

Foreign assistance, human rights and post-conflict societies

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Introduction

I remember driving from Pristina, the capital of Kosovo, in July 1999, to a village about 20 kilometres away. It was a few weeks after NATO had entered following a Security Council mandate setting up a United Nations transitional administration in Kosovo. At the time, I was with the United States Department of Justice office that worked with the State Department on international criminal justice development programs, such as code reform and training. I was sent to determine what type of assistance we should provide. Due to security requirements, I was in a fully armored vehicle with two 'chase' cars following closely behind. Accordingly, it was apparent that we were part of the 'international community' and, at that time, the Kosovo Albanians looked at us as liberators from the oppressive Slobodan Milosevic regime. Milosevic's regime had stripped Kosovo of its autonomy and, over a period of 10 years, had used heavy-handed tactics to keep Kosovo under its control. This culminated in an ethnic cleansing campaign in 1999, leading to NATO intervention followed by the arrival of peacekeepers and a UN-run transitional administration. As we drove through villages, the people would stop and wave excitedly with smiles and accompanying cheers. Some had American, German or British flags. There were murals on building walls with some of these flags, and one painting was of then United States Secretary of State Madeleine Albright, who had visited just days before. Looking into the hopeful and happy faces of the people, I remember saying to myself that one day, we — the international community of assistance providers, foreign diplomats and international organisations — would disappoint them. And I fear we did.

My first experience with an international mission was in Bosnia and Herzegovina (Bosnia), where I arrived as a resident legal advisor for the US Department of Justice. I had no previous international experience, having been a federal prosecutor and, before that, a lawyer for the state Attorney-General's office handling criminal and

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civil consumer protection cases. My experience in Bosnia left me profoundly troubled. I think two aspects contributed to this. The first was the sheer weight of being in a place and working closely with people who had experienced a level of trauma that, although I could not begin to fathom it as an outsider, nonetheless left me affected due to its almost palpable sense of human suffering. The other aspect was the behaviour and approach of the international community. I went into the international rule of law field with the assumption that I was entering a community of 'good-hearted helpers' who were going to do what was right, whatever that was. Contrary to this, although I most certainly met and worked with people who did fall into that category, many foreign assistance programs and approaches had little to do with trying to figure out what would be the best thing for building peace and establishing a functioning judicial system. Rather, many were focused on marking their territory, getting a project or donor dollars for their organisation or implementing their organisation's policies, no matter the effect. It did not matter whether their approach or program was consistent with what would be good for Bosnia as a whole or whether Bosnians were involved in a constructive role in these projects.

Further, at times, some members of the international community operating in post-conflict situations violated penal laws or took actions that were inconsistent with international human rights standards. This is not only counterproductive and damaging to our credibility, but it is wrong and simply inconsistent with the assumed goals underlying our interventions in trouble spots around the world: to prevent further abuses and violence, and to build peace. Accordingly, when reality overtook the very naive assumptions I held before arriving in Bosnia, I think it hit me hard because I had truly believed in them.

My six months in Bosnia left a permanent mark, causing me to embark on my current international rule of law path. It has been a seven-year path, including experience with many conflict and post-conflict countries where the troubling aspects of my experience in Bosnia continue to be present. This has caused me to grapple with such questions as: What is our role? How does our approach help or hinder rule of law development and peace building? Can we do it better? Is the terrain just so fraught with human frailties that the best we can hope for is not to make things worse?

This paper looks at past approaches of foreign assistance providers and, based on this, offers some thoughts for foreign assistance providers in devising and implementing future programs. The first part will give an overview of the types of programs that are undertaken in post-conflict states. The second part will look at the post-conflict realities that make implementing these programs challenging. I then discuss and critique past performance in implementing programs. Finally, reflecting

upon past performances, I offer some considerations that might inform future performance.

Rule of law programs

Foreign assistance often includes criminal justice assistance with the goal of establishing the rule of law based upon international standards of human rights. This assistance may focus on the various components of the criminal justice system, including the courts, prosecution, defense attorneys and police. More specifically, it could include a whole host of programs that address the following: training of judges, prosecutors, lawyers, police and corrections officials on international standards; mentoring local police, prosecutors and judges in the performance of their duties; addressing past crimes including war crimes, crimes against humanity and genocide; engaging in code reform to address the gaps in existing law relating to international standards or crime problems; reforming law schools; establishing legal aid and public defender systems; rebuilding the justice infrastructure including courthouses, police headquarters and prisons; establishing or reforming accountability mechanisms such as an ombudsman service, internal affairs, professional responsibility offices, codes of conduct and mechanisms for discipline or removal from office; and advising and/or assisting on court administration and management.

Post-conflict realities and challenges

Very often in states emerging from conflict, local communities have experienced gross violations of their human rights. These violations may have been the result of ethnic, religious or intercommunal conflicts and violence. In some situations, local political actors create or exacerbate tensions and supposed differences to stir up hatred and violence for their own ends (such as gaining economic or political power), as we have seen in Bosnia. Violations may also have been at the hands of dictators who maintained power through fear and violence. In many situations, the judicial system itself is used by those in positions of power to victimise those who are not, resulting in gross violations of international standards, including arbitrary arrests, detention and torture.

Years of violent unrest often result in a traumatised community where the judicial system is in shambles. Generally, there exists a dearth of qualified personnel to staff the judicial system, coupled with a lack of resources such as courthouses, offices and other essentials, including pen and paper. Nearly all traumatised communities share the common challenge of lack of resources, both human and material. For example, in Liberia following the establishing of the UN mission, judges were left holding

court in their apartments and victims were required to pay for the judge, clerk and jury expenses. Oftentimes there is no paper to document cases nor petrol or cars for police to use in conducting investigations. In addition to lack of resources, there may be problems with corruption or crime stemming from the conflict itself, such as organised criminal activity. In Afghanistan, as one example, drug trafficking is a challenge and the money made from trafficking funds the warlords who are trying to hold onto their power and who need funding for their own militias. There have also been allegations that those involved in the transitional government receive funding from drug trafficking activities.

Despite the realities and challenges faced by post-conflict societies, it is important that the rule of law and human rights be established in order to enable communities to move forward and to prevent renewed or continuing conflict. At the same time, it is essential for the new laws and justice system, both in theory and in practice, to represent a 'better' model than what came before, serving to protect the rights of the individual while simultaneously regulating law and order in society.

Reflections on past performance

As mentioned above, there are many challenges to confront in providing assistance in post-conflict environments given the very nature of societies emerging from conflict. These challenges are compounded by the action, or in some cases inaction, of foreign assistance providers, as discussed below.

Insufficient assessment of needs and local consultation

As foreign assistance providers and members of international organisations, we may enter a post-conflict situation with good intentions. However, we often fail to engage in adequate assessments prior to developing a program, and therefore fail to fully grasp the situation on the ground. Oftentimes, this results in a program that neither meets the needs of the country and its people nor advances the goal of establishing rule of law and human rights standards.

For example, in Kosovo, there was a human rights training program for Kosovo judges and prosecutors early on in the mission in which international trainers flew to Kosovo and gave a presentation on the standards for arrest, detention and fair trial under articles 5 and 6 of the European Convention on Human Rights and Fundamental Freedoms. Their presentation was, in essence, a recitation of the articles and their broadly stated general principles. One such principle was the requirement that following detention or arrest, police must bring the detainee promptly before a judge to determine the legality of the arrest or detention. The participants had no

way of taking that information and directly applying it to their current work or understanding how it fit within their current legal framework. They wanted to know very basic information, such as what is considered prompt appearance before a judge? Is it 24 hours? Seventy-two hours? Five days? What should be done if a police officer brings someone in after detaining him or her for seven days? Is that too long? Should the case be rejected or dismissed? Are there exceptions to a time limit, if such time limits exist? Although the trainers were advised ahead of time that these were questions of interest to the participants, the trainers' presentations failed to address the questions. Further, the discussion of standards was not linked to the laws applicable in Kosovo, specifically the criminal procedure code. The presenters had no knowledge of the local laws; therefore, the training was presented in a vacuum, without any context. The Kosovo judges and prosecutors left the training no better equipped to integrate the newly learned standards into their practice.

A better approach would have been for the trainers to familiarise themselves with the applicable law and judicial system and to conduct a basic needs assessment in collaboration with local actors prior to any training. Such an assessment would have helped determine what problems the judges and prosecutors were facing. It would have helped ascertain what questions they had and what types of training would be useful. Then, taking the information into account, the presenters could have developed a training program that would have addressed the needs and the objectives the judges and prosecutors had set for themselves for the training program. The presenters would have also devised a method of evaluation to determine whether they had met the objectives for the training program. Unfortunately, such a process is rarely followed by foreign assistance providers.

Kosovo provides another example. Despite having a local body of experts established to review and provide input on draft regulations, the international-run administration imposed regulations without adequate local consultation or integration of the existing legal framework. Additionally, an entirely new criminal code and criminal procedure code were promulgated without any training programs put into place, nor were any commentaries included to guide implementation. Furthermore, the codes contained significant gaps and inconsistencies. Now, five years after the process of revising the codes began, the codes are being revised once again, this time with the strong representation of local experts. The hope is that their inclusion will continue and their input will be integrated.

Another example is a training program attended by legal professionals from post-conflict situations who traveled to a foreign assistance provider's country for the program. At the training's conclusion, although the provider put out a nice press release concluding the training program was a success, many of the legal

professionals who attended concluded among themselves that it was nice to visit the country but they did not gain much on a substantive level that would help them in their official positions. Ultimately, there was little real impact because the participants resented the condescending attitude of the trainers and the fact that the speakers had no knowledge about their legal systems or struggles and did not take time to make their presentations relevant to the attendees.

In contrast, there are examples of what has worked. For instance, in Thailand, as part of the UN Border Relief Operation, Australian police came into the border refugee camps at the request of the Cambodian refugees who asked for help in keeping order in the camps. The Australian Federal Police, who were seconded to the United Nations, worked with leaders to develop laws and daily, for multiple weeks, they gave two hours of very practical training to the Cambodian refugees who were to act as police officers and judges after the training. Additionally, an Australian lawyer stepped in to act as defense counsel once legal proceedings began. In this situation, there was a request by the local officials and a willingness on behalf of the Australians to assist and engage in consultation and training. The end result was a success.

Lack of consideration of features of the country

Another challenge is that when developing programs, foreign assistance providers and members of international organisations do not always consider the country's resource limitations, a lack of political will on the part of the transitional government or the individual features of a country's judicial system. We may come to a situation with certain prescriptions or preconceived notions and fail to consult with our local counterparts to get a better understanding of the local situation. By way of example, an assumption might be that post-conflict country X should have a detention facility or prison that looks like those that exist in western country Y, and must adhere to the western standards without first determining whether this is possible, makes sense in country X, is sustainable over the long term or can be integrated into the larger justice sector reform strategy. Instead, it may be prudent to spend time and resources on trying to start with what already exists, and finding ways to improve upon certain areas in the immediate and short term aftermath until country X can determine for itself where larger reforms can be made. Using the example of prisons and detention, it might make more sense to start with establishing separate buildings for juveniles, women and men, or setting up basic paper systems to register and track detainees. Sometimes, such small steps are the only practical way of moving forward and generating positive changes over time.

An example of the importance of considering the existence of political will can be found in Liberia in the years following the establishment of the UN mission. Many

of the legislators were reluctant to engage in code reform because they feared that they themselves might be held accountable for past or current crimes and, therefore, did not want to see the justice sector developed. This fact would need to be considered in creating a strategy for code reform, including its timing.

In addition to resource and timing issues, there may also be country-specific customs that need to be considered. For example, in some western countries one-person prison cells are the 'gold standard'; however, some countries' customs include the preference for living together in a more communal fashion. By honouring this custom, prison officials are better able to maintain discipline and control of the prison population than if prisoners are isolated from one another. Such isolation might actually result in behavioural problems and increased risk of suicides. One colleague who worked in a post-conflict environment described how foreign assistance providers built a very expensive and modern prison based on the standards of their home countries without consulting with the local community. The prison contained only single-person cells, failing to recognise the importance of communal living arrangements within the culture. The prison was, therefore, unsuitable for the community.

Another example can be found in Afghanistan. Initially, foreign assistance providers focused solely on providing assistance to the formal justice system structures in the country. Even though customary and traditional systems exerted influence and control in much of Afghanistan, providers did not consider whether or how customary and traditional systems would relate to the formal system. It would have been more productive to have had an understanding of this dynamic before embarking on programs which focused solely on the formal justice sector.

Sacrifice of international human rights standards

In an effort to address threats to peace and to curb criminal activity that threatens the peace and security of a post-conflict society, international assistance providers may fall prey to the perceived conflict between the need to establish a safe and secure environment (law and order-related concerns) and adhering to international human rights standards. Rather than recognising that in developing their laws, many societies engage in a delicate balancing of interests to be able to meet both goals, international actors sometimes assume that these goals are mutually exclusive. For example, in Kosovo, the UN-led administration, with the encouragement of several states, engaged in the very conduct that many western governments routinely denounce. By doing so, the international community was not setting much of an example for the local community about the importance of the rule of law and human rights path.

Specifically, the Special Representative of the Secretary-General (SRSG) issued executive orders to detain individuals who had been released by the local judiciary. In some cases, the release may have been because of a lack of evidence (in some circumstances this was because the evidence against someone consisted of military intelligence and, therefore, could not be disclosed to judicial authorities). In certain circumstances, the decision by the local judge(s) to release an arrestee was more a result of a threat or of ethnic favouritism rather than the application of the law. Arguing that he had a right to do so in order to maintain security, the SRSG would then issue a detention order after a judge released someone. This went on even after international judges and prosecutors were brought into the local judicial system to handle certain cases and those judges released individuals or the prosecutors proposed their release. The practice was finally stopped, but only after a very long period of criticism by organisations including the Organisation for Security and Co-operation in Europe, the Council of Europe and Amnesty International.

There was also a great deal of polarisation between human rights and law and order factions among the international organisations in Kosovo. There were some who considered anyone who advocated for adherence to international standards as being against victims of crime or against having a peaceful Kosovo. Granted, there were some members of the human rights community who resisted working pragmatically with other groups to advance the goal of addressing the need for security while staying within the bounds of international human rights standards. At the same time, however, certainly not everyone who advocated 'due process' was guilty of merely wanting to 'let murderers out on the street', as I was once accused by a senior diplomat. This accusation was particularly perplexing to me given that my background was that of a prosecutor and one of my functions in Kosovo included working with others to draft regulations to allow covert surveillance, use of informants and witness protection measures so that police and prosecutors could better tackle organised crime. In doing so, however, it never occurred to me that we should draft the regulations in any manner other than in compliance with international standards. The only question we asked ourselves was how to define the standards and find a way to incorporate them so that the police and prosecutors could do what they needed to do to ensure that privacy and fair trial rights were preserved.

Typically in a post-conflict environment, there will be various groups of foreign assistance providers on the ground such as development agencies, military and non-governmental organisations, including those with a human rights focus. The latter group has, in part, been negatively viewed in some circumstances. This negative view has often been the result of the unconstructive behaviour and approach of some human rights advocates. Consequently, when it has been

associated with such advocates, the term 'human rights' itself has been seen by some criminal justice foreign assistance providers as a negative concept, as something that is not used to further post-conflict stabilisation and reconstruction, but rather used as an obstacle. This is unfortunate. It is quite easy to find error in just about anything. It is also easier to criticize as an outsider. It is quite another matter to come up with solutions and to be constructive rather than destructive. It is much more helpful in a post-conflict society if those of us involved in human rights and rule of law reform collaborate with foreign assistance providers in finding a solution rather than resorting to automatic criticisms. It is also not productive for us to demand actions that are not necessarily required by international human rights standards or are simply not possible in the given circumstances and perhaps not even in well-funded western countries.

If the parties come together, work to set aside any preconceived biases, listen to and be open with each other and work through a problem together, a solution can generally be found. One example of this type of collaboration is a working group that was established in Kosovo to develop laws to assist in combating ethnic and organised crime. Given the far-reaching laws that could be devised and the potential for infringement on individual rights such as privacy, it was important to balance the interests of the members within the group. A diverse group was convened, including a police officer, two prosecutors, two human rights lawyers and a judge. After many meetings during which the members could discuss and debate the issues, the group developed draft regulations that met the needs of law enforcement while complying with international human rights standards. This outcome would not have been possible had the various members not met face to face to work through the issues.

Lack of co-ordination and competing agendas within the international community

Different states and agencies within the international community often fight among themselves in order to advance their own agendas while the country they are supposed to help suffers. Rivalries exist with respect to programs, funding and credit. A private-sector implementing organisation may want to carve out for itself a certain program so it can use it to build its résumé in the hopes of obtaining additional contracts in the future. Or, a donor government may want to exert political or other influence in a country and decide to take on certain programs in order to further these objectives. Finger pointing and criticism of each other's programs is often the norm. A colleague recently returned from a post-conflict country and reported that nearly every meeting she had with a foreign assistance provider was marred with vitriolic denunciations of how country X or organisation Y was doing it all wrong. The reality is that the general lack of co-ordination and co-

operation seems to be the fault of either design, lack of time or lack of knowledge. There are examples of these failures in nearly every post-conflict environment. Additionally, while international providers are focusing on their own agendas, they often fail to tap the wealth of local knowledge and consequently structure programs in a vacuum without collaborating with local counterparts.

In one post-conflict country, for example, an international organisation and a non-governmental organisation partnered with a state's department of justice. Each wanted to conduct a training course on a newly promulgated revised criminal code and criminal procedure code. After a series of unnecessarily uncomfortable meetings, it was finally agreed that one organisation would train judges, prosecutors and defense attorneys while the other would train police. This decision was made although it would have made more sense to train them on the laws together, so that they could all hear the same material from the same instructors and, coming from a shared base of knowledge, work through the issues related to the new changes. In the end, however, the organisation that was to train the police failed to follow through. As the training started for the judges, prosecutors and defense attorneys, the police grew concerned and asked the second organisation to begin training or to allow them to join the training for the judges, prosecutors and defense attorneys. The second organisation continued to fail to implement its training program, but did not want the police to join the first organisation's existing training. Eventually, the police started to attend the first organisation's training, but had to do so surreptitiously. There are also examples of one organisation purposefully hiding information from another in an effort to gain an advantage or to prevent the other from trying to block their efforts. It is, of course, understandably difficult to co-ordinate efforts and maintain communication, but it is a nearly impossible task if those involved in providing assistance do not want to co-operate at a basic level and do not put aside their organisational or national biases and competition. Such a notion may be considered naive in today's growingly crowded and competitive world of rule of law assistance, but to do otherwise just dooms us to failure.

There are, of course, other examples where organisations have co-operated effectively. One example is in Kosovo where, after a critical report on the UN-administered justice system by the legal system monitoring section of the Organisation for Security Co-operation in Europe (OSCE), personnel from the OSCE's rule of law division and the UN's justice department worked together to find ways to address the report's recommendations, even though both organisations had experienced turf battles and other institutional conflicts at times since the beginning of the mission. However, these positive efforts were the result of the personalities of those involved on both sides who were willing to work together and who, over time, built a foundation of mutual trust. In addition to having a leadership that encourages

co-operative endeavours, an effective structure providing clarity of roles, it is these factors — personalities and mutual trust — that can make co-operation succeed or fail.

Lack of accountability of the international community

It is essential that international personnel who commit crimes, or who are guilty of misconduct while on missions, are subject to prosecution and/or disciplinary procedures, depending on the situation. Impunity is unacceptable given that international forces are always deployed to a situation where human rights have been violated and impunity has often been the norm. Establishing a system of rule of law begins with those who are deployed to help implement this. It is not acceptable for the members of a local community to be held accountable for their actions while international actors are not. This disparity hampers efforts to establish the notion of equality before the law in a post-conflict society and weakens the credibility of the foreign assistance providers as a whole.

Human rights groups denounce the fact that, in some situations, countries repatriate international personnel suspected of criminal conduct and then fail to hold them accountable. Some international personnel believe that the worst thing that will happen to them if they engage in misconduct is that they will be sent home. The problem is further exacerbated by the frequent rotation of personnel. Even if action against a person is initiated, that person's term may well be over before the action is completed. There are examples of peacekeepers and foreign assistance providers in Bosnia, Kosovo, Côte D'Ivoire and the Democratic Republic of Congo engaging in criminal behaviour and not being held accountable. These crimes have included rape, robbery, trafficking in women, murder and misuse of funds or fraud. It is therefore imperative that adequate accountability and oversight mechanisms be put in place for receiving and investigating complaints and allegations of misconduct or abuse, as well as mechanisms for the prompt and fair investigation and adjudication of these complaints.

When we fail to hold ourselves accountable for our own actions, we are committing a breach of trust and we fail to fulfill our obligation to advance the very notions of human rights and rule of law that we are asking the host country to embrace and implement. It is only by actually respecting the concepts of human rights and rule of law ourselves that we can expect others to respect them and us.

Thoughts for the future

There are different approaches taken by foreign assistance providers working in the field of human rights and the rule of law. One approach emphasises honouring a

society rather than interfering with local ownership and leadership, and providing foreign support but not control. A second approach is more interventionist in nature. The interventionist approach is more apt to advocate imposing changes either directly under executive authority, as in the cases of Kosovo and East Timor, and to a lesser extent in Bosnia, or by driving changes through diplomatic encouragement or pressure, as seen in Afghanistan. There are, of course, variations and degrees in between these categories, but the major approaches seem to fall on one side or the other: 'hands off' versus intervention. Having reviewed the various approaches to foreign assistance programs, the question becomes, what approach works most effectively? Is one better than the other? Are none of these approaches well-suited to post-conflict situations? Does the solution lie somewhere in between?

The UN is at a crossroads. It has visited both extremes. In Kosovo and East Timor, the UN had executive authority and was the transitional government. In Afghanistan, it took the opposite approach, often termed a 'light footprint' approach, and many say this was in reaction to the criticism it received in Kosovo and East Timor and the challenges it faced. The recent report of the Secretary-General on the rule of law (Report of the Secretary-General 2004) reflects the shift to a more 'hands off' approach and argues that the local community must take the lead. According to this recent report, foreign models, however nicely packaged, should be rejected. Whether this can be made to work and what it means to 'take the lead' remain to be seen, but it is certainly interesting to consider.

Some argue that the UN position, at first blush, sounds good and is politically correct in that it honors nationals driving their own reforms. But what about those who are held hostage to a transitional government that is not responsive to change? In a fractured society, you do not always have just one 'local' community or a transitional government holding the interests of the public at large at heart. Opponents to the new shift in the UN's position argue that it lets the international community off the hook from doing the hard work and passing it off to local actors who lack the resources, political climate and/or will to make changes.

Recently, I attended a meeting that brought together rule of law implementers from Europe, the United States and Central America. A colleague from Nicaragua remained silent for the first two days, while the other participants talked at length about the need to let the local community take the lead, and how foreign assistance providers must not impose or push forward any agenda. The Nicaraguan colleague then said that this viewpoint does of course sound quite politically correct and has elements that are certainly right. However, it assumes that there is one cohesive local community in charge with the desire to do what is right for the whole. He explained that this is simply not the case in all post-conflict environments. He advocated for a

more measured response in which someone from the international community applies pressure or pushes for certain positive levels of change. A sitting regime may not find such changes to be in its interest and can potentially hold an entire group of civil society hostage. Some argue that the situation in Bosnia would not have been improved in certain areas if the current High Representative had not imposed certain reforms after repeatedly trying and failing to get the leaders to do so. In any event, it seems that whatever the approach, the critical aspect is that of the process. Whether some type of external pressure or intervention is warranted when there is not adequate consultation, involvement and acceptance of local actors, it is difficult to see how rule of law and human rights improvements can take place and be sustainable.

The UN statement of wanting to let a country lead itself is understandable given that many would argue that Kosovo and East Timor (and even Iraq) are examples where, even when you have 'control', this control may be illusory, or tenuous at best. State building is hard work. The UN has been the subject of considerable criticism for its work in Kosovo and East Timor. Furthermore, the goal of 'capacity building' is often elusive. Capacity building may occur where a foreign actor does the job but at some point 'hands over' the job to a local actor. Or it may involve the local actor doing the job while the foreigner acts as a mentor. Unfortunately, in both scenarios, building of local capacity rarely occurs. This may be because there is simply a lack of understanding of how to build capacity and no effective mechanism in place for it to take place. It may also be because the particular foreign actor or organisation holds on to control, not fully trusting the local or not wishing to give up the position or power. Kosovo is an example where control of the criminal justice sector is clearly still in the hands of the international community, even though it has been stated that a handover has been and is occurring. Further, there has been insufficient capacity building of judges and prosecutors in handling serious crimes cases (for example, organised crime and terrorism) because internationals control and direct these cases. In East Timor, some complain that the UN pulled back despite the fact that capacity building was nearly non-existent.

But what is the alternative? What is the balance? Should new models be developed and tested? Only the future will tell which models may be used and what might work. We know what has not worked. If balance is key, then we need to work out what walking the middle ground means, practically speaking. Among some within the rule of law assistance provider community, these are the issues that are being explored. It is safe to say that, for some of those who have been in the post-conflict circle over the past 10 years, foreign assistance providers are frequently coming to the conclusion that they do not know what really works. It is a paradoxical situation in which the more you know, the more you realise how little you know.

It is not a simple solution of going in and training a few judges and prosecutors, amending a few laws and not worrying about life outside the justice sector. In fact, rule of law and human rights advances do not happen in a vacuum. They are nearly always tied to political, economic and cultural factors. Therefore, these factors, including understanding the nature of the conflict, the players and the power forces and interests, must be understood and considered in order to determine how best to approach rule of law and human rights issues. These factors can affect a program and present challenges to the restoration of human rights. One example is Afghanistan, where warlords wield influence over most of the country outside of the capital of Kabul. In constructing a program, agreement by the Ministry of Justice in Kabul to collaborate does not necessarily mean the justice personnel outside Kabul will also collaborate. Further, the interim administration, for political and stability reasons, made the decision during the early stages of the administration to include warlords in the government structure rather than exclude them and risk further instability.

Local consent, ownership and consultation must be present. Keeping these considerations in mind when developing programs could go a long way in helping to relieve some of the tension so often present between foreign assistance providers, members of international organisations and local actors. Without the proper acknowledgment that we are foreigners and do not have all the answers, we will fail. It is like me coming into your home and telling you how to bake a cake according to how I do it at mine — not accepting that perhaps you know the peculiarities and availability of your ingredients, the altitude and water better than me. Without in-depth assessment that places the 'users' at the centre, we cannot develop proper programs, much less determine the prioritisation or sequencing of issues.

One positive example that I experienced was in Bosnia. Although more comprehensive revisions were to take place in later stages, the first round of revisions of the criminal code and criminal procedure code were designed to bring them into compliance with international standards. These were drafted by a group of local and foreign participants. The team worked closely together and the process was largely driven by Bosnian experts with foreign funding. The training program was developed the same way, with the Bosnians acting as the trainers and with the foreigners providing the resources and providing assistance personnel in a 'train the trainers' program designed to develop additional Bosnian trainers. The Bosnian experts were placed at the centre of the training, fully engaged in the process. The foreign assistance providers played more of a supporting role. Mutual respect developed through the process. Excitement and ownership followed naturally.

Conclusion

I think of two concepts when I think about post-conflict rule of law and human rights work. Those concepts are first, be humble and second, do no harm. We can be humble when we acknowledge that we do not have all the answers, that we all make mistakes and that addressing rule of law and human rights in a post-conflict society is simply challenging. We can strive to do no harm when we take stock of our capabilities and limitations and choose the tasks that we can stick with and do well. The work we do in human rights and rule of law should not be about us, but about the country in which we are working. It should be based upon the notion of what is in the best interest of that country and its people as a whole, and not what is best for our self-interest. Many of us began our work with that belief in mind, and I just hope that we can keep it in mind and not allow ourselves to lose sight of it in the face of the many challenges we confront in this work.

References

International legal materials

European Convention for the Protection of Human Rights and Fundamental Freedoms, 3 September 1953, 213 UNTS 222

Report of the Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S/2004/616, 23 August 2004

