Chapter 31

UN Capacity Building: Basing Efforts on Nationally-Assessed Goals, Policies, and Needs

Shelley Inglis *

One of the criteria by which the legacy of the international intervention in the Balkans will be evaluated is the extent to which the national court systems in the region are able to effectively continue the prosecution of war criminals after the International Criminal Tribunal for the former Yugoslavia (ICTY) completes its case work. In order to begin this evaluation, it is necessary to consider the roles of the international community and the United Nations in advancing the rule of law by assisting the capacity building of the judiciaries of the former Yugoslavia to prosecute war crimes. In addition, an examination of the best practices, lessons learned, and needs identified in knowledge transfer and capacity building, as well as the types of capacity building that are being undertaken, must be made. Finally, thought should be given as to how sustainability and local ownership could best be ensured in the region with respect to capacity building. This essay focuses on providing background on the rule of law generally, and addresses lessons learned in this area with respect to the rule of law and transitional justice.

UN Activities

The UN has learned many lessons about how to develop capacity to strengthen the rule of law since the establishment of the ad hoc tribunals. This is, in part, an aspect of the legacy of the tribunals themselves as a number of lessons have emerged from the experience of operationalizing the tribunals and understanding their impact on the national communities and situations concerned.

It is also a legacy of the significant investment over the past ten or more years in strengthening the rule of law in the Balkans and Rwanda, as well as in other post-conflict countries. In East Timor and the Balkans, for example, substantial emphasis was placed on international decision making and expertise, and donor-driven models and political imperative. No doubt a great deal of rule-of-law assistance was provided

* Shelley Inglis is Rule of Law Officer in the Office of the United Nations Deputy Secretary-General. The views expressed are those of the author and do not necessarily reflect those of the United Nations.
prior to the establishment of the tribunals and international engagement on these issues, which occurred in the 1990s. Yet the lessons learned from this era were not particularly well documented, with little to no effort made to widely disseminate any of the lessons learned or good practices developed.

The Report of the Secretary-General to the Security Council on Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies\(^1\) consolidated and laid out many of these lessons, which helped the UN to come around to a shared understanding of the concepts of “rule of law” and “transitional justice.” This report was drafted six years ago, and as such many of these lessons and practices explored here are not novel. However, they have yet to be fully implemented by the international community in many contexts.

In fact, most of the lessons learned are not unique to rule-of-law engagement in post-conflict contexts. As a result, principles for UN engagement in strengthening the rule of law in all contexts (including long-term development) have been firmly established. These reflect many good practices in development assistance generally, and draw significantly from these experiences.

Since the engagement on rule of law expanded in the 1990s, interest in and capacity of many parts of the UN also expanded in the areas of rule-of-law work, demanding efforts to ensure coherent policy and operations in country. The UN fully recognized the need for internal coherence and coordination to strengthen the effectiveness of what we do in this field. As a result, the Secretary-General established the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General, under the leadership of the Deputy Secretary-General. This group is responsible for implementing a series of substantive tasks that go beyond information sharing, including overall strategy and policy development, improving the effectiveness of the support provided to Member States in these areas, and establishing overall partnerships between the UN system and other key actors, such as bilateral donors and nongovernmental organizations (NGOs).\(^2\)

Strengthening the UN approach to combating impunity and the legacy of international efforts to date, including that of this tribunal, are critical aspects of this work and was a key focus of discussions in the first annual UN system-wide meeting on rule of law that took place last year, with participants from the ICTY. It will continue to be important as we seek to ensure that international efforts and resources to strengthen the rule of law and capacities in countries to prosecute serious international crimes align with the international obligations of Member States to undertake
