lack of generosity of reparations programs for victims.<sup>111</sup> The perception that former perpetrators are being rewarded for bad behavior while former victims are left to fend for themselves could ultimately make reintegration and reconciliation initiatives difficult.<sup>112</sup>

Taken together, there is ample potential for tension between DDR programs and transitional justice initiatives. However, despite the potential to work at cross-purposes, DDR programs and transitional justice mechanisms also share common goals, including trust-building, prevention of renewed violence,

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<sup>107</sup> See Waldorf, *Linking DDR and Transitional Justice* at 16 (cited in note 8).

<sup>108</sup> The victim/perpetrator distinction can be problematic in several respects, particularly in the context of DDR where many former combatants are both perpetrators and victims at the same time. See Luisa Maria Dietrich Ortega, *Transitional Justice and Female Ex-Combatants: Lessons Learned from International Experience*, in Patel, de Greiff, Waldorf, eds, *Disarming the Past* 158, 169 (cited in note 8)

<sup>109</sup> Kimberly Theidon, *Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Columbia*, 1 *Intl J Transitional Just* 67, 69 (2007).

<sup>110</sup> Herman, Martin-Ortega, and Striram, *Beyond Justice versus Peace* at 55 (cited in note 11)

<sup>111</sup> See Eric A. Witte, *Beyond "Peace versus Justice": Understanding the Relationship between DDR Programs and the Prosecution of International Crimes*, in Patel, de Greiff, and Waldorf, eds, *Disarming the Past* 86, 96 (cited in note 8).

<sup>112</sup> See generally Jeremy Ginifer, *Reintegration of Ex-Combatants*, in Mark Malan, et al, eds, *Sierra Leone: Building the Road to Recovery* 39 (Institution for Security Studies 2003).

and reconciliation.<sup>113</sup> In terms of furthering these common goals, there are a number of areas of potential complementarity, particularly as regards the reintegration component of DDR programs. For example, while there is some evidence to suggest that parallel DDR and transitional justice initiatives might decrease former combatants willingness to come forward and engage in truth telling and reconciliation activities, it can also be argued that sending a strong public signal that only the “big fish” will be put on trial might allow victims to feel justice is being done, while at the same time making it clear that most combatants were not among the worst offenders and can be reconciled to their community.<sup>114</sup> Beyond community-level reconciliation, which will be discussed in more detail in the next section, building stronger linkages between DDR and transitional justice would likely involve a greater focus on human rights vetting to ensure that abusive former combatants are not channeled into reconstituted security services.<sup>115</sup> This mechanism, along with other accountability mechanisms, could ultimately enhance the credibility and legitimacy of the new forces, while at the same time lowering the chances of recurrence of abuses by the reformed security forces, even if the potential for some short-term frictions cannot be eliminated.<sup>116</sup>

SSR is a process that could be thought to include DDR but which is at the same time much broader and more comprehensive. While definitions of SSR vary in scope, the UN generally understands it to comprise efforts to promote “effective and accountable security for the State and its peoples without discrimination and with full respect for human rights and the rule of law.”<sup>117</sup> Similar to DDR programs, there exists a significant potential for tension

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<sup>113</sup> According to one UN definition, the aims of transitional justice include ensuring accountability, serving justice, achieving reconciliation, and preventing human rights violations in the future. See United Nations, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* at 4, ¶ 4 (cited in note 9). The IDDRS similarly underscores the centrality of DDR programs to preventing renewed violence, encouraging trust and confidence, and reconciliation. See IDDRS at § 1.2 (cited in note 12).

<sup>114</sup> In Sierra Leone, for example, the Special Court for Sierra Leone’s outreach efforts included activities targeting ex-combatants to explain the meaning of the phrase those “who bear the greatest responsibility” for crimes within its mandate. The purpose of these efforts was to dispel rumors that the court intended to indict every fighter, from top to bottom. See Mohamed Gibril Sesay and Mohamed Suma, *Transitional Justice and DDR: The Case of Sierra Leone* 18–19 (International Center for Transitional Justice 2009).

<sup>115</sup> See Mobekk, *Transitional Justice and Security Sector Reform* at 68–71 (cited in note 54) (discussing the role of vetting in conducting reform of military forces, police services, the judiciary, intelligence services, and the governance sector).

<sup>116</sup> See *id.* at 18 (discussing the role of SSR and transitional justice in engendering trust in critical state institutions).

<sup>117</sup> See United Nations, *Securing Peace and Development: The Role of the United Nations in Supporting Security Sector Reform* UN Doc A/62/659, S/2008/39 at 6, ¶ 17 (2008).

between SSR programs and transitional justice initiatives.<sup>118</sup> The potential for conflict between members of the security sector, who risk possibly being downsized or excluded through vetting procedures, and transitional justice, which seeks to promote accountability and truth-telling for abusive members of those same security forces, is fairly straightforward and obvious. At the same time, without security and stability, accountability mechanisms associated with transitional justice will have difficulty functioning. Thus, the basic tension between the felt needs of stability and security on the one hand, and the exigencies of accountability and human rights on the other, renders the already complicated task of reforming or reconstituting the security sector all the more challenging. Perhaps in part due to this potential for tension, SSR and transitional justice “rarely interact, either in practice or in theory.”<sup>119</sup>

Despite these tensions, it would be difficult to foster effective and accountable security “with full respect for human rights and the rule of law”<sup>120</sup> without some attention to issues of past abuses and impunity. In particular, attention to these issues through both transitional justice and SSR mechanisms has the potential to provide a much-needed sense of legitimacy for formerly abusive security forces.<sup>121</sup> This, together with other potential avenues of complementarity, has given rise to a small but growing literature exploring the possibility of a “justice-sensitive” approach to SSR that would include, among other things, more robust human rights training and vetting.<sup>122</sup> Thus, as with DDR, building better linkages between SSR and transitional justice could ultimately promote trust building, prevention of renewed violence, and reconciliation.

As defined by some global institutions, the “security sector” extends well beyond traditional security actors like the police and the military to management and oversight bodies, broader justice and rule of law institutions, and non-statutory security forces.<sup>123</sup> It is particularly in this broader conception of security sector reform, with its inclusion of the judicial sector and access to justice, that the potentially positive linkages between SSR and transitional justice might be more apparent. Therefore, while not always thought of as being part of SSR,

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<sup>118</sup> See Herman, Martin-Ortega, and Sriram, *Beyond Justice versus Peace* at 60–61 (cited in note 11).

<sup>119</sup> Mayer-Rieckh and Duthie, *Enhancing Justice and Development* at 222 (cited in note 8).

<sup>120</sup> United Nations, *Securing Peace and Development* at 6, ¶ 17 (cited in note 117).

<sup>121</sup> Herman, Martin-Ortega, and Sriram, *Beyond Justice versus Peace* at 60–61 (cited in note 11).

<sup>122</sup> See for example, Mayer-Rieckh and Duthie, *Enhancing Justice and Development* at 215 (cited in note 8); Barr, 26 PRAXIS: Fletcher J Hum Security at 5 (cited in note 54); Mobekk, *Transitional Justice and Security Sector Reform* at 1–7 (cited in note 54); Laura Davis, *Justice-Sensitive Security System Reform in the Democratic Republic of the Congo* 24–26 (Initiative for Peacebuilding 2009).

<sup>123</sup> Organization for Economic Cooperation and Development, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice* 5 (OECD 2007).

programs that ensure access to justice, particularly access to justice for those abused by security forces, could be one way of fostering accountability long-term, and maintaining sustained “bottom-up” pressure for reform on the security sector as a whole.<sup>124</sup>

## B. Building Linkages through the Lens of Critique

The potential for both conflict and complementarity between transitional justice and peacebuilding initiatives highlights the need for coordination sufficient to mitigate tensions and promote positive overlaps. Indeed, recognition of the need to promote coherence and integration while avoiding the fragmented and duplicative approaches of the past helped in part to inspire the creation of the PBC in 2005.<sup>125</sup> The many challenges associated with building peace and justice in the post-conflict context call for holistic solutions that address crosscutting challenges. For these reasons, this Article takes it as a starting point that promoting synergies between peacebuilding and transitional justice programs and initiatives is a worthwhile goal. At the same time, despite the seemingly unobjectionable nature of appeals for greater coordination, more integrated approaches to peace and justice issues in the post-conflict context may also create problems and challenges of their own.

To begin, the UN’s historic track record on coordination leaves ample room for improvement, and initial assessments of the PBC’s ability to promote more integrated approaches to complex and multi-dimensional peacebuilding challenges have not been optimistic.<sup>126</sup> Further complicating the task of coordination is the fact that post-conflict peacebuilding is a large and multifaceted task, with key roles being played by a variety of actors. Though this Article has focused largely on the UN, the larger post-conflict peacebuilding picture also includes actors over which the PBC has no direct authority, ranging from the World Bank and key bilateral donors such as the US, the EU, and Japan to national governments, civil society actors, and various local constituencies. Getting actors both in and outside of the UN system to work towards more integrated approaches to post-conflict peacebuilding is an

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<sup>124</sup> For a review of the potential for “bottom-up” access to justice initiatives to effect larger rule of law reforms, see generally Stephen Golub, *The Rule of Law and the UN Peacebuilding Commission: A Social Development Approach*, 20 Camb Rev Intl Aff 47 (2007).

<sup>125</sup> See General Assembly Res No 60/180 at 1 (cited in note 37); Security Council Res No 1645 at 1 (cited in note 37) (emphasizing the need for a “coordinated, coherent, and integrated approach to post-conflict peacebuilding and reconciliation”); Jubulut, 9 Minn J Intl L at 31 (cited in note 36) (discussing the problem of redundant and ad hoc efforts and a lack of coordination in peacekeeping missions of the past).

<sup>126</sup> See United Nations, *Review of the United Nations Peacebuilding Architecture*, UN Doc A/64/868-S/2010/393 at 16, ¶¶ 57–59 (2010).

enormous task, especially given the stove-piping, overlapping mandates, and bureaucratic territorialism that have plagued such efforts in the past.<sup>127</sup> It is important to note that coordination difficulties stem not only from the magnitude of the task or difficulties of communication amongst all of the various players, but also because of underlying disagreements and uncertainties as to how to best accomplish peacebuilding objectives in the first place.<sup>128</sup>

Second, beyond the inherent challenges of large-scale coordination itself, there is a danger of over-standardization and bureaucratization as best practices for the coordination of transitional justice and peacebuilding initiatives are taken up by the global institutions associated with post-conflict peacebuilding and development assistance that have the tendency to operate through standardized templates.<sup>129</sup> It has been argued that as transitional justice practices have spread around the world, they have done so not necessarily by adapting themselves de novo to each new context, but through a process of “acculturation” whereby a dominant script or practice is replicated again and again as a result of repeated information exchanges and consultations.<sup>130</sup> Once a dominant paradigm or script develops, modifying that script to suit new conditions or circumstances can be extremely challenging.<sup>131</sup> In the context of internationally driven peacebuilding initiatives more generally, the existence of “set templates” and a “formulaic path” has similarly been observed.<sup>132</sup> Given these tendencies, there is reason to worry that—notwithstanding paeans to national ownership and context-appropriate solutions—as transitional justice is mainstreamed into emerging best practices for post-conflict reconstruction, transitional justice initiatives will come to be seen as yet another item on the “post-conflict checklist,” a mechanistic part of the template deployed in the context of post-conflict peace operations.<sup>133</sup>

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<sup>127</sup> See Herman, Martin-Ortega, and Sriram, *Beyond Justice versus Peace* at 62 (cited in note 11) (observing that improving connections between peacebuilding and transitional justice requires a level of coordination that large bureaucracies are not very good at).

<sup>128</sup> See 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* 53, 72 (Routledge 2009).

<sup>129</sup> As Roland Paris has argued, this is particularly true insofar as efforts at coordination give impetus to centripetal forces in policymaking. See *id.* at 62.

<sup>130</sup> James Cavallaro and Sebastián Albuja, *The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond*, in Kieran McEvoy and Lorna McGregor, eds, *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* 121, 125 (Hart 2008).

<sup>131</sup> See *id.*

<sup>132</sup> See Sending, *Why Peacebuilders Fail to Secure Ownership and Be Sensitive to Context* at 7 (cited in note 81) (observing that “international organizations, such as the UN and the World Bank, are bureaucratic organizations that operate through standardized templates”).

<sup>133</sup> See Elizabeth Stanley, *Transitional Justice: From the Local to the International*, in Patrick Hayden, ed, *The Ashgate Research Companion to Ethics and International Relations* 275, 276 (Ashgate 2009)

That post-conflict peacebuilding and transitional justice initiatives have frequently been criticized for being planned and implemented in a top-down, externally driven, and Western-biased manner, only serves to highlight the concern of standardization.<sup>134</sup>

Third, as explored in Section III of this Article, international peacebuilding programs, as well as a number of transitional justice initiatives, have frequently been subject to powerful, parallel critiques, including the critique of liberal international peacebuilding, the critique of politics as neutral technology, and concerns about striking the right balance between the local and the international in post-conflict programming. Considered together with the danger of over-standardization, there is reason to worry that better integration and coordination between peacebuilding and transitional justice, especially insofar as it is carried out by the large bureaucracies traditionally associated with post-conflict assistance, might actually exacerbate some of the tendencies that have given rise to these parallel critiques rather than alleviate them. At a minimum, given historic patterns, there is no reason to think that simply linking peacebuilding and transitional justice, without more, will do anything to counter these tendencies.

Given the potential problems and challenges inherent in attempting to build stronger linkages between peacebuilding and transitional justice initiatives, it would not be unreasonable to question the compatibility of more integrated approaches involving a strong international role with the types of locally owned, context-specific, and bottom-up solutions suggested by the critiques that have arisen in the academic and policy literature.<sup>135</sup> On the other hand, from a pragmatic and realist standpoint, a balance between local and international agency in post-conflict programming seems both inevitable and desirable, due in part to the resources and expertise that internationals can at times bring to bear.<sup>136</sup> With this perspective in mind, as scholars, practitioners, and policymakers begin to take a greater interest in sounding out potential linkages, viewing transitional justice and peacebuilding overlaps through the prism of the critiques and concerns outlined in this Article should prove instructive. Attentiveness to some of the parallel critiques and concerns that have been raised could lead to shifts that would strengthen policy in both areas in the process of promoting linkages.

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(observing that, together with other international interventions, “transitional justice practices have commonly become part of a longer list of ‘tickboxes’ to attain peace and security”).

<sup>134</sup> See Section III.

<sup>135</sup> See Section III.

<sup>136</sup> See Arriaza and Roht-Arriaza, 2 *Intl J Transitional Just* at 153 (cited in note 21) (arguing for strategies that “incorporate a perspective that encompasses bottom-up local efforts as well as top-down state-driven or internationally driven ones”).

Ultimately, promoting linkages that reflect a cognizance of critique might involve more hybridized forms of peacebuilding and transitional justice that involve a mixture of conventional and local practices and models.<sup>137</sup> For example, as previously discussed, DDR programs and transitional justice initiatives have the potential to both conflict with and complement each other, and careful coordination is called for if synergies are to be exploited. One of the areas where DDR programs have had the least amount of success is in the community reintegration element, sometimes known as the forgotten “R” of DDR, or the “the weakest link in the DDR chain.”<sup>138</sup> This is an area where the reconciliation components of transitional justice initiatives might serve as a potential bridge, strengthening both DDR and transitional justice goals in the process.<sup>139</sup> The potential use of local ritual and tradition in facilitating reconciliation generally and the reintegration of former combatants specifically might be one way of building linkages between transitional justice and DDR programs that gives deference to the critiques and concerns that have in the past plagued both fields (including that they are Western-biased and externally driven).<sup>140</sup> Such approaches to reintegration have seen limited but intriguing use in Sierra Leone and Mozambique.<sup>141</sup> Similarly, in East Timor, a post-conflict community reconciliation process combined aspects of arbitration and mediation grounded in local ritual in bringing former perpetrators and combatants into dialogue with their estranged communities and victims.<sup>142</sup> In the future, it might be possible for coordinating bodies like the PBC to encourage the use of local ritual and tradition to bridge the gap between DDR and transitional justice. This could, of course, be a difficult needle to thread since too much international involvement in such affairs might be seen to co-opt or

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<sup>137</sup> See Newman, Paris, and Richmond, *Introduction* at 16 (cited in note 2).

<sup>138</sup> Sami Faltas, *DDR without Camps: The Need for Decentralized Approaches: Topical Chapter of the Conversion Survey* 1 (Bonn International Center for Conversion, 2005), online at [www.sweden.gov.se/content/1/c6/06/54/02/5d16fcf2.pdf](http://www.sweden.gov.se/content/1/c6/06/54/02/5d16fcf2.pdf) (visited Apr 10, 2013); see also Macartan Humphreys and Jeremy M. Weinstein, *Demobilization and Reintegration*, 51 *J Conflict Res* 531, 549 (2007) (concluding that combatants who did not participate in DDR were reintegrated as successfully as those who did).

<sup>139</sup> For a longer elaboration of this argument, see Sharp, *Bridging the Gap* at 34–36 (cited in note 15). For an exploration of the application of local ritual in the context of the reintegration of former child combatants, see Roger Duthie and Irma Specht, *DDR, Transitional Justice, and the Reintegration of Former Child Combatants*, in Patel, de Greiff, and Waldorf, eds, *Disarming the Past* 190, 207–10 (cited in note 8).

<sup>140</sup> Ministry for Foreign Affairs of Sweden, *Stockholm Initiative on DDR, Final Report* 30 (March 2006), online at <http://www.sweden.gov.se/sb/d/4890> (visited Apr 10, 2013); see also Theidon, 1 *Intl J Transitional Just* at 90 (cited in note 109).

<sup>141</sup> See generally Duthie, *Local Justice and Reintegration Processes* (cited in note 92).

<sup>142</sup> See generally Burgess, *A New Approach to Restorative Justice* (cited in note 57).

corrupt the authenticity of local practices. Nevertheless, the PBC could play a helpful role even if only to brief local constituencies as to the range of local ritual that has been successfully used in other contexts.

While this is but one example, we should be attentive to similar possibilities as we contemplate promoting greater linkages between peacebuilding and transitional justice. This Article does not attempt to set forth a comprehensive approach along these lines, but there are possibilities ripe for exploration. One such example might be the use of “bottom-up” approaches to rule of law assistance that attempt to effect reforms through grassroots legal empowerment.<sup>143</sup> Another such example could be more comprehensive approaches to transitional justice and SSR programs that give greater emphasis to accountability for economic crimes and economic violence perpetrated in the course of the conflict.<sup>144</sup> Additional possibilities that would cut against the grain of longstanding critiques of transitional justice and peacebuilding need to be developed by academics, practitioners, and policymakers going forward.

## V. CONCLUSION

Though historically seen as being in competition with the demands of peace, transitional justice is increasingly accepted as an important element of post-conflict peacebuilding. Along with the demobilization and disarmament of ex-combatants, security sector reform, rule of law programs, and elections, it has now joined a virtual checklist of post-conflict interventions spearheaded by the international community in post-conflict countries. This increasingly shared space between transitional justice and post-conflict peacebuilding initiatives has sparked new interest among both scholars and policymakers in sounding out potential connections between both fields. Although the pursuit of synergies between peacebuilding and transitional justice programs is a worthwhile goal, in developing these connections, we must also be keenly attentive to mutual shortcomings. Transitional justice and post-conflict peacebuilding have historically proceeded on separate tracks, yet there has been a remarkable similarity in the critiques and concerns that have been leveled against both fields in the last two decades. There are strong reasons to suspect that more integrated approaches to peacebuilding and transitional justice will have the tendency to exacerbate some of the tendencies that have given rise to these parallel critiques

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<sup>143</sup> See generally Golub, 20 *Camb Rev Intl Aff* 47 (cited in note 124).

<sup>144</sup> See generally Sharp, 35 *Fordham Intl L J* 780 (cited in note 78) (discussing the peripheral status of economic violence and economic justice in mainstream transitional justice initiatives); see also Carranza, 2 *Intl J Transitional Just* at 310 (cited in note 53) (arguing that transitional justice must do more to grapple with corruption and other economic crimes that may have helped to precipitate the conflict).

rather than alleviate them. Seeking synergies and overlaps through the optics of these historic concerns and critiques could be one technique of resistance to these tendencies. To be sure, exploiting overlaps while addressing critiques and pushing back against long dominant paradigms would bring its own challenges. At the same time, such efforts could take us one step forward in moving beyond the post-conflict checklist and toward the development of more holistic and innovative approaches to the challenge of building peace with justice in conflict's wake.