Justice Sector Reforms in post conflict peacebuilding & the use of transplantation as a tool to introduce post conflict legal change

Global Master of Arts Program Capstone Project

Submitted by

Richa Tewari

2 August 2021

http://fletcher.tufts.edu

THE FLETCHER SCHOOL

TUFTS UNIVERSITY

Table of Contents

Executive Summary

Establishing rule of law for countries in transition from conflict to peace has become a critical aspect in the work of internationals agencies involved in peacekeeping missions. In post conflict settings around the world, there has been considerable legal reform as part of the rebuilding and transformation. The United Nations is at the forefront of such efforts.[1]

The need for post conflict reforms stems from the discriminatory nature of the prior laws, which along with violating the international norms fall short of the needs of the country.[2] Also, post conflict countries lacking suitable legislative framework have a high probability to turn as safe havens for terrorist activity and organised crime.[3] Despite three decades of experimentation, limited information is available on how legal change can be effectively facilitated and be sustainable.[4] The paper traces the evolution of UN intervention in post conflict countries and examines two different post conflict intervention models of the United Nations in the state of Kosovo and Afghanistan. In a post conflict setting, the domestic law often exhibits signs of neglect and political distortion, often needing immediate assistance with reforming the legislative frameworks, as new laws contribute towards building fair and effective systems. International community plays an important role in the legislative reforms. Transplantation of legal models is one of the oldest mechanisms for introducing

[1] R Bair, "UN Peacekeeping and the Rule of Law" (2021) American Political Science Review, 115(1), Pg. 51

[2] The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary General, UN Security Council. S/2004/616

[3] John Jupp, "Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005" (2011) University of Sussex. Pg. 390

[4] Samuels Kirsti, "*Rule of Law Reform in Post Conflict Countries: Operational Initiatives and Lessons Learnt*," Social Development Department, The World Bank (2006)

legal change. International actors involved in the legislative reform process often turn to transplantation to solve legislative difficulties.

Also, legal transplants have been used as a major source of criminal law development in many parts of the world for a significant period of time.[5] While some legal codes developed through transplantation in the area of criminal justice have succeeded others withstood reception challenges. The paper shall examine transplantation of foreign codes as a mechanism to introduce legislative frameworks in a post conflict setting. It will test the hypothesis that transplanting foreign legal codes in a post conflict country is not a very effective and sustainable mechanism for promoting sustainable legal change. The thesis tests the hypothesis by analysing the Interim Criminal Procedure Code (ICPC) 2004- a procedural code in Afghanistan developed through the mechanism of legal transplantation. Afghanistan has been chosen as a case study as it is makes for a recent example of international intervention with legal experts and international actors involvement in the post-conflict legislative reform. The transplanted content of the ICPC and the manner of transplantation have impacted the degree to which it has been accepted and attained its objective. It is not always suitable to develop post conflict criminal law through legal transplantation. Also, legal change cannot be necessarily compensated with transplantation of a western model. Local contextual concerns play an intrinsic part in determining the success or failure of the legal transplantation, both at the time of the enactment of the law and through its application later on. Some of the important lessons from the assessment have been that legal development should be a reflection of local context. Also, post reform criminal codes should

[5] M. Damaska, "The Uncertain Fate of Evidentiary Transplant: Anglo American and Continental Experiments," (1997) 45 American Journal Comparative Law. Pg. 852

examine the level of its acceptance amongst the local population and the degree to which it has been able to achieve its objectives. To be operational and successful, legal reforms and frameworks must address the needs of the ordinary people, built upon pre-existing cultural commitments and enjoy popular legitimacy.[6] Successful legal reforms require acceptance and endorsement by the local legal intermediaries including the courts, judges, lawyers and the local population.[7] In the end, the paper identifies some gaps within the legislative reform process. The proposed measures shall strengthen and integrate legal reforms within the mission to maximise its contribution to lasting peace and security.

[6] Jane E Stromseth, "Post Conflict Rule of Law Building: The Need for a Multi layered, Synergistic Approach, (2008) Georgetown University Law Centre Pg.1457

[7] Kristen Boon, "*Legislative reform in post conflict zones: jus post bellum & the contemporary occupant's law-making powers*," (2005) 50McGill L.J, Pg.325

1. Introduction

In times of humanitarian crisis, there is a political imperative to rebuild core state capacities such as a functioning legal system in order to ensure peace and stability.[8]

The term 'post conflict' generally refers to a post war situation[9] to describe a period when the main hostilities have ended, with the signing of the peace accord. But the domestic government is unable to assert independent effective control (in its ability to preserve public order) over its territory.[10] In this paper, I employ the term 'post conflict state' to refer to countries where the international community has intervened to assist the move from conflict to peace. Peacekeeping is one of the most effective tools to assist host countries navigating the path from conflict to peace. External actors, especially the United Nations, have engaged in post-conflict environments for decades, there has been a change in the nature and rationale of peace missions after the Cold war ended.[11]

With the end of the Cold war, wars have predominantly been fought within states instead of between states with insurgent groups challenging the government and the state with violent means.[12] This changing context confronted the United Nations with the need to rethink its peace strategies and concentrate on actively assisting countries to make the transition from war to sustainable peace.[13] Led by practical demands, these missions expanded into

[8] Kristen Boon, "*Legislative reform in post conflict zones: jus post bellum & the contemporary occupant's law making powers*," Mc Gill Law Journal. Vol 50, Issue 2, June 2005.
[9] Criminal Justice Reforms in Post Conflict States, UNODC, United States Institute of Peace, 2011. Pg.2
[10] Matthew Saul, "*The Search for an International Legal Concept of Democracy: Lessons from the Post Conflict Reconstruction of Sierra Leone*," Melbourne Journal of International Law, Issue 1 June 2012. Pg. 540
[11] Nora Roehner, "UN Peacebuilding- Light Footprint or Friendly Takeover," (2011) Pg.7
[12] Ibid, Pg.20
[13] Ibid, Pg.20

multi-dimensional peace operations wherein UN's scope of peacekeeping expanded beyond the traditional interposition of "neutral" and observational forces in the buffer zones.[14] The UN mission mandates actively implemented increasingly comprehensive peace agreements to include institutional reforms and rebuilding, human rights protection, leading to the evolution of peacebuilding from traditional peacekeeping.[15] Led by the imperative to resolve protracted conflicts within states in order to prevent the recurrence of violence, the focus has shifted from separating the conflict parties to bringing them together and supporting the process of reconstruction.[16]

Legal reforms in the post conflict setting are central to the reconstruction effort. The mandate for a legal reform is included in a post-conflict peace agreement, it could be of binding nature on the parties to the agreement.[17] The need for reforms maybe incorporated in the peace agreement and therefore mandatory for the parties to the agreement. Sometimes, the need for legal reforms stems from the result of the findings of the truth commission.[18] In other cases, legislative frameworks of a post-war country need to be drafted or amended so that legal framework complies with the provisions of the constitution and international obligations that a State has.[19] Often times, legal reforms are initiated as a result of inadequacy of laws in a post conflict setting.[20] Legal reform is imperative in post conflict states as existing laws often tend to be irrelevant to the post-conflict context, outdated or related with the ills of a

[14] Olawale Ismail, "*The Dynamics of Post conflict reconstruction & Peacebuilding in West Africa*," The Nordic Africa Institute (2008) Pg.10
[15] Olawale Ismail, "*The Dynamics of Post conflict reconstruction & Peacebuilding in West Africa*," The Nordic Africa Institute (2008)
[16] Nora Roehner, "*UN Peacebuilding- Light Footprint or Friendly Takeover*," 2011. Pg. 7-8
[17] Handbook on United Nations Multidimensional Peacekeeping Operations, UNODC, Department of Peacekeeping Operations, 2003. Pg.59
[18] Ibid, Pg.59
[19] Ibid, Pg. 59
[20] Ibid. Pg.60

political system that gave rise to the conflict in the first place.[21] Also, destabilized by conflict, existing legislative frameworks contain discriminatory elements, exhibit accumulated signs of political distortion, neglect and barely articulate the requirements of international human rights.[22] The laws may not reflect the present day reality and may be falling short of the core elements necessary for the proper functioning of society.[23] The absence of a functioning legal system can adversely affect both the short and long term objectives of the peace-building efforts including the restoration of political stability necessary for the development of democratic institutions.[24] As Kofi Annan acknowledged, the United Nations has learnt that "*the rule of law delayed is lasting peace denied*."[25] The failure to reform the legal framework quickly and effectively has the potential to result in the eventual relapse into violence.[26] Amendment or rewriting of legislative frameworks is therefore a principle element in the post conflict reconstruction.

New laws in a post conflict setting, pave the way for the development of equitable and effective justice systems and promotion of rule of law. Numerous legislative reform activities in post conflict societies necessitate aligning the domestic legal framework with international human rights standards, chiefly by revising the criminal codes and writing of the Constitution.[27] Criminal justice

---

[21] K. Samuels, "Rule of Law Reform in Post conflict Countries- Operational Initiatives and Lessons Leant," Conflict Prevention and Reconstruction. Paper No. 37 (October 2006)
[22] The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary General, UN Security Council. S/2004/616
[23] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.60
[24] Hansjorg Strohmeyer, "*Collapse and Reconstruction of a Judicial System: The United Nations Mission in Kosovo and East Timor*," The American Law Journal of International Law, Vol. 95, No.1 (2001) Pg. 43
[25] Calin Trenkov-Wermuth, "*United Nations Justice: Legal and judicial reforms in governance operations*," United Nations University Press (2010) Pg.7
[26] Calin Trenkov-Wermuth, "*United Nations Justice: Legal and judicial reforms in governance operations*," United Nations University Press (2010) Pg.7
[27] K. Samuels, "*Rule of Law Reform in Post conflict Countries- Operational Initiatives and Lessons Lea*nt," Conflict Prevention and Reconstruction. Paper No. 37 (October 2006)

reform is considered to be a part of the broader rule of law reform agenda.[28] Such reforms are required in the post conflict setting as they represent urgent measures that are needed to guarantee peace, order and stability. The UN Security Council has adopted an expanded definition of what constitutes a threat to international peace and security. It now includes internal conflicts which may generate humanitarian crisis and regional instability. The report of the *UN Secretary General, Rule of Law and Transitional Justice in Conflict and Post Conflict Societies* mentioned that consolidation and maintenance of peace in the long term, cannot be achieved unless, "*the population is confident that redressal for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice*."[29] Where rule of law is strong, disputes can be resolved through transparent, publicly promulgated laws enforced by fair and accountable justice institutions.[30]

International actors are increasingly involved in the reform of domestic legal systems. Marking a paradigm shift in what was traditionally an exclusive right of the sovereign to make laws within its jurisdiction.[31] Legal reforms and the establishment of legal entities to deal with justice issues in the post conflict phase is now considered a core peacekeeping task and an integral part of the UN's approach to peace and security.[32] UN is at the forefront of efforts to restore rule of law in countries recovering from conflict.[33]

---

[28] Handbook on United Nations Multidimensional Peacekeeping Operations, UNODC, Department of Peacekeeping Operations, 2003. Pg. 2

[29] *Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*, United Nations Security Council, UN Doc S/2004/616, 23rd August 2004

[30] Robert A. Blair, "*UN Peacekeeping and the Rule of Law*," (2020) Cambridge University Press

[31] Kristen Boon, "*Legislative reform in post conflict zones: jus post bellum & the contemporary occupant's law-making powers*," (2005) 50McGill L.J, Pg.287

[32] Robert A. Blair, "*UN Peacekeeping and the Rule of Law*," (2020) Cambridge University Press

[33] Ibid.

"Rule of law" and its promotion is central to the post conflict United Nations missions.[34] It refers to

"a principle of governance in which all persons, institutions, 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 to ensure adherence to 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." [35]

In order for rule of law to become a reality, all components of a country's legal infrastructure must be developed, including the legal code, and the judicial, penal and policing systems. This construction involves the revision and modernization of much of the previous legal and legislative infrastructure. Legislative reforms are an essential component within the broader rule of law reform agenda. In this paper rule of law shall broadly refer to legislative reforms- including drafting of new laws, as well as the amendment of the existing ones, as part of the post conflict reconstruction. In the latter part of the paper, legal reforms shall specifically refer to post conflict reform of the criminal procedure code in Afghanistan. The paper will elaborate on the evolution of legal reforms in post conflict reconstruction and analyze the role of transplantation of foreign codes in carrying out post conflict legal reforms. In the last chapter the paper shall identify some gaps within the legal reform process and propose measures to strengthen and integrate legal reforms to maximise its contribution to lasting peace and security.

Research Questions

[34] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg. 2

[35] Report of the Secretary General on the Rule of Law and Transitional Justice in Conflict and Post Conflict Societies, United Nations Security Council, (2004) UN Doc S/2004/106, para 6.

United Nations (UN) is the only international organisation that has been mandated in the last few decades to assist in the reconstruction of a legal system in the post conflict society virtually from the ground up. As UN has been involved in international territorial administration more than any other institution[36], its experience with legal reforms is likely to hold many valuable lessons for its peace assistance missions. What lessons can be learnt from UN legislative reforms which are part of the peacekeeping missions in post conflict countries. My hypothesis is that importation of a foreign code or a western model is not an effective and conclusive mechanism for developing sustainable legislative framework. To test my hypothesis, I will examine in detail the Interim Criminal Procedure Code (ICPC) 2004 in Afghanistan, to evaluate if it has been a successful transplant. International experts involved in drafting of the ICPC preferred to rely to a great extent on foreign legal codes and transplanted the bulk of provisions into the Afghan domestic law. Also, examining ICPC will throw some light on the usage and reliance on transplantation as a mechanism in the development of criminal law frameworks, for countries transitioning from conflict. I have selected the criminal law reform in Afghanistan as it is one of the most recent examples wherein the international community has been involved in post conflict criminal law reform.

To answer the primary question and to test my hypothesis, several sub-questions need to be answered including the following- Can reliance on foreign models of law and importation of foreign legal codes help to establish a sustainable legal framework? Can bulk of legal provisions be transplanted from accepted

[36] Calin Trenkov-Wermuth, "*United Nations Justice: Legal and judicial reforms in governance operations*," United Nations University Press (2010), Pg. 10

western templates to fill the legal vacuum and promote rule of law? Can transplantation be a reasonable and effective way of producing change? Is the engagement of local actors helpful in the implementation of legal reforms?

Chapter organisations

In order to advance the analysis, the paper is structured in three different sections. In the first section, the paper outlines the setting of a post conflict country, the importance of legal reforms in a post conflict setting, the role & involvement of international actors in the process and the broad evolution of legal reforms in the past thirty years. In the second section, the paper examines transplantation of legal frameworks as a model for legal reform. Since a long time, transplantation has been used as a legislative tool in many parts of the world to assist in post conflict legal change. There is a divided view on the rationale for employing it. The paper examines the use of transplantation in post conflict reconstruction, analysing its contribution and rationale for adoption. The Criminal Procedure Code of Afghanistan (ICPC 2004) is used as a case study to examine transplantation as a mechanism to introduce legal reforms in a post conflict setting. Finally, in the last section, the paper evinces some of the main shortcomings of the UN engagement and elaborates on the best practices to be adopted for effective legal reforms as part of a peace building efforts in a post conflict setting.

Terminology

It is important to define, what I mean by legal reforms. For the purpose of this paper, the rule of law and justice reforms shall refer to reforming of the legislative frameworks in accordance with international human rights standards.

A well-functioning criminal justice system is a pre-requisite for rule of law to be effective. Legal reform in the latter part of the paper shall refer to the reform of the criminal procedure code in Afghanistan.

Resources

The research for this paper is anchored fundamentally on primary sources related to UN engagements in Kosovo and Afghanistan. To operationalise the analysis, the research rests on archival research. The research examined relevant documents, mainly UN documentation- resolutions, reports and evaluations from the UN system and also reports from other international organisations, non-government institutions, research centres as well as national reports and legislations.

2. Legal Reforms in a post-conflict setting- Rationale & International Involvement

2.1 Rationale for legal reforms

Each post conflict country represents a unique situation.[37] However, every post conflict state is characterized by three main features: a breakdown in law and order, state losing its power on the legitimate use of force and a weakened capacity to respond to citizens' needs.[38] Introduction of legal reforms is a critical concern for countries making the transition from conflict. International actors often experience extreme inadequacy of laws in many legal spheres and as a result they often work together with other actors to reform the laws.[39] They work with the aim of establishing compliance between the laws and the international human rights standards and norms.[40]

Lord Paddy Ashdown, *the former High Representative for the UN in Bosnia and Herzegovina*, expressed the esteem United Nations accorded to the furtherance of rule of law for countries in transition from conflict to peace. He stated that *"we should have put the establishment of rule of law first, for everything else depends on it: a functioning economy, a free and fair political system, the development of civil society, and public confidence in police and courts.*"[41]

Broadly, the four rationales put forth by as justifications for legal reforms in fragile and post conflict states are *Legal reforms help in peacebuilding-*

[37] Earnest, J. & Dickie, C., "*Post conflict reconstruction- a case study in Kosovo*," Paper presented at PMI, Research and Education Conference, Limerick, Munster, Ireland (2012)
[38] Maria Pantin, "*Why the West won't win Afghanistan: game theory implications for post conflict reconstruction,*" (2007) Master Thesis, Memorial University of Newfoundland
[39] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.57
[40] UNODC. Criminal Justice Reform in Post conflict States. United Nations, September 2011
[41] Lord Paddy Ashdown, "*What I learned in Bosnia*," The New York Times, 28 October 2002

Transitional justice, written constitutions and reforming the criminal law framework support in removing sources of conflict and injustice and are increasingly recognized as essential aspects of peacebuilding in post conflict states. *Legal reforms are critical for economic development* as predictable and enforceable laws are a requisite for contract enforcement and foreign investment. *Legal reforms are important for democratization* as a liberal democracy necessitates the need for protection of human rights and holding the government accountable. *Legal reforms help with poverty reduction* in a post conflict setting as the impact of crime on the livelihood of the poor is significantly greater, as they are less able to access justice systems.[42]Assisting in the improvement of the criminal justice framework provides a considerable opportunity to address this problem.

2.2 Importance of International Involvement in Reconstruction

International actors recognize legal & institutional reforms as central to the post conflict reconstruction. The domestic law of a ravaged country, according to the UN, "*often contain discriminatory elements, show accumulated signs of neglect and political distortion, and rarely reflect the requirements of international human rights standards*."[43] Thus creating a need for external support to help and build them.[44] This marks a shift from the traditional systems wherein legislative reforms were the exclusive right of the sovereign.

[42] Kevin E. Davis & Michael J Trebilcock, "*Legal Reforms in Development*," Third World Quaterly, Vol 22 No.1 (Feb. 2001) Pg.21-36
[43] The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies, Report of the Secretary General, UN Security Council. S/2004/616
[44] Dissertation submitted by Simon K. Nyambura on Post conflict Reconstruction in Africa: The role of International Community, Kansas State University (2004)

The end of the Second World War witnessed an increase in the involvement of the international community in post conflict reconstruction. This intervention also included legal reforms and transformation within the justice systems.[45] Further, development of the International humanitarian law, international refugee law and International criminal law lead to a new rights framework, of which the international community is the custodian.[46] Also, International donors have discovered that long term solutions to security and humanitarian problems depend on building and strengthening of the legal system including reforming and updating legal codes and creating a widely shared commitment to human rights.

No international organization can single handedly conduct the multi-faceted tasks required to support justice sector reforms and consolidate peace processes. The growing involvement of regional agencies and arrangements in the maintenance of international peace and security, as envisaged in Chapter VIII of the UN Charter, has created new opportunities for combining the capacities of United Nations and non-United Nations actors to manage complex and multi-dimensional crisis.[47] International agencies such as the Germany's Agency for Technical Development (GTZ) and the Department for International Development (DFID) are among organizations that provide technical support to the UN for legislative drafting programmes.[48] Non-governmental organizations like American Bar Association, Eurasian Law Initiative and the Central

[45] Kristen Boon, "*Legislative reform in post conflict zones: jus post bellum & the contemporary occupant's law-making powers*," (2005) 50McGill L.J, Pg.292

[46] Report of the Secretary General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, United Nations Security Council, UN Doc. S/2004/616 (2004) Para 9

[47] United Nations Peacekeeping Operations- Principles and Guidelines, United Nations Secretariat (2008)

[48] David Tolbert & Andrew Solomon, "*United Nations Reform and Supporting the Rule of Law in Post Conflict Societies*," Harvard Human Rights Journal 19 (2006), pp.55-56

European Law Initiative (ABA/CEELI), the International Legal Assistance Consortium (ILAC) and the International Development Law Organization (IDLO) have also facilitated the development of reform programmes and rendered technical expertise in the drafting of legislative frameworks.[49]

[49] Ibid, pp. 55-56.

3. Evolution of Legal Reforms

Assistance for legal reforms emerged in the 1960s with the US Law and Development movement (LDM) against the backdrop of American aid to developing countries.[50] It was championed by leading American legal scholars and mainly funded by United States Agency for International Development (USAID) and Ford Foundation which associated socio-economic development to the reform of the national legal systems.[51] LDM was an American movement, influenced by modernization theory and believed that law could speed up social, political and economic convergence of the 'Third world' with the West.[52] America's own legal systems and institutions were taken as the appropriate model, and in practice reform largely consisted of the transplantation of the US institutions. In the 1970s and 1980s, a revival of the rule of law reform, took place in the context of international assistance to the democratic transitions of authoritarian states, mainly in the region of Latin America.[53]

Later this approach was most commonly associated with the view of the World Bank which believed that functioning legal frameworks and institutions are crucial for economic growth and for fostering a healthy business environment.[54] The Bank provided 'Legal Technical Assistance' through legal drafting and introduction of legislative reforms. The World Bank recognised an intrinsic connection between promotion of rule of law with economic, human and social

[50] David M. Trubek, "*Law and Development. Then and Now*," Proceedings of the Annual Meeting (American Society of International Law) Vol 90, 1996, pp.223-226
[51] Ibid. Pg.225
[52] Woubishet Shiferaw, "*Effective decision-making and its impact on Social Justice: The Federal and Amhara National Regional Courts of Ethiopia*" (2017) University of Warwick.
[53] Almeida Cravo, "*Linking Peacebuilding, rule of law and security sector reform: The European Union Experience*," (2016) Asia Eur Journal, 107-124
[54] The World Bank and Legal Technical Assistance: Initial Lessons, Policy Research Working Papers. November 1999

development. This economic development paradigm seek to enhance the quality of the legal underpinnings necessary to support inclusive economic growth.

With the end of the Cold war, legal reforms have been increasingly recognised as an important aspect of conflict resolution and post-conflict peacebuilding.[55] The nineties witnessed an expansion of UN peacekeeping operations wherein the post-conflict countries became the cornerstone of the rule of law promotion programmes.[56] There was an unprecedented demand for peace interventions from Balkans, Haiti, East Timor to El Salvador. The World Bank estimate to have supported 330 "rule of law" projects dealing with legal and judicial reform in over 100 countries.[57] UN led post-conflict peace operations included legal reform of the domestic law as part of the international peace-building strategy. Such approach stemmed from the discriminatory nature of the prior laws, which often violated international standards, or were understandably insufficient for the needs of the country.[58]

3.1 Different models of intervention - From Trusteeship to Assistance

Legal reforms in countries recovering from conflict do not usually follow the same rationale or present the same options.[59] Each situation presents unique characteristics. The relevant variables might include the security situation, historical reasons leading to the conflict and the starting level for the

[55] Legal and Judicial Reform in Post Conflict Situations and the Role of International Community, CILC Seminar, Hague Dec. 2006. Pg. 15
[56] Jane Stromseth, David Wippman and Rosa Brooks, "*Can Might make Rights? Building the Rule of Law after Military Interventions*," Cambridge University Press (2006) Pg. 414
[57] Alvaro Santos, "*The World Bank Uses of the Rule of Law promise in Economic Development,*" New York: Cambridge University Press (2006)
[58]Mark Plunkett, "*Re-establishing Law and Order in Peace Maintenance*," (1998) 4 Global Governance, Pg. 65
[59] Matteo Tondini, "*From Neo-Colonialism to a Light Footprint Approach: Restoring Justice Systems*," International Peacekeeping, 15:2, 237-251

restoration.[60] Over the years, while undertaking legal reforming in a post conflict setting, the UN has experimented with different models ranging from full participation of international officials in the policy making process- acting as kind of trustees[61] to taking up a limited role in the justice reforms. Below two different models of intervention are briefly explained-

3.2 Kosovo and the Trusteeship model- With the adoption of the Security Council resolution 1244 on 10th June 1999, UN established a *de-facto* trusteeship model in Kosovo and temporarily took over full administration and government functions of Kosovo and the territory. The international society acted under Chapter VII of the UN Charter to intervene in the domestic affairs of the state. The operation entitled United Nations Mission in Kosovo (UNMIK) to establish a transitional administration in Kosovo. The institution of '*trusteeship'* was adopted by establishing transitional administration over the entire country. UNMIK was vested with comprehensive mandate to govern the territories empowering it to exercise all legislative and executive authority in Kosovo. The primary responsibility entrusted was promoting the establishment of substantial autonomy and self-government in Kosovo;[62] carrying out basic civilian administration; organizing the establishment of democratic institutions; supporting the reconstruction of infrastructure; maintaining law and order; and protecting and promoting human rights.[63] This exercise of sovereign power was

[60] Matteo Tondini, "*From Neo-Colonialism to a Light Footprint Approach: Restoring Justice Systems*," International Peacekeeping, 15:2, 237-251
[61] Carsten Stahn, "*International Territorial Administration in the former Yugoslavia: Origins, Development and Challenges Ahead*", 61(1) Zeitschrift fur Auslandisches Offentliches Rechts und Volcherrecht 2001, 107-172, Pg. 11
[62] Sarah William, "*Accountability for United Nations Civilian Operations in post conflict Kosovo,*" Durham theses, Durham University.
[63] Knudsen, T.B., & Laustsen, C.B (2006) *Kosovo between War and Peace: Nationalism, Peacebuilding & International Trusteeship* (1st ed.). Routledge.

an entirely different and an unprecedented enterprise from the previous peacekeeping operations the UN had undertaken.[64]

The mission in Kosovo was marked by the full participation of international officials in the policy making process, acting as kinds of trustees.[65] Rule of Law reforms was a centerpiece component in the comprehensive mandate of the UNMIK. The UNMIK was the highest legislative power in Kosovo. Rule of law reforms as a part of peacekeeping missions was a relatively new phenomenon at the inception of the UNMIK. The missions saw a much deeper international involvement in the domestic affairs than the traditional operations.

The scope of the UNMIK mandate was unprecedented in UN peacekeeping operations. It was the first time that the UN was entrusted with such a comprehensive mandate. The Special Representative of the Secretary General (SRSG) exercised all the executive and legislative powers and the administration of the judiciary. He was the highest legislative body and could issue binding legislation in the form of UNMIK regulations[66] that precede all national legislations. The tasks entrusted to UNMIK incorporated a much wider range of responsibilities than the traditional peacekeeping operations prevalent at that time. There is a significant difference between peacekeeping on one hand and trusteeship on the other, in terms of the amount of responsibility and authority placed with the UN. In a peacekeeping operation, the UN works with the existing government in a territory or state, while the role of the UN in a *trusteeship* is to be the government. The extensive powers vested in the UN and

[64] Calin Trenkov-Wermuth, "*United Nations Justice: Legal and judicial reforms in governance operations*," United Nations University Press (2010) Pg.3

[65] Matteo Tondini, "*Assessing Justice Systems Reform in Afghanistan*" (2008) IMT Institute of Advance Studies, Lucca. Pg. 45

[66] In the first Regulation UNMIK/REG/1991/1, the SRSG Kouchner assigned all legislative, executive and judicial competencies in Kosovo to himself.

the SRSG placed Kosovo in a unique position outside the standard order of international society built on a sovereignty of equal states.[67] The trusteeship established in Kosovo can be characterized as an experiment in the sense that the United Nations has never performed this kind of operation before.

3.3 **Afghanistan and the Light footprint model**- Afghanistan signaled the beginning of the "*light footprint approach*" as there was an eschewing of UN executive missions as seen in the case of Kosovo. The starting point for re-building Afghanistan was the "Agreement on Provisional Arrangements in Afghanistan Pending Re-establishment of Permanent Institutions" commonly known as the Bonn Agreement. The Bonn Agreement established an Interim Afghan Authority and provided the basis for an interim system of law and governance. In support of the Bonn Agreement, the UN Security Council Resolutions 1383 and 1401 established an international peacebuilding operation in Afghanistan under the leadership of UN Mission in Afghanistan (UNAMA).[68] The UNAMA was established as a civilian only operation aimed at integrating UN elements in Afghanistan in a single mission.[69] The UN's engagement in Afghanistan was minimalist in its approach.

The Bonn Agreement gave UNAMA, substantially fewer political functions than the other contemporary missions[70] wherein the UN was mandated to play the role as 'the internationally recognized impartial institution' in monitoring

[67] Albana Gerxhi, "*Post Conflict Peacebuilding in Kosovo*," International Scientific Journal, University of Padua, Italy. Pg. 121
[68] Richard J Ponzio, "*Transforming Political Authority: UN Democratic Peacebuilding in Afghanistan*," Global Governance 13(2007) 255-275
[69] Yuka Hasegwa, "*The United Nations Assistance Mission in Afghanistan: Impartiality in New UN Peace Operations*" (2008) Journal of Intervention and Statebuilding, 209-226
[70] Calin Trenkov-Wermuth, "*United Nations Justice: Legal and judicial reforms in governance operations*," United Nations University Press (2010)

and assisting the implementation of the peace agreement.[71] The Special Representative of the Secretary General in Afghanistan took the "*lighter footprint*" approach with limited international presence to allow for Afghan leaders to take centerstage in the political process. UNAMA remained in close contact with the Afghan transitional authority and provided far more development support than the earlier assistance missions. As part of the plan, certain donors were selected as "*lead nation*" for particular sectors. Italy was designated as a 'lead nation' to coordinate international assistance in the justice sector reforms for Afghanistan.

In Afghanistan, the UN abandoned the comprehensive governance models and adopted a modest modus operandi and assumed advisory role to help locally constituted interim administrators, as part of a peace settlement. The case of Afghanistan witnessed a departure from the expansive mandate in Kosovo wherein there was increased concentration of political authority in the UN hands.

The World Development *Report 2011: Conflict, Security and Development*[72] highlight that reforms of the legal and justice institutions are now seen as an important part of the solution to problems of conflict and development.[73] Also, international actors have increasingly played a larger role in the reform of the domestic legal system. This is a paradigm shift with increase in international

[71] Yuka Hasegawa, "*Is a Human Security Approach Possible? Compatibilities between the Strategies of Protection & Empowerment*," Journal of Refugee Studies, Vol.20, Issue 1, March 2001. Pg.1-20

[72] Global Programme on Strengthening the Rule of Law in Conflict & Post Conflict Situations, United Nations Development Programme, Annual Report, 2010

[73] World Development Report 2011: conflict, security & development-overview. World Development Report. Washington DC.

intervention in a sphere which has been the exclusive right of the sovereign to make laws within its jurisdiction.[74]

[74] Ian Brownlie, "*Principles of Public International Law*," (2003) 6th ed. Oxford University Press, Pg. 291

4. Transplantation of foreign codes and legal reform

In a post conflict setting, international legal experts have considerable opportunity to set '*virtuous cycles in motion*'[75] and draft legislative frameworks favourable to setting the rule of law in motion.[76] Legal experts have engaged in significantly large scale legislative reform programmes including recycling of the pre-existing legislation and in the process, turned to transplanting western solutions. Recycling of the pre-existing legislation is commonly seen as cost effective,[77] also complete or limited dependence on tested and proven legislations have the potential to promote legitimacy amongst the local population for a new government.[78] The need for a new legal framework arise in case the domestic law is unable to be amended or recycled. Historically, legal experts have furthered legal change through transplantation of western codes into the post conflict country's domestic legal framework. There is significant evidence exemplifying the existence and continuance of legal transplants in post conflict legal reforms. However, opinions regarding 'legal transplantation' differ across regions.[79] Some experts hold the opinion that law and culture are inherently associated, making it impractical to bring in provisions of a legislative code into another legal culture. The other group hold the opinion that legal reforms through the mechanism of transplantation have been occurring

[75] *Report of the Secretary General on Peacebuilding in the Immediate aftermath of Conflict*, United Nations General Assembly Security Council, 11th June 2009
[76] S N Carlson, "*Legal and Judicial Rule of Law Work in Multidimensional Peace Operations: Lessons Learned Study*," UNDPO, New York (2006)
[77] John Jupp, "*Legal Transplants as a tool for post conflict Criminal Law Reform: Justification and Evaluation*," Cambridge Journal of International and Comparative Law, 3(1): 381-406 (2014)
[78] R Z Sannerholm, "*In Search of a User Manual: Promoting the Rule of Law in Unruly Lands*," 2007, Pg.8
[79] Alan Watson, 1993 "Legal Transplants: An Approach to Comparative Law," Athens: University of Georgia Press, Pg.21

successfully for a very long time.[80] A fundamental aspect is to examine whether foreign legal codes developed through transplantation, accepted after being received.[81] The value of legal transplant for creating legal change has been the subject of extensive discussion. Some experts have also observed that, "*the identification of performance indicators for a transplanted legal system is a perplexing business at best*."[82]

Legal experts seem to be generally disposed to transplant legal provisions to further legal change.[83] Assigned with the directive of assisting legislative reform, an international legal expert is often "*hard pressed to not look at international benchmarks and models.*"[84] On the other hand, the application of International human rights standards and the obligations therein, have promoted the concept of world-wide networks of legal reference points and broadened the appeal of using transplantation as a means and model for finding solutions to legislative problems.[85]

4.1 Criminal law development through legal transplantation

Legal transplants have been a popular mechanism for developing criminal law. There is wealth of evidence available to suggest professional disposition towards the use of transplantation of legal codes as a means for legislative

[80] Handbook on United Nations Multidimensional Peacekeeping Operations, UNODC, Department of Peacekeeping Operations, United Nations (2003) Pg.67
[81] Ibid, Pg. 67
[82] John H. Beckstrom, "*Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia*", The American Journal of Comparative Law, Vol.21, No.3 (Summer 1973) pp. 557-583
[83] Mirjan Damaska, "*The Uncertain Faith of Evidentiary Transplants: Anglo American and Continental Experiments*" The American Journal of Comparative Law, Volume 45 Issue 4, Autumn 1997. pp. 839
[84] Richard Sannerholm, "*In Search of a User Manual: Promoting the Rule of Law in Unruly Lands*," (December 2007)
[85] John Jupp, "*Legal Transplants as a tool for post conflict Criminal Law Reform: Justification and Evaluation*," Cambridge Journal of International and Comparative Law, 3(1): 381-406 (2014)

problem solving. The Napoleonic *Code d'Instruction Criminelle* (Code of Criminal Procedure) illustrates the power of the legal transplant phenomenon as an instigator for legal development in the field of criminal procedure.[86] Within sixty years from its passage, various versions of it were transplanted in the criminal jurisdictions of European countries, and it also served as a precedent for criminal justice reform around the world.[87] The Italian Codes of 1808 and 1848 were versions borrowed from it and as were the Russian Code of 1864 and Holland Code of 1867.[88] Outside of Europe, its provisions were borrowed by Japan in 1882[89] and it played a noteworthy influence in Criminal procedure reform in the 19th and 20th centuries in many Muslim countries.[90] During the 19th century, legal transplantation was used as a tool within the criminal justice frameworks to establish adversarial procedures in place of inquisitorial systems in order to initiate jury trials based on the English trial system.[91] The jury trials were also transplanted into the French, Spanish, Portuguese, German and Russian Criminal Code in the early nineteenth century. In the early twentieth century, with substantial American influence, they were reintroduced through legal transplantation in Russia in 1991 and in Spain in 1995, wherein the Anglo-American model was adopted.[92] Comparable criminal procedure revolutions were also launched in many Latin American countries over a period of twenty five years, with the aid of legal transplantation. As per estimation, 80% of the Latin American countries have undergone criminal

[86] R. Vogler, "*A World View of Criminal Justice*," 1st ed. (2005) Routledge. 59
[87] R. Vogler, "*A World View of Criminal Justice*," 1st ed. (2005) Routledge. 59
[88] Ibid, pp.58-59
[89] A. Watson, "Legal Transplants and Law Reform" Law Quarterly Review, 1976 pp.79
[90] Persia's 1912 Criminal Code and the first Criminal Code of Egypt (1882) was based on CIC
[91] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law* 2005" (2011) University of Sussex. Pg. 180
[92] R. Vogler, "*A World View of Criminal Justice*," 1st ed. (2005) Routledge. Pp.233-253

procedural reforms to establish adversarial systems.[93] Using the process of transplantation, criminal codes importing Anglo-American adversarial procedures were introduced in Venezuela, Chile, Ecuador, Bolivia, Nicaragua & Honduras in the late 90s and early 2000s.[94] For a significantly long period, legal transplantation has been a popular tool in the evolution of criminal law in many of the world's criminal justice systems.

4.2 Motivations behind the use of legal transplantation

International legal experts while developing new laws have an innate leaning to turn to legal transplantation model to find solutions to legislative deadlock. There were cogent reasons why international actors prefer western models. One of the primary motivations to borrow foreign legal codes is the 'degree of esteem and reputation' the new law carries.[95] A piece of legislation is considered prestigious if acquired from a foreign country where it has been successful.[96] Another motivation for transplanting foreign law is to save cost. They are often an easy and inexpensive solution to legislative issues, having been tried & tested in a foreign country. There is also a 'practical utility' of the importation of western models as it is straightforward to adopt than to create new laws.[97] Modernisation is also an identified ground for encouraging transplantation of law. Archaic legislations in post conflict countries often need to be restored with 'modern' legislations. Often times developing countries

[93] Jonathan L Haftez, "*Pre-Trial Detention, Human Rights and Judicial Reform in Latin America*" 26 Fordham International Law Journal 1754 (2002)
[94] R. Vogler, "*A World View of Criminal Justice*," 1st ed. (2005) Routledge. Pg. 172
[95] Alan Watson, "*Aspects of Reception of Law*," The American Journal of Comparative Law, Vol 44, No.2 (1996) pp.335-352
[96] H. Kanda & c. Milhaupt, "*Re-examining Legal Transplants: The Directors Fiduciary Duty in Japanese Corporate Law*," (2003) 51 American Journal Comparative Law, Pg.889
[97] Alan Watson, "*Aspects of Reception of Law*," The American Journal of Comparative Law, Vol 44, No.2 (1996) pp.335-352

reeling from a conflict are triggered to borrow foreign codes to rework on their legislative frameworks and to adhere to the standards of developed and economically mighty countries. To enable the development of a modern nation, Japan enacted the criminal procedure code in the 1890s, which was based on the French Criminal Code.[98] 'Globalisation and economic development' are also strong motivational forces for importation of western models. Inspired by foreign governments and international institutions, many legislators in developing countries, are increasingly considering foreign codes to facilitate international trade and investment. The advent of globalisation, democratisation and economic development significantly enlarged the scope of legal transplants in developing countries.[99] Globalisation leads to a surge in the dissemination and exchange of legal ideas. Experts believe this has accelerated the process of reform by transplantation.[100] In addition, transplanting foreign legal code is an inexpensive and simple solution to legislative difficulties that occur elsewhere. In a post conflict setting, there is often a need for criminal law reform. For countries emerging from conflict, due to inefficiency of the applicable laws in the criminal justice systems, there is often a pressing requirement for a new legislative framework, to fill any 'rule of law vacuum.' The requirement of a new legislation and its practical utility often makes transplantation an attractive option.

[98] D. Nelken & J. Feest,"*Adapting Legal Cultures*," London Hart Publishing. (2001) Pp.187-198

[99] J M Miller, "*A Typology of Legal Transplants: Using Sociology, History and Argentine Examples to Explain the Transplant Process*," American Journal of Comparative Law, Vol.51 No.4, 2003. pp. 839-885

[100] Maximo Langer, "*From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*," Harvard International Law Journal, Vol.45, Number 1, 2004. Pg. 29

4.3 Legal transplantation and development of ICPC 2004 in Afghanistan -

As explained in the previous section, post conflict countries have inherent requirements for assistance on criminal law reform. The need for a well-functioning criminal law framework in a post conflict setting has led to a great expansion of international involvement in legislative programmes designed to promote legal change. This section will examine in detail use of the legal transplantation model by the experts to develop Afghanistan's Criminal Procedural Code of 2004, to advance the rule of law in a post conflict setting.

The domestic substantive and procedural law of the criminal justice system in Afghanistan after the conflict fell short of sufficiently criminalising activities resulting in the weakening of the efforts to establish the rule of law. Characterised by UN's 'light footprint' stance, the Interim Code for Procedure Code 2004 (ICPC) was introduced as part of a Justice reconstruction programme in Afghanistan, wherein Italy assumed responsibility as a lead nation for the justice sector reforms.[101] Many new laws were introduced in order to improve the local criminal legislation and promote the development of a functioning criminal justice system.[102]

Guiseppe De Gennaro, Executive Director of UNODC in February, 2003 was appointed as the Special Adviser to the Italian Government to advise on the justice reform.[103] The Italians knowledge of the Afghan criminal law and its legal traditions is thought to have been limited, as a result, they relied heavily on the legal principles and rules from their own Code of Criminal Procedure of

[101] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex. Pg. 180

[102] The Criminal Justice Assessment Toolkit, UNODC 2006.

[103] Matteo Tondini, "*The Role of Italy in Rebuilding the Judicial Systems in Afghanistan*," 45 Mil L. & L War Rev.79 (2006) Pg.80

1988.[104] The Presidential decree in February 2004, promulgated the Interim Code of Criminal Procedure (ICPC) into law.[105]

Although, the ICPC was not an absolute replication of the Italian Code, most of its 98 articles were borrowed from it. [106] As a result, the foreign element its content and the procedure that led to the development of the ICPC, it can be inferred as a case of legal transplant. The Code was divided amongst fifteen chapters. It enumerated procedural rules to administer the different stages of criminal procedure beginning with arrest, detention, investigation and prosecution for criminal offences,[107] trial and the implementation of decisions[108] appeals and the procedure for appeal to the Apex Court.[109]

The adoption of the ICPC was met by opposition from factions of the justice sectors including lawyers who objected to the replacement of a long established code with an interim law one fifth its size and filled with foreign concepts.[110] Examining the application of ICPC will be useful to understand the role of legal transplantation as a mechanism to re-establish the criminal law framework for countries emerging from conflicts.

4.4 ICPC- A transplanted legislation & its application

Acceptance of a legislative framework in a post conflict setting can be assessed by the degree of its application and use. Performance indicators are a good

---

[104] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex. Pg.184

[105] Interim Code of Criminal Procedure for Courts, Official Gazette No. 820, 25 February 2004

[106] Matteo Tondini, "*The Role of Italy in Rebuilding the Judicial Systems in Afghanistan*," 45 Mil L. & L War Rev.79 (2006) Pg. 343

[107] Interim Code of Criminal Procedure (ICPC) 2004- Chapter 1-7, Articles 1-41,

[108] Chapter 8, Articles 42-62 ICPC 2004

[109] Chapter 9 & 10, Articles 63-80 ICPC 2004

[110] Sivash Rahbari, "*From Normative Pluralism to a Unified Legal System in Afghanistan*," Asian Journal of Law and Society, (2018) 5(2) 289-314.

marker of the acceptance of the framework. Prison detention statistics, conviction and acquittal rates can be good indicators. Examining the objective of a transplanted law and the degree to which it has been able to achieve its objective is helpful for its evaluation. In the case of ICPC after its enactment, statistics from the Supreme Court of Afghanistan indicate a higher conviction rate in cases of individual's arrested and charged with an offence.[111] The statistics also highlight a notable regional variation in sentencing decisions within different jurisdictions. In provinces like Takhar and Saamangan in Afghanistan, twenty years of imprisonment was an average for individuals convicted for murder whereas in provinces like Panjshir two years of imprisonment was handed out to defendants convicted of the same offence. The statistics on conviction rates from Supreme Court correspond with the detention in prison statistics in Afghanistan, which denotes a marked rise in prison detention statistics after the enactment of ICPC.[112] Conviction and detention rates regularly exceeded the prison capacity after the ICPC came into force. The reports on the prison population are suggestive of a notable surge in prison numbers after the ICPC was implemented. Afghanistan's prison held 600 inmates in 2001[113] a year after the enactment of the Code in March 2005 an estimated 5,500 were imprisoned in the country's prison. And by the end of 2006, there were reported to be 10,604 inmates.[114]

---

[111] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex. Pg. 180
[112] Ibid, Pg.126
[113] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex.
[114] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex. Pg. 180

The transplanted provisions of the ICPC lacked clarity and instruction especially at the pre-trial stage, which potentially escalated the risk of arbitrary detention following arrest.[115] The Code assigned the prosecutor to determine the release of a detained individual before trial in case the detention of the individual and deprivation of his liberty is not necessary.[116] However, it failed to define with any clarity, the conditions when an individual must be released.[117] As per the provisions of the Code, the prosecutor must conduct interrogations within 48 hours of arresting a person. No guidelines were drafted specifying the alternatives in case the provision is not adhered or setting out the conditions for the release of the detainee from custody if no interrogation has taken place.[118] Also, suitable alternatives to pre-trial detention were not stipulated by the ICPC. No provisions were spelled out enumerating conditionalities for release from detention upon bail.

The omission of procedural guidelines in the ICPC concerning detention potentially led to the arbitrary detention of the defendants during the pendency of the criminal proceedings.[119] The failure on part of the legal authorities to effectively administer the provisions of the Code also contributed to the increase in the cases of arbitrary detention. Evidence indicate the inability of the legal authorities to comply with the detention timeframe prescribed by the Code.[120]

---

[115] John Jupp, "Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005" (2011) University of Sussex. Pg. 186

[116] ICPC-Art. 34(2)

[117] The Criminal Procedure Code of 1965 prescribed pre-trial detention to not exceed nine months in time

[118] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex.

[119] UN Assistance Mission in Afghanistan, "*Arbitrary Detention in Afghanistan, A Call for Action,*" Vol 1- Overview and Recommendations, January 2009

[120] John Jupp, "*Legal Transplants as a tool for post conflict Criminal Law Reform: Justification and Evaluation*," Cambridge Journal of International and Comparative Law, 3(1): 381-406 (2014)

A UNAMA Report of 2009 noted that a considerable number of detainees were held in prisons well beyond the prescribed timeframes laid out by ICPC, awaiting their court verdicts.[121] The prescribed time frame of two months for the verdict at the primary level was not complied with in any of the six provinces monitored by UNAMA in Afghanistan. Supreme Court verdicts which had a timeline of five months, according to the Code[122] often stretched into years.[123] The legal authorities comprising the spectrum of the state criminal justice system applied the ICPC in an incoherent manner. Amnesty International (AI) reported in 2005 that the judges and prosecutors were ignorant of the ICPC.[124] The justice system was inadequate and hardly working in rural areas.[125] A UNAMA report highlighted that the procedures of the ICPC related to investigation, arrest, detention, charging, trial and imprisonment of individuals were rarely complied.[126] If legal authorities did not comply with specific procedural sections of the Code whilst adjudicating criminal matters, it is critical to understand what provisions did they apply?

Tondini noted that criminal court rulings were (and still are) largely based on the judges personal opinion.[127] Apart from reliance on personal opinion and instinct, legal officials leaned on the side of Islamic law and customary approaches to justice and paid credence to them over the procedures stipulated

[121] John Jupp, "Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005" (2011) University of Sussex.
[122] Art. 6 (2) ICPC 2004
[123]UN Assistance Mission in Afghanistan, "*Arbitrary Detention in Afghanistan, A Call for Action,*" Vol 1- Overview and Recommendations, January 2009. Pg.12
[124] Afghanistan: Re-establishing the Rule of Law, Amnesty International Report 2005- Afghanistan. Pg. 36
[125] Ibid. Pg.37
[126] John Jupp, "Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005" (2011) University of Sussex.
[127] Matteo Tondini, "Assessing Justice Systems Reform in Afghanistan" (2008) IMT Institute of Advance Studies, Lucca. Pg. 158

in the ICPC.[128] In the adjudication of criminal matters, judges wilfully applied a combination of Shari'a law, Afghan customary practices and the statutory law.'[129] Judges and prosecutors reportedly "*detained individuals for offences that were established under customary or Islamic law but not recognised under any Afghan state law including the ICPC*."[130] As per UNODC report of 2008, proximately 50% of women held in detention were charged with criminal proceedings for a breach of 'moral crimes', as per the customary law and Shari'a law.[131] The Judges were predisposed to apply criminal procedures that were in line with Islamic interpretation at the cost of disregarding the procedures laid down in the ICPC. The Justice officials also lacked in the application of the ICPC. Transplantation as a means of reform to a greater extent lead to inadequacies and omissions in the content of the ICPC. The local population and the legal practitioners, both failed to find the ICPC sufficiently meaningful and appropriate for application in domestic criminal justice disputes.

4.5 ICPC- An unsuccessful transplantation

Some pertinent questions to consider, in determining the success of the post conflict criminal code developed through the mechanism of legal transplantation are firstly, the degree of acceptance of the transplanted law by the local Afghan population. And secondly, the degree to which the objectives of the law have been achieved in the post conflict setting in which it was enacted.

---

[128] Matteo Tondini," *State building and Justice Reform: Post Conflict Reconstruction in Afghanistan*," Routledge, 2010, Pg. 167
[129] John Jupp, "Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005" (2011) University of Sussex.
[130] Ibid, pg. 136
[131] Ibid. pg.137

ICPC has not been a successful transplant due to significant problems related to its application, objectives and meaningfulness. With many inconsistencies in its application, ICPC did not succeed in promoting uniform application of procedural law.[132] The transplanted content of ICPC struggled to be considered meaningful and appropriate by the respondents that were responsible for applying it and the Afghan population. Also, it hasn't been applied consistently by all legal practitioners. The provisions of the ICPC were not drawn from the procedural rules of the customary and Islamic legal traditions of Afghanistan. Due to which a great majority of the population referred criminal matters to forums that existed outside the state system. Within the state system, a number of judges did not comply with the procedural rules prescribed by the Code and continued to be motivated and guided by the Islamic interpretations of criminal justice and application of the Shari'a law even after the ICPC was passed. This indicates a lack of resonance of the Code amongst the legal fraternity.

The international community, initiated the development of the criminal procedure law through the process of transplantation. Their approach to this arrangement has been translated in a manner that has negatively impacted its acceptance amongst the local population and justice sector officials.[133] Lack of Afghan involvement and of the general public resulted in the exclusion of the Islamic and customary processes within the Code. This could have been a potential reason impacting the reception and legitimacy of the Code. For a legislative reform initiatives to be successful, it must stem from a firm root. In

[132] John Jupp, "Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005" (2011) University of Sussex.

[133] Faiz Ahmed, "*Afghanistan's Reconstruction, Five Years Later: Narratives of Progress, Marginalized Realities, and the Politics of Law in a Transitional Islamic Republic*," 10 Gonz Journal of International Law, 269 (2007) pp 269-311

the case of Afghanistan, it should have originated from the incontestable foundation of Afghan history and socio-culture, in which both Afghan Islamic jurisprudence and customary law play an intrinsic role.[134] To be effective and legitimate, legal reforms in Afghanistan needed to commit to the foundations of justice. Programmes to modernise the criminal justice systems through the mechanism of legal transplantation were also taken up in Japan and Turkey in the early 19th century. However, they were led nationally. On the other hand, criminal justice reforms in post conflict Afghanistan were driven by legal experts, international actors, foreign nations extrinsic to the recipient country. Legal reforms through transplantation mechanisms motivated by international concepts and driven by external agents without the goodwill of its national stakeholders run the risk of lacking legitimacy, consequently struggle to get assent of the local population.[135]

Procedurally, on the issue of pre-trial arrest, the ICPC did not authorise inquiry into the legality of arrest and detention until the first hearing, and did not elucidate on adequate pre-trial alternatives to imprisonment.[136] In violation of the international law, it allowed for a pre-trial detention under the authority of the prosecutor. It lacked specific procedures on how the legality of detention should be assessed at the primary court level and in what manner can the accused person challenge their pre-trial detention. The Code excluded any reference in respect of bail applications. The transplanted law with its

[134] F. Ahmed, "*Judicial Reform in Afghanistan: A Case Study in the New Criminal Procedure Code*," 29 Hastings International and Comparative Law Review, 93 (2005)
[135] Jonathan M Miller, "*A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to explain the Transplant Process*," The American Journal of Comparative Law. Vol.51, No.4 (Autumn 2003) Pg.839-885
[136] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex.

procedural inadequacies and omissions lead to inconsistent application of the law, causing arbitrary detention of the defendants.[137]

Afghan legal culture is a mix of Islamic law and secular law within one legal system. Historically, offering such wider access to justice improved the system's legitimacy and conformity by the general public. International experts failed to appreciate this distinctiveness of the Afghan law. Also, the transplanted ICPC did not allow for comparable negotiations between the different legal traditions. Foreign legal frameworks have a higher likelihood to command legitimacy amongst the locals if they resonate with the legal traditions of the recipient country. Countries with pluralistic legal systems like Afghanistan demand more sensitivity on the part of the international actors.

The transplanted nature of ICPC's content was interpreted as a foreign imposition and the process for legal transplantation did not succeed in resolving the differences between the Islamic and secular conception. The ICPC was repealed and superseded by the Criminal Procedure Code of 2013. The comprehensive code was specifically created for Afghanistan rather than being transplanted.

4.6 Lessons learnt

Transplantation of foreign codes is a socio-legal concept with interlinkages between the law and the society at large. The evolution of law and its acceptance depend on a host of cultural, political and social ingredients which are distinctive to each society. "*Law is bound so closely to its habitat by a mixture of physical, sociological, cultural and economic forces that it can rarely have*

[137]Ibid. Pg.184

*validity in any other environmen*t."[138] Legal development is intimately connected to the local context of the recipient country. Legal transplants that develop internally with involvement of legal professionals and users of law, through a process of trial and error, innovation and correction tend to be productive and have a greater probability of being sustainable. To be efficacious, legal transplant needs a close cooperation and participation between the foreign and domestic legal experts, dependence on local context and the commitment of the recipient country to enact the provisions. The success of transplanted rules depends to a greater extent on familiarity to the local context and the ability of additional change.

[138] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex.

5. Identifying the Gaps

Legal reforms as part of reconstruction process do not come with a certainty of success. Notwithstanding innumerable endeavors by the international actors towards the advancement of rule of law and development of legislative frameworks since the nineties, a gap remains in the knowledge and understanding on the manner in which legal change can be promoted effectively.[139]

Carothers stated that there was no consensus on how to bring about the rule of law and he stated "… *aid providers know what endpoint they would like to help countries achieve the Western style rule-oriented systems they know from their own countries. Yet they do not really know how countries that such systems do not have attain them. That is to say they do not know what the process of change consists of and how it might be brought about*."[140] Post conflict reconstruction programs and reforms are likely to facilitate stability, security and significantly reduce the chances of recurrence of conflict. However, they have been ineffective due to a variety of reasons-

1.) Local ownership & coordination with the domestic actors-

For legal reforms to be effective, the support and participation of national stakeholders is vital. Stakeholders include traditional leaders, justice officials, government officials, other rule of law officials, legal professionals, civil society organizations, women's groups, marginalized and minorities group.[141] The principle of local ownership is often side-lined when external promoters of

[139] K. Samuels, "Rule of Law Reform in Post conflict Countries- Operational Initiatives and Lessons Leant," (2006) Social Development Papers, No.37, Conflict Prevention and Reconstruction Unit, World Bank, Washington.
[140] T. Carothers, "*Promoting the Rule of Law Abroad: In Search of Knowledge,"* Carnegie Endowment for International Peace, 2003
[141] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, United Nations 2003. Pg.4

legal reforms design and implement programs. It is unlikely that legislative reforms would have long term impacts if local stakeholders consent to reforms only because they feel impelled to do so.[142] Donors are perceived as forcing their visions of reforms onto societies without taking the specific local culture into account, in many post conflict missions.[143] The principle desire for reconstruction must emanate from the local community.[144] Leadership regarding the process and decision making should be vested in the national stakeholders.[145] Persuading people through acts of coercion can be inherently paradoxical. Also, local population, excluded from the process can have a tendency to resist changes imposed on them without their consent or knowledge. Involving local actors in the legal process give a sense of ownership to the local population. This can prove to be helpful especially when sovereignty rests with the international actors.

Legal reforms can have a long-term impact when they comply with the principles of inclusion, participation and transparency.[146] A top down imposition of legislations and institutions on actors is no solution.[147] Bottoms up approach to legal reforms are better than top down approaches, since such bottoms up approach factors in the mission's sensitivity to local context and the involvement of the local community in the reform process.[148] In the case of

---

[142] Monika Heupel, 2012 " *Rule of Law Promotion and Security Sector Reform: Common Principles, Common Challenges*," Hague Journal on the Rule of Law, 4(1), 158-175
[143] Almeida Cravo, T. "Linking Peacebuilding, rule of law and security sector reform: the European Union's experience. (2016) Asia Eur J, 107-124
[144] Pierre Englebert & Dennis M Tull ,"*Post Conflict Reconstruction in Africa: Flawed Ideas about Failed States*," International Security (2008); 32(4); 106-139
[145] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.4
[146] Ibid, Pg.4
[147] Almeida Cravo, T. "*Linking Peacebuilding, rule of law and security sector reform: the European Union's experience*," (2016) Asia Eur J, 107-124
[148] Oya Dursun Ozkanca, "*The European Union Rule of Law Mission in Kosovo- An Analysis from the Local Perspective"* (2018) Ethnopolitics, 17:1, 71-94

Afghanistan, during the drafting of the ICPC, the consultation between the international experts and Afghan officials was negligible. Dearth of local ownership can jeopardize the success of reforms.[149]

2.) Understanding the country context and aligning reforms with the local culture of the host country- In many peacekeeping operations, donors force their vision of legislative frameworks without taking the specific local cultures into consideration. The UN must consider carefully the justice needs of each country. It includes the nature and context of the rule of law system within a country and the formal, informal traditions and culture that are cardinal to the system.[150] Legal reforms can be sustainable if they are based on the understanding of local culture and institutions.[151] External actors often disregard the specificities of local legal structure.[152] External solutions are borrowed without adequate attention to the social factors and local culture that allows specific types of legislations to work effectively but not others.[153]

For the international community to meaningfully contribute in the legislative process, understanding of the law along with the socio-political situation is required to develop an internally consistent legislative process. In case of Afghanistan, transplantation of legal codes could have succeeded if it was inked to the local contextual concern. It need to emanate from the history and sociological culture of the country wherein the Islamic culture and customary law, both play an elemental role. The reception of transplanted law in 49

[149] Matteo Tondini," *State building and Justice Reform: Post Conflict Reconstruction in Afghanistan*," Routledge First Ed. 2010, Pg. 167
[150] Handbook on United Nations Multidimensional Peacekeeping Operations, UNODC, Department of Peacekeeping Operations, 2003. Pg.4
[151] Monika Heupel," *Rule of Law Promotion and Security Sector Reform: Common Principles, Common Challenges*," Hague Journal on the Rule of Law, 4: 158-175 (2012)
[152] Almeida Cravo, T. "Linking Peacebuilding, rule of law and security sector reform: the European Union's experience. (2016) Asia Eur J, 107-124
[153] Stephen J Toope, "*Legal and Judicial Reform through development assistance: Some lessons*," McGill Law Journal, Vol. 48 Issue 3 (2003)

different countries during the 19th and early 20th century reveal that transplanted law has a higher possibility of success if it includes principles identifiable to the local population and if they are capable of adaptation by local population.[154] The international actors were not sufficiently attentive to Afghanistan's unique context and local views and ignored the issue of Islamic law. UNAMA despite its concern for engagement with traditional justice, did not take any leadership on this issue.

3.) Strengthening the inter-linkages between Formal and Informal system of Justice- A report by the International Commission of Jurists found that "*the bifurcation of the legal system into an official law and unofficial law has been a hallmark of Afghan legal history ever since attempts were made to introduce statutory laws*" and concluded that "….*past experience would suggest that any attempt to implement or enforce secular statutory laws which depart from customary and/or Islamic law is liable to be met with protest and civil unrest*."[155] Collaborative efforts among the formal and informal justice systems can positively impact the legitimacy of a new legislative framework.

In many countries, non-state actors play a pivotal role in their outreach to many sections of the society. In the case of criminal justice, such actors help particularly with those communities which live away from a capital city and do not have ready access to courts.[156] Non-state justice systems include a range of traditional, customary and religious based justice systems that tend to operate within the local socio-cultural communities. Oftentimes, strategies are focused in entirety on the formal institutions, exhibiting inadequacy in awareness about

[154] D Berkowitz K Pister & JF Richard, "*The Transplant Effect*," The American Journal of Comparative Law. 51 (1) 2003. Pp. 163-203
[155] Afghanistan Rule of Law Project, USAID, June 2005, Pg.6
[156] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.13

the customary and non-state justice systems.[157] Lack of willingness to work with unfamiliar systems often stems from the assumption that such systems may become in existential with time or get replaced with other state systems.[158] This approach can get difficult as it may risk reform efforts being irrelevant to most of the population along with potentially exacerbating uncertainty and tensions amidst the central authorities and local bases of power.[159]

The administration of justice in Afghanistan required cooperation between the formal and informal justice systems to achieve a level of popular legitimacy for the formal system. Enough attention was not paid to improve the inter-linkages between the traditional justice system and the formal system. The informal justice system can be an effective means for promoting and securing justice within a sizeable percentage of the population. It is critical for international actors involved in such processes to recognize their roles and understand their potential for contributing to such justice reforms.

4.) **Political will and the need for political engagement at the local level-** Post intervention legal reforms succeed when there is a political will to reform from within the political establishments. The international community often miscalculate the power political will carries in supporting effective rule of law development.[160] Millions of dollars spent on reforms by international donors and multilateral agencies cannot yield results unless the country in transition also wants the reforms. Bypassing the host country increase the risk that reforms prove inappropriate or inadequate for the contexts in which they are

[157] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.103
[158] Ibid, Pg.103
[159] Ibid, Pg.103
[160] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.3

implemented.[161] In Afghanistan, during the drafting process of ICPC, due to minimal degree of consultations between the Afghan officials and the International actors, the Parliament of Afghanistan and the Justice Institution persuaded President Karzai to refuse to accede to the Criminal Procedure Code.[162] Political pressure was exerted on President Karzai by the Italian government to pass the code as an interim decree through the invocation of his Presidential powers. [163]

There is a need to get political buy-in of the government for sustainable results on legislative strengthening. Along with this, there is also a need to support reforms in such a way that it outlasts any one government by building coalitions across parties and other power divisions.[164] Unless national stakeholders see the utility in supporting legal reforms, technical assistance will have little impact.

5.) **Making civil society a key partner-** Legal reforms are a long term undertaking which requires a consistent and constructive exchange of ideas, if legal reforms have to be far reaching and sustainable in their impact. International actors working on legal reforms should plan to work in close collaboration with civil society organizations.

Local civil society organizations can take various forms from human rights advocates to faith-based organizations to women's organizations, educational establishments and media outlets. These groups tend to engage both on a national level and on a community level, not including them in missions is to

[161] Robert A Blair, "*UN Peacekeeping and the Rule of Law*," (2020) Cambridge University Press

[162] Afghanistan Watch, Afghanistan National Laws and International Criminal Court Statute, 10th December 2009

[163] John Jupp, "*Legal Transplants: appropriate tools for the reform of Afghanistan's Criminal Law Framework. An Evaluation of the ICPC 2004 and the Counter Narcotics Law 2005*" (2011) University of Sussex.

[164] Thomas Carothers, "*Promoting the Rule of Law Abroad: The Problem of Knowledge*," Carnegie Endowment for International Peace (2003)

ignore key mechanisms that could bridge the gap to key parties. Engaging with the civil society helps to foster a comprehensive social understanding of law amongst the ordinary citizens. Civil society can play an important role in advocating change in the legal framework. Also, the civil society helps to provide a voice to different perspectives and experiences. A close working association with civil society as a stakeholder can also be helpful to pursue reforms relating to informal traditional justice systems. International actors should be able to identify the potential civil society actors that have capability to contribute to the reform process.[165]

Inclusive partnership with civil actors helps to ensure lasting effectiveness in peacekeeping operations. The civil society organizations can help international actors and peacekeepers in building relationship with local population and helps to build partnership within the local community. It should also be noted that these actors remain after peacekeeping missions have left. Therefore, including them can lead to higher chances of building and sustaining the reforms.[166]

Concluding remarks

Every conflict and crisis setting are unique. Legal reforms as part of the reconstruction program require a sustained commitment on part of the international actors to understand the contexts of each host country, its history and culture as every region has a nuanced background.

Law functions in living systems, legal reforms that take place by transplanting foreign laws or by introducing new practices into the existing systems can be

[165] Handbook on United Nations Multidimensional Peacekeeping Operations, Department of Peacekeeping Operations, 2003. Pg.14

[166] Tamara Kool, "*The Role of Civil Society in Peacekeeping Missions*," Article in United Nations University. 04.06.2016

unsuccessful in enforcement, if the law is not embedded in the society.[167] Legal reforms should be attuned to the needs of each case and holistic programmes should be created to address this aspect. The roles, responsibilities and mandates of the international actors engaged in post conflict intervention must be defined with clarity to ensure that their efforts are well coordinated and focused.[168]

Success and failure of reforms is intimately associated with the local contextual concerns like commitment to reform, participation and local ownership. For determining the success of the post conflict legal reforms, it's cardinal to evaluate the extent of acceptance of the new legal framework by the general public of the receiving country. And the extent to which a legislation has been able to achieve its objective post enactment. The greater the acceptance of the legislation within the local population and the degree to which it has achieved its objectives, the more successful and sustainable is the outcome.

The role of UN and the wider international community should mainly focus to support or align with national actors and their priorities. International actors' preoccupation with the state and western liberal principles can be counterproductive, reforms must seek to shape programs around local dynamics. Also, if international norms and standards are to have effect on the ground, they must be translated and adapted to the particular contexts as there is a need for contextualization and national ownership. There is also a need to engage with a variety of non-state actors that enjoy considerable local legitimacy and power.[169]

---

[167] D Berkowitz K Pister & JF Richard, "*The Transplant Effect*," (2003) The American Journal of Comparative Law. 51 (1):163

[168] Stephen Weaver, "*The UN's Role in Post-conflict Governance Capacity Building: A case study of East Timor*," Order No. MQ90531, Royal Roads University, Canada (2004)

[169] Louise Riis Anderson and Peter Emil Engedel, "*Blue Helmets and Grey Zones: Do UN Multi-Dimensional Peace Operations Work*," Danish Institute for International Studies (2013)

I will like to conclude with saying that there needs to be fit between proposed legal reforms and existing social norms and the lived experience of a society. Law has to be normatively grounded in the values of the underlying society. If the gap between the law and lived values is too large, the rule of law shall not take hold.

Bibliography

Ahmed, Faiz. "Afghanistan's Reconstruction, Five Years Later: Narratives of Progress, Marginalized Realities, and the Politics of Law in a Transnational Islamic Republic." *Gonzaga Journal of International Law* 10 (2007 2006): 269.

———. "Judicial Reform in Afghanistan: A Case Study in the New Criminal Procedure Code." *Hastings International and Comparative Law Review* 29 (2006 2005): 93.

Alda, Erik, David Andersson, Kenneth Anye, Holly Benner, Natalia Cieslik, Sarah Cliffe, Ivan Crouzel, Markus Kostner, Daniel Maree, and Nicholas Marwell. "World Development Report 2011: Conflict, Security, and Development." The World Bank, 2011.

Almeida Cravo, Teresa. "Linking Peacebuilding, Rule of Law and Security Sector Reform: The European Union's Experience." *Asia Europe Journal* 14, no. 1 (March 1, 2016): 107–24

———. "Linking Peacebuilding, Rule of Law and Security Sector Reform: The European Union's Experience." *Asia Europe Journal* 14, no. 1 (March 1, 2016): 107–24

Beckstrom, John H. "Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia." *The American Journal of Comparative Law* 21, no. 3 (1973): 557–83

Berkowitz, Daniel, Katharina Pistor, and Jean-Francois Richard. "The Transplant Effect." *American Journal of Comparative Law* 51 (2003): 163.

Blair, Robert A. "UN Peacekeeping and the Rule of Law." *American Political Science Review* 115, no. 1 (February 2021): 51–68.

Boon, Kristen. "Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers." *McGill Law Journal* 50 (2005): 285.

"Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers." *MCGILL LAW JOURNAL* 50 (n.d.): 42.

Brownlie, Ian. "Principles of Public International Law." *Verfassung in Recht Und Übersee* 14, no. 1 (1981): 92–93

"Building Peace through Transitional Authority: New Directions, Major Challenges: International Peacekeeping: Vol 7, No 4." Accessed June 5, 2021.

Call, Charles. *Constructing Justice and Security After War*. US Institute of Peace Press, 2007.

"Can Might Make Rights?" Accessed June 4, 2021.

Carlson, Scott N. "Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons-Learned Study." *Journal of International Peacekeeping* 12, no. 1 (September 13, 2008): 111–37.

Carothers, Thomas. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Brookings Institution Press, 2010.

"The Rule of Law Revival." *Foreign Affairs* 77, no. 2 (1998): 95–106.

"Criminal Justice Reform in Post-Conflict States—A Guide for Practitioners," n.d., 132.

Damaška, Mirjan. "The Uncertain Fate of Evidentiary Transplants: Anglo-American and Continental Experiments." *The American Journal of Comparative Law* 45, no. 4 (1997): 839–52.

Earnest J and Dickie C. "Post-Conflict Reconstruction--a Case Study in Kosovo." Accessed June 4, 2021

"Effective Decision Making and Its Impact on Social Justice: The Federal and Amhara National Regional Courts of Ethiopia ; Law and Practice - WRAP: Warwick Research Archive Portal." Accessed June 4, 2021.

Englebert, Pierre. "Flawed Ideas about Failed States," n.d., 34.

"Enhancing United Nations Capacity to Support Post-Conflict Policing and Rule of Law," n.d., 145.

"From Neo-Colonialism to a 'Light-Footprint Approach': Restoring Justice Systems: International Peacekeeping: Vol 15, No 2." Accessed June 5, 2021.

Gërxhi, Albana. “Post Conflict Peacebuilding in Kosovo. Milestones, Actors and People.” *Academicus International Scientific Journal* VIII, no. 15 (2017): 122–35.
Hasegawa, Yuka. “Is a Human Security Approach Possible? Compatibility between the Strategies of Protection and Empowerment.” *Journal of Refugee Studies* 20, no. 1 (March 1, 2007): 1–20.
Heupel, Monika. “Rule of Law Promotion and Security Sector Reform: Common Principles, Common Challenges.” *Hague Journal on the Rule of Law* 4, no. 1 (January 1, 2012): 158–75
Ismail, Olawale. “Dynamics of Post-Conflict Reconstruction and Peace Building in West Africa : Between Change and Stability,” January 1, 2009.
Jupp, John. “Legal Transplants: Appropriate Tools for the Reform of Afghanistan’s Criminal Law Framework? An Evaluation of the Interim Criminal Procedure Code 2004 and the Counter Narcotics Law 2005,” n.d., 384.
K Samuels. “Rule of Law Reform in Post-Conflict Countries: Operational Initiatives and Lessons Learnt.” GSDRC. Accessed June 4, 2021.
Kanda, Hideki, and Curtis J. Milhaupt. “Re-Examining Legal Transplants: The Director’s Fiduciary Duty in Japanese Corporate Law.” *The American Journal of Comparative Law* 51, no. 4 (2003): 887–901.
Knudsen, Tonny Brems, and Carsten Bagge Laustsen. *Kosovo Between War and Peace: Nationalism, Peacebuilding and International Trusteeship*. Routledge, 2006.
Koops, Joachim, Joachim Alexander Koops, Norrie MacQueen, Thierry Tardy, and Paul D. Williams. *The Oxford Handbook of United Nations Peacekeeping Operations*. Oxford University Press, 2015.
Langer, Maximo. “From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure.” *Harvard International Law Journal* 45 (2004): 1.
Langholtz, Harvey J. “Peace Operations Training Institute®,” n.d., 84.
“Lau_LSERO_version.Pdf.” Accessed June 5, 2021.
Lord Paddy Ashdown. “Opinion | What I Learned in Bosnia - The New York Times.” Accessed June 4, 2021.
Miller, Jonathan M. “A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process.” *The American Journal of Comparative Law* 51, no. 4 (October 1, 2003): 839–86.
———. “A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process.” *The American Journal of Comparative Law* 51, no. 4 (October 1, 2003): 839–86.
Nelken, David, Johannes Feest, and Rosemary Hunter. *Adapting Legal Cultures*. Hart Publishing, 2001.
Nyambura, Simon K. “POST-CONFLICT RECONSTRUCTION IN AFRICA: THE ROLE OF INTERNATIONAL COMMUNITY,” n.d., 210.
O Dursun-Özkanca. “The European Union Rule of Law Mission in Kosovo: An Analysis from the Local Perspective: Ethnopolitics: Vol 17, No 1.” Accessed June 5, 2021.
O’Connor, Vivienne. “Rule of Law and Human Rights Protections through Criminal Law Reform: Model Codes for Post-Conflict Criminal Justice.” *International Peacekeeping* 13, no. 4 (December 1, 2006): 517–30.
Pantin, Cecily Maria. “Why the West Won’t Win Afghanistan: Game Theory Implications for Post-Conflict Reconstruction.” Masters, Memorial University of Newfoundland, 2007
“Peacekeeping-Handbook_un_dec2003_0.Pdf.” Accessed June 4, 2021.
Plunkett, Mark. “Reestablishing Law and Order in Peace-Maintenance.” *Global Governance* 4, no. 1 (1998): 61–79.
Ponzio, Richard J. “Transforming Political Authority: UN Democratic Peacebuilding in Afghanistan.” *Global Governance: A Review of Multilateralism and International Organizations* 13, no. 2 (August 3, 2007): 255–75.
Röhner, Nora. “UN Peacebuilding: Light Footprint or Friendly Takeover?” *UN PEACEBUILDING*, n.d., 25.

"Rule of Law and Human Rights Protections through Criminal Law Reform: Model Codes for Post-Conflict Criminal Justice: International Peacekeeping: Vol 13, No 4." Accessed June 5, 2021.
Samuels, Kirsti. "Rule of Law Reform in Post-Conflict Countries," n.d., 64.
Sannerholm, Richard. "In Search of a User Manual: Promoting the Rule of Law in Unruly Lands." *SSRN Electronic Journal*, 2007.
Santos, Alvaro. "The World Bank's Uses of the 'Rule of Law' Promise in Economic Development." *Georgetown Law Faculty Publications and Other Works*, January 1, 2006
Saul Matthew. "The Search for an International Legal Concept of Democracy: Lessons from the Post-Conflict Reconstruction of Sierra Leone by Matthew Saul :: SSRN." Accessed June 4, 2021.
Secretary-General, Un. "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies :," August 23, 2004.
Strohmeyer, Hansjörg. "Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor." *The American Journal of International Law* 95, no. 1 (2001): 46–63
Stromseth, Jane. "Post-Conflict Rule of Law Building: The Need for a Multi-Layered, Synergistic Approach." *William & Mary Law Review* 49, no. 4 (March 1, 2008): 1443.
"The United Nations Assistance Mission in Afghanistan: Impartiality in New UN Peace Operations: Journal of Intervention and State building: Vol 2, No 2." Accessed June 5, 2021.
The World Bank, Legal Department. *The World Bank and Legal Technical Assistance: Initial Lessons*. Policy Research Working Papers. The World Bank, 1999
Tondini, Matteo. *Statebuilding and Justice Reform*. 0 ed. Routledge, 2010.
———. "The Role of Italy in Rebuilding the Judicial System in Afghanistan." *Military Law and Law of War Review* 45 (2006): 79.
"Tondini_phdthesis.Pdf." Accessed June 5, 2021.
Toope, Stephen J. "Legal and Judicial Reform through Development Assistance: Some Lessons." *McGill Law Journal* 48 (2003): 357.
"Transforming Political Authority: UN Democratic Peacebuilding in Afghanistan in: Global Governance: A Review of Multilateralism and International Organizations Volume 13 Issue 2 (2007)." Accessed June 5, 2021.
Trubek, David M. "Law and Development: Then and Now." *Proceedings of the Annual Meeting (American Society of International Law)* 90 (1996): 223–26.
Unit, UN Department of Peacekeeping Operations Peacekeeping Best Practices. "Handbook on United Nations Multidimensional Peacekeeping Operations," 2003
"United Nations Justice :" Accessed June 4, 2021.
Vogler, Richard. *A World View of Criminal Justice*. Routledge, 2017.
Watson, Alan. "Aspects of Reception of Law." *The American Journal of Comparative Law* 44, no. 2 (1996): 335–51
———. "Legal Transplants: An Approach to Comparative Literature (2nd Edition)." *Books*, January 1, 1993
Williams, Sarah. "Accountability for United Nations Civilian Operations in Post-Conflict Kosovo." Masters, Durham University, 2003.
"WRAP_Theses_Shiferaw_2017.Pdf." Accessed June 4, 2021.