PROFESSIONALIZING RULE OF LAW: ISSUES AND DIRECTIONS

KRISTINA SIMION AND VERONICA L. TAYLOR

FOLKE
BERNADOTTE
ACADEMY

THE FOLKE BERNADOTTE ACADEMY is a Swedish government agency dedicated to improving the quality and effectiveness of international conflict and crisis management, with a particular focus on peace operations, including peacebuilding. The overall objective is to contribute to lasting peace and development. The Academy functions as a platform for cooperation between Swedish agencies and organizations and their international partners. Its main areas of responsibility are:

› Recruitment of Swedish civilian personnel to international peace operations
› Multifunctional education, training and exercises
› Policy, research and development
› National and international cooperation and coordination
› Funding of civil society peace projects

The Academy has a preparedness to offer good offices for conflict management initiatives, such as talks between parties to a conflict. Within its mandate, it serves as a national point of contact with international organisations, including the UN, EU, AU, OSCE and NATO.

The Academy aims for broad international participation in its activities, and cooperates closely with partner institutions throughout the world. The Academy is named after Count Folke Bernadotte, the first official UN mediator and its mission reflects Sweden's commitment to international peace and security.

**FOLKE
BERNADOTTE
ACADEMY**

RESEARCH REPORT

PROFESSIONALIZING RULE OF LAW: ISSUES AND DIRECTIONS

Kristina Simion[1] and Veronica L.Taylor[2]

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

FOREWORD

Twenty-five years after the fall of the Berlin Wall 'rule of law' has become a routine part of framing and legitimizing multilateral and bilateral interventions in developing and fragile states. Its conceptual and operational use now extends across undertakings as diverse as peacekeeping, security sector reform, transitional justice, human rights advocacy and economic development assistance. Similarly, the multilateral and bilateral actors who seek to strengthen it are wide-ranging and include the United Nations (UN) and its many divisions and agencies. This extends from the UN Security Council to national military forces to bilateral aid agencies and civil society organizations. It also includes individual legal and development professionals. As its scale and scope has grown, donor spending on rule of law has totalled billions of dollars and with this has come increased political calls for quick and concrete results. While many observers accept that rule of law is a desirable part of both post-conflict state-building and post–peace economic development and peace-building, the work itself is open to the claim that it is time-consuming. Its 'outputs' are difficult to measure and lack, for instance, the clarity of such things as health or agricultural reforms. It is perceived by others that properly functioning and accessible legal services merely represent indirect contributions to stabilizing fragile societies.[3]

But in appealing for greater efficiency and efficacy in this field, donors and rule of law organizations have paid comparatively little attention to those who design and implement interventions. This is important because it is necessary to understand how rule of law is conceptualized and put into operation as part of a security or development assistance intervention, since one of the essential elements that determines success in such 'programmes' and 'projects' is people: the designers, implementers and partners for rule of law interventions in specific settings. The type and quality of personnel in such programming also matters because they are a critical 'input' to any enterprise. In a field increasingly concerned with quality and quantity of 'outputs' and measuring and ranking recipient states, there is a deepening awareness that the donor-side of a rule of law enterprise must refocus on its own capabilities.

This report applies insights from the anthropology of development, the sociology of the professions, and from socio-legal studies of lawyers to frame rule of law both as a practice and a potential emerging profession. We argue that rule of law – as well as being a cluster of conceptual ideas and an ideology underpinning multilateral and bilateral policy interventions in the developing world – can also be viewed as a networked field of practice. We examine how the field of practice is constituted and populated, and how its practitioners see themselves and the challenges they face.[4] The transnational and multilevel nature of rule of law work and its diverse funding sources means that those working in the field lack the geographically bounded self-regulatory capacity of the traditional professions. Thus while 'professionaliza-

tion' in the classic sense may be nascent, we can observe the emergence of communities of practice.

Further empirical work is required to identify such rule of law communities and the practices they embody. But in understanding rule of law as practice – and how it is shaped by practitioners and affiliated organizations – we detect a missing 'input' element in how rule of law interventions worldwide are currently evaluated for quality, results, and effect.

1 INTRODUCTION: RULE OF LAW AS PRACTICE

November 2014 marked the 25th anniversary of the fall of the Berlin Wall. It was also a significant event in the rule of law 'revival' that sought to both democratize and open up the economies of Eastern and Central Europe and the former Soviet Union.[5] In the intervening decades rule of law as a form of policy intervention has become a routine part of multilateral and bilateral peacekeeping, policy-making, and development assistance.[6] As a field of policy activity, rule of law encompasses a wide range of programming, variously labelled as 'law and justice', 'governance', 'legal and institutional reform', 'access to justice' and 'security sector reform' as well as the legal incidents of peacekeeping, such as policing and corrections support. These areas, which we will refer to collectively as 'rule of law' interventions, are by no means the primary focus of donor spending on statebuilding, security or poverty alleviation, even although the scale and scope of rule of law assistance in developing, post-conflict, and fragile states has grown immensely,[7] and the total spend[8] on rule of law and related policy interventions totals billions.[9] Rule of law assistance owes its current influence less to the quantum of funds expended directly on 'law and justice' programming, and more to the perceived need to have rule of law embedded within a wide range of peacekeeping, security, humanitarian, human rights, development and legal and institutional reform interventions in developing or conflict affected states.

The call to have 'rule of law' embedded in security or development programming (regardless of how it is labelled) is in part due to a recognition of the persuasive and regulatory power of practitioners. In post-conflict settings, for example, there might be a shortage of development aid funding. Rule of law advisers, for example, are then mobilizing a different asset as they rely on the power of ideas and their ability to transmit useful knowledge and to mentor, monitor and advise. Their affiliation with an international or a bilateral 'mission' or project often confers a status that helps in advancing the appeal of the legal or justice reform idea. They are also able to exert influence where legal compliance is a condition of the target state in becoming a member of a multi-state or multilateral organization that it desires to join, such as the European Union (EU) or the World Trade Organization (WTO).[10] In this sense, rule of law advisers are 'brokers', 'translators', 'mediators' and 'agents' for the organizations advancing the desired policy intervention.[11]

1. CONCEPTUAL AMBIGUITY

One consequence of the expansion of policy interventions that require practitioners to implement legal services or legal system reforms as a constitutive or supporting element is that it stretches the flexibility of the meaning of 'rule of law'. Under the rule of law everything tends to be included, from advising on the number and size of prisons to the best system for cadastral surveying for land titling, through to pro-

viding defence lawyers for wrongfully imprisoned women and children. As Krygier continually reminds us, when everything is rule of law, nothing is.[12] Krygier argues persuasively that rule of law has an important intrinsic meaning; it prompts us to ask how the arbitrary exercise of power by state and non-state actors can – and should – be controlled. However, the post-1990s embracing of the 'rule of law revival' has led to a capacious political and ideological use of 'rule of law' by donors or governments in the global North to justify or champion preferred forms of legislative or institutional reform in target countries.[13] This in turn has prompted a lively scholarly debate about the concept and attributes of rule of law and the extent to which they vary across western and non-western political and legal systems[14] – a debate that is unlikely to end soon.

2. OVERPROMISING

A second consequence inserting rule of law into transnational policy interventions in fragile and conflict-affected states is that it conflates legal reform with political reform. Legal and legal institutional reform in most places is, unambiguously, political. But when we use 'rule of law' as a synonym for the desirable end-point for state governance, regardless of the underlying political, economic, legal or social conditions of the state marked for reform, we risk understating the intensity and the duration of the necessary reform. Newer policy documents and the practice-oriented 'grey' literature produced by international organizations, state agencies or donor organizations acknowledges that rule of law work is inherently political, but for much of the post-1990s period 'rule of law' was often presented as a public good that will transform and cure local economic, political, social and geographic ills. Inevitably such expectations fail to be completely realized in practice.

Authoritarian states are now in the ascendance, whether or not they make use of elections. So the form and traction that we can anticipate for rule of law must be calibrated accordingly. Critics have noted that the high spending on rule of law projects often does not lead to corresponding reforms[15] and that the many quantitative outcomes flowing from such interventions do not always imply real or lasting institutional or behavioural change.[16] As Kavanagh and Jones observe:

> [G]iven the dearth of knowledge and evidence currently underpinning strategic and operational responses, the international community has perhaps demonstrated a case of "trop de zèle" in terms of rule-of-law expectations in highly complex and volatile settings.[17]

Some commentators go as far as arguing that rule of law projects are sometimes unpredictable in their impact and thus potentially destabilizing.[18]

3. WEAK FEEDBACK LOOPS

A third consequence of the growth and diversification of the rule of law field is the difficulty of maintaining 'feedback loops' for the type of learning necessary for effective regulatory interventions. In the early days of the 'revival' of rule of law in

the 1990s this was termed a 'problem of knowledge'.[19] More accurately it is a prob-
lem of how to effectively share, absorb, reflect upon and institutionalize knowledge
gained from practice across a multi-level, globally diffuse sphere of activity. The
many actors engaged in rule of law often have few political incentives to coordinate
their efforts and few commercial incentives to share experience. More recently the
practical tools that have emerged for creating open access to rule of law knowledge
management for (and among) donor and host country organizations are discussed
below in Section Four of this report.

4. CONCEPTUALIZING THE RULE OF LAW AS A FIELD OF PRACTICE

This report uses insights from the anthropology of development,[20] the sociology of
the professions, and from the socio-legal studies of lawyers to frame rule of law both
as a practice and a potentially emerging profession. We suggest that 'rule of law' is
simultaneously a range of normative ideals; a rallying cry for political and policy
reforms; and a well-established and expanding domain of transitional policy and
practice. We do not take the position that rule of law is simply the sum of those pol-
icies and practices.[21] We suggest, rather, that rule of law practice and its practition-
ers are influenced by the theoretical and ideological concepts of rule of law, while
also helping to shape them through practical application. Such dialogic process is
consistent with what has been observed in ethnographies of development practice,[22]
in the development and diffusion of legal practice worldwide,[23] in work on regu-
latory norm formation,[24] and in the formation of transnational legal orders.[25] How
this occurs in the rule of law field, through which actors, in which locations, and the
process by which particular concepts and practices become dominant, is the subject
of continuing empirical research.[26]

Conceptualizing rule of law as a field of practice is an ambitious undertaking be-
cause it is a 'field' that is not unified and operates on 'thin' knowledge.[27] There is no
overarching international agency to sponsor it. We see instead international agen-
cies undertaking multilateral tasks and programming, with national governments
engaged in bilateral policy interventions. Both are conducted through public and
private chains of service provision. In certain respects this resembles a globalizing
legal services industry specializing in humanitarian, post-conflict or development of
legal and institutional reforms. Rule of law actors and implementers are now a mix-
ture of government, non-government, military, not-for-profit humanitarian bodies,
and commercial entities. With the rise of neo-liberal economic thinking in the West
during the 1990s and the adoption of ideas of new public management much of the
civilian rule of law work in the Anglo-American donor sphere is now contracted
out through public procurement and thus subject to a host of technocratic finance,
performance and reporting requirements.[28] Consistent with the new public man-
agement ideas that animate many governments in the global North, taxpayers are
also presented as stakeholders with an acute interest in whether or not such donor
funded aid 'works'.[29]

Rule of law interventions have not been immune from public challenges as to their legitimacy. Can they be relied upon to provide the promised economic, political and/or social benefits claimed? Is development assistance spending on rule of law, compared with other basic human needs, effective and justifiable? Host states also appear to becoming increasingly sceptical towards development aid in general and more assertive than previously – through multilateral fora and agreements – in their insistence on international actors adhering to improved governance practices in the distribution of development aid.[30]

The legitimacy challenge to rule of law and its practitioners matters for a number of reasons. It comes precisely at a time when global development agencies are emphasizing the importance of 'justice' as an element in sustainable peace-building, and as a prerequisite for confronting the violence that undermines economic and social development.[31] The legal profession in the global North – and increasingly in transitional states – has historically concerned itself with responsibility for both establishing and upholding law and justice in society.[32] Its success in bringing into being and sustaining a professional identity is based on both altruistic claims to serve the public interest and the ability to devise new competencies while prospecting for new areas of economic activity. Part of the authority of the professional identity of lawyers is the implicit assertion that they 'embody' the rule – symbolically in their costume and rituals; technically, as officers of the court; legally, as fiduciaries for their clients; professionally, as a group that holds itself to ethical standards that go beyond the minimum requirements of law; and culturally, as social elites who are expected to behave better than 'ordinary citizens', by virtue of their training and their professional affiliation. In this sense, lawyers have been seen not simply as employees of the legal system, but as its guardians - legally and professionally responsible for creating and sustaining law and justice institutions in society.

As legal practice becomes more transnational and diverse, 'rule of law' can be viewed as an emerging domain of practice. In sociological terms it is also a transnational 'project' that carries with it distinct concepts, technologies and practices.[33] By definition this is work that takes place in developing or fragile country settings, within the tight constraints of a military operation or a development aid funded project. It follows that the professional identities and practices of the legal profession in the global North are unlikely to fit precisely into this new field.[34] Significant questions thus arise as to how lawyer (and non-lawyer) practitioners function in the rule of law practice domain. How do they understand 'rule of law' as a practice? Do they seek to embody its values in their work? Does a relationship exist between the type and quality of practitioners working in the rule of law? What is the class and quality of results observed by organizational actors?

In responding to calls for greater rule of law efficiency and efficacy, donors and rule of law organizations have so far paid comparatively little attention to those designing and implementing their rule of law interventions. In the following section we outline some of the structural issues that affect rule of law practice interna-

tionally, including geographic and operational diversification of rule of law work; outsourcing and service supply chains; non-disclosure and broken feedback loops; evaluation bias; and metrics and indices. We then describe the demands that confront those seeking to design and implement rule of law interventions worldwide. The potential is analyzed for professionalizing rule of law practice, or rendering it more effective and legitimate than previously as a field of practice. In doing this we have drawn on the existing literature and on our own interviews with rule of law organizations and practitioners.[35]

2 ORGANIZING RULE OF LAW

In September 2012 the UN held its first High Level Meeting on the Rule of Law.[36] It was convened in order to stress the central place that the rule of law has assumed in UN operations, and to both discuss and agree on a forward looking agenda that would strengthen the rule of law at national and international level.[37] This suggests that the UN and its member states are interested in more effective rule of law assistance and have recognized the need to discuss current practices at a higher level than before.[38] The statements made at the meeting refer more to the aspirations and objectives of rule of law rather than *who* should design and implement the processes to achieve them and *how*.[39] Questions were barely considered on how to ensure sufficient and appropriate professional capacity to support the desired rule of law interventions, where they would take place, and what (and how) practical assistance would be given.

While rule of law practitioners and practice failed to make the agenda for this headline UN event, there are clear indications that they are now part of the organizational thinking of donors and the focus of an emerging body of research by scholar-practitioners that begins to deal directly with the questions of not only the 'where' but the 'who' of the rule of law field.[40]

In 2002 the Swedish Development Agency recognized that the demand for rule of law practitioners exceeded the supply in important donor countries and among international organizations.[41] Similarly, a 2002 report identified gaps and weaknesses in the UN's rule of law expertise.[42] A 2006 UN document stated that it was becoming increasingly difficult to identify suitable candidates for rule of law positions, since standard legal training and practice experience formed only a small part of the skills required for this special subset of legal practice.[43] In the same year another report concluded that the UN human resource capacity in this sphere was both modest and striking in considering the relatively high profile of rule of law-related work. That study identified the broad and all-encompassing definition of rule of law as being a barrier to building actual in-house capacity.[44] In 2010 Evers observed that in Organization for Security and Co-operation in Europe (OSCE) missions:

> … rule-of-law activities of ODIHR [Office for Democratic Institutions and Human Rights] and the field operations suffer from major personnel problems. Finding experts with both the legal background and the regional and linguistic knowledge and skills is extremely difficult …[45]

More recently, the 2011 UN Report Civilian Capacities in the Aftermath of Conflict stated:

> In some cases, the needed capacities are just not available. It is difficult, for example, to find people who can rebuild a judicial system. Conflict may have weakened capacities at home and the international market has not been able to provide enough talented people with the right skills, language and cultural fluency who can deploy at short notice and will stay long enough to be effective.[46]

The empirical question is whether anything has changed in the intervening decade. We see some modest but significant changes within the UN system. The establishment of a Global Focal Point for Police, Justice and Corrections (GFP) has enabled greater concentration of rule of law expertise at UN Headquarters and thus more in-house expertise and capacity.[47] The UN has also developed two standing capacities based in Brindisi: one on police and another on justice and corrections, designed to be deployed at short notice to fill operational gaps in the field.[48] At EU level in the Civilian Planning and Conduct Capability (CPCC), specialists on rule of law are being recruited to supplement the existing single post, again signalling the strengthening of in-house rule of law capacities in order to provide increased capability in the field.[49]

Despite at least a decade or more of indications that individual and organizational capacities for performing rule of law work might be less then optimal, the organizational response by donors appears to have been somewhat muted. This could be partly attributable to the structure of rule of law as a field. Here we point to five phenomena that have shaped the field of rule of law practice internationally in the past decade, and which contribute to the relative invisibility of practitioner supply and quality.

1. GEOGRAPHIC AND OPERATIONAL DIVERSIFICATION OF RULE OF LAW WORK

Rule of law programming has shifted location since the 1990s from technical legal assistance in Eastern Europe and South America (for example, such as those provided by the American Bar Association Central European and Eurasian Law Initiative) to conflict and post-conflict areas (often within the framework of a UN peacekeeping mandate) such as East Timor, Afghanistan, Sudan, and Liberia. Fragile and conflict-affected locations pose particular challenges for rule of law interventions and their implementers, among them the need to manage security threats and build trust among sceptical or hostile local partners.[50]

The scope of rule of law programming is no longer limited to civilian assistance to reform local legislation and justice sector institutions. Rather, today's agenda appears all-inclusive to include topics as diverse as customary or non-state justice, gender equality, economic development, anti-terrorism measures, anti-corruption strategies, alternative dispute resolution, access to justice, conflict prevention and human rights monitoring. It follows that rule of law practitioners are as diverse. Many are practising lawyers, court personnel or are legally educated; some are military personnel; others are non-lawyers with particular technical skills or development experience. The work often requires teams of professionals such as sociologists, political scientists, anthropologists and country specialists.

2. OUTSOURCING AND SERVICE SUPPLY CHAINS

A further shift in rule of law practice is that significant rule of law donors such as the EU, the United States, Sweden, and Australia increasingly source their capacity for rule of law programming though intra-governmental pools or panels or professionals, or through public procurement, either of individuals or commercial organizations. Such 'outsourcing' of design and provision inevitably results in its becoming

more difficult to collate practice experiences and data because of the different lines of reporting and accountability to which practitioners are subject.[51] Time lines and contract duration within the field also tend to be short. Thus it may happen that after a project is finished its practitioners move on without having had the opportunity to hear the results of an evaluation, or indeed to monitor the effects of their own work.[52] Mobility within the field means that templates and models can 'travel' from one location to another while insights into prior project implementation and results might not.[53]

3. NON-DISCLOSURE AND BROKEN FEEDBACK LOOPS

As rule of law practitioners apply for new postings, or organizations bid for rule of law projects, previous failure may be seen as weakness, and so there is an in-built tendency to proclaim all work performed to have been successful.[54] Sometimes organizations fail to react to failure. They might be genuinely unaware of problems either due to faulty monitoring and evaluation standards or because no rigorous evaluative phase was built into the project.

Where reports evaluating outcomes of projects are produced they tend to be written mostly by people paid by the client, so there is open or implied pressure to report success to justify ongoing or new funding.[55] Where the contracting entity is an organization, 'lessons learnt' or best practices may well be treated as confidential trade secrets, instead of being used to remedy lack of knowledge.[56] In places where implementation is privatized there are more likely to be claims made that information surrounding projects is proprietary. Donors may be politically weak or contractually prevented from enforcing accessibility to project data and deliverables for other actors. Host governments and local partners might also have reasons for wanting to keep project information secret.[57]

4. EVALUATION BIAS

Somewhat paradoxically the field of rule of law seems to have, at the same time, an abundance of evaluative data that is publicly available. Development practice – including civilian rule of law programming – has moved strongly towards the transparent showing of effectiveness, and a strong desire to exhibit 'impact'. There is widespread acknowledgment that new rule of law programmes must be empirically informed because 'knowledge-based action produces better results than stabs in the dark or uninformed good intentions'.[58] Thus in rule of law, as in other fields of development assistance, an uptake is detected in experimental research and randomized control trials to compare performances and provide data-intensive measures of impact.[59] However, robust evaluations of previous rule of law projects and programmes remain difficult to obtain, and precisely how evaluation reports are collected and disseminated can also limit their usefulness as guides for future action.[60] The fact that rule of law practitioners seldom possess specialized research skills can contribute to a lack of robust evaluations. One effect of this is that monitoring and evaluation (M&E) is seen as its own specialized sub-field of practice and ordinary rule of law practitioners report very little direct experience of this.[61]

Self-reporting of 'lessons learned' or studies carried out by evaluators contracted by the implementing organization often result in foreign experts making a quick scan of the project (the 'fly in approach')[62] in the form of interviews and checking quantitative results.[63] An earlier FBA study of evaluation of rule of law programming found:

> Even when evaluation reports are read or discussed, they are primarily used to justify or discontinue on-going programming and are rarely used to gain knowledge of what has worked or not worked in the field when new rule of law assistance programs and projects are conceived and designed … [T]he actual application in decision-making processes [is] limited. Several donors have launched evaluation summary series to make the main findings more widely known, but the various efforts to highlight experiences have so far been ineffective, unsustainable, or difficult to locate. There is a tendency to focus on success stories and to ignore problematic issues.[64]

Absent from this style of evaluation is any plan for communicating and implementing the findings of an evaluation (either internally to practitioners or staff or externally to partners) in contrast to what are often elaborate programmes of 'communication of results' for the particular project.

5. METRICS AND INDICES

A final influence is the wide range of indicators and rankings used to characterize host countries' rule of law reforms. Well-known examples include the World Justice Project *Rule of Law Index*[65] and Transparency International's *Corruption Perception Index*.[66] These aggregated data represent perceptions of how well a country's rule of law is developed and are frequently built into project designs as part of the required outcomes for the intervention, even though they have some serious limitations as normative and regulatory tools. In their design these indices tend to be top-down, ahistorical snapshots of how select respondents perceive the functioning of formal legal institutions.[67] They are also intended to broadly generalize and shape perceptions of rule of law within individual states, measured against an idealized yardstick of what desired 'rule of law' attributes or institutions would look like. Coupled with the tendency that Haggard and Tiede observe to describe the donor-funded interventions as 'rebuilding', 're-establishing' or 'restoring' formal legal systems that might – or might not – have existed or functioned in the state prior to the most recent conflict, the effect of meta-level indices and rankings is often to obscure a particular state's political, legal and economic history.[68]

Something that has not been explored in relation to these indices and rankings is the extent to which they influence rule of law practitioners, or operate as a substitute for genuine knowledge of the target system. So when asked how much knowledge of the local legal system is needed in order to be effective as a rule of law practitioner, one of our early-career respondents answered: 'None. They have no rule of law … that, after all, is why we are going there.'[69] If she was relying on this aggregated data, she could be forgiven for thinking so. More experienced practitioners from the same rule of law project locality gave very different responses - again, understandable in view of their much longer experience in the setting.

3 RULE OF LAW PRACTITIONERS

Who are today's rule of law practitioners? One of the identified knowledge gaps in the field is the absence of any baseline data about the professionals, both local and international, who are engaged in justice reform work worldwide.[70] Our received image is of lawyers from Western democracies giving advice in economic development and political transition contexts, often as somebody seconded from a donor government or an international NGO. While this might have once been a salient model the 21st century profile of practitioners is now much more diverse. They differ in age, nationality, education and experience. They come from different age, nationality ethnicity and socio-economic backgrounds and have different educational, disciplinary, professional and organizational experiences. They are distributed across various geographies field situations, and organizational roles. Thus there is no guarantee of shared orientation in professional identity, ethos, motivation, outlook or personal or organizational goals.

1. CHALLENGES OF THE LEGAL MINDSET

Rule of law practice is not the exclusive domain of lawyers but those working in it having a legal education or legal practice experience (or both) appear to be in the majority in at least some of the sub-fields that make up this area. For the purposes of our study, we defined sub-fields proximate to rule of law as follows: Governance; Humanitarian aid; Law and justice reform; Legal technical assistance; Post-conflict legal reconstruction; Security sector reform; Human rights promotion; Transitional justice; and Policing.

Where our respondents had legal education it was generally of the most conventional kind and mainly oriented towards their home jurisdictions. In some cases respondents had taken formal courses in international or comparative law, but few had undertaken degrees outside law and almost none had studied relevant disciplines such as economics or development studies, or peace and conflict. So our prototype legally-educated practitioner would be one with a relatively formal legal education. This is consistent with the charge made by critics such as legal anthropologist Laura Nader that lawyers are particularly prone to see the target state as 'lacking' the desired attributes of a Western liberal democracy,[71] or to imagine that their desired type of state can be realized by transplanting formal western legal institutions.

We hypothesize that a lack of knowledge of the relationship between law and society, both the many forms of law and justice (or 'legal pluralism') that occur worldwide, and the relationship between law and political, cultural, economic and social development, is a handicap for many practitioners. Our respondents were fairly confident of their knowledge of formal legal concepts and methods, and how to apply law in an advanced economy, but had little knowledge of how those advanced economies came into being, and the specific part that law and justice institutions played in that process. Thus we observed that while they were fairly confident about the mechanisms of writing and passing new laws or methods for training the judi-

ciary, prosecutors, the police, public defenders and the bar association of any given jurisdiction, they were much less informed about the social dynamics that cause a particular country to fall into a governance crisis.

2. EXPANDING PERFORMANCE REQUIREMENTS

The knowledge and skills required of rule of law practitioners appear to have undergone a marked expansion in recent years. While formal legal qualifications and experience remain minimum requirements for many postings, the substantive focus of rule of law projects now ranges across security and development, environmental and health issues, development economics, anti-corruption enforcement and international trade regimes.[72] At the practical level, practitioners are increasingly asked to be skilled at non-legal technical tasks, including project management; qualitative and quantitative research; setting up monitoring and evaluation mechanisms; establishing systems that will help them 'manage for results' while generating impact; communications; mounting training programmes; and event planning and organizing. For the most part these are tasks for which conventional legal education provides little preparation, and which fall well outside the traditional scope of legal practice.

Local practitioners are also highly critical of 'internationals' who lack knowledge of their host countries and who appear to offer ready-made models based on their own ideas or limited experience.[73] The critique becomes more pointed when local rule of law practitioners are paid a fraction of the salaries of their international counterparts while being asked to advise on the same projects. Such local practitioners perceive themselves to have the knowledge, experience and skills that surpass those of international advisers.[74] The paradigm expression of such friction (in this example, Kosovo) is:

> Junior people assigned to monitor, mentor and advise senior Kosovar civil servants. Since they have little experience, and therefore often command little respect from their Kosovo counterparts, this hampers the effectiveness of EULEX [European Union Rule of Law Mission in Kosovo] as an MMA [Monitoring, Mentoring and Advising] actor.[75]

In both empirical studies and in a secondary critique, it is the 'character' of the international adviser that is regarded as being just as important as personal technical ability.[76] One way of viewing 'character' is to ask whether the practitioner has what organizational psychologists now call 'emotional intelligence' and what organizations popularly term 'soft' skills. Thus respondents in our study identified performance problems arising from the mismatch between lawyers' highly specialized and technical qualifications[77] and the need for interpersonal and organizational skills, such as mentoring local colleagues, or facilitating the design of a social structure or institutional reform in demanding environments.[78]

3. PERSONAL AND PROFESSIONAL MOTIVATIONS

Most of the respondents in our study cite altruistic reasons for entering the field of rule of law, coupled with opportunities to advance professionally or experience challenging work of the kind that would not be available at home. Earlier studies of

discrete rule of law practice communities by Alkon (focusing on Afghanistan)[79] and Baylis (on the International Criminal Court)[80] find cohorts of practitioners who are relatively young, or late career, relatively inexperienced and whose personal motivations for entering the rule of law field range from finance to adventure – in extreme cases what Baylis terms thrill-seeking 'post-conflict justice junkies'. Our empirical project draws on a wider range of practitioner profiles, across nine nominate areas of rule of law practice, and we find a more evenly distributed age cohort. Respondents to our survey and interviews have diverse and nuanced reasons for entering the field, many of which are altruistic.

4. FEEDBACK LOOPS AND LIFELONG LEARNING

We also find that practitioners struggle to manage their careers in a way that creates a cumulative learning trajectory; and they miss out on the routine professional education and professional development opportunities that they would have access to through more conventional roles at home.

This preliminary data raises an important issue about the preparedness of practitioners – both for existing rule of law work and for any expanded scope or complexity in the work. The World Development Report (2011), for example, argues strongly for an expanded focus on security, jobs and justice as a core element of international interventions in fragile and conflict-affected states, which the authors assert should happen earlier in the 'fragility cycle'. But this in turn raises questions about the capacities, knowledge and professional practice of international organizations and practitioners and whether those currently engaged in justice reform are equipped for this kind of predictive work.[81]

Though organizations engaged in rule of law design and delivery do attempt some 'lessons learned' exercises it is unclear who learns, and how.[82] What the existing data suggests is an acute lack of knowledge among new rule of law practitioners and, simultaneously, a wealth of 'unused' knowledge among those experienced in the field. Much of the accumulated knowledge about rule of law programming and its effects is not centralized or institutionalized but resides in individuals.[83]

This suggests that rule of law as an international and transnational policy domain continues to be guided by intuition and hope rather than systematic knowledge and empirical evidence.[84] In examining agencies involved in funding or implementing rule of law work, we observe a lack of systematic knowledge management to inform design; an absence of feedback loops from practitioners and field experience; cursory pre-deployment training, where it exists at all; a lack of emphasis on debriefing; and an absence of rigorous project design cycles. The historical parallel to the Law and Development Movement of the 1960s, which came to an abrupt end because disappointed donors reacted to practitioner amateurism and a mismatch between promises and results, seems to be striking.[85] It is certainly possible that we could be 'tracking old, flawed donor modalities of action in new, more complex settings'.[86] At the same time we also observed networked communities of rule of law practitioners emerging from formal academic and professional training programmes, described below.

4 RULE OF LAW AS AN EMERGING PROFESSIONAL FIELD

One of the striking preliminary findings of our study of rule of law practitioners is the diverse ways that people describe themselves and their work. Such descriptions range from simply 'I work for organization X', to 'human rights practitioner' through to 'technical assistance provider' to 'judicial reform expert' – and, at the margins - 'I don't know'. Despite the overwhelming number of respondents having one or more university qualifications, often in law, respondents also demonstrated ambivalence on whether or not they were, in fact, 'expert' on rule of law work. Some who considered themselves 'expert' were uncertain with regard to what kind of knowledge or practice domain.

Those rule of law practitioners who were legally educated or legally qualified did not uniformly identify themselves as 'lawyers'. The exception was serving judges or prosecutors acting as consultants for short periods, or seconded into the same professional role within the host country. Such responses were consistent across those affiliated with high-profile international organizations and those working in less visible locations within the rule of law field.

This kind of ambivalence might reflect the fact that what we term 'rule of law practice' could be diffuse. Upon closer analysis, the types of work that it encompasses might be so different as to be incommensurate. Alternatively, it could mean that highly qualified professionals accustomed to high levels of stability and certainty in institutional design and operation at home are ill at ease in settings where those certainties are absent. Or it could mean that the rare opportunity to speak about the challenges of rule of law work in an interview setting unlocks a reflexivity and humility in individuals that makes them hesitate to claim competence and knowledge in ways that they might, for example, in the reports they prepare for donors and the public.

What we can say is that no single occupational label emerges with which all respondents can identify. Individually, respondents expressed reservations about what we might call their occupational or professional identities. Significantly, many such interviews were conducted during professional development courses in rule of law, so these respondents had already self-selected as wanting deeper knowledge about the field and were seeking to build on their professional skills.[87]

'Professional', is of course, a powerful talismanic term. It implies an aspiration or a capacity to perform work that is somehow different in kind or quality from that of a 'non-professional' or a mere occupational worker. So it is no surprise that we now see 'professional' attached to rule of law programming in documents such as terms of reference for recruitment and in specialist education and training programmes.[88] Evetts calls this the 'discourse of professionalism' which is used as a 'marketing slogan' to attract new recruits and to motivate existing employees.[89]

In this report we employ 'field of practice' to describe rule of law work whether there is one or more fields. We relate what the practices of those fields entail; whether they coalesce into one or more 'communities of practice'; and whether the attributes of one or more rule of law 'professions' that are emerging are all empirical questions. This in turn depends on how one defines those terms and which of them require much more data-intensive exploration. In the section below we consider three different ways that a 'profession' can be distinguished from an occupation, and then go on to describe the emergent activities within the rule of law that appear to signal a desire in some parts of the field to professionalize. In the concluding section we examine whether or not professionalization in the traditional sense is possible in the rule of law field.

1. THEORIES OF PROFESSIONS

The classic definition of a profession is that of an occupational group that uses its specialized knowledge, and exercises a monopoly over its expertise, in order to help sustain its power.[90] Law, together with medicine, is generally regarded as a paradigm of professionalization with a sustained history of asserting its expertise and charging a premium for its services. Weber, for example, recognized that the creation of legal rules could only be done by trained professionals, since it involves the 'use of highly specialized forms of thought'.[91]

In most post-industrial economies professions are granted a certain degree of self-regulatory licence by the state in return for the implied promise to pursue the public good – as well as the group's private economic gain. For lawyers this sustains the ability of their profession to simultaneously claim to uphold law and justice on behalf of society, while guarding the practice monopolies that secure them significant economic opportunities. While this self-regulating privilege has been significantly eroded for professional groups over the course of the 20th century, a core professional marker is still control of membership of the occupational group. Typically this takes the form of mandating training and education that is a pre-requisite for membership of the group. This will often include university level education and training, an industry journal and professional examinations, and generally also involves compliance with the profession's code of ethics.

Control over a profession's membership is necessary because it underpins the 'regulative bargain' struck between an occupational association and the state and the society in which it is located.[92] So while the core claim of the profession is specialist knowledge provided through both altruism and self-interest, Birkett and Evans suggest that the three conditions that actually characterize professionalism are professional power, associational control, and a sustaining ideology.[93] Professional power 'refers to a particular form of hegemony in society, by occupational associations over both the production and supply of services to consumers in a particular domain or jurisdiction'.[94] Associative control allows occupational associations to limit their membership so that they can warrant who is competent to practise the profession and that practise will be directed to the interests of consumers.[95] The sustaining ideology element of professions is the offer of 'service, competence and integrity

– *by* producers *to* consumers'.[96] Sustaining ideology is the projection of identity that claims to subordinate self-interest as a group to the altruistic service of society.

2. THE PROCESS OF PROFESSIONALIZING

How do new professional groups emerge? Conventional accounts of professions advance an implicit 'taken for granted' meaning of professionalization rather than examining the strategies adopted to arrive there.[97] Abbott's systems approach to professions, for example, highlights the ways and means that existing professions put into effect to block or pre-empt the emergence of competitor occupational groups that might threaten the jurisdiction or work of an existing profession. These challenges to existing professions emerge constantly, as new 'socially legitimate sets of problems create opportunities for new professional groups'.[98] What Abbott's work draws attention to is the uniqueness of the trajectories of law and medicine as professional monopolies, and the much more frequent occurrence of multiple groups vying for control of an occupational domain, or emerging in response to new needs that an established profession cannot or chooses not to meet. An example of Abbott's thesis at work in the rule of law domain would be the Japanese model of organizing such work. Preliminary results from our study suggest that American, European, British and Australian rule of law work is open to qualified practitioners, who may or may not be legally educated, and who may or may not be admitted to practise law. By contrast the Japanese pattern for rule of law recruitment has predominantly been from the ranks of lawyers, judges and prosecutors who have successfully passed (a highly restrictive) national bar exam, with the addition of some academic lawyers. The logic of this pattern is that it seeks to extend domestic protections for the legal profession into the new, transnational domain. A consequence of this is a perennial shortage in supply of Japanese rule of law practitioners, and a cleavage to 'legal' work such as advice on legislative options.[99] This is not to suggest that Japanese rule of law practice is deficient; rather that it reflects a different form of professional organization.

Janda and Killip[100] suggest that significant social changes typically prompt questions such as who can best deliver; how they will be educated; and whether the tasks required will be taken up by members of existing groups or by new entrants to the market. Understanding a new complex issue might require improvement of a profession's existing expertise, or development of a completely new expertise. Within the rule of law field the political, economic and social problems and fragilities for which rule of law is offered as a programming 'solution' would seem to be problems of the kind that could call forward new professional opportunities and challenges. To what extent might existing ideas of professions and professionalism apply to rule of law practice?

Professional overlays on the field of rule of law

We can think of the field of rule of law as being a set of activities and financial flows that occupy spaces at different levels within the transnational legal order: for example, within multilateral organizations such as the UN (at both its agency headquar-

ters, and in country missions and country teams); within bilateral rule of law projects (the physical location of the project in a host country and the negotiated encounters between that project and its local counterpart agencies); or as a reform programme or team implanted within a host country's legal institution.

What we observe in such transnational rule of law 'spaces' are conscious and unconscious borrowings from the models advanced by the theories of professions. Within host country rule of law programmes, for example, we see this in project designs that emphasize the creation of a new professional group in the target country (such as support for an emerging legal profession) or the upgrading of the standing and prestige of existing institutions (such as the courts) by applying more stringent membership requirements (through increased educational requirements, or by applying new ethical standards). Professionalization is an implicit goal within projects that focus on creating new, specialized knowledge, and changing processes to become more systematic and more institutionalized than previously in the ways that Weber's ideas of bureaucratic development suggest.

At the same time, in international and donor state rule of law 'spaces' – the preparation, design and delivery of rule of law programming – we see quite an extensive range of activities that map onto conventional attributes of professions. We can assess these activities with regard to the degree to which they (a) enhance professional power; (b) bolster associational control; and (c) create a sustaining ideology. These activities include providing education and training; developing a professional journal; disseminating handbooks and manuals; establishing international professional associations and networks; creating online resources and virtual communicative spaces; promulgating protocols for ethics and accountability; and holding professional meetings such as roundtables and debriefings.

(a) Enhancing professional power through education and training
Modalities and availability
Training and capacity-building are staple activities within rule of law interventions internationally. A threshold activity at the start of a programme or project is often that of systematic training for stakeholder groups within local legal institutions in new technical knowledge or subjects. This might be human rights law, electronic case management, investigative techniques for police and prosecutors, or new models of corporate governance. Such training has the stated goal of increasing shared understanding of the new norms or rules or procedures that the rule of law project seeks to inculcate locally; it also seeks to improve the performance of the occupational groups responsible for implementing change.

We now see a similar picture emerging for rule of law practitioners within or affiliated to multinational and bilateral donors. Training opportunities in rule of law as a nominated area have gradually increased (as detailed in the table below) but remain less visible than, for example, training opportunities in comparable areas of international policy engagement, such as human rights and governance. For some donor organizations, of course, 'training' is antithetical to 'expertise' – they view the need for training as an admission of lack of knowledge. More progressive institu-

tions recognize that continual education and training in fact enhances reputation.

The UN has particularly invested in developing training under the rubric of rule of law; its *UN Judicial Affairs Officer Course* has had hundreds of participants and is offered in both English and French.[101] Zentrum für Internationale Friedenseinsätze (ZIF) and the UN Department for Peacekeeping Operations (DPKO) jointly organize six-day rule of law training courses that are held twice a year.[102] The UN staff college provides a *Unified Rule of Law Training*.[103] For corrections officers seconded by their home governments to peacekeeping missions there is a *Predeployment Training Standards for Corrections Officers* course.[104] Police officers can attend a two-week UN-certified *International Police Officer Course for EU and UN missions* provided by the Peace Operations Training Institute in preparation for assignments in Integrated Peacekeeping Operations.[105]

The World Bank provides a two-day course to provide an introduction to justice sector development work for its staff.[106] The OSCE provides staff training on topics such as the use of Trial Monitoring Handbooks.[107]

The International Institute for Justice and the Rule of Law was set up in 2014 and provides 'innovative and sustainable' rule of law training. It is based in Malta and aims to be a hub for the provision of training to practitioners in North, East, and West Africa and the Middle East.[108]

For the EU security sector reform has been the dominant nomenclature for some time and it is now reflected in its training priorities. Korski and Gowan point out that the EU's top performers in state-building have extensive and often obligatory training for civilians.[109] However, at the individual EU member level collaborative training programmes on rule of law such as those offered by FBA/ZIF operate to partially fill that gap.

Table 1 below illustrates some of the rule of law training activities[110] open to rule of law practitioners (regardless of institutional affiliation) currently offered by leading training providers.[111]

TABLE 1: *Rule of Law training courses*

TRAINING COURSE	TARGET GROUP	EXAMPLE OF TRAINING TOPICS	LEARNING OBJECTIVES
Rule of Law Toolbox for Crisis Management and Peace Operations **The Folke Bernadotte Academy (FBA) in Cooperation with Zentrum für Internationale Friedenseinsätze (ZIF)**	The course is primarily designed for practitioners (with at least three years professional experience in the field) who currently work, or who have experience from working, in a post-conflict or fragile state environment on Rule of Law and related issues	After completing the course, participants will: -Understand, and be able to reflect on, the broader definition of Rule of Law in relation to past practices, current challenges and emerging trends; -Be familiar with and more effectively apply the tools available in Rule of Law reform, including tools for assessments, mapping, conflict analysis, monitoring, and developing reform strategies; -Be familiar with and more effectively apply key skills and approaches such as mentoring and advising, capacity-building, programme management and evaluation; -Understand challenges that international and national actors face while working on the Rule of Law, as well as roles and responsibilities in a Mission and a non-Mission context	The objective of the course is to prepare participants for challenges encountered when working toward strengthening rule of law in the field. Special attention is paid to negotiating and advising on sensitive justice problems, securing local ownership, and eliciting political will to reform in the host country

TRAINING COURSE	TARGET GROUP	EXAMPLE OF TRAINING TOPICS	LEARNING OBJECTIVES
Rule of Law Practitioners Course **United States Institute of Peace**	The course is designed for both new and experienced rule of law professionals from a legal, development, military, government, NGO, international organisation, private sector or academic background	By the end of the course, participants will be able to: - Define the "rule of law" as a concept and as a practical end-state for post-conflict states; - Understand the historical origins of rule of law assistance and identify the various actors engaged in the rule of law field; - Understand and apply over-arching rule of law "principles of engagement" that apply to the work of the international community; - Conduct a rule of law mapping and assessment; -Design and implement context-appropriate projects that promote the rule of law in a post-conflict state; - Develop an effective system for monitoring and evaluating rule of law assistance efforts; and - Build upon existing core competencies (e.g. inter-personal skills) that are essential for rule of law practitioners	The course seeks to provide an opportunity for practitioners to develop their general rule of law knowledge and skills. Drawing upon on-the-ground experience, lessons learned and "best-fit" examples, the course offers a comprehensive introduction to the rule of law from theory to practical application. This course goes beyond the traditional parameters of rule of law training, which is often solely focused on law and legal solutions, and draws upon a multitude of complementary fields of practice to offer examples of creative approaches to promoting the rule of law
Specialised training course on Rule of Law **Europe's New Training Initiative for Civilian Crisis Management (ENTRi)**	The course is designed for civilian experts with professional experience required for deployments to international civilian crisis management-type missions in third countries with a particular focus on experts selected or pre-selected for deployment for the first or second time or field mission personnel	The course will cover different challenges associated with rule of law in societies affected by violent conflict, including: -Predictability of the law; -Equality before the law; -Reform of judicial institutions; -The fight against impunity and corruption; and -Human rights	The course seeks to provide a comprehensive overview of the rule of law aspects of civilian crisis management missions and to deepen the participants understanding of such matters and their importance in the context of war torn societies

TRAINING COURSE	TARGET GROUP	EXAMPLE OF TRAINING TOPICS	LEARNING OBJECTIVES
Justice Sector Reform: Applying Human Rights Based Approaches **International Human Rights Network**	The course is designed for individuals from a range of disciplines with experience in developing and industrialised countries, as well as international field missions: government officials; regulatory bodies; international civil servants; non-state actor as well as policy advisors/project managers. The programme is of particular relevance to consultants providing technical assistance services to bi- and multi-lateral donors	The course covers different topics, including: - Mapping the Justice Sector; -Int'l Legal framework; -Empowerment; -Participation; -Attention to vulnerable groups; -Equality and non-discrimination; -Accountability; -Justice Sector monitoring; -Justice Sector Evaluation; and -Advocacy of HRBA & Organisational Learning	The central objective of the course is to enhance the skills of participants in applying Human Rights Based Approaches to Justice Sector Reform. It will facilitate the development of knowledge and skills regarding: -The legal principles and practice underpinning human rights based approaches to justice sector reform; -The inter-linkages between justice sector actors; -The relationship between the justice sector and related sectors ('security sector'), and concepts 'rule of law', 'good governance'; -Human Rights Based needs assessment, programme design, implementation, monitoring & evaluation; -Programming tools (including Human Rights Based benchmarks and indicators); -Case studies from national contexts and international field missions (conflict and post-conflict); and -Teamwork, advocacy and strategic partnerships

TRAINING COURSE	TARGET GROUP	EXAMPLE OF TRAINING TOPICS	LEARNING OBJECTIVES
Law and development training programme **Advocates for International Development**	The programme is aimed at practising lawyers, and those with a strong interest in the role the law plays in the development agenda. You need a legal background and the critical skills to apply your knowledge to a new area	The programme covers different topics, including: -Introduction to international development; - Financing development; -Socio-economic rights; and -The post 2015 agenda. Seminars and workshops are delivered by leading academics, development professionals and practising lawyers to help participants understand how the law can secure, or be a barrier to, sustainable development	After completion of the programme, participants will have gained knowledge of the big issues in international development, successes and challenges in using the law, and the complexities involved in trying to make effective interventions. And practical skills in thinking through how to tackle real life cases as well as confidence to advise pro bono and fee paying clients on legal issues to do with international development
Security, Governance and Rule of Law in fragile states **The Hague Academy for local governance**	The course is designed for professionals from government agencies, civil society and non-governmental organisations, as well as international institutions, who have been working directly with or on issues related to societies in early transition and fragile and conflict affected areas	The training deals with post-conflict reconstruction of local governance and rule of law and includes: – Post-conflict reconstruction of Governance and Rule of Law; – Accountability and Participation; – Human Security; – Access to Justice; – Restoring Public Services; and – Social Economic Development	The course will help participants: -Learn about the role of the different institutions – including local government, judiciary and traditional leadership- in restoring security, legitimacy and effectiveness; -Increase insight in concepts of conflict sensitivity and peace settlement at a local level; -Gain practical experience in applying these concepts; -Broaden the understanding of (local) security concerns and reflect on effective interventions to mitigate the risk of violent conflict and contribute to peaceful resolution; and -Increase the understanding of factors in the political economical context that influence performance of state and local institutions

TRAINING COURSE	TARGET GROUP	EXAMPLE OF TRAINING TOPICS	LEARNING OBJECTIVES
Rule of Law Course **Peace Operations Training Institute**	Participants can be military, police, and/or civilian and be of the equivalent rank of Captain to Colonel. While the selection of participants will be focused on those originating from the EASBRIG countries, a select number of positions will be offered to other candidates from the ASF in an effort to create a diverse learning environment.	The course provides a forum in which participants are being exposed to the various aspects of the Rule of Law in Peace Operations and the associated factors for both the planning and conduct of a peace operation.	The purpose of the course is to harmonize an understanding of the rule of law institutions and enable participants to train according to the international laws and human rights standards. The Objectives include; -To demonstrate an enhanced understanding of the institutional structures and dimensions; -To demonstrate an enhanced understanding of the laws and principles governing rule of law; -To demonstrate an enhanced understanding of the customary laws challenges and how they relate to the national laws; -To demonstrate an enhanced understanding of the rule of law in a post-conflict situation; and -To identify and discuss the alternative dispute resolution mechanisms.

These courses notwithstanding, the question of whether pre–deployment training is available, its kind and quality, and whether it extends to briefings on the design and provision of rule of law programming vary across place and organization. Many of the respondents in our study had received no pre–deployment training (and in some cases no internal organizational orientation) before starting rule of law work.

The next question is whether continuing education or training is available mid–career. Many respondents reported either that it was not available, or that it was available but not sponsored or endorsed by their current employers, or that there were few incentives to engage in professional development, even had they been aware of how to gain access to it. This suggests less than universal distribution of training opportunities and is consistent with some earlier UN reports. The *UN Peace-building Capacity Inventory* (2006), for example, indicates that training and opportunities to improve UN rule of law staff skills of technical know-how, in–depth country and regional knowledge, or analytical capacity are limited and that opportunities for continuing training beyond pre–deployment training as well as development of rule

of law career paths are lacking.[112] From our survey of available training courses we see that in many instances places on a course are allocated competitively and tend to favour more seasoned practitioners rather than those new to the field. The effect is that those needing it the most are left out.[113] Furthermore, courses are limited in geographic availability, which might result in difficulties in gaining access to training. It might also be the case that the sponsoring government or organization applies selection criteria relating to geography or type of rule of law intervention and does so within finite funding, or it might be the case (as suggested by a 2009 UN DPKO Assessment) that practitioners are often not made aware of available training opportunities or how to 'avail themselves of field training budget'.[114]

Training availability now seems to be scarcer when going beyond foundational or general courses. One identified gap is specialized rule of law skills – for example, preparation on how to reconstruct post-conflict justice systems.[115] Thus it is logical that the OSCE identifies a need for rule of law update courses to be provided for rule of law practitioners who have been in the field for a long time, since we can hypothesize that most of them would have received no formal orientation or training in rule of law work.[116]

Regardless of whether training is pre-deployment or mid-career, and whether its content is foundational or advanced, most of the activities we have identified tend to occur on a national or an institutional basis. This means that participants undergo training in an artificial environment (albeit with a new cohort of national or international peers) with no explicit link back to their organization or their workplaces. In this way the training could miss the opportunity for timely 'double-loop' or 'triple-loop' learning[117] that involves the widest possible range of perspectives, stakeholders and field experiences.

The geographic spread and availability of existing courses is limited and it would appear that being able to provide them cost-effectively across different regions would be important if there is to be a shared knowledge base for practice. To date there has been little exploration of technology-enhanced blended learning and this would seem to be a future opportunity for training in the field, though participants in existing courses place high value on face-to-face networking opportunities and peer-to-peer learning that conventional courses allow.

Training providers are beginning to see the benefits of co-hosting training events, often bringing them to new locations. United States Institute of Peace (USIP) and the Australian Civil Military Centre, for example, held a *Rule of Law Practitioner's Course* in Australia, which involved participants from Australia, Pakistan, Philippines, Laos, Cambodia, Indonesia, Tonga and the Solomon Islands. The FBA–ZIF course *Rule of Law Toolbox for Crisis Management and Peace Operations* is offered annually and is held alternately in Sweden and Germany and attracts participants from Africa, Asia and Europe.[118]

Credentialing

A core attribute of professional control is the ability to award credentials to members. Rule of law practitioners need incentives to undergo training. They might be

persuaded of the intrinsic usefulness of training; they could be seeking a break in a peaceful European city; or preparing to change jobs and needing additional credentials; or hoping to be well-positioned in a future competition where some kind of certification system would be helpful.

Employers in service industries, including law, view professional training as an advantage – for staff retention purposes, to boost competence and manage non-performance risk, or to comply with mandatory certification requirements (most legal professions in the global North now mandate continuing professional education in order to retain membership in the profession).[119] Of course, certification requirements are difficult to stipulate and keep relevant (let alone implement and supervise) in a transnational environment where many organizations and individuals are involved in diverse tasks.

By contrast, the rule of law field is one in which the market for practitioner training remains largely voluntary. Our preliminary findings suggest that employer organizations are sometimes reluctant to release staff to attend training. Whether they will financially support their staff to undertake training varies with the organization. An established mission might have funds for training while a stand-alone programme or project might not. This becomes problematic where an organization requires evidence of training credentials as a prerequisite for recruitment to rule of law missions, meaning that practitioners with some years of field experience might need to personally pay to obtain that credential in order to be eligible for advancement.[120]

Against this background we now see some well-established credentials appearing in Europe. The Justice Rapid Response (JRR), a multilateral stand-by facility to apply criminal justice quickly and deploy related professionals, has certified training. Experts are nominated by the state or institution for which they work to attend a JRR Training Course which is designed to ensure that technical expertise is matched by knowledge of international investigations and deployment. On completion, participants are certified as experts and can be included in the JRR high-quality roster.[121]

The capacity-building programme initiated in early 2011, Europe's New Training Initiative for Civilian crisis Management (ENTRi), also provides certification for training in the field of civilian crisis management (among them a *Specialization Course in Rule of Law*). The certification system has been designed to enhance coherent and high-level training and offers an objective evaluation standard. This allows training institutions to improve the quality of their courses, which are recognized by organizations and professionals at European level.[122]

Programme content
The content of training is as important as the availability of the course. A training course should ideally be evidence-based – that is to say, drawing on the careful assessment of existing challenges and training needs. There are relatively few comprehensive institutional assessments of the type of training required for which kind of practitioner carrying out what category of work. This is a more general diagnostic problem with defining the field for practice purposes while at the same time expanding in line with political or ideological demands (or both).

We can see in some training a shift from simple presentations of topical rule of law areas that might not have been part of the practitioner's formal education (for instance, land rights or access to justice). Courses instead are now focused on core practical skills and tools of rule of law practice such as assessment and monitoring skills.[123] Such training could also result in general awareness of the practices of rule of law but probably falls short of building the flexible expertise that the evolving nature of the field suggests will soon be required.[124]

It is significant that the DPKO *Training needs assessment for Rule of Law and Security Institutions in the field and at Headquarters* identifies a number of training needs that underpin DPKO rule of law training:

› *knowledge about the country of work and its systems;*

› *religious dimensions to law;*

› *cultural understanding;*

› *soft skills; and*

› *humility expressed towards national counterparts and other agencies.*

Writing in 2006, Rausch[125] of USIP, also argues that

International personnel should have three different sorts of skills and knowledge: substantive expertise related to their specific function; knowledge of the host state, including its legal framework, judicial system, history, politics and, ideally, the language(s); and knowledge and interpersonal skills that will enable them to function effectively in what may well be a stressful and chaotic environment

The fact that 'soft skill' and attitudinal attributes are showing up in multiple organizational lists suggest that even within organizations identified with high quality rule of law training the focus of the content remains formal and technical, rather than attitudinal and adaptive – a characteristic of conventional legal knowledge identified at the outset of this report. An apparent scarcity of careful and systematic training needs assessments suggest that some training might be based on assumptions or anecdotes or simply reflect the instructors' personal experiences or assessments. This does not necessarily mean that such training is irrelevant or of poor quality, rather that it is impossible to know and explain exactly why these particular topics have been selected and transformed into course content, and the extent to which they predict the future needs of practitioners in the field.

University level education
In the evolution of professions 'on the job' training within a guild was gradually supplanted by university-based education, which was then mandated and in turn supplemented with continuing education (from various providers, including the profession itself), which often became compulsory. What we now observe in the rule of law field is the emergence of programmes in 'rule of law' or 'international develop-

ment' (the latter with significant legal content) that aim to prepare candidates as rule of law practitioners, in which ever way it is defined.

One of the most prominent is the Loyola University Chicago offshore programme in Rome, the PROLAW Masters Programme. A practitioner-focused programme that claims to 'provide[s] students with the specialized theory, skills, and understanding they need to address the complex challenge of reforming and strengthening governance and the rule of law in transitioning and developing nations' through an 'innovative, transformative educational approach'.[126] According to the programme description, PROLAW focuses on the 'how to' aspects of rule of law advisory work.[127]

The programme also has its own journal, *PROLAW Student Journal of Rule of Law for Development*, with students responsible for reviewing submissions, setting editorial standards and the final selection of commentaries and articles for publication.[128]

An outgrowth of convenor Loris's work in founding the International Development Law Organization (IDLO), itself a major training provider of technical courses for developing country professionals, is that the PROLAW programme aims to train a new generation of experts. Loris claims

> [t]here is no other course in this field that is providing that kind of training … [and that] [a]ll of us who came before learned on the job, and perhaps at a very high cost to our clients and organizations. PROLAW students are not going to make the same mistakes that we did.[129]

The assertion that this programme is unique is perhaps exaggerated – there are numerous masters-level programmes at leading universities around the world that focus on professional formation for rule of law practice. What is interesting in this self-promotional blurb is the implicit claim that practitioners in the field have been ill-prepared in the past and that this has come at a cost to clients, to end-users and reputations for sponsors of rule of law interventions.

Table 2 below surveys a sample of the university-level programmes[130] currently offered with a rule of law development focus.

TABLE 2: *University level rule of law programs*

UNIVERSITY	COURSE NAME	TYPE OF COURSE
Australian National University, Australia	Master of Laws in Law, Governance and Development	Masters Program
Nagoya University, Japan	L.L.M.(Comparative Law) Program in La w and Political Science/Department of the Combined Graduate Program in Law and Politics "The Human Resources Development program to Contribute to the Asian Technical Legal Assistance Projects"	Masters Program
Ohio Northern University, Pettit College of Law	LL.M. in Democratic Governance and Rule of Law	Masters Program

UNIVERSITY	COURSE NAME	TYPE OF COURSE
Payson Center for International Development, Tulane University, US	Master of Laws in Development	Masters Program
School of African and Oriental Studies, UK	LLM in Law, Development and Governance	Master Program
Stockholm University, Sweden	Rule of Law. Legal Reform and International Organizations	Undergraduate/advanced course, law programme
Umeå University, Sweden	Rule of Law and International Organizations	Undergraduate/advanced course, law programme
University of Sydney, Australia	Master of Law and International Development	Masters Program
University of Melbourne, Australia	Master of Law and Develop-ment	Masters Program
Van Vollenhoven Institute, Leiden University, Netherlands	Law and Governance in Devel-oping Countries	Optional Bachelor Course
Warwick University, UK	International Development Law and Human Rights	Masters Program
Örebro University, Sweden	Law and Development	Undergraduate/advanced course, law programme

Professional Journal

Most professions reinforce their knowledge requirements and advance members' capacities through one or more professional or industry journals. *The Hague Journal on the Rule of Law* was established in 2009 in response to Carothers's suggestion that a specialized (inter-disciplinary) journal for the study of the rule of law would be useful, in light of the lack of knowledge he had observed in the rule of law assistance industry.[131] The journal, described as the first scientific journal focusing exclusively on rule of law,[132] facilitates

> … the exchange of views between academics and practitioners[133] … [in relation to] theoretical issues related to the conceptualization and imple-mentation of the rule of law in domestic and international contexts and
>
> … the relation between the rule of law and such outcomes as economic development, democratization and human rights protection.[134]

Handbooks and Manuals

Some organizations have developed handbooks and manuals on how to assess, programme, monitor and evaluate rule of law assistance. The UN, for example, has developed handbooks and manuals to guide practitioners in both peace-building and development. INPROL are publishing a series of rule of law *Practitioners Guides* and the FBA is developing a *Rule of Law Advisers' Handbook*.[135]

One of the unanswered questions for the field is to what extent these tools are actually used by rule of law practitioners in their daily work. We know little about how practitioners find and use reference material for their work or how they select texts to rely upon, particularly if they have not undergone any formal training. There is no apparent hierarchy within the different guidelines and manuals.[136] What we know about pedagogy and professional practice from other fields is that making the

guidelines and manuals part of daily operations requires not only knowledge of their existence but also the internalization of the content and processes that they represent.[137] That would typically be taught (or modelled) through training and capacity-building exercises for practitioners, or it would be part of a workplace induction and a pattern of practice among peer professionals given the job of showing a new entrant 'how we do things around here'. Table 3 below surveys a sample of Handbooks and Manuals[138] for Rule of Law Practitioners.

TABLE 3: *Examples of Handbooks and Manuals for Rule of Law Practitioners*

European Commission for the Efficiency of Justice
Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, 2013

International Network to Promote the Rule of Law
Practitioners Guide on Defining the Rule of Law and Related Concepts, 2015
Practitioners Guide on How to Ensure Project Sustainability, 2015
Practitioners Guide on Understanding the International Rule of Law Community, Its History and Its Practice, 2015
Practitioners Guide on Rule of Law Research, 2015
Guide to Change and Change Management for Rule of Law Practitioners, 2015
Practitioners Guide on Mapping the Justice Sector, 2015
Practitioners Guide on Legal Aid, 2015
Practitioners Guide on Customary Justice, 2015
Practitioners Guide on Monitoring and Evaluation, 2015
Common Law and Civil Law Traditions, 2012
Islamic Law Guide, 2013

United States Agency for International Development
Community Participation in Transitional Justice: A role for Participatory Research, 2014

United States Institute of Peace
Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners, 2006

United Nations Children's Fund
Handbook on Legislative Reform: Realising Children's Rights, 2008

United Nations Department of Peacekeeping Operations
Handbook for Judicial Affairs Officers in United Nations Peacekeeping Operations, 2013
Prison Support Guidance Manual, 2006
United Nations Police Handbook, 2005

United Nations Development Programme
Access to Justice: Practice Note, 2004

United Nations Office for Drugs and Crime
Guide for Practitioners: Criminal Justice Reform in Post- conflict States, 2011
Handbook on Improving Access to Legal Aid in Africa, 2011
Training Manual for Prosecutors on Confronting Human Trafficking, 2008
Handbook for Prison Managers and Policymakers on Women and Imprisonment, 2008
Criminal Justice Assessment Toolkit, 2006

World Bank
Surveying Justice: A Practical Guide to Household Surveys, Justice & Development Working Paper Series, 2010
Justice Sector Assessments: A Handbook, 2006

What the handbooks and manuals have in common is a formulaic approach to the basic concepts and approaches that could be used in effecting reform in a particular technical area of peace-building, governance or legal reform. This is understandable – and desirable – in an environment where the background, nationality, experience and acquired knowledge of the user is unknown. It could also be a deliberate hedge

against the mobility and relatively short-term nature of assignments within some parts of the field, and the possibility that the user is not a specialist in the subject matter of the manual or handbook.

What they tend to be silent on is the scope for discretionary decision-making and interpretation (or application to a new situation) – one of the hallmarks of the well-educated professional. This might be because they have been developed in a kind of 'professional vacuum,' and are not informed by the variations in practice from the field, or it could be because they actively seek to discourage innovation, in part because it is difficult to monitor and report on the ways described in section two of the report.

(b) Associational control: Membership, Recruitment, Expert Rosters and Networks, Ethics and Accountability

Control over membership was earlier identified as a component of professionalization. Who controls entry into the rule of law industry and what type of knowledge and experience do they look for?

In viewing the formal recruitment practices of some of the rule of law field's biggest actors, EU, UN, United Nations Development Programme (UNDP) and OSCE, entrance to the field appears to be limited to (or favours) lawyers and members of other branches of the legal profession.[139] This is certainly the case for one non-European rule of law donor, Japan, where there is a close correlation between admission to practice and the credentials of a lawyer, judge or prosecutor, and selection into government-sponsored rule of law assistance missions.[140]

One of the paradoxes of this field of practice, however, is that while it is overlaid with public and often highly technocratic regimes of supervision and control, in its everyday practices it remains highly relational. In a positive sense this is desirable, since sustained relationships of trust and understanding are generally correlated with responsive provision of services in both the public and private sector. Thus chiefs of party in recruiting a team for a rule of law mission, particularly in places of high risk, will prefer – if they have the choice – to work with known colleagues or those whom they can solicit good proxy evaluations from trusted third parties. In reality, such relational preferences are often undercut by circumstance. The supply is limited of available and willing practitioners to serve in projects or missions in volatile places of conflict. For this reason, both empirical research and anecdotal evidence suggest that rule of law practitioners in remote and dangerous places tend to polarize around the early career and later career practitioners. Similarly, some organizations report that 'old' missions in places that lack glamour or prestige often need to relax their qualitative standards when it comes to recruitment. This observation is consistent with what Baylis describes as the 'cycling' effect of cohorts moving from one 'hot' development destination to the next.[141]

Thus there is a recurrent tension between the formal 'narrow band' approach to defining eligibility for rule of law work by reference to whether a practitioner is legally educated or qualified to practice, the breadth of the type of work actually performed in the field, the skill-sets that practitioners actually rely on and the avail-

ability of the most desirable kinds of practitioner for different settings (irrespective of what the formal recruitment documentation specifies). This is one reason why we should hesitate before extrapolating the profile of the rule of law as a field of practice exclusively from publicly available documentation.[142]

Contradiction becomes evident when comparing the job opening announcements of the different organizations. Here the pattern in describing the work and the desired applicant (or in our terms, rule of law practitioner) is both diverse and incoherent. Job openings advertised by the EU seem most confusing.[143] A recruiter within the field suggests that organizations themselves do not always know what sort of rule of law competence they are after:

> Sometimes I don't understand what rule of law connection the position has, and sometimes they want a rule of law/Human Rights/gender person; sometimes they just put so much in the job description – like if they try to fit everything in…. For some missions and actors, rule of law is only the police, so they always look for police officers. When I tell them that we don't recruit police officers, they tell me to send anything.[144]

The EU has also reportedly experienced difficulties in finding appropriate rule of law staff.[145] This problem seems to exist at the level of organizations (restricting eligibility to legal professionals); recruiters (hampered by organizations that define a rule of law practitioner in different ways); and practitioners (an apparent lack of qualified practitioners ready and willing to deploy). A 2011 study[146] recommends that EU member states and other contributing states should

> consider sustaining (and even increasing) their efforts to second sufficient numbers of appropriate personnel … consider offering stronger incentives, such as potential career advancement and professional development, to encourage judicial personnel to value participation in international missions, since the numbers, quality, harmonization and cohesion of the EULEX staff is diminished … [by for example] the waning interest and financial constraints of contributing states, the meagre incentives offered and narrow criterion put on the pool of recruited justice personnel.

A year later (2012) the European Court of Auditors reported that the efficiency and effectiveness of the European Union Rule of Law Mission in Kosovo (EULEX) had suffered from constrained resources in relation to staff recruitment. The difficulty in filling positions had resulted in vacancies being filled with under experienced staff. Particularly difficult was the recruitment of specialized positions such as magistrates.[147] Difficulties with recruiting more specialized personnel are also related to differences in personnel categories and how professionals are rewarded when returning to their home countries. Judges have few incentives to work internationally as there are few rewards (sometimes it appears to even be negative for their careers) for doing so. For police and corrections officers, working in a more 'problematic' environment, on the other hand, is seen as positive.

More work is required to identify how organizations designing and implementing rule of law work so as to see how they define its parameters and how they determine the skills necessary to perform it, as well as the ideal profile for practitioners best suited to provide it. For the moment it would seem that – at organizational level – there is considerable fluidity around practitioner profiles and skills. What we know little about is what impact this has on the emergence of shared values and norms across the field; whether organizational labels such as rule of law, human rights or gender matter (or whether experts in these nominate areas are all in practice carrying out similar tasks) and what effect labelling, the awarding of credentials, and practitioner profiles have on working relationships with national counterparts and colleagues.

A number of donor countries and multilateral agencies now maintain rosters of 'experts' or experienced personnel who are vetted in advance for recruitment into rule of law positions for which the 'rostering' organization is responsible.[148] The rise of 'rosters' is an outgrowth of an increase in rule of law work worldwide, and a need to systematize the secondment of government agency staff and experienced civilians to rule of law projects. The rosters also coincide with an upswing in interventions in fragile and conflict-affected settings. They draw some inspiration from military models of staffing and the concept of a 'civilian corps' that can 'deploy' at short notice to conflict zones in order to provide stabilization and peace-building services before more conventional development assistance work begins.[149]

International Professional Associations and Networks
What we see in the roundtable meetings and seminars are different intellectual and practice communities advancing different theories and normative preferences simultaneously, across temporal, geographic, and networked spaces.

For scholar–practitioners working on rule of law such groups or communities tend to be loose membership or friendship networks, with some overlap between them of individual members, but also powerful reflexes that determine which ideas and people fall inside or outside specific fields. We see this clearly in academic compilation works on 'rule of law', which look very different, depending on which group produces them and where it sits in the lively domestic debates among elites about what constitutes 'justice', 'legal legitimacy' and 'rule of law' in non-western societies.[150]

Something similar occurs within the UN as an organization:
Communities of practice to facilitate horizontal sharing of knowledge and experience, and systems to record good and bad practices and provide guidance to the field, have been established by a few UN entities, but access is often restricted and such initiatives remain the exception rather than the norm across the organization.[151]

One example is the DPKO Rule of Law Community of Practice Network operated by the Criminal Law and Judicial Advisory Service (CJLAS) where membership is limited to UN staff, due to the confidentiality of many of the shared documents.[152]

The Community of Practice Network is an internet-based forum that aims to improve the collection, dissemination and retention of knowledge across field missions on rule of law issues and to keep members updated on major developments in the area of rule of law assistance; … support and facilitate field and Headquarters staff in interacting with colleagues worldwide, and in accessing and exchanging documents, best practices and information on major events, workshops, training and job opportunities.

Other examples include the administrative network within UN HQ Global Focal Point for Police, Justice, and Corrections[153] and United Nations Crime Prevention and Criminal Justice Programme Network.[154]

Restricted membership has the advantage of protecting confidentiality and perhaps promoting openness about 'lessons learnt', but the disadvantage of vertical, single-organization networks is that information is not available for the professional development of non-members or for informing practice more widely in the field.

Another model of professional networking on rule of law is the horizontal linking of practitioners who share a similar profile or sub-field of work. Perhaps the most successful of these is the International Network for the Promotion of the Rule of Law (INPROL), sponsored by the US Institute for Peace, which has a high proportion of policing and corrections practitioners who use internet forums to obtain ideas and reference materials from one another.[155]

Other networks that would fit this model include World Bank, Collaboration for Development;[156] Alertanet, Portal de Derecho y Sociedad (Portal on Law and Society);[157] the Friends of Corrections; and International Corrections and Prisons Association (ICPA).[158]

The Asia Pacific Judicial Reform Forum (APJRF) is a different example – an institutional network of 49 superior courts and justice sector agencies in the Asia Pacific Region that have united to contribute to judicial reform in the region. It resulted from the Manila Declaration on Judicial Reforms in 2005, which called for a forum to learn from judicial reform successes and failures. The APJRF's declared purpose is to 'create a network to support Asia Pacific jurisdictions committed to advancing judicial reform'.[159]

Clearly part of the impulse for these networks and associative groups is to boost the knowledge and competence of practitioners through the sharing of information, but a secondary objective is to establish a profile within an organization or publicly to draw attention to the existence of a critical mass of practitioners in the field.

Online Resources and Virtual Spaces
In contrast to the limited availability of face-to-face training through training activities, technology now offers rule of law practitioners (and indeed development practitioners across all fields) an unprecedented means of communicating and sharing knowledge without regard to geographic location or organizational affiliation:

Traditional knowledge management approaches can now be supported by online, 'just in time' peer collaboration platforms, which make the 'knowl-

edge sharing' process more immediate and effective, focusing on experience, communities of practice and value added contributions.[160]

The *Innovating Justice* platform, for example, is open to all involved in strengthening the rule of law and access to justice. Its aim is to improve rule of law and access to justice by facilitating a community of rule of law entrepreneurs by nurturing promising innovations, new knowledge, networks and tools.[161]

It is not clear whether any or all of the technology-facilitated, sponsored or 'designed' sites have yet achieved comprehensive coverage or critical mass. This is difficult to assess without knowing how many potential practitioners exist. The exception might be the UNDP developed online sharing platform called 'Teamworks', which claims over 16,000 users across UNDP, the UN and its development partners. It allows users to obtain information quickly, gain support and advice, and share solutions and experiences.[162] Perhaps one explanation for the apparently low take-up rate of other professional development style sites is the striking diversity of the topics covered, or the fact that they are open forums. A relevant comparison here is the successful and widely used knowledge-sharing platform The Electoral Knowledge Network (ACE), established around 1998, which is the world's largest knowledge network for electoral reform practitioners. ACE has only 1,000 members compared with the much newer INPROL, which claims 2,700 members, but seems to lack the 'stickiness' or intensity of the ace network, suggesting that rule of law practice is more spread out and covers several disparate fields.[163] We use this comparison here because for the purposes of our study on rule of law practice we do not include electoral reform work because it seems to have a discrete identity and a well-formed epistemic community.

The rule of law practice world has not as yet spawned the kind of blog discussions that proliferate in development studies and development economics. Discussions in such forums might reference 'governance' but seldom venture into justice reform topics. There is, however, a growing profile for professional networking groups on various rule of law topics on the professional network 'Linkedin'. One of them is the *Justice Support Group* (2,091 members)[164] which is described as a networking group with the aim of exchanging ideas, experiences and discussions on justice sector support projects between experts, consultants, representatives of governments, as well as European and international organizations.[165] The *Rule of Law Veterans* is a professional group 'for all who have served to build the Rule of Law, the Legal Culture, Access to Justice and Good Governance throughout the world'. This group intends to 'share experiences and seek new opportunities to serve' and encourages establishing new contacts, the seeking and offering of opportunities and other vigorous exchanges.[166]

The size of the rule of law networks within Linkedin can be gauged by reference to the group *Humanitarian Professionals*, which has more than 18,000 members.[167] This group was created in response to the growing number of humanitarian workers signing up for Linkedin and its stated intention of creating a space for connection, networking and discussion between practitioners across organizational and country borders.

These are only some examples of the many groups one finds on the Linkedin professional networking platform. What is interesting is that they have obviously been created by people working in the field in response to a lack of other resources for knowledge-sharing. They are administered on a fully voluntary basis and have a significant number of members who have lively discussions. Many members are active in several of the groups and also connect to one another. In regulatory terms we can view the growth of online platforms as frustrated practitioners moving towards 'non-state' regulatory activity ('wiki-regulation'), meaning regulation not simply in the sense of applying sanctions but providing a 'regulatory space'[168] where governing ideas, norms and practices can be debated. When this form of regulation occurs it is often in response to an absence of other salient forms and/or the failure of key institutions to regulate and support their stakeholder employees.[169]

Ethics and Accountability
How the multi-level transnational domain of interlocking and overlapping networks of organizations and individuals performing rule of law is regulated remains a taxing theoretical and practical question.

For the purpose of this paper it is significant because a signature capacity of a profession is its ability to control its membership and to sanction members who violate its work or standards. One of the paradoxes of rule of law practice is that those practitioners who are lawyers are exhaustively regulated at home[170] but are – or perceive themselves to be – virtually unregulated when working abroad.

The aim should be that practitioners responsible for supporting or building a rule of law system should be accountable to it for their actions.[171] In practice we know that anecdotally, and from host state reports, that this is often not the case. While rule of law practitioners working 'at home' for most of their time would be expected to work within central and sensitive aspects of law or justice and be responsible for the quality of their work, and therefore carefully screened before employment for the correct education, professional training and personal skills,[172] this is not always the case when working abroad. Rather, there is a notion among some actors that this responsibility does not extend beyond national borders or that different qualities are sought when people leave for the field.[173] As one practitioner put it: 'There is no way I would ever be hired to, for example, rewrite the constitution of my own country but it wouldn't surprise me if I would in a post-conflict environment.'

Such issues have not gone unnoticed by host states. During the High Level Meeting on Rule of Law the then President Mohamed Waheed of the Maldives, for example, raised the important question of 'whether international organizations held themselves to the standards they set for States'. He considered it 'regrettable that some international actors had 'instructed' his country to take measures that contradicted national laws. When those measures had been questioned, the Maldives had been labelled 'uncooperative' and doubt had been cast on its democratic credentials and as a result major investments had been lost.[174] One might be inclined to dismiss this as a standard play in development rhetoric, where a host state charged with being intransigent (as here) or corrupt (as is often the case elsewhere) seeks to deflect

the charge by pointing to deficiencies in the donor state or its administering organizations. However, there is a steady trickle of evidence from our project and from elsewhere that breaches of local law are frequent in the execution of rule of law projects, and that more serious legal and ethical problems are by no means uncommon.

The most dramatically visible of such breaches has been on the part of UN peacekeeping forces and private military contractors, which are well documented. But this has led to a wider perception among scholars that there may be an 'ethics deficit' or a lack of legal and ethical awareness among practitioners in the rule of law field. Sampford expresses the doubt in this way:

> [I]f we are going to build the rule of law in international affairs we are not necessarily just going to agree to a set of principles, but also it will be absolutely vital that they are seen as fundamental governance principles and governance values for the international community. This means that power should be used for the purposes for which it is given and not abused … *there is clearly more room for tension in the ethics of relevant officials within the international system than within effective domestic rule of law systems. This is something that is going to be critical to the development of the international rule of law. And in fact, just as lawyers, soldiers and civil servants became critical to the development of the rule of law domestically, so they will be critical of the rule of law internationally* (emphasis added).[175]

Rule of law practice is replete with legal and ethical tensions. One complexity is the demand that rule of law interventions assist in the building of local capacity and become sustainable. For rule of law practitioners this often means a choice between overriding local ownership in order to safeguard the practitioner's conception of 'rule of law' or in promoting local ownership at the expense, for example, of an aspect of human rights practice. Thus the dual objectives of increasing the participation and capacity of local owners and establishing the rule of law might at times be in conflict.[176]

A complicating factor here is that currently no mechanism exists for resolving such tensions beyond particular projects; for defining quality standards for rule of law practice; for monitoring their implementation; or for overseeing the actual work of rule of law practitioners beyond routine supervision within their organization or workplace. Neither are there any penalties for unskilled or unethical legal work performed in the developing world besides what follows from institution-specific regulations and contractual obligations.[177]

A threshold issue in many rule of law workplaces is this: whose rules apply? The first casualty in this contest is usually local law. But does it matter if a practitioner assigned to help rebuild the rule of law in a host country breaches national law – or local customary law – without any of the consequences that would normally apply, either in the country concerned, or in the practitioner's home country? For a lawyer-practitioner at home that consequence could be as serious as being disbarred and unable to practice law again. In the field, such breaches are often ignored or minimized, in part because there is a tacit or overtly stated assumption that the local legal system is underdeveloped, unreasonable, or unworthy of respect. A paradigm

example would be consumption of alcohol in an Islamic country where this is pro-
hibited by law.

While it may be more difficult to hold personnel of private firms than seconded
government officials accountable for their behaviour in the field,[178] the problems of
accountability are not limited to the private sector. Those seconded from government
agencies must generally adhere to their 'sending' organization's code of conduct and
mandate, as well as certain guidelines set by their 'sending' organization. They might
also be covered by immunity provisions derived from international conventions.[179]
In practice this means that if an Australian public servant is sent abroad, that person
is subject to Section 13(12) of the *Public Service Act* 1999:

> An APS [Australian Public Service] employee on duty overseas must at all
> times behave in a way that upholds the good reputation of Australia[180]

Officers of the Department of Foreign Affairs and Trade (which now subsumes Aus-
tralia's former foreign aid agency, AusAID) are also subject to the Code of Conduct
for Overseas Service.[181] They will also automatically be subject to duties under the
terms of their original employment and to implied legislation such as the Com-
monwealth *Work, Health and Safety Act*, which, while it charges the government with
providing a safe workplace, requires employees to take reasonable care for their own
safety. Such safeguards are mainly directed at reputational risk and risk of injury – a
paradigm being drunk while driving on service abroad resulting in the death or inju-
ry of a local person. Such scenarios, while serious and not uncommon, are far from
the issues that most professional codes of conduct seek to address.

A 2011 study on EU Rule of Law reform in Kosovo[182] found that staffing issues
that were a common problem addressed by the interviewees at EULEX were also
to do with 'choice of law' – overlapping and contradictory rules that inhibited the
formation of a cohesive workplace:

> Beyond staff shortages, there was a noted lack of 'corporate' culture that
> could imbue the mission with more loyalty among its staff, somewhat like
> the UN. Some reported that secondees seek guidance from their home
> states, and will disclaim the EULEX position on a matter if they feel that it
> is inconsistent with the position endorsed by their own country (who signs
> their pay check). In this way, the various cultural and political backgrounds
> of the staff are asserted more strongly than their allegiance to a cohesive
> mission. The irregularity of pre-mission training among staff members
> does little to alleviate this.

A professional or industry ethics code is a key characteristic of legal professions. Even
where the rule of law practitioner is governed by such a code at home – in the case
of a legal practitioner – that person's regulatory environment becomes different and
often less visible when detached from the familiar work environment and the lateral
reminders of professional standards provided by workplace colleagues or a profes-
sional association. In the complex transnational space that is the rule of law practice
environment, we do not know what work standards and ethical principles rule of law

practitioners value and what reference points they use in making ethical decisions.

What we know from the development of other professions is that the process of professional norm formation ('how we do things around here') and the setting of standards of conduct and performance that the membership group is willing to claim and to champion are much more important than static expressions of regulatory ethics. While such norms are formally set out in codes of ethics they are, of course, also defined and elaborated upon as breaches of conduct occur. Socio-legal work on ethics formation suggests that modelling and reinforcement within the workplace come to define the profession's conduct as much (or more so) than the codes of ethics. For formal regulatory instruments such as codes of ethics (and their enforcement machinery) to function effectively, what is required is that 'feedback loop' from the organization and the workplace.

(c) Creating a sustaining ideology: Roundtables, Debriefings

One mode of sharing practice information about complexity – and being seen to do so – is to convene roundtable discussions that straddle different organizations, geographies and areas of practice. We have observed some growth in this kind of information-sharing meeting in the past decade, often held with an explicit goal of improving rule of law practice. The Australian Civil-Military Centre, for example, held an inaugural roundtable discussion to identify lessons learned for civil-military-police cooperation and coordination in response to Australia's progressive strengthening of its multi-agency approach and capabilities for conflict and disaster management overseas:

> These initiatives indicate that it is timely to examine how future Rule of Law programs in post-conflict environments might be better designed and implemented ... The Roundtable created a space for international rule of law experts and practitioners with a select [sic] group of Australian Government officials to discuss best (or better) practices in re-establishing the Rule of Law in post-conflict environments.[183]

The Hague Institute for the Internationalisation of Law (HiiL) has been active in promoting high-level consideration of the contours and operation of rule of law as a field. As the convenor, the topic of the 6th Annual Meeting of the Hague Rule of Law Network (HRoLN) was *Rule of Law Promotion and Security Sector Reform (SSR): Partners or Rivals?*[184] The Hague Institute for Global Justice began a project involving debriefing of rule of law experts to remedy the lack of mechanisms to systematically collect first-hand information from experts and to determine how to use such information for future rule of law missions.[185]

Following on from its 2006 workshop *Promoting the Rule of Law Abroad: Are We There Yet?* and programme of think tank consideration of rule of law promotion the Carnegie Endowment for International Peace held roundtable discussions in 2012 on *Reforming Rule of Law Assistance in Asia and Advancing the Rule of Law Abroad: Next Generation Reform.*[186]

On 8 April 2013 the UN Rule of Law Unit organized an open roundtable discus-

sion on *Measuring effectiveness of support to the rule of law*[187] in response to a report on transitional justice in post conflict settings, after which the Security Council requested a follow-up report on the effectiveness of rule of law interventions. The Deputy Secretary General held a briefing in January 2013 and the follow-up report was expected to follow this, with the roundtable discussion organized with the expectation that it would assist in drafting the report.

The Folke Bernadotte Academy in Sweden hosts an annual Research Working Group with rule of law experts, as well as a rule of law seminar series to provide platforms for discussions on the rule of law and current and future challenges.[188]

The International Forum for the Challenges of Peace Operations (Challenges Forum) provides a platform for a regular discussion on the challenges of peace operations perceived among policy makers, practitioners and academics. Its aim is to contribute to the global dialogue on the preparation, implementation and evaluation of peace operations, to generate practical recommendations and to encourage action for their effective implementation. Specific sub-areas addressed by the Challenges Forum include the regional dimensions of peace operations; the rule of law; and education and training.[189]

5 CONCLUSION: RULE OF LAW AS A NETWORK OF PRACTICE

The examples given above of professionalizing activities in the rule of law field all point to disparate but growing aspirations for practitioners to be recognized, awarded credentials and potentially accorded professional status. This development, as one might expect, is more marked at the entry point to a nascent profession – educational qualifications and training. The ability of practitioners to organize themselves into networks is clearly being made easier by technology, and these networks and communities seem to occur both within and outside large sponsoring organizations in the field. The self-identifying labels that practitioners apply to themselves vary across networks and there appears to be some experimentation or 'trying on' of professional identities.

Where organizational control is weakest is in accountability. There are few, if any, visible modes of regulation of rule of law practice (or the behaviour of practitioners) beyond what is found in the hiring contract and the legislation of the home jurisdiction. It is significant that rule of law practitioners are self-organizing into networks and virtual dialogues about practice and standards in the field. Still, there are limits to what they can accomplish spontaneously if one views this through the lens of evolution into a profession. Recognition as a profession and the self-regulatory privilege that comes from it is essentially a public-private regulatory collaboration. Governments and organizations responsible for rule of law work on a structural level. They are also stakeholders in the process of developing its practice capacities.

This lack of attention to (and consensus about) work quality and professional standards arguably weakens the third dimension of professionalism – the ideological claim. Thus far the high level roundtable discussions and reports have drawn attention to rule of law as a domain of practice, and have diagnosed some of its vulnerabilities, but have offered little by way of plans or resourcing to address deficiencies in knowledge and practice.

To be fair, the task is made more difficult by a lack of robust empirical research on rule of law as a domain of practice. Academic research on rule of law practice has emerged and this is a positive development for future policy and practice. However, we must work harder to create more persuasive accounts of rule of law work that are grounded in robust data, and create awareness among policy makers, trainers and practitioners themselves about the utility of such studies. Better empirical knowledge from the field could help identify performance challenges and match them with improved recruitment criteria, preparatory training and quality control of rule of law practitioners.

Research initiatives that focus on knowledge management and transfer within the rule of law field could help advance the professionalization of the emerging realm of rule of law practice. Currently, there is almost no such empirical research on rule of law practice. This matters not only for the practitioners of the global North but also

for the growing numbers of local rule of law practitioners in host countries who are partners in contributing to best practice and more accountability of rule of law interventions within established accountability frameworks – such as the Paris Declaration on Aid Effectiveness (2005) and the Accra Agenda for Action (2008).

Practitioners are important repositories of explicit and tacit knowledge from the rule of law field. By mapping practitioner experiences systematically we can better identify common professional and ethical challenges and reveal important gaps in existing training. This could also facilitate the development of strategies and programmes that take account of potential strengths, weaknesses and unintended consequences of previous rule of law experiences.

REFERENCES

REPORTS, POLICY PAPERS

ACCORD, 'Civilian Capacities in the Aftermath of Conflict', 2013

Clapp-Wincek, Cynthia and Richard Blue, 'Evaluation of Recent USAID Evaluation Experience', Center for Development Information and Evaluation, Working Paper No. 320, 2001

Cohen, Elin, 'Evaluations and Learning in Rule of Law Assistance', Folke Bernadotte Academy Publications, 2013

Derks, Maria and Megan Price, 'The EU and Rule of Law Reform in Kosovo', Conflict Research Unit, Netherlands Institute for International Relations, 'Clingendael', 2010

Durch, William J. and Tobias C. Berkman, 'Who Should Keep the Peace? Providing Security for Twenty-First-Century Peace Operations', Stimson Center, 2006

European Union Policy 'Justice Components for CSDP Missions', 2011

Evers, Frank, 'OSCE Efforts to Promote the Rule of Law: History, Structures, Survey', CORE Working Paper 20, Hamburg, 2010

Hansen, Annika S. and Sharon Wiharta, 'The Transition to a Just Order- Establishing Local Ownership after Conflict- A Policy Report', Folke Bernadotte Academy Publications, 2007

International Development Law Organization, 'Legal and Judicial Development Assistance Global Report', 2010

International Forum for the Challenges of Peace Operations, 'Challenges Forum Report 2010, Challenges of Protection Civilians in Multidimensional Peace Operations', 2010

Kavanagh, Camino and Bruce Jones, 'Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda', Center on International Cooperation, 2011

Korski, Daniel and Richard Gowan, 'Can the EU Rebuild Failing Sates? A Review of Europe's Civilian Capacities', European Council on Foreign Relations, 2009

Samuels, Kirsti, 'Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt', Social Development Papers, Conflict Prevention and Reconstruction, Paper No. 37, 2006

Swedish International Development Co-operation Agency, Methods report, 'Swedish Development Co-operation in the Legal Sector, Division for Democratic Governance', 2002

United Nations Executive Committee on Peace and Security, 'ECPS Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations', 2002

United Nations Executive Office of the Secretary General, 'Inventory: United Nations Capacity in Peacebuilding', 2006

United Nations General Assembly Security Council, Independent report of the Senior Advisory Group, 'Civilian capacity in the aftermath of conflict', 2011, A/65/747– S/2011/85, 2011

United Nations Peacekeeping Study, 'Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons-Learned Study', 2006

United Nations Secretary General, 'Delivering justice: programme of action to strengthen the rule of law at the national and international levels', A/66/749, 2012

United Nations Secretary General, 'Rule of law and Transitional Justice in Conflict and Post-conflict Societies', S/2004/616, 2004

Van de Goor, Luc et al., 'Independent Progress Review on the UN Global Focal Point for Police, Justice and Corrections', 2014

World Bank, 'World Development Report 2011: Conflict, Security, and Development', 2011

World Bank, 'Initiatives in Justice Reform', 2009

Zajac-Sannerholm, Richard, Frida Moller, Kristina Simion and Hanna Hallonsten, 'UN Peace Operations and Rule of Law Assistance in Africa 1989-2010: Data, Patterns and Questions for the Future', Folke Bernadotte Academy Publications, 2012

BOOKS, BOOK CHAPTERS, ARTICLES

Abbott, Andrew, 'The System of professions: an essay on the division of expert labour', Chicago: Chicago University Press, 1988

Alkon, Cynthia, 'The Flawed U.S Approach to Rule of Law Development', Penn St. L. Rev., 2013

Baylis, Elena, 'Tribunal-Hopping with the Post-Conflict Justice Junkies', Oregon Review of International Law, 2008

Baylis, Elena, 'Function and Dysfunction in Post-Conflict Justice Networks and Communities', 47 Vanderbilt Journal of Transnational Law 625, 2014

Behrends, Andrea, Sung-Joon Park and Richard Rottenburg, 'Travelling Models in African Conflict Management: Translating technologies of social ordering', BRILL: Netherlands, 2014

Birkett , W.P. (Bill) and Elaine Evans, 'Theorising professionalization: a model for organizing and understanding histories of the professionalizing activities of occupational associations of accountants', Accounting History 2005, 10:99, 2005

Bosch, Anna, 'Local Actors in Donor-Funded Rule of Law Assistance in Indonesia: Owners, Partners, Agents?' (PhD in progress)

Braithwaite, John, 'The Essence of Responsive Regulation' UBC Law Review 44(3) 2011, 475-520, 2012

Braithwaite, John and Peter Drahos, 'Global Business Regulation', Cambridge: Cambridge University Press, 2000

Carothers, Thomas, 'The Problem of Knowledge', in Promoting the Rule of Law Abroad–In Search of Knowledge, Carothers (ed.), Carnegie Endowment for International Peace, 2006

Carothers, Thomas, 'The Rule of Law revival', 1998, Foreign Affairs 77.2 (Mar/Apr 1998): 95-106

Carothers, Thomas, 'The Rule-of-Law revival', in Promoting the Rule of Law Abroad: In Search of Knowledge, Carothers (ed.), Carnegie Endowment for International Peace, 2006.

Channell, Wade, 'Lessons not Learned: Problems with Western Aid for Law Reform in Postcommunist Countries', Carnegie Endowment for International Peace, 2005

Cohen, Elin, Kevin J. Fandl, Amanda Perry-Kessaris and Veronica L. Taylor, 'Truth and Consequences in Rule of Law: Inferences, Attribution and Evaluation', Hague Journal on the Rule of Law, 3 (01), 2011

Desai, Deval, Deborah Isser and Michael Woolcock, 'Rethinking Justice Reform in Fragile and Conflict-Affected States: Lessons for Enhancing the Capacity of Development Agencies', Hague Journal on the Rule of Law, 4 (01), 2012

Desai, Deval, 'In Search of 'Hire' Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field', in The International Rule of Law Movement: A Crisis of Legitimacy and the Way Forward, David Marshall (ed.), 2014

Dressel, Björn (ed.), 'The Judicialization of Politics in Asia', Routledge, 2012

Faundez, Julio, Ronald Janse, Sam Muller and Randy Peerenboom, 'Editorial Introduction – A New Journal!, Hague Journal on the Rule of Law,' 1 (01), 2009

Fechter, Anne-Meike, 'The personal and the professional in aid work', ThirdWorlds, Routledge: London, 2013

Ginsburg, Tom, 'Pitfalls of Measuring the Rule of Law', Hague Journal on the Rule of Law, 3 (02), 2011

Golub, Stephen, 'A House Without a Foundation', in Promoting the Rule of Law abroad: In Search of Knowledge, Thomas Carothers (ed.), Carnegie Endowment for International Peace, 2006

Grabosky, Peter, 'Beyond Responsive Regulation: The expanding role of non-state actors in the regulatory process, Regulation & Governance', 2012

Haggard, Stephan and Lydia Tiede, 'The Rule of Law in Post-Conflict Settings: The Empirical Record', International Studies Quarterly, 2014

Halliday, Terence C. and Bruce Carruthers 'Bankrupt: Global Lawmaking and Systemic Financial Crisis', Stanford University Press, 2009

Halliday, Terence C. and Gregory Shaffer (eds.), Transnational Legal Orders, New York: Cambridge University Press, 2015

Halliday, Terence C. and Lucien Karpick (eds.), Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries, Oxford: Clarendon Press, 1997

Halliday, Terence C., Lucien Karpick and Malcolm Feeley (eds.), Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism, Oxford: Hart Publishing, 2007

Hammergren, Linn, 'Assessments, Monitoring, Evaluation, and Research: Improving the Knowledge Base for Judicial Reform Programs', 2002

Humphreys, Stephen, 'Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice', Cambridge University Press: New York, 2010

Janda, Kathryn B. and Gavin Killip, 'Building Expertise: A System of Professions Approach to Low-Carbon Practice', Research Paper, Environmental Change Institute, Oxford University, (undated)

Johnson, Terence James, 'Professions and Power (Study in Sociology)', London: Macmillan, 1972

Krygier, Martin, 'The Rule of Law: An Abuser's Guide', University of New South Wales Law Research Paper No. 2007-4

Larson, Magali Sarfatti ,'The Rise of Professionalism: A Sociological Analysis', Berkeley/Los Angeles/London: University of California Press, 1977

Lewis, David and David Mosse, 'Development Brokers and Translators: The Ethnography of Aid and Agencies', Bloomfield: Kumarian Press, 2006

Lindsey, Timothy (ed.), 'Law Reform in Developing and Transitional States', London: Routledge, 2007

Linnan, David (ed.) Legitimacy, Legal Development & Change: Law and Modernization Reconsidered, Ashgate Publishing, 2012

Mattei, Ugo and Laura Nader, 'Plunder: When the Rule of Law is Illegal', Oxford: Blackwell, 2008

McKenzie, Michael, 'Rethinking international cooperation: crime, policy and politics in Australia–Indonesia relations' (PhD in progress)

Morlino, Leonardo and Amichai Magen, Amichai 'International Actors, Democratization, and the Rule of Law: Anchoring Democracy?', Routledge, 2009

Mosse, David, 'Cultivating Development: An Ethnography of Aid and Agencies', London: Pluto Press, 2004

Mosse, David, 'Adventures in Aidland: The Anthropology of Professionals in International Development', Studies in Public and Applied Anthropology, New York/Oxford: Berghahn Books, 2011

Mosse, David and David Lewis, 'The Aid Effect: Giving and Governing in International Development', London/Ann Arbor: Pluto Press, 2005

Nader, Laura, 'Promise or plunder? A past and future look at law and development', Global Jurist (Article 1), 2007

Nicholson, Pip and Sally Low, 'Local Accounts of Rule of Law Aid: Implications for Donors', Hague Journal on the Rule of Law, 5 (01), 2013

Peerenboom, Randall, 'The Future of Rule of Law: Challenges and prospects for the Field,' Hague Journal on the Rule of Law, 1(01) 2009

Peerenboom, Randall (ed.), Asian Discourses of Rule of Law, New York: RoutledgeCurzon, 2004

Roesler, Shannon M., 'The Ethics of Global Justice Lawyering', Yale Human Rights and Development Law Journal, Vol. 13, 2010

Scott, Colin, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design', Public Law (Sum):329-353, 2001

Simion, Kristina, 'The role of intermediaries in rule of law development promotion in Myanmar" (PhD in progress)

Stromseth, Jane David Wippman and Rosa Brooks, 'Can might make rights? Building the Rule of Law after Military Interventions', Cambridge: Cambridge University Press, 2006

Tamanaha, Brian, 'On the Rule of Law: History, Politics, Theory', Cambridge: Cambridge University Press, 2004

Taylor, Veronica L., 'Rule-of-Law Assistance Discourse and Practice: Japanese inflections', in Amanda Perry-Kessaris (ed.), Law in the Pursuit of Development: principles into practice?, Abingdon and New York: Routledge, Taylor & Francis Group, 2010

Taylor, Veronica L., 'Frequently Asked Questions About Rule of Law Assistance (And Why Better Answers Matter)', Hague Journal on the Rule of Law, 1 (01), 2009

Taylor, Veronica L., 'The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies' (January 15, 2005). Available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=893682

Taylor, Veronica L., 'The Rule of Law Bazaar', in Per Bergling, Jenny Ederlof and Veronica L. Taylor (eds.), Rule of Law Promotion: Global Perspectives, local applications, Iustus Förlag AB, 2009

Taylor, Veronica L., 'Rethinking justice reform and rule of law in fragile and conflict affected states: challenges from the World Development Report 2011', (on file with the author)

Taylor, Veronica L., 'Too important to be left to the lawyers?: Interdisciplinary insights for justice reform concepts and practices in fragile and conflict affected states', (on file with the author)

Trubek, David M., 'Max Weber on Law and the Rise of Capitalism', Wis. L. Rev. 736, 1972

Trubek David M. and Alvaro Santos (eds.), 'The new law and economic development: a critical appraisal', Cambridge: Cambridge University Press, 2006

Trubek David M., 'Law and Development', in N. J. Smelser and Paul B. Baltes (eds.) 2001 International Encyclopedia of the Social & Behavioral Sciences, Oxford: Pergamon, 2001

Upham, Frank, 'Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China' 114 Yale Law Journal 1675, 2005

Upham, Frank, 'Mythmaking in the Rule of Law Orthodoxy', Rule of Law Series, Democracy and Rule of Law Project, Carnegie Working Papers, 2002

Zajac-Sannerholm, Richard, 'In Search of a User manual: Promoting the Rule of Law in Unruly Lands', in Per Bergling, Jenny Ederlof and Veronica L. Taylor (eds.), Rule of Law Promotion: Global Perspectives, local applications, Iustus Förlag AB, 2009

REGULATORY INSTRUMENTS

American Bar Association, 'Task Force on the Model Definition of the Practice of Law, Guidelines for the Adoption of a Definition of the Practice of Law', 2005

American Bar Association, 'Model Rules of Professional Conduct': http://www.americanbar.org/groups/professional_responsibility/publications/ model_rules_of_professional_conduct.html

Australian Public Service Act 1999: http://www.comlaw.gov.au/Details/C2014C00511/Html/Text#_Toc394926945.

Conseil des barreaux européens– Council of Bars and Law Societies of Europe, 'CCBE Model Scheme for Continuing Professional Training', 2006

Department of Foreign Affairs and Trade, Code of Conduct for Overseas Service: http://www.dfat.gov.au/about-us/publications/Pages/dfat-code-of-conduct-for-overseas-service-2.aspx

Organisation for Economic Co-operation and Development, 'Accra Agenda for Action' (2008)

Organisation for Economic Co-operation and Development, 'Paris Declaration on Aid Effectiveness' (2005)

WORKING GROUPS, CONFERENCES, PRESENTATIONS

Australian Civil Military Centre, 'Rule of Law Roundtable: Towards Best Practice in Post-Conflict Situations': http://acmc.gov.au/publications/rule-of-law-roundtable-towards-best-practice-in-post-conflict-situations/

Bergling, Per, Erik Wennerström & Richard Zajac-Sannerholm, 'The ROL and SSR lottery and its victims: what happens when the going gets tough?', for the 6th Hague Rule of Law Network Conference, April 2011

Challenges Forum: http://www.challengesforum.org/

Davies, Robin, Keynote address – 'The future of aid: three orthodoxies contested', Annual Australasian Aid Conference, 2015: https://devpolicy.crawford.anu.edu.au/ annual-australasian-aid-conference/2015/abstracts

Evetts, Julia, 'Professionalism in Turbulent Times: Changes, Challenges and Opportunities', Propel International Conference, Stirling, 2012

Folke Bernadotte Academy Research Working Groups:
https://www.fba.se/en/Activities/Research/Research-working-groups/

Hague Rule of Law Network (HRoLN): 'Rule of Law Promotion and Security Sector Reform (SSR): Partners or Rivals?', The 6th Annual Meeting, 2011: http://www.hiil.org/events/sixth-annual-meeting-hroln-rule-of-law-promotion-and-ssr-partners-or-rivals

Taylor, Veronica L., 'The Ethics of Development Lawyering' for Rule of Law on the International Agenda: Policy, Politics and Morality, Umea University, Sweden June, 2007

United Nations, High-level Meeting on the Rule of Law, 24 September 2012: http://www.unrol.org/article.aspx?article_id=168

United Nations Rule of Law Unit: 'Open Roundtable on Measuring effectiveness of support to the rule of law', 2013:
http://www.unmultimedia.org/radio/library/2013/04/83597.html

PRACTITIONER HANDBOOKS

European Commission for the Efficiency of Justice
Guidelines on the Creation of Judicial Maps to Support Access to Justice within a Quality Judicial System, 2013: http://www.coe.int/t/dghl/cooperation/cepej/quality/2013_7_cepej_Judicial_maps_guidelines_en.pdf

International Network to Promote the Rule of Law:
http://inprol.org/inprol-publications
Practitioners Guide on Defining the Rule of Law and Related Concepts, 2015
Practitioners Guide on How to Ensure Project Sustainability, 2015
Practitioners Guide on Understanding the International Rule of Law Community, Its History and Its Practice, 2015
Practitioners Guide on Rule of Law Research, 2015
Guide to Change and Change Management for Rule of Law Practitioners, 2015
Practitioners Guide on Mapping the Justice Sector, 2015
Practitioners Guide on Legal Aid, 2015
Practitioners Guide on Customary Justice, 2015
Practitioners Guide on Monitoring and Evaluation, 2015
Common Law and Civil Law Traditions, 2012
Islamic Law Guide, 2013

United States Agency for International Development
Community Participation in Transitional Justice: A role for Participatory Research, 2014: http://www.usaid.gov/sites/default/files/documents/1866/CPTJUSAID.pdf

United States Institute of Peace
Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners: 2006:
http://www.usip.org/publications/combating-serious-crimes-postconflict-societies

United Nations Children's Fund

Handbook on Legislative Reform: Realising Children's Rights, 2008: http://www.unicef.org/policyanalysis/rights/files/LRIHandbook-Final.pdf

United Nations Department of Peacekeeping Operations

Handbook for Judicial Affairs Officers in United Nations Peacekeeping Operations, 2013: http://www.un.org/en/peacekeeping/publications/cljas/handbook_jao.pdf

Prison Support Guidance Manual, 2006: http://unrol.org/files/FinalPrisonGuidanceManual20April2006.pdf

United Nations Police Handbook, 2005: http://unrol.org/doc.aspx?d=2557.

United Nations Development Programme

Access to Justice: Practice Note, 2004: http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/access-to-justice-practice-note.html

United Nations Office for Drugs and Crime

Guide for Practitioners: Criminal Justice Reform in Post- conflict States, 2011: http://www.unodc.org/documents/justice-and-prison-reform/11-83015_Ebook.pdf
Handbook on Improving Access to Legal Aid in Africa, 2011: http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf
Training Manual for Prosecutors on Confronting Human Trafficking, 2008: http://lastradainternational.org/lsidocs/646%20training_manual_prosecutors1.pdf
Handbook for Prison Managers and Policymakers on Women and Imprisonment, 2008: http://www.unodc.org/documents/justice-and-prison-reform/women-and-imprisonment.pdf
Criminal Justice Assessment Toolkit, 2006: http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/CJAT_Toolkit_full_version.pdf

World Bank

Surveying Justice: A Practical Guide to Household Surveys, Justice & Development Working Paper Series, 2010: https://openknowledge.worldbank.org/handle/10986/18104
Justice Sector Assessments: A Handbook, 2006: http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/JSAHandbookWebEdition_1.pdf

WEBPAGES

Carnegie Endowment for International Peace: http://carnegieendowment.org/programs/democracy/

Responsive Rule of Law project webpage: http://regnet.anu.edu.au/research/research-projects/details/540/responsive-rule-law

The Hague Institute for Global Justice, Debriefing Rule of Law Experts: http://thehagueinstituteforglobaljustice.org/index.php?page=Projects-Projects-Current_projects Towards_better_debriefing_of_rule_of_law_experts&pid=122&id=5&jaar=0#.UW43zBkt39A

United Nations Rule of Law: http://www.unrol.org/

United Nations HQ Global Focal Point for Police, Justice, and Corrections: http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/focus_areas/rule-of-law/global-focal-point-for-police--justice-and-corrections-.html

RULE OF LAW TRAINING

Advocates for International Development, 'Law and development training programme': http://www.a4id.org/training-programme

Europe's New Training Initiative for Civilian Crisis Management (ENTRi), 'Specialised training course on Rule of Law': http://www.entriforccm.eu/12.html

The Folke Bernadotte Academy (FBA) in Cooperation with Zentrum für Internationale Friedenseinsätze (ZIF), 'Rule of Law Toolbox for Crisis Management and Peace Operations': https://www.fba.se/en/Training/Specialised-courses/Rule-of-Law/

The Hague Academy for local governance, 'Security, Governance and Rule of Law in fragile states': http://thehagueacademy.com/blog/2014/04/governance-rule-law/?gclid=CITAo-uq9MQCFVEGvAodpiwAQw

International Human Rights Network, 'Justice Sector Reform: Applying Human Rights Based Approaches': http://www.ihrnetwork.org/justice-sector-reform_202.htm

The International Institute for Justice and the Rule of Law: http://www.theiij.org/

Justice Rapid Response: http://www.justicerapidresponse.org/what-we-do/training/

Criminal Law and Judicial Advisory Service, DPKO, 'Predeployment Training Standards for Corrections Officers': http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/viewdocument.aspx?id=2&docid=1347

Peace Operations Training Institute, 'Rule of Law Course': http://www.peaceopstraining.org/cotipso/partners/courses/1085/

Peace Operations Training Institute, 'International Police Officer Course for EU- and UN missions': http://www.peaceopstraining.org/cotipso/partners/courses/1095/

United Nations 'Unified Rule of Law Training': http://www.unssc.org/home/category/themes/peace-and-security/rule-law-and-peacebuilding

United Nations System Staff College: http://www.unssc.org/home/

United Nations, 'Rule of Law Training for Judicial Affairs Officers': http://www.unrol.org/article.aspx?article_id=135, http://www.un.int/news/dpko-rule-law-training-judicial-affairs-officers-french

United States Institute of Peace, 'Rule of Law Practitioners Course': http://www.usip.org/events/rule-law-practitioners-course

World Bank, 'Justice Sector Reform 101 Course': http://web.worldbank.org/WB-SITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:22768757~menuP-K:2644004~pagePK:64020865~piPK:51164185~theSitePK:445634,00.html

Zentrum für Internationale Friedenseinsätze (ZIF) and the UN Department for Peacekeeping Operations, 'Rule of Law Training Program': http://www.zif-berlin.org/en/training/training-partners/rule-of-law-training-program/training.html

ROSTERS

United Nations Development Programme, 'Rule of Law, Access to Justice, Security and Legal Empowerment of the Poor' Roster: http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/expert_rosters/

United States Agency for International Development, The Office of Crisis Surge Support Staff: http://www.usaid.gov/who-we-are/organization/bureaus/bureau-democracy-conflict-and-humanitarian-assistance/office-2

Australian Civilian Corps: http://www.dfat.gov.au/aid/topics/investment-priorities/building-resilience/acc/Pages/australian-civilian-corps.aspx

United States Institute of Peace, 'Recruitment of Rule of Law Specialists for the Civilian Response Corps', 2009: http://www.usip.org/publications/recruitment-of-rule-of-law-specialists-the-civilian-response-corps

INDEXES

World Justice Project, 'Rule of Law Index 2014':
http://worldjusticeproject.org/rule-of-law-index

Transparency International, 'Corruption Perceptions Index':
http://www.transparency.org/research/cpi/overview

EVALUATIONS

Australian Government, Office of Development Effectiveness, Evaluations and Reviews, 'Building on Local Strengths: Evaluation of Australian Law and Justice Assistance', 2012

European Court of Auditors, Special report No 18,'European Union Assistance to Kosovo Related to the Rule of Law', 2012

UNIVERSITY PROGRAMS

Australian National University, Australia, 'Master of Laws in Law, Governance and Development': http://law.anu.edu.au/masters-program/master-laws-law-governance-and-development

Loyola University Chicago School of Law, Rome, Italy, 'LLM in Rule of Law for Development' (PROLAW): http://www.luc.edu/prolaw/about_prolaw.shtml ; http://www.luc.edu/prolaw/whyloyola.shtml

Nagoya University, Japan, L.L.M. (Comparative Law) 'Program in Law and Political Science': http://jds-scholarship.org/country/cambodia/univ_nagoya_law.html

Ohio Northern University, Pettit College of Law, 'LL.M. in Democratic Governance and Rule of Law': http://law.onu.edu/llm_program

Payson Center for International Development, Tulane University, US, 'Master of Laws in Development': http://www.payson.tulane.edu/master-laws-llm-development

School of African and Oriental Studies, UK, 'LLM in Law, Development and Governance': https://www.soas.ac.uk/law/programmes/llm/llmlawdevgov/

Stockholm University, Sweden, 'Rule of Law, Legal Reform and International Organizations': http://fastreg.juridicum.su.se/kursweb/Description.aspx?MomentID=2245

Umeå University, Sweden, 'Rule of Law and International Organizations': http://www.jus.umu.se/english/education/courses/courses/rule_of_law_and_international_organizations/

University of Genoa, Italy, 'Global Rule of Law & Constitutional Democracy': http://www.udg.edu/areas/FilosofiadelDret/Noticies/tabid/10083/p/20545/language/en-US/Default.aspx

University of Sydney, Australia, 'Master of Law and International Development': http://sydney.edu.au/courses/master-of-law-and-international-development

University of Melbourne, Australia, 'Master of Law and Development': http://coursesearch.unimelb.edu.au/grad/1173-master-of-law-and-development

Van Vollenhoven Institute, Leiden University, Netherlands, 'Law and Governance in Developing Countries': https://studiegids.leidenuniv.nl/courses/show/40098/law_and_governance_in_developing_countries

Warwick University, UK, 'International Development Law and Human Rights': http://www2.warwick.ac.uk/study/postgraduate/courses/depts/law/taught/international-development-law/ ; also convened in Ethiopia: http://www2.warwick.ac.uk/fac/soc/law/ethiopia/llm/warwick/

Örebro University, Sweden, 'Law and Development': http://lily.oru.se/studieinformation/VisaKursplan?kurskod=RV4455&termin=20142&sprak=en

PRESS RELEASES, NEWS ARTICLES

Devex, 'PROLAW: A unique program grooms rule of law leaders', By Ivy Mungcal, 02 March, 2012: https://www.devex.com/en/news/prolaw-a-unique-program-grooms-rule-of-law-leaders/77641?source=DefaultHomepage_Center_2

General Assembly GA/11290, Sixty-seventh General Assembly, Plenary, 3rd, 4th & 5th Meetings (AM, PM & Night), Department of Public Information, News and Media Division, New York, 24 September 2012, 'World Leaders Adopt Declaration Reaffirming Rule of Law as Foundation for Building Equitable State Relations, Just Societies: Respect for Accepted Norms Cannot be Ambiguous, General Assembly President Stresses as Speakers Warn against Selectivity': http://www.un.org/press/en//2012/ga11290.doc.htm

United Nations Rule of Law, 'Historic High-level Meeting on the Rule of Law Held at the United Nations', 24 September, 2012: http://www.unrol.org/files/89797_RoL%20Unit%20Press%20release_EN.pdf

United Nations Rule of Law, 'First rule of law course conducted for judicial affairs officers in peace operations': http://www.unrol.org/article.aspx?article_id=111

United Nations, Department for Peacekeeping Operations, 'Justice Update', Volume 1, April 2010: http://reliefweb.int/sites/reliefweb.int/files/resources/justice042010.pdf

NETWORKS, KNOWLEDGE SHARING PLATFORMS

ACE Project: http://aceproject.org/

Alertanet, Portal de Derecho y Sociedad (Portal on Law and Society): http://www.alertanet.org/

Asia Pacific Judicial Reform Forum (APJRF): http://www.apjrf.com/about.html

International Corrections and Prisons Association (ICPA): http://www.icpa.ca/

International Network to Promote the Rule of Law: www.inprol.org

Innovating Justice: www.innovatingjustice.com

Linkedin, 'Justice Support Group': http://www.linkedin.com/groups/Justice-Support-Group-3703422/about?trk=anet_ug_grppro

Linkedin, 'Rule of Law Veterans': http://www.linkedin.com/groups/Rule-Law-Veterans-2584588/about?trk=anet_ug_grppro

United Nations Crime Prevention and Criminal Justice Programme Network: http://www.unicri.it/information/partners_donors/crime_prevention_network/

United Nations Development Programme, Knowledge Sharing: http://www.undp.org/

United Nations Development Programme, 'Team Works: An integrated solution for knowledge management in UN and development organizations': http://www.undp.org/content/dam/undp/library/corporate/Knowledge%20Management/The_Teamworks_Solution-Brochure.pdf

World Bank, Collaboration for Development: https://collaboration.worldbank.org/welcome

ENDNOTES

1.   PhD candidate, Regulatory Institutions Network (RegNet), Australian National University; Rule of Law Research Facilitator, the International Network to Promote the Rule of Law: kristina.simion@anu.edu.au.

2.   Professor of Law and Dean, College of Asia and the Pacific, Australian National University: veronica.taylor@anu.edu.au.

3.   For a comprehensive attempt to locate legal and institutional reform at the heart of both poverty alleviation and providing security in fragile environments, see the World Bank's 'World Development Report 2011: Conflict, Security, and Development', 2011.

4.   Research for the project from which this report is drawn includes 100 survey responses and follow-up interviews with rule of law practitioners in Australia, the US, Indonesia and Europe and a survey instrument administered to rule of law training course participants in Sweden and Germany in 2012, 2013 and 2014. A full analysis of that data is the subject of a separate, forthcoming report.

5.   Carothers, 'The Rule-of-Law revival', 2006.

6.   See, for example, Zajac Sannerholm, Moller, Simion and Hallonsten, 'UN Peace Operations and Rule of Law Assistance in Africa 1989-2010: Data, Patterns and Questions for the Future', 2012. For a 'macro-study' of aid and discretionary spending see Davies, Keynote address – 'The future of aid: three orthodoxies contested', Annual Australasian Aid Conference (2015), available at: https://devpolicy.crawford. anu.edu.au/annual-australasian-aid-conference/2015/abstracts.

7.   Ibid; The rule of law activities of the United Nations alone extends to over 150 Member States in the world, United Nations Rule of Law, http://www.unrol.org/.

8.   Donor funding, even within the well-documented policy domain of the The Organisation for Economic Co-operation and Development's Development Assistance Committee (OECD DAC) is difficult to disaggregate. An indicative example is a medium-sized donor such as Australia, which in 2012 was spending A$371 million per annum (14.7 per cent of Australia's total bilateral aid budget) on law and justice assistance, Australian Government, Office of Development Effectiveness, Evaluations and Reviews, 'Building on Local Strengths: Evaluation of Australian Law and Justice Assistance', 2012, p. 5.

9.   For example, only in 2008, 2,6 billion dollars was spent by key donors for rule of law promotion, International Development Law Organization, 'Legal and Judicial Development Assistance Global Report', 2010; The World Bank has since 1992, devoted over 90 grants to legal and justice reform, for a total worth of over US$46.8 million, and its current justice sector assistance and reform portfolio comprises nearly 2,500 justice reform activities, The World Bank, 'Initiatives in Justice Reform', 2009; For a broader overview of spending on rule of law assistance see Humphreys, 'Theatre of the Rule of Law: Transnational Legal Intervention in Theory and Practice', 2010.

10. Thanks to Zajac Sannerholm for this idea; also see Morlino and Magen, 'International Actors, Democratization, and the Rule of Law: Anchoring Democracy?', 2009.

11. Halliday and Carruthers 'Bankrupt: Global Lawmaking and Systemic Financial Crisis', 2009; Simion, 'The role of intermediaries in rule of law development promotion in Myanmar' (PhD in progress), Bosch, 'Local Actors in Donor-Funded Rule of Law Assistance in Indonesia: Owners, Partners, Agents?' (PhD progress), McKenzie, 'Rethinking international cooperation: crime, policy and politics in Australia–Indonesia relations' (PhD in progress).

12. Personal communication. See the expanded version of this idea in Krygier's extensive writing on the use (and abuse) of rule of law as a conceptual category: for example, 'The Rule of Law: An Abuser's Guide', 2006.

13. See, for example, Tamanaha, 'On the Rule of Law: History, Politics, Theory', 2004, p. 3. On the revival, see Carothers, 'The Rule of Law revival', 1998.

14. See, for example, Peerenboom (ed.), 'Asian Discourses of Rule of Law', 2004.

15. Stromseth, Wippman and Brooks, 'Can might make rights? Building the Rule of Law after Military Interventions', 2006; Trubek and Santos, 'The new law and economic development: a critical appraisal' 2006; Golub, 'A House Without a Foundation', 2006; and Taylor, 'The Rule of Law Bazaar', 2010.

16. Taylor, 'The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies', 2005.

17. Kavanagh and Jones, 'Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda', 2011, p. 26.

18. Mattei and Nader, 'Plunder: When the Rule of Law is Illegal', 2008.

19. Carothers, 'The Problem of Knowledge', 2006.

20. There is now an established literature on professional practices of aid workers which is suggestive, e.g. Fechter, 'The personal and the professional in aid work', 2013; however, it is worth noting that none of the respondents in our study has identified themselves as an aid worker.

21. Cf., Desai, 'In Search of 'Hire' Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field', 2014.

22. Mosse, 'Cultivating Development: An Ethnography of Aid and Agencies', 2004, 'Adventures in Aidland: The Anthropology of Professionals in International Development', 2011; Mosse and Lewis, 'The Aid Effect: Giving and Governing in International Development' 2005; Lewis and Mosse, 'Development Brokers and Translators: The Ethnography of Aid and Agencies', 2006.

23. Bosch (PhD in progress).

24. Braithwaite and Drahos, 'Global Business Regulation', 2000.

25. Halliday and Shaffer, 'Transnational Legal Orders', 2015.

26. Responsive Rule of Law project webpage, http://regnet.anu.edu.au/responsive-rule-law/home.

27. Carothers, 'The Problem of Knowledge', 2006, p. 27-28.

28. Taylor, 'The Rule of Law Bazaar', 2009.

29. Cohen, 'Evaluations and Learning in Rule of Law Assistance', 2013, p. 13.

30. Important expressions of these host/recipient state aspirations are found in the sequence of international agreements beginning with the Paris Declaration on Aid Effectiveness (OECD, 2005), even though such agreements tend to be honoured in the breach.

31. See, for example, The World Bank, 'World Development Report 2011: Conflict, Security, and Development', 2011.

32. See, for example, Halliday and Karpick, 'Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries', 1997; and Halliday, Karpick and Feeley, 'Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism', 2007. Socio-legal scholars, however, have questioned whether an autonomous legal elite is a necessary institution for development, given the economic trajectory of China and its reliance on paralegals and non-professionals (e.g. Upham, 'Who Will Find the Defendant if He Stays with His Sheep? Justice in Rural China', 2005).

33. Behrends, Park and Rottenburg, 'Travelling Models in African Conflict Management', 2014.

34. When a model travels rationalities embedded in epistemic communities, knowledge and surrounding institutions are left behind and the 'travelling' models, made up of concepts and practices, must be adapted and reinvented at their new sites, Ibid; Simion (PhD in progress).

35. Responsive Rule of Law project webpage, http://regnet.anu.edu.au/responsive-rule-law/home.

36. The UN defines Rule of Law as '…a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency,' UN Secretary General, 'Rule of law and Transitional Justice in Conflict and Post-conflict Societies', S/2004/616, 23 August 2004. The UN definition is used by other international organizations as well, for example, in the European Union policy 'Justice Components for CSDP Missions', 2011.

37.   The meeting was described as a historic event. See, for example, http://www.unrol.org/article.aspx?article_id=168; also see the Background Note: High-level Meeting of the General Assembly on the Rule of Law, 24 September 2012, UN Secretary General, 'Delivering justice: programme of action to strengthen the rule of law at the national and international levels', A/66/749; Press Release, 'Historic High-level Meeting on the Rule of Law Held at the United Nations', http://www.unrol.org/files/89797_RoL%20Unit%20Press%20release_EN.pdf.

38.   The UN has since initiated many initiatives to coordinate Rule of Law; for example, through the UN Global Focal Point for Police, Justice and Corrections. See also, for example, Van de Goor, et al., 'Independent Progress Review on the UN Global Focal Point for Police, Justice and Corrections', 2014.

39.   See, for example, the Statements delivered during the opening of the High-level Meeting, http://www.unrol.org/article.aspx?article_id=168.

40.   For example, Alkon, 'The Flawed U.S Approach to Rule of Law Development', 2013; Baylis, 'Tribunal-Hopping with the Post-Conflict Justice Junkies'; 2008, 'Function and Dysfunction in Post-Conflict Justice Networks and Communities', 2014.

41.   Swedish International Development Co-operation Agency, Methods report, 'Swedish Development Co-operation in the Legal Sector, Division for Democratic Governance', 2002.

42.   UN Executive Committee on Peace and Security, 'ECPS Task Force for Development of Comprehensive Rule of Law Strategies for Peace Operations', 2002.

43.   UN Peacekeeping Study, 'Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons-Learned Study', 2006.

44.   UN Executive Office of the Secretary General, 'Inventory: United Nations Capacity in Peacebuilding', 2006.

45.   Evers, 'OSCE Efforts to Promote the Rule of Law: History, Structures, Survey', 2010, p. 11.

46.   UN General Assembly Security Council, Independent report of the Senior Advisory Group, 'Civilian capacity in the aftermath of conflict', 2011; See also, ACCORD, 'Civilian Capacities in the Aftermath of Conflict', 2013.

47.   Van de Goor, et al., 'Independent Progress Review on the UN Global Focal Point for Police, Justice and Corrections', 2014.

48.   Observation by Zajac-Sannerholm.

49.   Personal communication, Zajac-Sannerholm.

50.   Zajac-Sannerholm, 'In Search of a User manual: Promoting the Rule of Law in Unruly Lands', 2009.

51.   An example from EU missions is in Korski and Gowan, 'Can the EU Rebuild Failing Sates? A Review of Europe's Civilian Capacities', 2009.

52.   Taylor, 'Frequently Asked Questions About Rule of Law Assistance (And Why Better Answers Matter', 2009.

53. Behrends, Park and Rottenburg, 'Travelling Models in African Conflict Management', 2014.

54. Channell, 'Lessons not Learned: Problems with Western Aid for Law Reform in Postcommunist Countries', 2005.

55. Ibid.

56. Ibid.

57. Taylor, 'The Rule of Law Bazaar', 2009.

58. Hammergren, 'Assessments, Monitoring, Evaluation, and Research: Improving the Knowledge Base for Judicial Reform Programs', 2002.

59. For an early impact study of rule of law by Taylor et al, see: Cohen, Fandl, Perry-Kessaris and Taylor, 'Truth and Consequences in Rule of Law: Inferences, Attribution and Evaluation', 2011.

60. Ibid.

61. General finding from the empirical study that informs this report.

62. '[T]he fly-in approach having a serious effect on the quality of the evaluations. As things stand now: Scopes ask a team to come for 4–6 weeks and interview the mission, the activity staff, and "representatives" of the local people. There isn't enough time to get any kind of representative sample,' Clapp-Wincek and Blue, 'Evaluation of Recent USAID Evaluation Experience', 2001.

63. Cohen, Fandl, Perry-Kessaris and Taylor, 'Truth and Consequences in Rule of Law: Inferences, Attribution and Evaluation', 2011.

64. Cohen, 'Evaluations and Learning in Rule of Law Assistance', 2013, p. 10.

65. See, for example, World Justice Project, 'Rule of Law Index 2014', available at: http://worldjusticeproject.org/rule-of-law-index.

66. Transparency International, Corruption Perceptions Index, available at: http://www.transparency.org/research/cpi/overview.

67. See, for example, Ginsburg, 'Pitfalls of Measuring the Rule of Law', 2011; Taylor, 'The Law Reform Olympics: Measuring the Effects of Law Reform in Transition Economies', 2005.

68. Thanks to Richard Zajac-Sannerholm for making this point; Haggard and Tiede, 'The Rule of Law in Post-Conflict Settings: The Empirical Record', 2013.

69. Rule of Law Practitioner Interview.

70. Taylor, 'Too important to be left to the lawyers?: Interdisciplinary insights for justice reform concepts and practices in fragile and conflict affected states' (on file with the author). For a similar claim about development professionals, see Mosse, 'Adventures in Aidland: The Anthropology of Professionals in International Development', 2011.

71. Nader, 'Promise or plunder? A past and future look at law and development', 2007.

72.   Peerenboom, 'The Future of Rule of Law: Challenges and prospects for the Field,' 2009.

73.   See, for example, Nicholson and Low 'Local Accounts of Rule of Law Aid: Implications for Donors', 2013.

74.   For an extended study of this phenomenon, see Bosch (PhD in progress).

75.   Derks and Price, 'The EU and Rule of Law Reform in Kosovo', 2010, p. 29.

76.   Rausch (ed.), Chapter Six, 'Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners', 2006.

77.   See also, Trubek, 'Law and Development', 2001.

78.   Carothers, 'The Problem of Knowledge', 2006.

79.   Alkon, 'The Flawed U.S Approach to Rule of Law Development', 2013.

80.   Baylis, 'Tribunal-Hopping with the Post-Conflict Justice Junkies', 2008.

81.   Taylor, 'Too important to be left to the lawyers?: Interdisciplinary insights for justice reform concepts and practices in fragile and conflict affected states', (on file with the author); see also Dessai, Isser and Woolcock, 'Rethinking Justice Reform in Fragile and Conflict-Affected States: Lessons for Enhancing the Capacity of Development Agencies', 2012.

82.   Carothers, 'Promoting the Rule of Law Abroad - The Problem of Knowledge', 2003.

83.   Samuels, 'Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt', 2006.

84.   Trubek, 'Law and Development', 2001.

85.   See, for example, Upham, 'Mythmaking in the Rule of Law Orthodoxy', 2002.

86.   Taylor, 'Rethinking justice reform and rule of law in fragile and conflict affected states: challenges from the World Development Report 2011', p. 7, (on file with the author).

87.   Training courses held in Europe in 2012, 2013, 2014.

88.   See, for example, the International Corrections and Prisons Association, Training 'for the Advancement of Professional Corrections', http://www.icpa-training.com/.

89.   Evetts, 'Professionalism in Turbulent Times: Changes, Challenges and Opportunities', 2012.

90.   See, for example, Larson, 'The Rise of Professionalism: A Sociological Analysis', 1977; Abbott, 'The System of professions: an essay on the division of expert labour', 1988; Johnson, 'Professions and Power (Study in Sociology)', 1972.

91.   Trubek, 'Max Weber on Law and the Rise of Capitalism', 1972, p. 736.

92.   Larson, 'The Rise of Professionalism: A Sociological Analysis', 1977.

93. Birkett and Evans, 'Theorising professionalization: a model for organizing and understanding histories of the professionalizing activities of occupational associations of accountants', 2005.

94. Johnson, 'Professions and Power', 1972; Ibid, p. 106.

95. Birkett and Evans, 'Theorising professionalization: a model for organizing and understanding histories of the professionalizing activities of occupational associations of accountants', 2005, p. 271.

96. Ibid, p. 110.

97. Ibid.

98. Abbott, 'The System of professions: an essay on the division of expert labour', 1988.

99. For a more detailed analysis of this pattern, see Taylor, 'Rule-of-Law Assistance Discourse and Practice: Japanese inflections', 2010.

100. Janda and Killip, 'Building Expertise: A System of Professions Approach to Low-Carbon Practice' (undated).

101. Rule of Law Training for Judicial Affairs Officers gathers participants from United Nations Partners, http://www.unrol.org/article.aspx?article_id=135; DPKO Rule of Law Training for Judicial Affairs Officers in French, http://www.un.int/news/dpko-rule-law-training-judicial-affairs-officers-french; First rule of law course conducted for judicial affairs officers in peace operations, http://www.unrol.org/article.aspx?article_id=111.

102. ZIF, Rule of Law Training Program, http://www.zif-berlin.org/en/training/training-partners/rule-of-law-training-program/training.html.

103. UN System Staff College, http://www.unssc.org/home/; UN Unified Rule of Law Training, http://www.unssc.org/home/category/themes/peace-and-security/rule-law-and-peacebuilding.

104. Predeployment Training Standards for Corrections Officers, http://www.peacekeepingbestpractices.unlb.org/PBPS/Pages/Public/viewdocument.aspx?id=2&docid=1347.

105. Peace Operations Training Institute, 'International Police Officer Course for EU- and UN missions', http://www.peaceopstraining.org/cotipso/partners/courses/1095/.

106. Justice Sector Reform 101 Course, http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/0,,contentMDK:22768757~menuPK:445676~pagePK:64020865~piPK:51164185~theSitePK:445634,00.html.

107. For example, in Baku in 2012 by Kristina Simion and Inma Arnaez.

108. The International Institute for Justice and the Rule of Law, http://www.theiij.org/, founders include Algeria, France, Italy, Jordan, Malta, Morocco, the Netherlands, Nigeria, Tunisia, Turkey, the United Kingdom and the United States, http://www.theiij.org/about-us/.

109. Korski and Gowan, 'Can the EU Rebuild Failing Sates? A Review of Europe's Civilian Capacities', 2009.

110. Web links to training providers, from which this information is taken, appear in the References section of this report.

111. Leading rule of law training providers include the Folke Bernadotte Academy, Sweden; the United States Institute for Peace; and the Zentrum für Internationale Friedenseinsätze (ZIF).

112. UN Peacekeeping Study, 'Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons-Learned Study', 2006.

113. Suggesting to us that mid-career practitioners are perhaps enrolled in foundational courses that have become available since they began their careers, or that suitable advanced courses are not available.

114. DPKO Office of the Rule of Law and Security Institutions (OROLSI), 'Training Needs Assessment for ROLSI Staff in the Field and at Headquarters', 2009, p.11.

115. Samuels, 'Rule of Law Reform in Post-Conflict Countries, Operational Initiatives and Lessons Learnt', 2006.

116. See, for example, Evers, 'OSCE Efforts to Promote the Rule of Law: History, Structures, Survey', 2010.

117. Braithwaite, 'The Essence of Responsive Regulation', 2011.

118. Rule of Law Toolbox for Crisis Management and Peace Operations, https://www.fba.se/en/Training/Specialised-courses/Rule-of-Law/.

119. See, for example, Council of Bars and Law Societies of Europe, 'CCBE Model Scheme for Continuing Professional Training', 2006.

120. Interview with rule of law practitioner.

121. JRR webpage, http://www.justicerapidresponse.org/activities/; http://www.justicerapidresponse.org/activities/training-programmes/ (last visited 15 February 2015).

122. ENTRi webpage http //www.entriforccm.eu/33/.

123. For example, the Zif/FBA training course 'Rule of Law Toolbox for Crisis Management and Peace Operations'.

124. See, for example, DPKO OROLSI, 'Training Needs Assessment for ROLSI Staff in the Field and at Headquarters', 2009.

125. Rausch, 'Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners', 2006, p. 150.

126. PROLAW Overview, Loyola University Chicago, http://www.luc.edu/prolaw/about_prolaw.shtml, http://www.luc.edu/prolaw/whyloyola.shtml.

127. Ibid.

128. PROLAW Student Journal of Rule of Law for Development, http://luc.edu/prolaw/journals/index.shtml.

129. Mungcal, 'PROLAW: A unique program grooms rule of law leaders', 2012, https://www.devex.com/en/news/prolaw-a-unique-program-grooms-rule-of-law-leaders/77641?source=DefaultHomepage_Center_2.

130. Web links to programme providers appear in the References section of this report.

131. Faundez, Janse, Muller and Peerenboom, 'Editorial Introduction – A New Journal!', 2009, p. 1-2.

132. Ibid, p. 2.

133. Cambridge Journals, http://journals.cambridge.org/action/displayJournal?jid=ROL.

134. Faundez, Janse, Muller and Peerenboom, 'Editorial Introduction – A New Journal!', 2009, p. 2.

135. See, for example, INPROL, 'Guide to Change and Change Management for Rule of Law Practitioners', 2015; INPROL, 'Practitioners Guide on Defining the Rule of Law and Related Concepts', 2015.

136. Kavanagh and Jones, 'Shaky Foundations: An Assessment of the UN's Rule of Law Support Agenda', 2011, p. 61.

137. Zajac-Sannerholm et al., 'UN Peace Operations and Rule of Law Assistance in Africa 1989-2010: Data, Patterns and Questions for the Future', 2012, p. 24.

138. Web links appear in the References section of this report.

139. TOR's for rule of law job openings, on file with the authors. For a systematic overview and analysis of rule of law donor hiring practices see, Desai, 'In Search of 'Hire' Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field', 2014.

140. Taylor, 'Rule-of-Law Assistance Discourse and Practice: Japanese inflections', 2010.

141. Baylis, 'Tribunal-Hopping with the Post-Conflict Justice Junkies', 2008.

142. See, for example, Desai, 'In Search of 'Hire' Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field', 2014.

143. TOR's for rule of law job openings, on file with the authors. For a systematic overview and analysis of rule of law donor hiring practices see, Desai 'In Search of 'Hire' Knowledge: Donor Hiring Practices and the Organization of the Rule of Law Reform Field', 2014.

144. Interview.

145. Derks and Price, 'The EU and Rule of Law Reform in Kosovo', 2010; Korski and Gowan, 'Can the EU Rebuild Failing Sates? A Review of Europe's Civilian Capacities', 2009.

146. Derks and Price, ibid, p. viii.

147. European Court of Auditors, Special report No 18,'European Union Assistance to Kosovo Related to the Rule of Law', Paragraph 87, 2012.

148. See, for example, UNDP Roster, 'Rule of Law, Access to Justice, Security and Legal Empowerment of the Poor', http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/expert_rosters/.

149. USAID, The Office of Crisis Surge Support Staff, http://www.usaid.gov/who-we-are/organization/bureaus/bureau-democracy-conflict-and-humanitarian-assistance/office-2; Dfat, Australian Civilian Corps, http://www.dfat.gov.au/aid/topics/investment-priorities/building-resilience/acc/Pages/australian-civilian-corps.aspx; See also, USIP, 'Recruitment of Rule of Law Specialists for the Civilian Response Corps', 2009, http://www.usip.org/publications/recruitment-of-rule-of-law-specialists-the-civilian-response-corps.

150. See, for example, Peerenboom (ed.), 'Asian Discourses of Rule of Law', 2004; Lindsey (ed.), 'Law Reform in Developing and Transitional States', 2007; Linnan (ed.), 'Legitimacy, Legal Development & Change: Law and Modernization Reconsidered', 2012; Dressel (ed.), 'The Judicialization of Politics in Asia', 2012.

151. United Nations Executive Office of the Secretary General, 'Inventory: United Nations Capacity in Peacebuilding', 2006.

152. DPKO Justice Update, Volume 1, April 2010, http://reliefweb.int/sites/reliefweb.int/files/resources/justice042010.pdf.

153. UN HQ Global Focal Point for Police, Justice, and Corrections, http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/focus_areas/rule-of-law/global-focal-point-for-police--justice-and-corrections-.html.

154. UN Crime Prevention and Criminal Justice Programme Network, http://www.unicri.it/information/partners_donors/crime_prevention_network/.

155. International Network to Promote the Rule of Law, www.inprol.org.

156. World Bank, Collaboration for Development, https://collaboration.worldbank.org/welcome.

157. Alertanet, Portal de Derecho y Sociedad (Portal on Law and Society), http://www.alertanet.org/.

158. International Corrections and Prisons Association (ICPA), http://www.icpa.ca/.

159. The Asia Pacific Judicial Reform Forum (APJRF), http://www.apjrf.com/about.html.

160. UNDP, Knowledge Sharing, http://cq-publish.beta.undp.org/content/undp/en/home/ourwork/knowledge_exchange.html.

161. Innovating Justice, www.innovatingjustice.com.

162. Team Works: An integrated solution for knowledge management in UN and development organizations, http://www.undp.org/content/dam/undp/library/corporate/Knowledge%20Management/The_Teamworks_Solution-Brochure.pdf.

163. Ace Project, http://aceproject.org/; INPROL, http://inprol.org/about-inprol.

164. On 20 February 2015.

165. http://www.linkedin.com/groups/Justice-Support-Group-3703422/about?trk=anet_ug_grppro.

166. http://www.linkedin.com/groups/Rule-Law-Veterans-2584588/about?trk=anet_ug_grppro.

167. On 20 February 2015, these numbers are not definite but do provide an indicator for how many people work in the development assistance field. This is an interesting development in light of Mosse's claim in 2011 that we had no idea how many people are working in the development assistance field worldwide, Mosse, 'Adventures in Aidland: The Anthropology of Professionals in International Development', 2011.

168. Scott, 'Analysing Regulatory Space: Fragmented Resources and Institutional Design', 2001.

169. See, for example, Grabosky, 'Beyond Responsive Regulation: The expanding role of non-state actors in the regulatory process, Regulation & Governance', 2012.

170. See, for example, the American Bar Association, 'Model Rules of Professional Conduct', http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html.

171. Rausch, 'Combating Serious Crimes in Postconflict Societies: A Handbook for Policymakers and Practitioners', 2006.

172. See, for example, American Bar Association, 'Task Force on the Model Definition of the Practice of Law, Guidelines for the Adoption of a Definition of the Practice of Law', 2005.

173. Roesler, 'The Ethics of Global Justice Lawyering', 2010.

174. UN General Assembly GA/11290, Sixty-seventh General Assembly, Plenary, 3rd, 4th & 5th Meetings, 2012, 'World Leaders Adopt Declaration Reaffirming Rule of Law as Foundation for Building Equitable State Relations, Just Societies: Respect for Accepted Norms Cannot be Ambiguous, General Assembly President Stresses as Speakers Warn against Selectivity',
http://www.un.org/News/Press/docs//2012/ga11290.doc.htm.

175. Challenges Forum Report, 'A Research Perspective' statement made by Dr. Sampford, 2010, p. 314–315.

176. Hansen and Wiharta, 'The Transition to a Just Order- Establishing Local Ownership after Conflict- A Policy Report', 2007.

177. Taylor, 'The Rule of Law Bazaar', 2009.

178. Durch and Berkman, 'Who Should Keep the Peace? Providing Security for Twenty-First-Century Peace Operations', 2006.

179. See, for example, UN Convention on the Privileges and Immunities of the United Nations, 13 February 1946.

180. Australian Public Service Act 1999,
http://www.comlaw.gov.au/Details/C2014C00511/Html/Text#_Toc394926945.

181. DFAT Code of Conduct for Overseas Service: http://www.dfat.gov.au/about-us/publications/Pages/dfat-code-of-conduct-for-overseas-service-2.aspx.

182. Derks and Price, 'The EU and Rule of Law Reform in Kosovo', 2010, p. vi.

183. Rule of Law Roundtable: Towards Best Practice in Post-Conflict Situations, http://acmc.gov.au/publications/rule-of-law-roundtable-towards-best-practice-in-post-conflict-situations/.

184. 6th Annual Meeting of the Hague Rule of Law Network (HRoLN), http://www.hiil.org/events/sixth-annual-meeting-hroln-rule-of-law-promotion-and-ssr-partners-or-rivals.

185. Hague Institute for Global Justice debriefing of rule of law experts, http://the-hagueinstituteforglobaljustice.org/index.php?page=Projects-Projects-Current_projects Towards_better_debriefing_of_rule_of_law_experts&pid=122&id=5&jaar=0#.UW43zBkt39A.

186. Carnegie Endowment for International Peace, http://carnegieendowment.org/programs/democracy/.

187. UN Rule of Law Unit Open Roundtable on Measuring effectiveness of support to the rule of law, http://www.unmultimedia.org/radio/library/2013/04/83597.html.

188. Folke Bernadotte Academy Research Working Groups, https://www.fba.se/en/Activities/Research/Research-working-groups/.

189. Challenges Forum, http://www.challengesforum.org/.

**FOLKE
BERNADOTTE
ACADEMY**

SWEDISH AGENCY FOR PEACE, SECURITY AND DEVELOPMENT