

Contents

<i>Foreword</i>	xvii
<i>List of Abbreviations</i>	xix
<i>List of Authors</i>	xxiii
Introduction: Post-conflict Peacebuilding—Ambiguity and Identity	1
<i>Vincent Chetail</i>	
I. The Meanings and Dilemmas of Post-conflict Peacebuilding	1
Origin and context	1
Definitions and meanings of post-conflict peacebuilding	4
Dilemmas and controversies surrounding post-conflict peacebuilding	7
II. The Actors of Post-conflict Peacebuilding	9
The diversity of actors	9
Peacebuilding operations and missions	11
The Peacebuilding Commission	14
III. A Legal Framework for Post-conflict Peacebuilding	17
<i>Jus post bellum</i> : an emerging field	17
The components of <i>jus post bellum</i>	19
IV. Concluding Remarks: Post-Conflict Peacebuilding—Crossing the Bridge from Rhetoric to Reality	25
Selected Bibliography	28
Capacity-building	34
<i>Volker Türk</i>	
I. Term	34
Origin and context	34
Linguistic and semantic difficulties	35
Possible understandings	36
Official definitions currently used by the main actors	36
Comments on the general definition	37
II. Content	38
Safe and secure environment	38
Rule of law reform	39
Confidence-building, reconciliation, and civil society	40
Socio-economic environment	41
III. Implementation	42
Challenges and dilemmas	42
Operational aspects on the basis of lessons learned	43
Selected Bibliography	46

Civil-military Interface	48
<i>Thierry Tardy</i>	
I. Term	48
Origin and context	48
Official definitions	49
II. Content	52
The difficult coexistence of the military and humanitarian agencies	52
The interaction between state and non-state actors	53
The heterogeneity of the actors	53
III. Implementation	54
Nature and degree of civil-military interaction	55
The challenge of coordination	56
The need for a truly inclusive approach	57
Selected Bibliography	58
Civil Society	60
<i>Thania Paffenholz</i>	
I. Term	60
Origin and context	60
Meaning of the concept	62
Linguistic and semantic distinctions	62
II. Content	63
Civil society actors and roles	63
Relevance and understanding of the concept in post-conflict peacebuilding	64
Core components: civil society roles in post-conflict peacebuilding	65
Challenges and dilemmas	68
III. Implementation	69
Challenges of implementation	69
Lessons learned, good practice, and operational aspects	70
Selected Bibliography	72
Conflict Economies	74
<i>Achim Wennmann</i>	
I. Term	74
Context	74
Possible understandings	76
Linguistic and semantic difficulties	76
Official definitions	77
Comments on the proposed definition	77

II. Content	78
The economic legacies and cost of conflict	78
The financing of conflict	79
The evolution of conflict economies	80
Actors in conflict economies	82
III. Implementation	83
Economic policy for post-conflict recovery	83
Private sector investment	85
Targeting the revenue sources of armed groups in post-conflict economies	86
The dilemmas of dealing with shadow economies	87
Economic issues in peace processes and peacebuilding	88
Selected Bibliography	89
Conflict Transformation	92
<i>Laurent Goetschel</i>	
I. Term	92
Origin and context	92
Obstacles of linguistic or semantic nature	93
Possible acceptance and meanings	94
Official definitions	96
II. Content	96
Core components	96
Underlying ideological, normative, and institutional issues	98
III. Implementation	100
Best practice	100
Proposal for more efficient implementation	101
Selected Bibliography	102
Democratic Governance	105
<i>Rama Mani and Jana Krause</i>	
I. Term	105
The emergence of the concept of democratic governance	105
Linguistic and semantic difficulties	108
II. Content	109
Core components of democratic governance	109
Key actors	110
Driving forces for democratic governance	112
Challenges and dilemmas	113
The relevance of democratic governance in post-conflict peacebuilding	115
III. Implementation	116
Difficulties of implementation	116

Worst practices	118
Best practices	120
Selected Bibliography	120
Disarmament, Demobilization, and Reintegration	123
<i>Robert Muggah</i>	
I. Term	123
Origin and context	123
Meanings and official definitions	125
II. Content	127
Underlying ideological, normative, and institutional issues	127
Challenges and dilemmas	129
III. Implementation	131
Lessons learned, good practice, and operational aspects	131
The challenges of implementation	133
Selected Bibliography	135
Free and Fair Elections	138
<i>Victor-Yves Ghebali</i>	
I. Term	138
Origin and context	138
Official definitions	139
II. Content	140
Guidelines and legal framework	140
Challenges and dilemmas	142
III. Implementation	143
Objectives and functions	143
Lessons learned	144
Selected Bibliography	145
Human Security	147
<i>Keith Krause</i>	
I. Term	147
Origin and context	147
Evolution and understandings	148
II. Content	150
III. Implementation	152
Specific policy initiatives	152
Limits and opportunities for human security: some observations	155
Selected Bibliography	156

International Crimes	158
<i>Louise Doswald-Beck</i>	
I. Term	158
Origin and purpose	158
Definition and understandings	158
II. Content	160
Legal description of ‘international crimes’	160
III. Implementation	168
Legal difficulties	168
Practical difficulties	170
Best practices	171
Selected Bibliography	172
Local Ownership	174
<i>Béatrice Pouligny</i>	
I. Term	174
Origin and context	174
Local, national, or insiders?	175
(Local) involvement	175
(Local) participation	176
(Local) empowerment and accountability	176
II. Content	177
Local partners and actors of the processes	177
Local resources for peacebuilding	179
Instruments of intervention	180
Ideological contradictions	180
III. Implementation	181
Managing outsiders’ invasion	181
Managing timing constraints	182
Developing a dynamic micro-analysis of local socio-political contexts	183
Monitoring interventions	183
Managing ‘clientele’ relationships	184
Re-enforcing local legitimacy and accountability	184
Supporting knowledge and skills transfer to promote self-help skills	185
Selected Bibliography	186
Mine Action	188
<i>Davide Orifici and Suzanne Damman</i>	
I. Term	188
Origin and context	188
Official definition	189

II. Content	190
Origin of mine action	190
Mine action since the early 1990s—three phases	191
III. Implementation	193
Responsibility of mine-affected countries	193
Sound national mine action legislation	194
The evolving context of mine action—from conflict to development	194
The implications for mine action	196
Mine action in support of peacebuilding	196
Gender and mine action	198
Selected Bibliography	198
Non-state Actors	200
<i>Andrew Clapham</i>	
I. Term	200
A subjective term: an expansive definition	200
Non-state actors defined in international texts	204
II. Content	205
Obligations with regard to civil society non-state actors	205
Human rights recommendations with regard to non-state actors	206
Monitoring armed groups	207
III. Implementation	208
Engaging with armed groups	208
Holding corporations accountable	209
The problems and potential of engaging non-state actors	209
Selected Bibliography	210
Peace Operations	213
<i>Nigel White</i>	
I. Term	213
Origin and context	213
Evolution	214
II. Content	217
Peacekeeping component	218
Peacebuilding component	219
III. Implementation	220
The challenges of enforcement	220
The role of regional organizations	223
Lessons learned	224
Selected Bibliography	225

Peace Process	228
<i>Bertrand G. Ramcharan</i>	
I. Term	228
Origin and meaning	228
The peace process in the peacemaking phase	229
The peace process in the continuum between peacemaking and peace implementation, and in the post-conflict peacebuilding phase	230
A contemporary definition of 'peace process'	231
II. Content	231
Promotion: a culture of peace and halting hate media	232
Principles for peace	232
The role of diplomacy and dialogue	232
Prevention of conflicts	234
Peacekeeping and peace observation	238
Development and equity	238
III. Implementation	238
Determining the existence of a peace process	238
The challenge of multiple peace processes	239
Key factors influencing the success of a peace process	240
Selected Bibliography	242
Private Sector	245
<i>Gilles Carbonnier</i>	
I. Term	245
II. Content	246
Political economy of war	248
Role and accountability of economic stakeholders	249
Ideological and institutional issues	250
III. Implementation	251
Challenges and dilemmas	251
Recommendations	253
Selected Bibliography	254
Reconciliation	256
<i>Pierre Hazan</i>	
I. Term	256
Origin	256
Contexts	257
Definitions	259
II. Content	261
III. Implementation	262

Challenges, operational aspects, and positive or negative experiences	262
Lessons drawn from the past	264
Recommendations	265
Selected Bibliography	266
Recovery	268
<i>Riccardo Bocco, Pierre Harrisson, and Lucas Oesch</i>	
I. Term	268
Meaning	268
Genealogy	270
II. Content	272
Functions and objectives	272
Challenges	274
III. Implementation	274
Lessons learned	275
Operational guidelines	275
Selected Bibliography	277
Reparation	279
<i>Marco Sassòli</i>	
I. Term	279
Origin	279
Meanings	279
II. Content	280
Sources	280
The goals of reparation	281
Forms of reparation	281
The impact on peacebuilding	283
III. Implementation	283
The obligation to make reparations	283
The right to reparation	284
Legal limits to the possibility of waiving one's right to reparation	284
Statutory limitations	285
Proceedings	285
Implementation difficulties	287
Selected Bibliography	289
Responsibility to Protect	291
<i>Daniel Warner and Gilles Giacca</i>	
I. Term	291
Origin and context	291
Official definition	293

II. Content	295
Core components	295
Actors	297
Challenges and dilemmas	299
III. Implementation	301
Challenges of implementation	301
Responsibility to rebuild	303
Selected Bibliography	305
Return and Reintegration	307
<i>Vicky Tennant</i>	
I. Term	307
Origin and context	307
Meaning	308
II. Content	309
The impact on post-conflict peacebuilding	309
Actors	311
Security issues	312
Development component	312
Human rights component	314
III. Implementation	314
The changing context of refugee returns	314
Reintegration programmes	316
The 4Rs approach	317
Selected Bibliography	318
Rule of Law	320
<i>Vera Gowlland-Debbas and Vassilis Pergantis</i>	
I. Term	320
Origin and evolution	320
Meanings of the rule of law	322
Definitions of the rule of law used by IOs	324
Comments on the general definition given by the contributors	324
II. Content	324
Formal components	324
Substantive components	327
Ideological issues	328
Actors	329
Challenges and dilemmas	330
Importance of rule of law projects in post-conflict peacebuilding	332
III. Implementation	332
Controversies over implementation	332
Appraisal of past practices and concluding remarks	333
Selected Bibliography	334

Security Sector Reform	337
<i>Heiner Hänggi</i>	
I. Term	337
Origin and context	337
Understandings	339
II. Content	341
Core components	341
SSR and the post-conflict environment	342
III. Implementation	344
The challenges of implementation	344
Lessons learned	345
Selected Bibliography	348
State-building	350
<i>Marwa Daoudy</i>	
I. Term	350
Origin and context	350
Semantic and linguistic difficulties	352
II. Content	352
Premises and dilemmas of state-building	352
The elusive concept of sovereignty	354
III. Implementation	355
Past experiences	355
Assessment of institutional practices	356
Selected Bibliography	357
Transitional Administration	359
<i>Richard Caplan</i>	
I. Term	359
II. Content	361
Objectives and functions	361
The normative basis	362
The multilateral nature	363
III. Implementation	364
The challenges of implementation	364
Lessons learned	365
Selected Bibliography	366
Transitional Justice	368
<i>Anne-Marie La Rosa and Xavier Philippe</i>	
I. Term	368
Origin and context	368

Linguistic and semantic issues	369
Meanings	369
Official definitions used by international organizations and the different stakeholders	370
II. Content	371
Truth-seeking	371
Reparations	372
Law enforcement	373
Sanctions	374
Ideological and institutional stakes	375
III. Implementation	376
The challenges of implementation	376
Operational aspects and lessons learned	377
Selected Bibliography	378
<i>Index</i>	381

Introduction: Post-conflict Peacebuilding—Ambiguity and Identity

*Vincent Chetail**

I. The Meanings and Dilemmas of Post-conflict Peacebuilding

Origin and context

Although the term ‘peacebuilding’ appeared as early as the 16th century, the theme of peacebuilding did not become a subject of study in its own right until the 1960s and 1970s within the framework of peace research. Its conceptual origins lie in the distinction between ‘positive peace’ and ‘negative peace’ developed by the Norwegian sociologist and researcher Johan Galtung. Whereas negative peace is defined as the ‘absence of direct and organised violence between human groups or nations’, the notion of positive peace is part of a longer term conception according to which establishing a sustainable peace is made possible through cooperation between these groups or nations and the eradication of the root causes of the conflict (Galtung, 1975: 29). To this end, Galtung’s ‘triangle of violence’ identifies three types of violence: direct violence, cultural violence, and structural violence. From this tripartite model three complementary approaches to peace are derived:

- *peacekeeping*, the aim of which is to end the immediate violence and hostilities;
- *peacemaking*, in order to resolve the conflict peacefully through negotiation, mediation, or arbitration; and;
- *peacebuilding*, which focuses on the root causes of the conflict with a view to establishing a sustainable peace.

The pioneering work of Johan Galtung has inspired—and continues to inspire—numerous studies on the dynamics of conflicts and methods of peaceful settlement of disputes (Senghaas, 2001; Lund, 1996 & 2004; Azar, 1990; Burton, 1990). Among the other key scholars in the field of peace research, John Paul Lederach has made a major contribution to the understanding of peacebuilding,

* The drafting of this introduction was made possible thanks to the comments and assistance of Gilles Giacca, Stuart Maslen, Stéphane Pfister, and Marc Roissard de Bellet.

arguing that the concept means much more than just reconstruction after a peace agreement, and should be understood as:

a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships. The term thus involves a wide range of activities that both precede and follow formal peace accords. Metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct (Lederach, 1997: 20).

Notwithstanding reflections in earlier publications on peace studies, the term 'peacebuilding' only officially entered the diplomatic lexicon in 1992. Its endorsement as a sector in its own right is largely due to Boutros Boutros-Ghali's *Agenda for Peace* published that year. Amid the widespread enthusiasm which characterized the immediate aftermath of the Cold War, the former UN Secretary-General categorized conflict management into four key activities: preventive diplomacy, peacemaking, peacekeeping, and peacebuilding. Despite its new exalted position at the heart of the UN's *raison d'être* (the promotion of peace), peacebuilding was defined in only very general terms as an 'action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict' (UN, 1992: para 21). Assisting in post-conflict peacebuilding in its differing contexts thus means 'rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war' (*ibid.*: para 15). Such an ambitious objective requires a considerable number of enabling measures if the implementation of a ceasefire agreement is to be sustained:

[T]hese may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation (*ibid.*: para 55).

In this way, peacebuilding is seen as linear, a natural extension of the three other types of activity identified in *An Agenda for Peace*. From this perspective:

Preventive diplomacy seeks to resolve disputes before violence breaks out; peacemaking and peacekeeping are required to halt conflicts and preserve peace once it is attained. If successful, they strengthen the opportunity for post-conflict peace-building, which can prevent the recurrence of violence among nations and peoples (*ibid.*: para 21).

Although peacebuilding has its own specific content, it is sometimes difficult to disassociate it from the other approaches promoted by the UN. This is especially true for preventive diplomacy with which peacebuilding has long been confused. Highlighting the interaction of these two corollary concepts, *An Agenda for Peace* explains that:

In surveying the range of efforts for peace, the concept of peace-building as the construction of a new environment should be viewed as the counterpart of preventive diplomacy,

which seeks to avoid the breakdown of peaceful conditions. When conflict breaks out, mutually reinforcing efforts at peacemaking and peace-keeping come into play. Once these have achieved their objectives, only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation. Preventive diplomacy is to avoid a crisis; post-conflict peacebuilding is to prevent a recurrence (*ibid.*: para 57).

The concept of peacebuilding has been taken up again and clarified in the *Supplement to An Agenda for Peace*, published in 1995. While restating the ‘validity of the concept of post-conflict peacebuilding’, the Supplement emphasizes the need for ‘integrated action’ (UN, 1995: paras 47–8), observing that:

Most of the activities that together constitute peace-building fall within the mandates of the various programmes, funds, offices and agencies of the United Nations system with responsibilities in the economic, social, humanitarian and human rights fields. In a country ruined by war, resumption of such activities may initially have to be entrusted to, or at least coordinated by, a multifunctional peace-keeping operation, but as that operation succeeds in restoring normal conditions, the programmes, funds, offices and agencies can re-establish themselves and gradually take over responsibility from the peace-keepers (*ibid.*: para 53).

The same year as the publication of the Supplement, the Secretary-General created an inter-departmental Task Force to identify post-conflict peacebuilding activities that could be undertaken by UN agencies; these are described in *An Inventory of Post-Conflict Peace-Building Activities*, published in 1996. Along with this, the publication of *An Agenda for Development* (1994), *An Agenda for Democratization* (1996), as well as the *UNDP Report on Human Security* (1994) have helped to explain the UN’s perspective on the interaction between four central concerns: security, development, democratization, and human rights.

The many peace operations undertaken during the 1990s were thus intended to be part of a broader strategy on post-conflict peacebuilding. In reaction to the often-mixed results of such operations, the Brahimi Report, published in 2000, stresses the need to promote more coherent strategies ‘to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war’ (UN, 2000: 3). This in turn demanded better coordination of the various stakeholders and recognition of the intersectoral nature of the many areas of peacebuilding activities inherent to such a process.

Since 1992, the UN conception of post-conflict peacebuilding has thus evolved from an essentially linear approach into one which is meant to be more integrated (Tschirgi, 2004). This evolution culminated in the 2005 World Summit, which emphasized ‘the need for a coordinated, coherent and integrated approach to post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace’ (UN, 2005b: 25). The decision to establish a Peacebuilding Commission was adopted at the Summit with a view to resolving the institutional deficit that had long prevailed in efforts to ensure effective coordination. This

quest has generated a new impetus for shaping the UN's strategy and conception of peacebuilding. In May 2007, the UN Secretary-General's Policy Committee agreed on the following conceptual basis to inform the UN practice in the field of post-conflict peacebuilding:

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 foundations for sustainable peace and development. Peacebuilding strategies must be coherent and tailored to the specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives. (UN Peacebuilding Commission, 2007: 2).

Identifying this 'relatively narrow set of activities' may, however, prove particularly perilous given the wide range of activities and actors involved in post-conflict peacebuilding. In parallel with the reflections initiated within the UN, post-conflict peacebuilding has been developed and strengthened well beyond the confines of that world body, being rapidly incorporated into the mandates of numerous other governmental and intergovernmental agencies. For example, in 1996, Canada launched the 'Canadian Peacebuilding Initiative' in the form of a joint programme led by the then-Department of Foreign Affairs and International Trade (DFAIT) and the Canadian International Development Agency (CIDA), thereby highlighting the interaction between peace and development. Among multilateral institutions, the World Bank established a 'Post-Conflict Unit' in 1997, the same year that the Organisation for Economic Co-operation and Development (OECD) created the 'Conflict Prevention and Post-Conflict Reconstruction Network', the aim being to bring together bilateral and multilateral aid agencies to better coordinate their actions. From then on, interest in peacebuilding continued to grow, but without an accompanying clarification of the meaning of this now essential concept.

Definitions and meanings of post-conflict peacebuilding

Indeed, far from becoming more sharply defined, as peacebuilding was institutionalized, its scope and ambit actually became increasingly ambiguous. Although the expression 'post-conflict peacebuilding' has become an integral part of diplomatic vocabulary, states and international organizations often—deliberately—avoid giving it a precise definition. The waters have been further muddied by the proliferation of terminological substitutes and other hybrid expressions. A study of the terminology used by twenty-four governmental and non-governmental agencies has highlighted the vast diversity of expressions used to describe post-conflict peacebuilding (Barnett *et al.*, 2007).

Aside from the difficulties in comprehension this may cause, the profusion of terms reflects more fundamentally the differences in the mandates and political and/or institutional interests of the various actors involved in the

process of post-conflict reconstruction. For instance, the North Atlantic Treaty Organization (NATO) privileges the terms ‘stabilization’ and ‘peace support’ in line with its military mandate, while the European Union employs the expression ‘civilian crisis management’ within the framework of its European Security and Defence Policy (ESDP). Among the many other regional organizations involved in this sphere, the African Union (AU) speaks of ‘post conflict reconstruction and development (PCRD)’, defined as:

a comprehensive set of measures that seek to: address the needs of countries emerging from conflict, including the needs of affected populations; prevent escalation of disputes; avoid relapse into violence; address the root causes of conflict; and consolidate sustainable peace. PCRD is conceived within the African vision of renewal and sustainable development and while its activities are integrated, and many must be pursued simultaneously, they are envisaged in the emergency (short-term), transition (medium-term) and development (long-term) phases. The scope of these activities encompasses six indicative elements, namely: security; humanitarian/emergency assistance; political governance and transition; socio-economic reconstruction and development; human rights, justice and reconciliation; and women and gender (AU, 2006: para 14).

With respect to UN agencies and international financial institutions, such as the UN Development Programme (UNDP) or the International Monetary Fund (IMF), the expression ‘post-conflict peacebuilding’ is generally associated with the concepts of reconstruction and recovery. In UNDP’s view:

crisis and post-conflict situations present a major challenge to development assistance but also constitute a unique opportunity for UNDP to demonstrate the importance of its own core mandate – that of building national capacity for long-term growth and sustainable development (UNDP, 2000: 8).

Among the rare official definitions, that of the UN Thesaurus (UNBIS) merely repeats verbatim the definition proposed by Boutros Boutros-Ghali in his *An Agenda for Peace*. The on-line glossary of the UN Department of Peacekeeping Operations (DPKO) proposes a slightly more substantive definition:

[I]n the aftermath of conflict; it means identifying and supporting measures and structures which will solidify peace and build trust and interaction among former enemies, in order to avoid a relapse into conflict; often involves elections organized, supervised or conducted by the United Nations, the rebuilding of civil physical infrastructures and institutions such as schools and hospitals, and economic reconstruction (<<http://www.un.org/Depts/dpko/glossary/p.htm>>).

More recently, DPKO’s 2008 *United Nations Peacekeeping Operations: Principles and Guidelines* outlines its own definition of peacebuilding:

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. Peacebuilding is a complex, long-term process of creating the necessary conditions for sustainable peace.

It works by addressing the deep-rooted, structural causes of violent conflict in a comprehensive manner. Peacebuilding measures address core issues that effect the functioning of society and the State, and seek to enhance the capacity of the State to effectively and legitimately carry out its core functions (UN, 2008: 18).

Definitions used by governmental agencies are even more diverse. For instance, DFAIT defines peacebuilding as designating a set of measures that create a sustainable infrastructure for human security (DFAIT, 1996). This dense and concise formula attests to Canada's desire to promote the concept of human security which it has placed at the heart of its foreign policy. Thus, the way peacebuilding is defined remains highly dependent upon the political motivations of its promoters. In some cases, for example in Japan or the United Kingdom, meaning can even vary internally within the government, depending on whether the department involved is responsible for defence or development. The banner of post-conflict peacebuilding is indeed large enough and vague enough to encapsulate different interpretations of its exact meaning. Its volatility represents both its main strength and weakness. Barnett *et al* observe that:

[T]he willingness of so many diverse constituencies with divergent and sometimes conflicting interests to rally around peacebuilding also suggests that one of the concept's talents is to camouflage divisions over how to handle the post conflict challenge. In this respect, it functions much like a favored political symbol. Symbols are often highly ambiguous. Ambiguity can facilitate collective action because different constituencies can support the symbol without necessarily achieving consensus on the substance (Barnett *et al*, 2007: 43–4).

The recurrent ambiguity of post-conflict peacebuilding perpetuates the ongoing debates among policy-makers, practitioners, and analysts as to its exact scope and meaning. Although there is a general agreement that post-conflict peacebuilding is more than the elimination of armed conflict, three different approaches to peacebuilding may be identified:

- *Maximalist*: addressing roots causes of armed conflict;
- *Minimalist*: no renewed armed conflict;
- *Middle Ground*: no renewed armed conflict plus decent governance (Call & Cousens, 2007: 4–6).

These different approaches echo the long-standing discussions on the interaction between peacebuilding and development. While development is essential for lasting and sustainable peace (Collier *et al*, 2003), the muddling of the difference between peacebuilding and development could result in practical problems, because 'the most important factors driving potential conflict may not be addressed' (Lund, 2003: 27). Accordingly, it has been argued that:

A line needs to be drawn between peacebuilding and maximizing the various levels of social, economic and political development possible in a given society. Otherwise, if the term peacebuilding becomes a synonym for all the positive things we would want to

include in development in order to reduce any and all of a society's ills, it becomes useless for guiding knowledge gathering and practical purposes (*ibid*, 28).

Dilemmas and controversies surrounding post-conflict peacebuilding

In short, post-conflict peacebuilding is a polymorphous concept that never fails to provoke lively debate. While in-depth analysis is not possible here, it is important to point out early on that the political essence of such a concept easily explains why it has become the battleground for ideological confrontations that go well beyond the individual issue of post-conflict reconstruction. The many controversies provoked by peacebuilding are part of the larger and constant confrontation between different schools of thought in international relations: the realist and neo-realist schools; the theory of dependence; constructivism; functionalism; and neo-functionalism, or critical theories.

Many have called into question the ideological underpinnings of post-conflict peacebuilding, which they say is being exploited by Western states to justify a new form of interventionism or to promote the post-9/11 agenda of stabilization (Richmond, 2004; Pugh, 2004; Bellamy, 2004). On another level, the strategies applied by the international community are often criticized for not giving adequate consideration to local realities and the actual needs of the concerned populations (Chopra & Hohe, 2004). The importing of a neo-liberal model combining democracy with a market economy may be indeed particularly counter-productive in societies weakened by years of war (Kumar, 1997). Roland Paris has shown on the basis of different case studies that accelerated economic liberalization and strong efforts to democratize can cause a recurrence of violence (Paris, 1997). The impossibility of standing up to extreme economic competition may cause new social inequalities, whereas premature democratization is thought to lead to the polarization of political antagonisms within already destabilized societies. It raises in turn the validity of the 'liberal peace', as embedded in the particular Western paradigm of the state, by opposition to 'real peace' in non-Western post-conflict societies.

Over and above underlying ideological issues, what is most worrying is that the multiple actions undertaken by the international community have brought so few positive results. Post-conflict peacebuilding remains an eminently precarious process. Various estimates suggest that the risk of conflict recurrence is between 20 to 50 per cent in the first five years after a conflict ended (Suhrke and Samset, 2007: 195–7; Call & Cousens, 2007: 3–4; Collier and Hoeffler, 2004; Doyle & Sambanis, 2000). Thus, numerous conflicts labelled 'recidivist' (Woodward, 2007: 3) require repeated peace operations. In other cases, countries coming out of an armed conflict get stuck in a grey area of 'neither war nor peace'. As the hope inspired by the end of the fighting gives way to disillusionment, the involvement

of the international community decreases or even disappears, at the very moment when the populations are most in need of assistance.

Such a feeling of failure is obviously not independent of the particularly high—even disproportionate for some—expectations that the ambitious concept of peacebuilding encourages. The ever-present gap between theory and practice is a reminder of the extent to which post-conflict peacebuilding is a complex, multifaceted, and long-term process. It is ‘not only *multi-dimensional* but also *multi-sectoral* in terms of *what* the international community should be doing on the ground, *multi-leveled* in terms of *how much* should be done, and *multi-staged* in terms of *when* the international community should be involved’ (Lund, 2003: 13). Although each post-conflict context is unique, peacebuilding typically involves a triple transition: a *security* transition, from a situation of open violence to the progressive establishment of sustainable peace; a *socio-economic* transition, from conflict economies to a peace economy which is more open to the private sector and to international trade; and a *democratic* transition, from an authoritarian system to one of representative government (David, 1998). While the concept of transition is controversial in itself, there is consensus that post-conflict peacebuilding is composed of three core components: security, socio-economic recovery, and democracy.

The establishment of sustainable peace requires simultaneous action in each of these areas, which are so interdependent that they are difficult to dissociate. The first challenge of post-conflict peacebuilding is clearly that of taking security measures, in order to avoid a recurrence of hostilities and thus to support the peace process. The implementation of this security aspect involves many tasks: maintaining law and order through civil and military means, undertaking mine action, effecting the disarmament, demobilization, and reintegration of former combatants, ensuring security sector reform, facilitating the return and reintegration of refugees, and so on. Peacebuilding strategies rapidly become split between the contradictory objectives of negative peace and positive peace. All at the same time, it becomes necessary to stabilize the situation in the field for the short- and medium-term while addressing the root causes of the conflict through long-term action. In short, this dilemma illustrates the traditional opposition between the logic of security and the logic of development (Krause & Jütersonke, 2005; Junne & Verkoren, 2004; Keating & Knight, 2004; Duffield, 2001).

Faced with these contradictions, the concept of human security tries to reconcile the traditional understanding of security with development by focusing on the protection of individuals. Its objective is to free individuals not only from ‘fear’, but also from ‘need’. The second challenge highlighted by UNDP, recovery, has to make it possible to optimize the passage from emergency assistance to development. Capacity-building, especially through local ownership, is then a crucial factor for minimizing the perverse phenomenon of assistance. Aside from getting infrastructure back in working order, boosting the economy requires

structural reform to facilitate the passage from conflict economies to peace-time economies. It notably includes the stimulus of the private sector, combating corruption and shadow economies, as well as encouraging investment by diasporas and multinational companies.

The third challenge of post-conflict peacebuilding, democratization, often supposes state-building reforms through a whole battery of legislative or even constitutional measures aimed at restoring the authority and representativeness of institutions damaged during a civil war (Daudet, 1995). The essential, if not vital, issue is to foster—to the extent possible—an impartial state that respects the rights of all, including those of minorities. In practice, however, the principle of democratic governance and its corollary concept—free and fair elections—frequently come up against the persistence of clan and/or party loyalties inherited from the war. Indeed, ‘the lines of division that led to conflict escalation normally survive the peace process: if war is continuation of politics by other means, peace is generally the resumption of the same politics, often by the same pre-war means’ (Smith, 2004: 27). Implementing a policy of reconciliation that closely involves civil society is therefore essential for encouraging a culture of peace. Ball observes that:

Successfully ending the divisions that lead to war, healing the social wounds created by war, and creating a society where the differences among social groups are resolved through compromise rather than violent conflict requires that conflict resolution and consensus building shape all interactions among citizens and between citizens and the state (Ball, 2005: 619).

No reform of institutions which are seen as the guarantors of the rule of law can succeed in a lasting way if such reform is imposed from outside. Over and above institutional engineering, it is the citizens’ confidence in the primacy of law which must be restored.

II. The Actors of Post-conflict Peacebuilding

The diversity of actors

Taking stock of the many actors involved in post-conflict reconstruction is another way of understanding the complexity and multi-dimensional nature of the peacebuilding process (Cutillo, 2006). Here again, the issue can be examined from various perspectives: external or exogenous actors versus local or endogenous actors; state actors versus non-state actors; decision-makers versus civil society; civilians and the military; political leaders and economic agents. Attempting to make a complete and systematic list quickly becomes a perilous exercise, as one could add categories indefinitely. Moreover, all of these actors are involved—and interconnected—to different degrees.

Beyond the operational difficulties inherent in coordinating a plethora of stakeholders, one of the major challenges centres on the collaboration between the state concerned and the international community. Indeed, the viability of this collaboration conditions the effectiveness of peacebuilding efforts (hence the eternal tension between national sovereignty and international intervention). The terms of this contradiction are even enshrined in the UN Charter: on the one hand, the principle of non-intervention in domestic affairs, reflected in Article 2(7) of the Charter, is a natural extension of the concept of sovereignty; while on the other, apart from the explicit reservation mentioned in Chapter VII, specifically created to address threats to peace, the principle of non-intervention in domestic affairs must be squared with the ‘universal respect for, and observance of, human rights and fundamental freedoms for all’ proclaimed in Articles 1(3) and 55 of the Charter. How can the world body’s founding principles be reconciled, when they endorse sovereignty while at the same time suggesting infringing upon it in order to protect collective interests such as peace and human rights?

The concept of responsibility to protect suggests shifting the terms of the debate by moving ‘from sovereignty as control to sovereignty as responsibility’ (ICISS, 2001: para 2.14). From this perspective, ‘sovereignty implies a dual responsibility: externally—to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state’ (*ibid.*: para 1.35). Although the exact content of the responsibility to protect remains uncertain (which explains its success), one of its core components derives from the principle of subsidiarity: the international community is supposed to act as a substitute to a failed state which must be rebuilt. In practice, however, such endeavours have proven to be extremely hazardous, in cases where the international community intervenes without the consent of the state and, more generally, without the consent of all of the former belligerent factions (Kreilkamp, 2003; Han, 1994).

While the intervention of the international community can become necessary, it is important to recognize that local actors, and in particular civil society, are best equipped to take their fate in hand and bring a sustained end to conflict. External intervention can never be an end in itself. Its *raison d’être* is to support the indigenous forces of a country coming out of conflict. The primary actor of peacebuilding remains the population affected by war. Capacity-building and local ownership are thus crucial to the success of any post-conflict peacebuilding process.

Too often, however, external actors have privileged formal institutions over informal or traditional structures for the purpose of restoring the authority of the state. Support to the formal institutions of the state is certainly critical, for peacebuilding is by essence ‘a highly political project involving the creation of a legitimate political authority that can avoid the resurgence of violence’ (Tschirgi, 2004: 9). It should not, however, be carried out to the detriment of the informal sector at the societal or micro level (Tschirgi, 2006). Initiatives towards civil society and the population at large prove crucial for fostering reconciliation and

ensuring that peacebuilding programs are locally owned, people-centred, and rights-based.

The important work of John Paul Lederach showed how important it is to reconcile and combine a ‘top-down’ with a ‘bottom-up’ approach to peacebuilding. Both approaches are closely interconnected and complementary in the establishment of a sustainable peace. Constructing a peace process in deeply divided societies therefore requires consideration of ‘the *legitimacy, uniqueness, and interdependency* of the needs and resources of the grassroots, middle range and top level’ (Lederach, 1997: 60). His analytical framework is succinctly summarized in the pyramid shown in Figure 1, which identifies three categories of actors and three correlative approaches to peacebuilding, whose impact on the population varies from one to another.

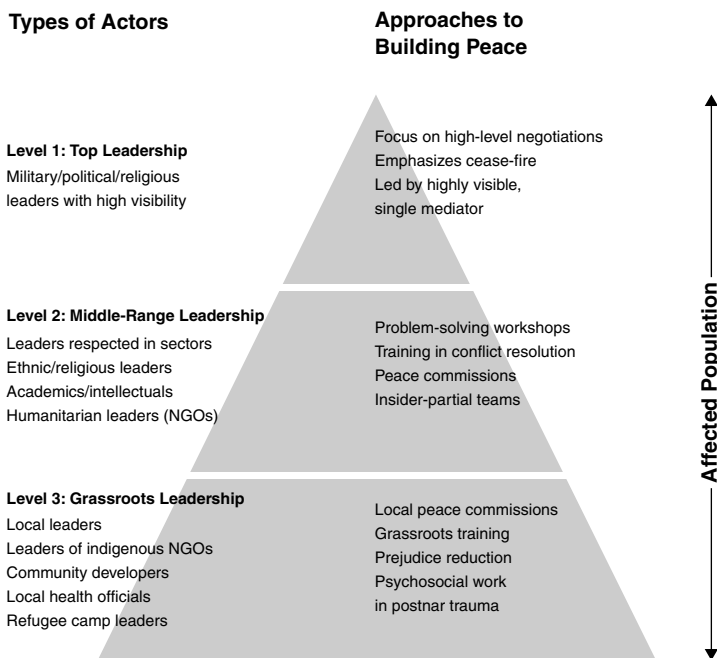


Figure 1 Peacebuilding Pyramid

Derived from John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Societies* (Washington, DC: United States Institute of Peace Press, 1997), 39.

Peacebuilding operations and missions

Regardless of the limitations inherent in any external intervention, the deployment of an impartial international presence is as much an element of stability—the

prerequisite for reconstruction—as it is a means of keeping the international community’s attention focused on countries devastated by war. Furthermore, as most peacebuilding activities involve many different actors, supporting and coordinating these activities can require the setting up of comprehensive and multifaceted peace operations.

The very concept of peace operations has thus evolved considerably as its missions have developed. Given the difficulty of constructing a global and coherent typology, such operations are often described by generic—and revealing—terms such as ‘complex’ or ‘multidimensional’. Their hybrid character becomes even more accentuated with the involvement of two or more international organizations responsible for different—and sometimes identical—activities in one country. This evolution is mainly due to the increasing role played by regional organizations in peace operations, including the AU, the EU, the Economic Community of West African States (ECOWAS), NATO, and the Organization for Security and Co-operation in Europe (OSCE). While regional organizations offer the advantage of being more familiar with local conditions and enjoy a special legitimacy among local actors, they may also be dominated by regional hegemons that may be counter-productive to efforts to foster capacity-building and local ownership. Against this backdrop, complex peace operations carried out by the UN may appear more impartial and benefit from a relatively longer experience in the field of post-conflict peacebuilding.

Within the UN, the first peace operation specifically tasked with peacebuilding was the UN Transition Assistance Group (UNTAG), which accompanied Namibia’s passage to independence between April 1989 and March 1990. Its primary mandate was to supervise the organization of free and fair elections. It also required a multitude of related activities: restoring public order, confining of troops to base, and, in the case of South Africa’s troops, ensuring their withdrawal from Namibia; as well as ensuring that discriminatory laws were repealed, political prisoners were released, and Namibian refugees were permitted to return.

Since then, many operations have been deployed to help implement peace agreements. This was the case, for example, in El Salvador (UN Observer Mission in El Salvador, ONUSAL, 1991–1995); in Cambodia (UN Advance Mission in Cambodia, UNAMIC, 1991–1992, UN Transitional Authority in Cambodia, UNTAC, 1992–1993); in Mozambique (UN Operation in Mozambique, ONUMOZ, 1992–1994); in Guatemala (UN Verification Mission in Guatemala, MINUGUA, 1997); in Bosnia and Herzegovina (UN Mission in Bosnia and Herzegovina, UNMIBH, 1995–2002); and in Burundi (UN Operation in Burundi, ONUB, 2004–2006).

Today, such peacebuilding operations are the rule rather than the exception. Indeed, almost all of the peace operations in progress, listed in Table 1, fulfil reconstruction and peacebuilding functions.

Table 1 United Nations Peace Operations

<i>Peace operations in progress</i>		<i>Date for initiation</i>
UNTSO	United Nations Truce Supervision Organization	May 1948
UNMOGIP	United Nations Military Observer Group in India and Pakistan	January 1949
UNFICYP	United Nations Peacekeeping Force in Cyprus	March 1964
UNDOF	United Nations Disengagement Observer Force	June 1974
UNIFIL	United Nations Interim Force in Lebanon	March 1978
MINURSO	United Nations Mission for the Referendum in Western Sahara	April 1991
UNOMIG	United Nations Observer Mission in Georgia	August 1993
UNMIK	UN Interim Administration Mission in Kosovo	June 1999
MONUC	UN Organization Mission in the Democratic Republic of the Congo	November 1999
UNMIL	United Nations Mission in Liberia	September 2003
UNOCI	United Nations Operation in Côte d'Ivoire	April 2004
MINUSTAH	United Nations Stabilization Mission in Haiti	June 2004
UNMIS	United Nations Mission in the Sudan	March 2005
UNMIT	United Nations Integrated Mission in Timor-Leste	August 2006
UNAMID	African Union/United Nations Hybrid Operation in Darfur	July 2007
MINURCAT	United Nations Mission in the Central African Republic and Chad	September 2007

Source: United Nations Peacekeeping operations. Peace and Security Section of the United Nations Department of Public Information, in consultation with the Department of Peacekeeping Operations, Peacekeeping Financing Division of the Office of Programme Planning, Budget and Accounts, and the Department of Political Affairs—DPI/1634/Rev.79—February 2008: <www.un.org/Depts/dpko/dpko/bnote010101.pdf>

In addition to these peace operations managed by DPKO, peacebuilding missions and support offices are directed by the Department of Political Affairs (DPA). As of 31 July 2008, 12 missions of this type involving 3,944 civilian and military staff were being conducted in Africa, Asia, and the Middle East. The peacebuilding missions underway in 2008 are summarized in Table 2.

The overall results of the various peacebuilding operations and missions are mixed, as they vary significantly from one situation to another, depending on the local context and the degree of involvement of the international community. The major operational difficulty lies in coordinating a multitude of civilian and military actors whose areas of expertise are extremely diverse. One of the solutions put forward to this implementation challenge has been the notion of 'integrated mission', whose goal is to enable all participants to cooperate closely and in a coordinated manner in order to ensure the implementation of a comprehensive peacebuilding strategy (Eide *et al.*, 2005). However, the tangible results of such integrated missions proved themselves so mixed that a new step toward institutionalizing coordination efforts was necessary through the creation of a Peacebuilding Commission.

Table 2 United Nations Peacebuilding Missions

<i>Missions in progress</i>	
UNPOS UN Political Office for Somalia	Since 15 April 1995
UNOGBIS UN Peacebuilding Support Office in Guinea-Bissau	Since 3 March 1999
UNSCO Office of the United Nations Special Coordinator for the Middle East	Since 1 October 1999
Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organisation and the Palestinian Authority	
BONUSCA UN Peacebuilding Office in the Central African Republic	Since 15 February 2000
UNSCOL Office of the United Nations Special Coordinator of the Secretary-General for Lebanon (formally known as Office of the Personal Representative of the Secretary-General for Southern Lebanon established in August 2000)	Since 16 February 2007
UNOWA Office of the Special Representative of the Secretary-General for West Africa	Since 29 November 2001
UNAMA* UN Assistance Mission in Afghanistan	Since 28 March 2002
UNAMI UN Assistance Mission for Iraq	Since 14 August 2003
UNIOSIL* UN Integrated Office in Sierra Leone	Since 1 January 2006
BINUB* UN Integrated Office in Burundi	Since 1 January 2007
UNMIN UN Mission in Nepal	Since 23 January 2007
UNRCCA United Nations Regional Center for Preventive Diplomacy for Central Asia	Since 10 December 2007

* Mission directed and supported by the Department of Peacekeeping

Source: Peace and Security Section, United Nations Department of Public Information, in consultation with the Department of Political Affairs and the Department of Peacekeeping Operations—DPI/2166/Rev.53—December 2007: <<http://www.un.org/Depts/dpko/dpko/ppbm.pdf>>

The Peacebuilding Commission

The Peacebuilding Commission was established on 20 December 2005 by the Security Council and the General Assembly (UN Security Council, 2005; UN, 2005b; Ponzio, 2005; Schneckener & Weinlich, 2005; Stahn, 2005a). This ‘double paternity’ is an important novelty: in UN history the Commission is the

first subsidiary organ to belong to both the General Assembly and the Security Council. This specificity anchors it solidly at the centre of the UN system. In return, however, the effectiveness of its action is dependent upon the often equivocal relations between the Security Council and the General Assembly in the area of international peacekeeping and collective security.

The key mission of this new institution is to better coordinate post-conflict strategies in order to ensure that they can be sustainable in the long-term and be more coherent. The three main functions assigned to it by the aforementioned resolutions are:

- (a) To bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery;
- (b) To focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and to support the development of integrated strategies in order to lay the foundation for sustainable development;
- (c) To provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, to develop best practices, to help to ensure predictable financing for early recovery activities and to extend the period of attention given by the international community to post-conflict recovery (resolution 1645 (2005), para 2).

The institutional void the Commission is supposed to fill is nevertheless a relative one. The Commission is not intended to take the place of other UN bodies. It is an instrument of support for the many existing institutions, all of which can call on it for help or advice. As a consequence, the Commission is nothing but an advisory body: it does not have the authority to make binding decisions opposable to any of the numerous actors involved in post-conflict peacebuilding efforts. As a way of attenuating this significant limitation, the Security Council and the General Assembly invite 'all relevant United Nations bodies and other bodies and actors, including the international financial institutions, to take action on the advice of the Commission, as appropriate and in accordance with their respective mandates' (*ibid.*: para 14).

The Peacebuilding Commission thus resembles in many ways a forum for discussion, exchange, and reflection as a support to the various actors involved in the complex post-conflict process. It is thereby constrained to favour an integrated approach to the management of post-conflict situations by acting as the key interface between all UN agencies involved in reconstruction (such as DPA, DPKO, UNHCR, OHCHR, UNDP, and UNICEF), but also between the other bodies that are becoming more and more involved in this process (even though it is not at the core of their respective mandates), such as the World Health Organization (WHO) or the International Labour Organization (ILO).

All the other relevant actors are also closely associated to the work of the Peacebuilding Commission. According to the resolutions establishing this new body, 'representatives from the World Bank, the International Monetary Fund and other institutional donors shall be invited to participate in all meetings of

the Commission' (para 9). Moreover, in addition to its collaboration with the authorities of the state concerned, the Commission shall work in consultation with 'regional and subregional organizations' (para 11) and with 'civil society, non-governmental organizations, including women's organizations, and the private sector engaged in peacebuilding activities' (para 21).

Development of the working methods of the new Commission is entrusted to a permanent Organizational Committee (para 4), whose composition was decided with the utmost care. The Committee comprises thirty-one members elected for renewable terms of two years, including: seven members chosen by the Security Council (and including permanent members); seven members elected by the Economic and Social Council; five of the ten top providers of financial contributions to UN budgets; five countries from among the ten top providers of military personnel and civilian police to UN missions; and, lastly, seven members elected by the General Assembly. The diversity of these members and their experience in post-conflict activities gives the Commission undeniable legitimacy, although its reactivity may be hindered by the number of its members and the use of consensus for decision-making. In parallel to country-specific meetings, a Working Group on Lessons Learned was also established to accumulate best practices and lessons on critical peacebuilding issues with a view to develop recommendations for future post-conflict strategies and implementation.

In order to carry out the difficult mandate entrusted to it, the Peacebuilding Commission is supported by two other key components: the Peacebuilding Support Office and the Peacebuilding Fund. Together, these three new bodies form what is labelled the 'UN peacebuilding architecture'. The Peacebuilding Support Office enables the Commission to benefit from the different services of the Secretary-General and to help the latter integrate peacebuilding strategies on a UN-wide scale. It thus serves as interlocutor between the UN system and the Commission.

The Peacebuilding Fund is by far the most crucial pillar of this new peacebuilding architecture, with a funding target of US\$250 million. The Fund, managed by UNDP, must mobilize the resources necessary to undertake activities 'of direct and immediate relevance to the peacebuilding process' (UN, 2006: para 5; Annex, para 2.1). Its priority is to foster activities that support the implementation of peace agreements, reinforce the beneficiary country's capacities for the peaceful resolution of conflict, and help combat the sources of a recurrence of conflict, such as disarmament, demobilization, and reintegration programmes. The Peacebuilding Fund thus serves as a catalyst for more sustainable investments by development agencies and bilateral donors. However, the Fund is not part of the UN's regular budget, as its financing depends entirely on states' voluntary contributions.

The main challenge facing the Peacebuilding Commission is to maximize its impact on the ground to make the UN peacebuilding architecture an effective instrument of international collaboration in support of countries emerging from conflict. A key political instrument for the Commission is the potential to negotiate an Integrated Peacebuilding Strategy (IPBS) with the focus-country

government. Once jointly endorsed by the government and the Commission, the IPBS provides an agreed framework for the government's commitments and the international community's overarching support to peacebuilding activities. IPBS is thus conceived as 'a flexible and practical instrument for facilitating political dialogue, analysing the sources of conflict, enhancing coordination among key national and international actors, marshalling resources and monitoring progress' (UN Peacebuilding Commission, 2008a: para 63). It should therefore cover all aspects that are critical to sustain a country's transition from conflict to sustainable peace, notably the following:

- (a) a consultative process based on the principle of national ownership;
- (b) an integrated approach to ensure that political, security and development dimensions reinforce rather than undermine each other;
- (c) succinct identification and analysis of key peacebuilding priorities and commitments on the part of all stakeholders;
- (d) a nationally led monitoring and review mechanism on the basis of concrete, measurable and time-bound indicators to assess progress as well as setbacks towards agreed commitments;
- (e) coherence with existing national strategic frameworks, such as the Poverty Reduction Strategy Papers; and
- (f) ways to support national capacity for peacebuilding and enhance aid effectiveness (*ibid*).

Although it is too early to make a full assessment of the Commission's activities, it is clear that this young child of the UN family is still in search of an identity. This is a predictable consequence of its double paternity. One thing is sure: the success of the UN in this area now goes hand-in-hand with that of the Peacebuilding Commission. As one of the participants in the Security Council's 31 January 2007 session stated:

in order to benefit from [the Commission], the Security Council, the General Assembly and the Economic and Social Council should all continue to adapt to ensure that they too achieve a level of effectiveness that meets both their Charter objectives and general expectations. In other words, to use the metaphor of parent and child, the existence of the Peacebuilding Commission should ease the conscience of those who established it, just as parents pass on to their children the dreams and ambitions that they themselves could not realise. The Commission would otherwise be just another body in an insufficiently reformed international institutional framework (UN Security Council, 2007: 19).

III. A Legal Framework for Post-conflict Peacebuilding

Jus post bellum: an emerging field

Just as there are multiple actors involved in post-conflict reconstruction, the law applicable to peacebuilding is made up of various components. Far from being

based upon a coherent and uniform set of standards, the delicate transition from war to peace is located at the intersection of various branches of law, as much international as domestic law. From the perspective of public international law, the law which applies to post-conflict peacebuilding is scattered throughout a multitude of domains including—to mention only the most recurrent—international humanitarian law; international human rights law; international criminal law; international refugee law; international development law; international economic law; the law of international organizations; the law of international responsibility; the law relating to the peaceful settlement of disputes; treaty law which governs, in particular, ceasefire agreements; and the law relating to the succession of states in the case of territorial dismemberment due to conflict.

The fragmenting of the legal system applicable to post-conflict peacebuilding is due, in part, to the compartmentalizing of branches so common in contemporary international law. But it is also, and above all, a reflection of the contradictions and ambiguities inherent in the very concept of peacebuilding. The result is a heterogeneous mixture of standards which are not at all, or only loosely, linked to each other. The fragmentation of the norms applicable to post-conflict peacebuilding makes them difficult to understand, and difficult to apply effectively in war-torn societies.

The generic expression *jus post bellum* nevertheless captures in a single term the extreme diversity of the branches of law which can be applied at the close of armed conflicts. Beyond the traditional couplet *jus in bello* (law governing the conduct of hostilities) and *jus ad bellum* (law regulating the resort to force), it is more important than ever to recognize post-war law as a concept in its own right, as has been demonstrated by recent international practice (Stahn, 2007). Following this perspective, *jus post bellum* can be generally defined as the set of norms applicable at the end of an armed conflict—whether internal or international—with a view to establishing a sustainable peace. Far from a stylistic device of the sort dear to academics, the grouping of disparate standards within the same frame of reference underscores the need for a comprehensive and coordinated approach to the numerous rules governing post-conflict situations. From a systemic perspective, it paves the way for a contextualized interpretation—and, by extension, a contextualized application—of existing norms in order to better take into account the specificities which characterize the difficult transition from war to peace.

Although the expression *jus post bellum* is not widely used in contemporary international law, it is part of a long tradition of the doctrine of the law of nations introduced by Francisco de Vittoria in the 16th century. His disciple, Francisco Suarez, put particular emphasis on the tripartite concept of *jus ad bellum*, *jus in bello*, and *jus post bellum* (*Disputationes XIII*, 1621). But it is thanks to the works of Emmanuel Kant that this tripartite notion was systematized. In *The Metaphysics of Morals*, he distinguishes between (1) the right of “going to” war; (2) right “during” war; and (3) right “after” war, the object of which is to constrain the nations

mutually to pass from this state of war and to found a common constitution establishing perpetual peace' (Kant, 1796: 226–7).

The components of *jus post bellum*

The various norms governing the end of hostilities are now receiving renewed attention which is not yet systematic or in-depth. Although an exhaustive analysis of all of its components is beyond the scope of this introduction, one could highlight some of them to assess the multifaceted legal challenges of post-conflict peacebuilding.

International humanitarian law

International humanitarian law is a key component of *jus post bellum* at least with respect to the rules governing military occupation. Bearing this in mind, the other rules of international humanitarian law are not applicable, as the threshold of their applicability depends on the existence of an armed conflict and they therefore cease to be applicable 'on the general close of military operations' (Geneva Convention IV, Article 6; Additional Protocol I, Article 3).

There are, however, various exceptions which led the International Criminal Tribunal for the former Yugoslavia to state that 'the temporal scope of the applicable rules clearly reaches beyond the actual hostilities' (ICTY, 1995: para 69). This is particularly true for the rules applicable to prisoners of war and civilian internees, as they remain under the protection of the Geneva Conventions and their Additional Protocols until their final release and repatriation (Convention III, Article 5; Convention IV, Article 6; Protocol I, Article 3; Protocol II, Article 2(2)). The rules relating to the control of weapons are also applicable at the end of the armed conflict. For example, the 1996 Protocol on Prohibitions or Restrictions on the use of Mines, Booby-Traps and other Devices requires states parties to take measures to remove and destroy mines 'without delay after the cessation of active hostilities' (Article 9). The parties are also encouraged to reach agreements, if necessary, with other states or with international organizations, in order to receive technical and material assistance in fulfilling their responsibilities.

Aside from the various rules of international humanitarian law likely to be applied upon cessation of hostilities, the law of occupation has seen renewed interest in light of recent international practices in Iraq and elsewhere. Although military occupation is traditionally defined by reference to a 'territory [...] actually placed under the authority of the hostile army' (Hague Regulations, Article 42), its meaning has been progressively enlarged by subsequent practice to encapsulate other kinds of occupation without armed resistance or state of belligerency (Adams, 1984). The threshold for military occupation is thus factual in essence. It is satisfied by effective control by a foreign military force over a territory of a state. Against this background, it has been argued that the law of occupation

may apply to complex peace operations (Benvenisti, 1993: 3–5; Kolb *et al*, 2005: 204–32). Although this last issue remains controversial, this was clearly the case for the multinational forces present in Iraq and Afghanistan after armed intervention, which had been carried out outside of UN auspices.

While it is not possible to analyse here the complex and detailed legal regime governing military occupation, its content is organized around two essential axes: the protection of individuals and maintenance of territorial and legislative *status quo*. The first normative axis prohibits, in particular, forcible transfer and deportation (Geneva Convention IV, Article 49), forced labour (*ibid*: Article 51) and the destruction of real or personal, individual or collective property located in an occupied territory (*ibid*: Article 53). Furthermore, the Occupying Power ‘has the duty of ensuring food and medical supplies of the population’ (*ibid*: Article 55). The second normative axis aims to maintain the *status quo ante*, just prior to the occupation, the latter being considered a transitional phase by definition. Occupation cannot thus generate any transfer of sovereignty of the territory in question, as annexation by threat or through the use of force is prohibited by the UN Charter. The legislative *status quo* has, though, proven highly problematic, especially in light of the prevailing situation in Iraq (Sassòli, 2005; Boon, 2005; Dinstein, 2004). The principle of maintaining in force the legislation of the occupied territory blocks all legislative and constitutional reform, which is often necessary for establishing the rule of law.

It has to be observed, however, that a simple appeal to the norms of international humanitarian law does not resolve the issue of which law to apply during any given occupation. In each case, the issue must also be examined in light of relevant Security Council resolutions and with regard to peremptory norms of general international law (*jus cogens*). From that perspective, respect for fundamental norms of international human rights law has been interpreted as involving, for the Occupying Power, ‘an obligation to abolish legislation and institutions which contravene international human rights standards’ (Sassòli, 2005: 676).

International human rights law

International human rights law plays a crucial role in restoring the rule of law and the citizen’s confidence in their own state. It offers a normative framework which is mainly based upon the two UN Covenants of 1966, whose universality is well established. But the issue is not so much the opposability of human rights law as its effectiveness in a less-than-favourable environment, where the state and its legislative, judiciary, and even executive bodies often need to be rebuilt. That is the fundamental question, as genuine respect of fundamental rights is both a precondition and a component of peacebuilding (Quast, 2004; Ahlund, 2004). It requires not only the incorporation of international norms into domestic law, but also, and above all, that they inform the practices of national and local authorities.

From that angle, the right to an effective remedy, and the right to a fair trial, play key roles in incorporating international standards into the domestic legal order. They presuppose, however, the establishment of a transparent and effective judicial system. The effectiveness of human rights is therefore closely dependent on the operational and structural measures adopted after the cessation of the hostilities (OHCHR, 2006; Strohmeyer, 2001). Such an endeavour is nevertheless bound to fail if it is limited to the passing on of a sort of Western ready-made model, totally detached from the local context, and incompatible with the legal traditions of the country (Danne, 2004).

Following the same logic, the relevant applicable human rights cannot be limited to civil and political rights. The prohibition of arbitrary deprivation of life, torture, inhuman or degrading treatment, and arbitrary detention is surely the most visible indication that an armed conflict, during which these fundamental human rights are so often flouted, has ended. Nevertheless establishing a sustainable peace requires an integrated—and therefore ambitious—approach that gives appropriate consideration to economic and social rights, which are just as fundamental. Notably they include the right to a decent standard of living, the right to adequate housing, the right to health, and the right to education. While the state retains its primary responsibility for implementing human rights, realizing economic and social rights in post-conflict contexts largely depends upon international assistance for fostering the capacity-building and recovery of the state and its population. It echoes in turn the long-standing debate on a putative right to development regularly asserted by the General Assembly.

At the state level, the adoption of legislation protecting individual freedoms is also closely linked to free and fair elections, which concretize the right to vote and to be elected, as enshrined in Article 25 of the 1966 Covenant on Civil and Political Rights (Goodwin-Gill, 2006; Samuels, 2005–2006; Fox, 2003). Such elections guarantee the legitimacy of the Parliament in its efforts to repeal exceptional legislation, which is commonly passed in times of armed conflict. In practice, however, recourse to elections has often proven premature in the socio-political context prevailing at the end of an armed conflict, as the former belligerents often attempt to obtain by means of the ballot box what they gained or lost through the use of arms. In this context, free and fair elections presuppose the prior safeguarding—in fact as in law—of other related freedoms. Promoting freedom of opinion, of association, and of assembly is essential if an active and open civil society is to be fostered.

In post-conflict situations, the prohibition of ‘any propaganda for war’ and ‘any advocacy of national, racial or religious hatred’, set out in Article 20 of the 1966 Covenant, takes on a largely symbolic dimension unless it is accompanied by a policy of national reconciliation. Particular emphasis needs to be placed on freedom of the press, especially when some media have been used during the conflict to propagate hatred of others. Moreover, one of the frequent underlying causes of conflict is an unresolved minority issue. Ensuring equal access to essential public

services and protecting cultural rights (including the right to enjoy one's culture, the right to profess and practise religion, and the right to use one's own language) is central for promoting reconciliation and building confidence among the entire population. While a paternalistic approach towards minority groups should be avoided (and may be counter-productive), harmonious relations between minorities and majorities and between different minority groups within a state contribute greatly to its stability.

International criminal law

In the heated context that follows an armed conflict, judging war criminals is an essential—albeit highly sensitive—step in restoring peace and breaking with the past. The concept of transitional justice has thus become a full-fledged component of post-conflict peacebuilding, so much so, that legal writings focus on this aspect to the detriment of the other relevant domains of public international law. Aside from the definition of international crimes, a central concern relates to the different forms that transitional justice can take. It is possible to identify five different scenarios and to classify them according to their degree of internationality as shown in Table 3.

Table 3 Models of Transitional Justice

<i>Typology of transitional justice</i>	<i>Mechanisms implemented</i>
Permanent international criminal justice	International Criminal Court. Cases in progress concerning: the Central African Republic, the Democratic Republic of the Congo, Uganda, and Sudan.
Ad hoc international criminal justice	International Criminal Tribunal for the former Yugoslavia
Hybrid criminal justice	International Criminal Tribunal for Rwanda Special Court for Sierra Leone Extraordinary Chambers in the Courts of Cambodia Serious Crimes Unit and Special Panels created by UNTAET in East Timor Internationalized Courts in Kosovo: International Judges and Prosecutors programme established by UNMIK Special Chamber within the State Court of Bosnia and Herzegovina Special Tribunal for Lebanon
Ad hoc internal criminal justice	Iraqi Special Tribunal Gacacas courts in Rwanda Truth and Reconciliation Commissions in South Africa, Argentina, Burundi, Chile, East Timor, El Salvador, Ghana, Guatemala, Morocco, Peru, and Sierra Leone.
Internal criminal justice under domestic law	Territorial jurisdiction of states after conflict: ordinary Timorese courts, ordinary Congolese courts Universal jurisdiction of third-party states: Germany, Belgium, Spain in particular

Choosing among the different forms of transitional justice does not depend on any specific legal rule. Stahn rightly recalls that:

[T]here is no blueprint for transitional justice. The choice and design of each formula must be adjusted to the particular needs of each individual case, taking into account factors such as the nature of the underlying conflict, the commitment of parties to the peace process, the need and degree of protection for particular groups (minorities, displaced persons, abducted children), the potential for public and victim consultation, and the condition of the country's legal and political system, in general (Stahn, 2005b: 426–7).

Furthermore, the different possible forms of transitional justice are not mutually exclusive (Mobekk, 2006; Chesterman, 2005; Seibert-Fohr, 2005; Bassiouni, 2002). On the contrary, experience has shown that the reconciliation and reparation of victims benefits from an approach which combines domestic and international aspects of justice, whose ultimate goal goes well beyond the simple criminal repression of past crimes.

However, the design and formula of transitional justice depends more fundamentally on the political will of the state involved as well as of the international community (which raises the possibility of their doing nothing to prosecute past crimes). Although it is increasingly acknowledged that peace and justice are not contradictory but complementary, states are frequently tempted to enact amnesty laws on the assumption that prosecution would be politically charged and could destabilize the fragile new government or even hinder the reconciliation process. Conversely, abstaining from prosecution of international crimes encourages a culture of impunity, which not only undermines the very notion of rule of law but represents a major cause of the perpetuation of violence and human rights abuses.

From the perspective of international law, human rights treaty bodies have asserted an obligation to prosecute serious human rights violations, such as torture, extrajudicial, summary, or arbitrary execution, and forced disappearance (Olson, 2006; Ratner, 1999). But while amnesty is also prohibited in the case of genocide and war crimes committed in international armed conflicts, international law is more ambiguous with regard to other violations of humanitarian law committed in the wake of a civil war (Dugard, 1999). Article 6(5) of 1977 Additional Protocol II to the Geneva Conventions provides that:

At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

This provision, originally intended to facilitate reconciliation at the end of a civil war, has subsequently been construed as excluding war crimes from its scope. The same conclusion may be argued for crimes against humanity under customary law. In line with other UN bodies, the Security Council has recalled

that amnesty 'shall not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law' (UN Security Council, 2000).

International refugee law

Among the various other relevant branches of public international law, international refugee law deserves special attention, as it is well-known that armed conflicts are one of the main causes of forced displacement. When hostilities end, withdrawal of the refugee status, granted by a host country on the basis of the 1951 Geneva Convention, is inevitably posed (Chetail & Flauss, 2001). While the principle of non-refoulement prohibits a State from returning to a territory a person who fears for his/her life or freedom, Article 1C of the convention states that refugee status will cease to apply to such a person if circumstances in that person's country of origin have fundamentally changed. This represents a crucial dilemma, inherent to the very process of post-conflict peacebuilding: can one consider that the end of a conflict constitutes in and of itself a fundamental change of circumstances, when a sustained peace has not been established and the massive return of refugees may serve as an additional source of destabilization? On the other hand, it has been argued that the return and reintegration of refugees can be a decisive factor in the reconstruction of the country (Black & Koser, 1999).

An empirical solution to this normative and political dilemma has been found through the promotion of programmes of voluntary repatriation which are generally organized in close cooperation with the country of asylum, the country of origin, and UNHCR (Chetail, 2005). From a normative point of view, while it is not explicitly addressed by the 1951 Geneva Convention, voluntary repatriation is provided for in Article 5 of the 1969 OAU Convention governing the Specific Aspects of Refugee Problems in Africa. At the universal level, international human rights law gives it a broader and more solidly anchored legal foundation via the right to return to his own country, notably as enshrined in Article 12(4) of the 1966 Covenant on Civil and Political Rights (Chetail, 2003).

The situation of internally displaced persons (IDPs) raises an additional legal difficulty linked to the absence of a distinct legal regime specifically devoted to those who are forced to flee their homes but who, unlike refugees, have not crossed an international border. In recognition of their specific needs, the Guiding Principles on Internal Displacement, adopted in 1998, restate and refine, in the particular context of internal displacement, the key provisions of international human rights law, humanitarian law and—by analogy—refugee law. Although the Guiding Principles are not formally binding, they have been endorsed by the General Assembly and incorporated into the domestic law of an increasing number of states. In particular, they require competent authorities to create conditions and provide the means to enable IDPs 'to return voluntarily, in safety and

with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country’.

The voluntary nature of return does not, though, make it a panacea. Successful returns of refugees and IDPs require a wide range of other conditions, including first of all the safety of returnees. Reintegration also presupposes that they will have access without discrimination to basic public services and employment opportunities. The restitution of housing, land, and property, as well as other forms of reparation is also needed not only to facilitate their reintegration but also to restore a sense of normalcy, thereby fostering the reconciliation process. More generally, if the return is to be viable in the medium- and long-term, it must be coupled with economic cooperation agreements between donor countries and the home country so as to stimulate recovery and the sustainable development of the country. Implementing durable solutions for refugees and IDPs is therefore an integral component of post-conflict peacebuilding. It ‘can simultaneously address the root causes of a conflict and help prevent further displacement’ (Koser, 2007: 12). The concept of return and reintegration thus condenses the great diversity of the challenges typically associated with post-conflict processes.

As we can see, the multi-faceted issues surrounding post-conflict peacebuilding cannot be addressed through a narrow disciplinary approach in which each of the relevant branches of public international law develops in isolation, in a sterile and outmoded environment. On the contrary, the specificities of post-conflict peacebuilding call for a global and integrated approach within a more general and comprehensive legal framework, which can truly be labelled a *jus post bellum*.

IV. Concluding Remarks: Post-Conflict Peacebuilding—Crossing the Bridge from Rhetoric to Reality

The existence of legal norms should not hide the fundamentally political essence of peacebuilding processes. The means of achieving a sustainable peace are well known. They demand an unfailing determination from the international community, the mobilization of resources over the long term, and a better understanding of the true needs of the populations involved. One cannot, however, help but notice that the concept of post-conflict peacebuilding is still struggling to move from rhetoric to reality. Its popularity in diplomatic circles certainly owes much to the broad and equivocal nature of this concept.

In the absence of a definition accepted by all of the actors involved, post-conflict peacebuilding remains an easy target for all sorts of manipulation and ideological machination. Owing to the prevailing terminological and operational confusion surrounding the term, it may become a convenient smoke-screen, used to justify the institutional mandate of international agencies or to defend a security agenda. Since 9/11, post-conflict peacebuilding has been conflated with the

discourse of ‘nation-building’ and ‘stabilization’. Such a reformulation driven by external actors is likely to undermine ‘the basic agreement that peace, security and stability cannot be imposed from outside but need to be nurtured internally through patient, flexible, responsive strategies that are in tune with domestic realities’ (Tschirgi, 2004: 9).

The chronic ambiguity of post-conflict peacebuilding stems from the fact that it designates both the *process* of establishing a sustainable peace, and the political and institutional *strategies* used to do so. Nevertheless, these different—albeit overlapping—meanings share two essential attributes and one common purpose: post-conflict peacebuilding is a long-term process; and it is multidimensional in nature; the ultimate objective being to reconcile security, development, and justice. The rhetorical interest in post-conflict peacebuilding has yet to translate into effective coordination and a broader strategy for the countries ravaged by war. Policy coherence and coordination remain one of the key challenges at all levels between international and domestic actors, among departments and ministries of states, within the UN as well as between the UN and regional organizations. Different actors are likely to make different choices in line with their own mandates and priorities, which frequently counteract each other’s actions. The strategic deficit has been notably exemplified by the Utstein Study which evaluated 366 peacebuilding projects financed by Germany, Norway the Netherlands, and the UK. It concluded that:

More than 55 per cent of the projects do not show any link to a broader strategy for the country in which they are implemented. Some projects are not linked to a broader strategy because there is no strategy for them to be linked to. In other cases, the broader strategy exists but projects show no connection to it (Smith, 2004: 10–11).

Nonetheless, despite its strategic limitations, during the last decade, post-conflict peacebuilding has evolved significantly as a field of practice in its own right. External actors have become more conscious of their own limitations, and of the correlative need for a context-specific approach determined by, and tailored to, local needs and realities. Analysts have observed that:

On the one hand, the international architecture for peacebuilding has improved considerably over the past fifteen years, as noted at the outset. There is a much greater understanding of the complexities of peacebuilding, more self-critique about the limits of international assistance, and increasing appreciation of the unique demands of specific situations, particularly over questions of state society relations and governance. As peacebuilding has become a comparative growth industry, there have also been waves of effort to reform, streamline, specialize, or coordinate among international actors, both multilaterally and bilaterally. Within the UN system and within donor governments, agencies are much more aware of functional priorities for post-war societies, which has spurred specialization of specific international offices dedicated to tasks including transitional justice; police development; disarmament, demobilization, and reintegration of combatants; refugee return; and economic recovery. On the other hand, these advances have not

yet sufficiently diminished persistent and serious shortcomings in international responses to war-torn societies, which the Peacebuilding Commission and related bodies have just been created to fill. Whether they are able to do so will be an important determinant of the effectiveness and appropriateness of international architecture on these issues for some time to come (Call & Cousens, 2007: 10).

The Peacebuilding Commission represents a unique opportunity to mainstream and prioritize peacebuilding efforts worldwide. However, institutional engineering cannot be a substitute, but rather it represents a complement to a more coherent and comprehensive strategy. The establishment of the Commission intervenes at a crucial moment as consensus coalesces around the core components of an effective and holistic strategic framework. While acknowledging that there is no 'one-size-fits-all' model (nor will there ever be), its Working Group on Lessons Learned identified a set of twelve key principles. They are summarized in the following terms:

Specificity of peacebuilding: in order to address drivers of conflict that are context-specific, peacebuilding strategies have to be informed by accurate analysis of country realities.

National ownership: the primary responsibility and ownership for peace consolidation rests with the Government and the people of the host country.

Strengthening national capacities: the international partners' focus to get things done quickly and effectively should not undermine efforts over the medium- and long-term to strengthen national capacities for conflict management.

Holistic approach: Since peacebuilding encompasses security, development and human rights, the linkages between them need to be adequately recognized and prioritized.

Ongoing support for political consolidation: constructive political processes are essential to peace consolidation.

Mutual accountability: sustainable peacebuilding requires a strong partnership based on mutual respect and accountability between the Government and the people of the host country and their international partners.

Sustained engagement: peacebuilding is a long-term process requiring sustained and predictable engagement from all stakeholders. Despite the necessity to implement projects that provide tangible peace dividends, sufficient attention should be given to the sustainability of efforts.

Effective coordination: to avoid duplication as well as gaps in peacebuilding, international, national and local stakeholders need to act in a coherent and mutually reinforcing manner. Existing mechanisms, such as post-conflict needs assessments, integrated peacebuilding strategies, poverty reduction strategies and monitoring and tracking mechanisms, are important instruments for effective coordination.

Tangible peace dividends and quick wins: while peacebuilding requires time, early provision of tangible peace dividends for the population and quick win projects are necessary to build confidence and generate support.

Integrating a gender perspective: men and women are affected differently by conflict. Any peacebuilding strategy should address these differences, especially to ensure the end of impunity for gender-based violence, while contributing to gender equality and supporting women's full participation in and ownership of peacebuilding and recovery.

Encouraging a regional approach: an effective peacebuilding strategy takes into account the regional dimensions of a conflict and provides a regional and/or international solution, in consultation with relevant governments and non-state actors.

Prioritization, sequencing and timing: when building peace in societies ravaged by violent conflict, everything is considered a priority. However, to use the limited resources most effectively, host governments and international actors need to agree on key priorities and to sequence their implementation (UN Peacebuilding Commission, 2008b: 13).

The Working Group on Lessons Learned adds that 'the challenge, therefore, lies in calibrating general principles with country-specific realities based on an accurate analysis of commonalities and differences among countries' (*ibid.*: 4). Too often, knowledge about local context has been lacking, thereby impeding the development of strategies tailored to specific environments. External actors need to understand thoroughly the history, politics, and cultures of the countries in which they are attempting to build peace. More fundamentally, they must learn to appreciate that they are not the main actors of the peacebuilding process, but are only facilitators in a leverage process. This supposes a cultural sea-change to an approach based on modesty, flexibility, and patience. This in turn obliges—as the rule rather than the exception—that a comprehensive assessment of the local and regional environment, conflict dynamics, and indigenous capacities pre-dates the design of peacebuilding programs, and that it is undertaken in close collaboration with internal actors. External actors need to seek to fulfil more of a catalytic role—understanding post-conflict peacebuilding as a long-term, home-grown, and political process.

Winning the peace has typically proved far harder than winning the war. If this is to change, we need to speak the same language when we talk about peacebuilding. Otherwise, in the absence of a common identity, peacebuilding will continue to be plagued by ambiguities and misunderstandings. The search for the true meaning of peacebuilding remains one of the greatest challenges of our times.

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