

## Reconceptualising Legal Education after War

Of one thing we may be certain; in the postwar period there will be no lack of experimentation as to methods of teaching and studying law, and this will be to the great advantage of students, of the profession and the public alike if the law school men will but keep constantly in mind that it is their high responsibility....to sweat out the standards, principles and rules of law that will permit progress in a dynamic society without bloodshed, that will reconcile justly the competing claims not only of the state and the individual but of nation and nation.<sup>1</sup>

### Introduction

The close of the Second World War brought with it an urgent academic discussion on legal education in the United States, the United Kingdom and Canada. The literature spawned by this discussion sought to chronicle law schools' experiences of the war years. A notable example is a collected series of reports from Britain's law schools detailing the war service of staff and alumni, the drops in numbers of lecturers and students, the destruction of educational buildings, evacuation of London colleges to places outside the capital, the granting of flexible 'war degrees' and legal education in the military and prisoner of war camps.<sup>2</sup> These reports attempted to record –and make sense of - what had occurred in legal education and provide moving reading. The academic literature written during this period also looked forward to the shape of post-war legal education.<sup>3</sup> Many of the concerns expressed were logistical. Canadian and American universities were struggling with accommodating large numbers of returning servicemen – whose education was encouraged by the federal governments in both countries - without sacrificing

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<sup>1</sup> A.T. Vanderbilt, "A Symposium in Legal Education after the War: Foreword" (1945) 30 *Iowa L. Rev.* 325 at 332.

<sup>2</sup> "Review of Legal Education During the War, 1939-1945" (1947) 1 *J. Soc'y Pub. Tchrs. L.* 23. Interestingly, the impact of the War on UK law schools continues to be described afresh; see J. Beatson & R. Zimmermann, eds., *Jurists Uprooted* (Oxford: Oxford University Press, 2004).

<sup>3</sup> See for example W.H. Wicker, "Legal education Today and in the Post-War Era" (1945) 18 *Tenn. L. Rev.* 700; H. Kronstein, "Experience of Other Countries for our use in Building Legal Education after the War" (1945) 30 *Iowa L. Rev.* 373; E. Cheatham, "Post War Legal Education and the Service Men" (1944) 19 *Ind. L.J.* 330; C.A. Wright, "The University Law Schools" (1950) XXVIII *Canadian Bar Review* 140; M. Cohen, "The Condition of Legal Education in Canada" (1950) *Canadian Bar Review* 267.

standards.<sup>4</sup> The discussion went beyond logistics, however, and there was a widespread sense among legal academics that legal education could be – indeed needed to be – reimagined. In aspirational language, law teachers spoke consistently of an “opportunity” to remake legal education in terms of curriculum reform (how to deal with the enhanced importance of administrative and public law as well as a need for international and comparative law teaching) and teaching methodology (students would demand to see law in action and would be more critically minded).<sup>5</sup> Significantly, most writers from the period suggested, there would need to be a change in the purposes and ethos of legal education with greater emphasis placed on justice and good governance (though the latter term was not used).

Post-conflict legal education reform today is just as urgent for war-torn societies as it was following World War Two. Graduates of law schools need to be adequately prepared for the roles they will assume in reconstructing the post-war legal sector. Unfortunately, however, post-conflict legal education has not been rigorously studied in the six decades following World War Two. Indeed there is virtually nothing written on the topic *qua* topic; the few articles which do deal with legal education following particular armed conflicts tend to pathologise those experiences as context-specific.<sup>6</sup> One of this article’s assertions, however, is that similar patterns can be seen across post-conflict legal education, albeit with important contextual differences.

It is surprising that the topic has not been adequately addressed given that there are three well-developed areas of scholarship and policy-making which might be expected to include post-conflict legal education in their purview; namely a) legal education, b) education and conflict and c) the rule of law. The growth in quality and quantity of scholarship on legal education from the 1980s has resulted in a significant body of expertise on matters such as teaching methodology, the aims and purposes of

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<sup>4</sup> See for example Wesley Pue’s account of the role education for veterans played in the establishment of a law faculty at the University of British Columbia: *Law School: The Story of Legal Education in British Columbia* (Vancouver: University of British Columbia, 1995) at 135-147.

<sup>5</sup> It is worth noting that writers had also spoken of new “opportunities” for legal education after the First World War; see E. Jenkins, “The War and Legal Education” (1920) 36 L.W. Rev. 429.

<sup>6</sup> See for example, H.A. Hamoudi, “Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education into Iraqi Law Schools” (2005) 23 Berkeley J. Int’l L. 112.

legal education, the law school experience and legal academics.<sup>7</sup> Legal education as a subject matter is now firmly established in terms of profile, specialist publications and associations. Overwhelmingly, however, the scholarship focuses on Western, stable jurisdictions and, while there is some study of legal education in developing countries, references to armed conflict and legal education are rare. Unsurprisingly, writers in the Education discipline have more explicitly looked at the link between conflict and education than have lawyers. Matters such as education for demobilized child soldiers and the use of education to spread war propaganda have been thoroughly studied. But most of these studies look at primary and, to a lesser extent, secondary education.<sup>8</sup> Higher education is rarely mentioned in the education literature (and when it is the emphasis is usually on teacher training). This is understandable in that conflict-affected areas are typically those where achieving universal primary education is a pressing challenge. Finally, one might have expected to find more on legal education in the field of post-conflict legal reconstruction, especially given the recent focus on developing post-conflict justice ‘tools’. To be clear there are numerous references to retraining jurists after conflict (judges and prosecutors in particular) in this literature but discussion of legal studies in higher education institutions is curiously absent.<sup>9</sup>

This article aims to sketch the problems of legal education after war by drawing on the experiences of past and recent conflicts. Many of the examples are taken from post-conflict jurisdictions in the Balkans and Caucasus, where I have taught law<sup>10</sup> and carried out interview-based projects since 1998.<sup>11</sup> Secondary

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<sup>7</sup> For an account of this growth see A. Bradney, “The Rise and Rise of Legal Education” (1997) 4 Web Journal of Current Legal Issues: <http://webjcli.ncl.ac.uk/1997/issue4/bradney4.html>.

<sup>8</sup> A leading publication in the field is L. Davies, *Education and Conflict* (London: RoutledgeFalmer, 2004).

<sup>9</sup> On the importance placed on strengthening the rule of law after conflict see the Report of the High-Level Panel on Threats, Challenges and Change, *A more secure world: our shared responsibility*, UNGA A/59/565 (2004). On post-conflict justice tools see OHCHR, “Rule-of-Law Tools for Post-Conflict States: Mapping the Justice Sector” (New York: Geneva United Nations, 2006): [http://www.ohchr.org/english/about/publications/docs/ruleoflaw-Mapping\\_en.pdf#search=%22post%20conflict%20justice%20tools%22](http://www.ohchr.org/english/about/publications/docs/ruleoflaw-Mapping_en.pdf#search=%22post%20conflict%20justice%20tools%22)

<sup>10</sup> I have taught international law courses and been involved in education reform in Azerbaijan, Georgia, Armenia, Kosovo and Albania. In the Caucasus, these experiences were under the auspices of the Civic Education Project, in Kosovo with the Organization for Security and Cooperation in Europe and in Albania with a World Bank funded consortium.

<sup>11</sup> Most recently in Bosnia in January 2005 and in Kosovo in September 2005. I am grateful to the UK’s Socio-Legal Studies Association for a grant enabling me to carry out those interviews. For an

literature and media reports have been used to gather examples from beyond those two regions. The study is also informed by the three academic subject areas noted earlier, namely, legal education, education and conflict and the rule of law. Studies of what legal education looks like in stable societies are relevant to reimagining legal education in conflict-affected societies, for example. Similarly, accounts of “education in emergencies” and “education for peace” are useful for understanding the relationship between conflict and the education sector as a whole. And the literature on the rule of law helps show the importance of early and sustained rule of law reconstruction efforts. But the specifics of legal education and conflict need exploring. This article does so in three parts. The first looks at the impact of armed conflict on legal education. It assesses this impact in material (buildings and books), human (death, disappearances and so forth) and programmatic (impact on law taught) terms. The second part looks at law schools’ response to the reconstruction and reconciliation needs posed after conflict, a response which is too often weak. The international community’s role for law school reconstruction is discussed in the third part. Finally, the Conclusion suggests an agenda for reimagining post-conflict legal education along lines similar to those put forward by British and American scholars writing at the close of World War Two.

## **1) The impact of conflict on legal education**

### *a) Books, Bricks and Mortar*

In many cases, universities will be deliberately targeted for attack during armed conflict. There are at least three possible reasons for this. They may be perceived – especially in the civil war context – as politicized places tied to ideological and practical aspects of conflict. Indeed, in several Latin American universities during the 1980s for instance, universities were highly instrumentalised institutions, producing leaders, spokespersons and “rank and file” members of opposition groups.<sup>12</sup> Universities may also be targeted in an attempt to prevent

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earlier attempt to map the connections between conflict and legal education see C. Waters, “Post-Conflict legal Education” (2005) 10 J. of Conflict & Security Law 101.

<sup>12</sup> J. Marques & I. Bannon, “Central America: Education Reform in a Post-Conflict Setting, Opportunities and Challenges”, 2003 World Bank-CPR Working paper (Paper Number 4) at 9:

leadership creation. A clear example of this is the deliberate targeting by Japanese forces of Chinese colleges in the late 1930s. Finally, and this holds especially true in ‘ethnic cleansing’ cases, universities may be targeted for their symbolic or cultural value, as shown by the shelling of the University of Sarajevo during the more recent Bosnian conflict.<sup>13</sup> Although not targeted as university buildings *per se*, damage may also occur through indiscriminate attacks (or through “collateral” damage).<sup>14</sup> During the Second World War for example, London, Bristol and Liverpool Universities suffered considerable damage in this way,<sup>15</sup> as did several German universities.<sup>16</sup>

Where university buildings have been appropriated by military or paramilitary forces, rather than destroyed, the structures may have been altered, contain unexploded ordnance, and/or been pillaged of furniture, office equipment, books, and student and employment records. Looting by civilians can also take place in the domestic power vacuums left after war. This occurred in Iraq in the immediate aftermath of the end of the 2003 war, with law schools “stripped of virtually all possessions that could be carried off, including desks, air conditioners, computers, carpets, metal support rods, linoleum tiling, and shelves.”<sup>17</sup> Faculty members tried to protect library holdings but many books were burned or stolen.<sup>18</sup> At Basra University all that was left of the law library by the end of 2003 was a “mere collection of books stacked in a corner of a barren room.”<sup>19</sup> Similarly, the law library of Berlin’s Humboldt University contained 150 000 volumes prior to the Second World War but by the end of the war only 18 000 remained.<sup>20</sup> The destruction or loss of records

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[http://Inweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/CentralAmericaEducationReforminaPost-ConflictSettingOpportunitiesandChallenges/\\$FILE/WP+4+text.pdf](http://Inweb18.worldbank.org/ESSD/sdvext.nsf/67ByDocName/CentralAmericaEducationReforminaPost-ConflictSettingOpportunitiesandChallenges/$FILE/WP+4+text.pdf)

<sup>13</sup> N. Arnold, et al., *Education for Reconstruction* (Wallingford: Symposium/Oxford Studies in Comparative Education, 1998) at 15.

<sup>14</sup> The failure to distinguish civilian objects from military objectives is contrary to the basic principles of international humanitarian law. In some cases, causing damage to university buildings will also offend the requirement to protect cultural property. See art. 48 of *Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts* (1977) [hereinafter Protocol 1], and the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict* (1954).

<sup>15</sup> See “Review of Legal Education During the War, 1939-1945”, *supra* note 2.

<sup>16</sup> D.J. Meador, *Impressions of Law in East Germany: Legal Education and Legal Systems in the German Democratic Republic* (Charlottesville: Virginia University Press, 1986).

<sup>17</sup> See Hamoudi, *supra* note 6 at 113-114.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Meador, *supra* note 16 at 57.

during conflict should also be noted as it impedes university governance after war and the ability of graduates to prove academic credentials.

The move back to educational buildings following war can be difficult, as the experience of the Law Faculty in the University of Pristina suggests.<sup>21</sup> Through the 1970s and 1980s the Faculty was ethnically mixed, with Albanian and Serbian language streams. These two streams co-existed in the same building, although there was occasionally tension. Following provocations from the Milosovic regime, however, the Faculty was split in 1991, with the Albanian stream going “underground”. This was part of a wider pattern which saw the creation of “parallel” Albanian education and health sectors across the province.<sup>22</sup> Classes for the Albanian students were held in a variety of places, often lecturers’ homes. At the end of the 1999 NATO bombings and the withdrawal of the Serb security forces from Kosovo, Albanian students and staff returned to the building after nearly a decade’s absence, They found walls marked with nationalist slogans, emptied classrooms and libraries and debris left by paramilitary forces who had taken over during the NATO bombing campaign. The first order of the day was clean up, followed by a search for furnishings and equipment. Concurrently, efforts were made by incoming Albanian students to remove Serbian language signs, and to assert cultural and linguistic hegemony over the building. This was a pattern repeated in various ways throughout the city, as street signs were changed to Albanian ones and attempts were made to destroy evidence that Serbian civilization ever existed in Kosovo. The Serbian Faculty, meanwhile, fled first to Serbia proper and then later to Serb controlled northern Mitrovica in Kosovo.<sup>23</sup> It continues to be a Faculty at the renamed University of Mitrovica, though it exists in temporary quarters and illegally in the eyes of the United Nations Mission in Kosovo and Kosovo’s provisional government.<sup>24</sup>

Physical destruction does not of course always occur from a foreign invader or even the forces of an “alien” ethnic group. The Taliban regime in Afghanistan ,for

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<sup>21</sup> C. Waters, “Legal Education in Kosovo” (2001) 30(4) *Peacekeeping and International Relations* 7.

<sup>22</sup> See N. Malcolm, *Kosovo: A Short History* (New York: New York University Press, 1998) at 349.

<sup>23</sup> Interviews carried out with education officials in Kosovo in September 2005.

<sup>24</sup> UN Adviser to the Ministry of Education, Kosovo, “Overview on Problematic Minority Issues in the Education Sector” (19 September 2005). Document on file with author.

example, allowed the near complete destruction of the University of Kabul's law library and one of the early challenges for authorities following the removal of the regime was finding copies of laws which, although still "on the books", had become irrelevant under the regime.<sup>25</sup> In Afghanistan and other jurisdictions suffering from protracted conflict, not only does destruction of existing buildings take place, but the period of conflict poses an opportunity cost – new buildings are not built and existing buildings are not repaired. In Iraq, sanctions and three armed conflicts since 1980 left the law schools with few resources by the declared end of the war in 2003.<sup>26</sup> As has been well-documented at the primary stage of education, post-conflict reconstruction requires massive amounts of investment to rehabilitate or rebuild buildings.<sup>27</sup> Increasingly educational reconstruction is recognized as important by the international community but the primary sector has been prioritised in the allocation of funding, as discussed below.

*b) You're in the army now: law teachers and students*

Obviously war also has a physical and psychological impact on faculty and students. Military recruiting (voluntary or through conscription) death, injury and forced migration remove people from classrooms and administration.<sup>28</sup> Just as universities as a whole may be targeted, so too may certain categories of people at universities be targeted for their actual or potential leadership. In Rwanda during the 1994 genocide, for example, "[e]ducated Tutsi men and women were targeted as the university was 'cleansed'".<sup>29</sup> Faculty and students may also choose to stay away from educational facilities for safety reasons and concerns about the instrumentalisation of universities by warring or politicised factions. In the 1980s, for example, the

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<sup>25</sup> International Legal Assistance Consortium, "Report from a visit to Afghanistan, 11-20 February 2002", p. 2 [www.ilacinternational.org].

<sup>26</sup> Though it should be noted that during the period of decline of Iraqi universities, the Saddam Hussein University (now renamed as the University of Two Rivers) was constructed by the Iraqi dictator and relatively well-resourced.

<sup>27</sup> See World Bank, "Reshaping the Future. Postconflict Reconstruction and Education" (2005): [http://www1.worldbank.org/education/pdf/Reshaping\\_the\\_Future.pdf](http://www1.worldbank.org/education/pdf/Reshaping_the_Future.pdf).

<sup>28</sup> As in many countries university students may be aged 16 or 17, art. 77 of Additional Protocol I to the Geneva Conventions is relevant: "In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest." Similar protection is offered by art. 38 of the *Convention on the Rights of the Child* (1989), though the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (2000) goes further, offering protection against conscription and direct participation in hostilities for those under 18.

<sup>29</sup> Arnhold, *supra* note 13 at 48.

University of El Salvador “was plunged into a deep crisis because of its links to the ideological left that were overshadowing its educational mission”, leading some of its faculty to emigrate (and others to join guerrilla forces).<sup>30</sup> A war-prompted ‘brain drain’ also affected several law departments in the former Yugoslavia<sup>31</sup> and Iraq. Post-war Iraqi law schools are now severely understaffed at a time when promoting the rule of law is crucial to that country’s development; faced with the emigration of roughly 35 members of staff since 1980, Baghdad University Law department now has 31 full-time faculty members for its 3000 students.<sup>32</sup> This staff-student ratio has meant that personnel are simply unavailable for participation in teaching activities other than through the large lecture format.<sup>33</sup>

Along with liberal arts programmes, law departments appear to suffer disproportionate drops in numbers, especially in protracted conflicts. American law schools during the Second World War, for example, saw sharp declines in enrolment, especially when compared to applied science and other subjects considered more useful for war fighters:<sup>34</sup>

Harvard law school, which had a prewar enrollment of about 1,400 had 600 students in the spring of 1942. Compared with a year earlier, law school enrollments that spring were down 67 percent at Duke, 40 percent at the University of Minnesota, and 27 percent at the University of Pittsburgh. Enrollment in the ten law schools in New York was down 71 percent in October 1942 compared with October 1937. When all but two faculty members in the school of law at Santa Clara University departed for war service, its law school closed for the duration.

Similar declines in enrollment occurred in the United Kingdom during the War and, there again, law suffered enrollment drops disproportionate to technical subjects; indeed some law students actually switched to technical subjects with military commissions in mind.<sup>35</sup> At Cambridge the number of law undergraduates shrank to a tenth of pre-war figures.<sup>36</sup> At Birmingham law numbers fell by three quarters and even then “only a very few –mainly the medically unfit – could hope to remain in the

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<sup>30</sup> Marques & Bannon, *supra* note 12.

<sup>31</sup> Davies, *supra* note 8 at 98.

<sup>32</sup> Hamoudi, *supra* note 6 at 121 and at footnote 5.

<sup>33</sup> *Ibid.*

<sup>34</sup> V.R. Cardozier, *Colleges and Universities in World War II* (Westport: Praeger, 1993) at 113.

<sup>35</sup> *Supra* note 1.

<sup>36</sup> *Ibid.* at 23.



Faculty for more than two years. In one session [there were] none at all, and in another the third year consisted of three – two ‘asthmas’ and an ‘eczema.’”<sup>37</sup>

Statistics, of course, do not tell the full story of the chaos which loss of teaching staff and students can bring. The Dean of the Albanian Faculty of Law at the University of Pristina, for example, “disappeared” during the conflict. When the Albanian Faculty reconvened at the end of the war it was not clear who was in charge. Furthermore the NATO bombings and the internal armed conflict, together with the parallel nature of the education sector throughout the 1990s, had disrupted legal education to the extent that there was a shortage of expertise. Professors had simply been cut off from conferences, legal materials and legal practice for so long that they were ill-equipped to face the challenges of reconstructing the law school after the conflict.

When war does end, casualties, dislocation and traumatic experiences ensure a host of difficult psycho-social issues. While dealing with grief, anxiety and anger is at the forefront of people’s minds (though of course many repress war memories), the conflict may also serve as a defining moment for the university and its population. The reports from British universities noted at the start of this article not only describe amendments to the curriculum or numbers but detail the war contributions – and military honours received - of faculty and students. The deaths of law school personnel and alumni are also noted in those reports. The University of South Ossetia (South Ossetia broke away from Georgia in a violent clash following the breakup of the Soviet Union) has a board displaying a large photo of each of its members who died during the conflict and this is on the tour of the University given to visitors. A plaque outside the Law Faculty at the University of Sarajevo states: “To all the students and workers in the Sarajevo Law Faculty killed in combat and in workplaces during the war of liberation and defence. They gave their lives for defending the independence, integrity and sovereignty of Bosnia and Herzegovina.”<sup>38</sup> The University of Pristina currently is planning a memorial to its wartime experience,<sup>39</sup> which will add to the “shrines” to Kosovar fighters erected in many primary and

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<sup>37</sup> *Ibid.* at 30.

<sup>38</sup> The memorial is dated 6 April 2002 and was observed in January 2005.

<sup>39</sup> Interview with the Dean of the Law Faculty, University of Pristina on 22 September 2005.

secondary schools in that jurisdiction. As well as remembering the dead, such monuments – commonly built in British and Commonwealth universities following the First and Second World Wars - can celebrate heroism, victory (or loss) and imbue the rebirth of universities after war with heroic, almost mythical qualities.<sup>40</sup>

The importance of war looms large especially where the university remained open during the war. While in some conflicts education stops almost entirely - the Faculty of Law at Kabul University had effectively ceased to function under the Taliban - what is extraordinary is that for the most part the education sector – including higher education - continues to function in some form. In intense civil wars, education is often seen a “second front” and attempts to maintain normalcy are seen as heroic and patriotic. One author described the “pedagogical patriotism” witnessed in schools during Sarajevo’s siege during the early 1990s:<sup>41</sup>

[T]he imagery of the military battle for the country is employed by student and teacher alike to describe the psychological battle to preserve the illusion of normality and the logistical battle to reconstruct an educational system under siege. The imagery suggests that “the battle of the mind” became a form of patriotic resistance against the enemy expressed in the very terminology of the “war schools” of Sarajevo.

How staff and students stand down from this battle after conflict – and how pedagogical patriotism can be squared with social reconstruction - will be further addressed below.

The psycho-social difficulties experienced may be compounded by political divisions, corruption and struggles over jobs, admissions, departmental and university autonomy. In Kosovo, from 1999 when the Serb regime retreated, there were tensions between the Law Faculty and the Rectorate of the University of Pristina and between the University and UN administrators over matters such as financing and fees-retention and the recruitment of students. These tensions continue today though the UN control of education has now passed to a Kosovar Ministry of Education.

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<sup>40</sup> War memorials in the Anglo-American world – including those located in universities – are the subject of extensive scholarship; see, for example, M. Connelly, *The Great War, memory and ritual : commemoration in the city and East London, 1916-1939* (Woodbridge: Royal Historical Society/Boydell Press, 2002).

<sup>41</sup> D.M. Berman, *The Heroes of Treca Gimnazija: A War School in Sarajevo, 1992-1995* (Lanham: Rowman & Littlefield, 2001) at 7.

Reportedly, control of the Law Faculty of the University of Pristina is directly tied to party politics.<sup>42</sup> In Afghanistan, tensions between Taliban and non-Taliban students quickly developed at the University of Kabul after the Taliban regime was removed.<sup>43</sup> Similarly, the “de-Baathification” process in Iraq caused disruption; in Baghdad University alone, 283 staff members were dismissed following the 2003 U.S.-led invasion, including the University’s President.<sup>44</sup> Tension may also follow the reintegration of ex-combatants and the reception and/or return of refugees and the internally displaced.<sup>45</sup>

One of the intriguing aspects of the human impact is that, despite significant dips in student numbers during conflicts, enrolment figures quickly bounce back following war and indeed often exceed pre-war levels. This occurred at the end of both the First and Second World Wars in Canada, the US and UK; for example, in 1938-39 there were 936 law students in Canada while in 1947-48 there were 2,434.<sup>46</sup> Similar patterns can be seen following the armed conflicts in the Balkans and Caucasus of the 1990s. Only five months after the spring 1999 NATO bombardment ended and Serb forces withdrew, the University of Pristina enrolled 600 new law students, roughly the same number as admitted preceding the conflict.<sup>47</sup> There are now 3300 full and part-time students at the Faculty and there are additional students at recently established private universities.<sup>48</sup> Even in light of the continental European tradition of large undergraduate enrolments in law, these numbers are high given that the population of Kosovo is roughly 2 million. In many cases, student numbers far surpass pre-war levels. While prior to the conflict in Georgia over South Ossetia,

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<sup>42</sup> Interviews with graduates of the Law Faculty, University of Pristina, September 2005.

<sup>43</sup> H. Ghafour, “Kabul University slowly recovers”, *The [Toronto] Globe and Mail* (14 August 2003), A11.

<sup>44</sup> T. Munthe, “Will harsh weed-out allow Iraqi academia to flower?” *The Times Higher Education Supplement* (25 July 2003).

<sup>45</sup> Article 22(2) of the 1950 *Convention relating to the Status of Refugees* provides that “The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.” Principle 23(4) of the UN’s *Guiding Principles on Internal Displacement* [E/CN.4/1998/53/Add.2] states that “Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.”

<sup>46</sup> Cohen, *supra* note 3 at 270.

<sup>47</sup> Of which, it should be noted, 250 were by correspondence. Waters, *supra* note 21.

<sup>48</sup> Interview with the Dean of the Law Faculty, University of Pristina on 22 September 2005.

the latter territory did not have its own law department, it now has two, with the largest educating 622 law students, 192 of them full-time.<sup>49</sup> For a population of roughly 50,000 persons, this figure is inordinately high. There are various reasons for rises in law student numbers and not all of them are directly caused by conflict.<sup>50</sup> But, while this requires further empirical work, the end of conflict in and of itself seems to bring new demand for lawyers and places at law schools.<sup>51</sup> In many cases – particularly but not exclusively in cases of regime change - there is usually an intense period of law-making and institution building. Law is seen as crucial to rebuilding a country and as a source of jobs. As a result, the stock of law departments rises, even while the popularity of departments in the sciences and humanities may drop. As the President of the British Society of Public Teachers of Law put it in a speech to his association in 1919:

Our lecture-rooms are full to over-flowing...Doubtless some of this satisfactory result is due to accumulated arrears and the reaction from war to peace conditions. But allowance made for these reservations, enough remains to show that the study of law has lost none of its attractions. It would, indeed, be surprising if it had; for if one lamentable result of the war has been the temporary suspension of what was formerly believed to be law, another has been the formulation of many regulations which in some form or another will ultimately become, or give rise to, much new law.

### *c) Law taught*

As implied in the above quotation, war has a programmatic as well as logistical impact on legal education, particularly in terms of the curriculum. It is an obvious point perhaps, but war changes law and law schools must grapple with these changes. This applies even to victorious parties. The allied powers in World War Two, for example, saw emerging topics – notably administrative law - which required a place on the curriculum. Of course, change will be most drastic for the “losers” and in cases of wholesale regime change or international intervention. In each case, the value of professors’ legal knowledge, and so the value of what they teach, may be

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<sup>49</sup> Interview with administrative staff at the Law Faculty of the University of South Ossetia on 11 September 2003.

<sup>50</sup> In the former communist bloc, the numbers also have to do with a freer market in higher education and the expanded need for lawyers in emerging economies. See C. Waters, *Counsel in the Caucasus: Professionalization and Law in Georgia* (Leiden: Martinus Nijhoff, 2004).

<sup>51</sup> Rises in post-war enrolment in the education sector generally have been documented, see World Bank, *supra* note 27.

eroded. Following the withdrawal of Serb forces from Kosovo in 1999 and the imposition of a UN transitional administration, defined legal concepts were overturned. UN Security Council resolution 1244 of 1999 gave a good deal of discretion to a Special Representative of the Secretary General (SRSG) to pass regulations for Kosovo (essentially constituting governance through administrative fiat, albeit with benevolent intentions). These regulations imported legal concepts, including human rights concepts, of which the academy had little understanding.<sup>52</sup> It should also be noted that post-conflict law brings with it certain legal problems which may never have been dealt with in peacetime and for which expertise is lacking. These include war crimes trials and property restitution for returning refugees and internally displaced persons.<sup>53</sup>

It often takes some time for legal education to adapt to post-conflict realities. At the end of the 1994 genocide in Rwanda, many of the Tutsis who had been educated in exile in neighbouring countries found themselves back in Rwanda with common law, English language degrees which were of little immediate use in Rwanda's French language, civil law system. The unrecognized Turkish Republic of Northern Cyprus has only recently – 30 years after the Turkish invasion – put in place provision to teach the *sui generis* law of that territory (a combination of English common law and Turkish civil law).<sup>54</sup> While the lecturers are civil lawyers “imported” from Turkey, Turkish Cypriot graduate teaching assistants serve to put a Northern Cypriot spin on the curriculum. In some instances - East Timor is the obvious example - there will be no legal academy at all following the end of conflict. Following East Timor's 1999 referendum, when its people voted overwhelmingly for independence from Indonesia, the country faced an endemic shortage of trained jurists and East Timorese legal education started “from scratch”, albeit with international assistance.

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<sup>52</sup> The SRSG's first Regulation [UNMIK/REG/1999/1 of 25 July 1999] declared inoperable any prior-existing law incompatible with international human rights standards. On the lack of human rights education for lawyers under the Milosovic regime, see B. Lindsnaes & T. Martin, eds., *Partners in Progress: Human Rights Reform and Implementation* (Copenhagen: Danish Centre for Human Rights, 2002) [available at [www.humanrights.dk](http://www.humanrights.dk)].

<sup>53</sup> On property issues peculiar to the post-conflict environment, see A.R. Smit, “Property Restitution and Ending Displacement in Kosovo: Coordinated Effort or at Cross-Purposes ?” (2004) 55 *Northern Ireland Legal Quarterly* 182.

<sup>54</sup> T. Turhan, A. Alibaba and U. Gündüzler, “Legal Education in North Cyprus”, paper delivered at the European Law Faculties Association, Leuven, Belgium, 10 February 2006. Copy on file with author.

It should be stressed, however, that legal academics are not always passive participants in legal change. At times they rebel against change and at times they are in its vanguard. For example, Kosovo Albanian law professors were among those opposed to the SRSG's intentions with respect to the applicable law in Kosovo. The SRSG proposed that the law which was in place before the conflict – which included Serbian laws passed after Kosovo's autonomy was stripped by Belgrade in 1989 – should continue to exist unless it clashed with international human rights standards or UN Regulations.<sup>55</sup> Kosovo Albanian jurists vehemently opposed this scheme, perhaps not surprisingly given the fact that since 1989 legal education for Albanians had existed parallel to – and indeed in opposition to – the imposition of direct rule from Belgrade. Examples from the Caucasus also show how law teachers may actively take a role in promoting a change in legal systems. Following the breakaway of South Ossetia from Georgia and Nagorno Karabakh from Azerbaijan, these two *de facto* states have reoriented their legal systems in a way which reinforces the political goals of the states. South Ossetia, which wishes to join the Russian Federation, has adopted Russian law as its default law.<sup>56</sup> Nagorno Karabakh, which wishes to join Armenia, has adopted Armenian law as its default law.<sup>57</sup> The law schools in these two unrecognized republics have fallen into step with these political goals and no Georgian law or Azerbaijani law is taught at all. To the extent international law is addressed as a topic, the goal of law teaching is to assert the right of the two *de facto* states to self-determination and, specifically, the right to join other states.

This part of the article has surveyed –using examples from various conflicts - the ways in which war and post-war instability impacts legal education. It suggests that the impact can be usefully considered in three categories: material, human and programmatic. In each of these categories the impact can be profound, though law schools have also shown surprising resilience. Taking this impact as the starting point, the next part explores the ways in which formal legal education promotes or hinders post-conflict reconstruction and reconciliation.

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<sup>55</sup> See C.P.M. Waters, "Human Rights in an International Protectorate: Kosovo's Ombudsman" (2000) 4 *International Ombudsman Yearbook* 141 at 148.

<sup>56</sup> C. Waters, "Law in Separatist States", forthcoming (2006) in the *Denver Journal of International Law and Policy*.

<sup>57</sup> *Ibid.*

## 2) How good are law schools at reconstruction?

There are variables in regards to how well law schools perform following armed conflict. One key indicator is the extent of damage to the law school in the material, human and programmatic terms described above. Another is the extent of international support, discussed in Part 3. And of course there are countless variations on the post-conflict environment in terms of security threat, levels of enmity and so forth, which will determine what is possible with respect to law school contributions to reconstruction and reconciliation. What is possible in terms of visits to courthouses and internships for students in Sarajevo, for example, may not be in Baghdad. Nonetheless, a working hypothesis can be made. The first is that while law schools have a mixed record with respect to what might be called the technical aspects of reconstruction, they have done a poor job with respect to reconciliation or – perhaps more realistically termed given the bitterness which follows conflict – social reconstruction.<sup>58</sup>

As detailed in the previous section, there are numerous instances where legal education has been quickly re-established following conflict despite the logistical challenges. Similarly, changes – sometimes tinkering and at other times more comprehensive – may be made to pre-war curricula and teaching methodology. For example, clinical legal education, previously unknown in the Balkans, has been introduced in several universities in the former Yugoslavia and Albania. Law departments have also been drawn into wider law reform efforts. Legal academics are often asked to sit on constitutional and law reform commissions,<sup>59</sup> and law students and graduates staff new or revamped legal institutions (ombudsman's offices, human rights commissions, and war crimes courts are often part of the post-conflict justice

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<sup>58</sup> Reconciliation – with images of a family member returning to the fold - has rightly been described as “a murky concept with multiple meanings”. Social reconstruction has been defined as “a process that reaffirms and develops a society and its institutions based on shared values and human rights.” It calls for a broad range of activities to address the factors which led to conflict in the first instance. See H. Weinstein & E. Stover, “Introduction: conflict, justice and reclamation” in Stover & Weinstein, *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (Cambridge: Cambridge University Press, 2004) at 5.

<sup>59</sup> For example, several law professors from the University of Pristina sat on panels convened by the UN to review Kosovo's criminal procedure.

“package”). As law students and recent law graduates are often seen as less corrupt and less tainted by association with former regimes, they also make attractive employees for international organizations and foreign businesses.<sup>60</sup> And, as war may have shaken existing hierarchies in practice, recent graduates often are able to establish successful, market-oriented law firms where that may have proven more difficult in the pre-war period.<sup>61</sup> Especially where the international community has helped with funding and expertise, law departments have shown themselves able to make curriculum reform which at least partly reflects the needs of rule of law based states, modernize teaching methods and expand the intellectual dimension of law through faculty and student exchanges and conferences. All of the countries of the Balkans, for example, as well-as the quasi-independent Kosovo – albeit informally - are involved in the Bologna process on European convergence in higher education. The universities and law departments make technical reform at different speeds – and there are differing degrees of resistance from ‘old guards’ - but change does take place.

If examples of technical reconstruction are apparent, however, it is more difficult to find instances of social reconstruction. Particularly this is true following ethno-political conflicts. In these cases, law departments may hamper reconstruction or reconciliation in three related ways: i) discrimination, ii) substantive law taught, and iii) a failure to inculcate a culture of peace and reconciliation.<sup>62</sup>

The effects of discrimination are most often felt in the area of admissions. This discrimination may manifest itself more in practice than policy. For example, while there are no formal ethnicity requirements for admission, Bosnia’s Banja Luka Law Faculty requires candidates to write an admissions test on, among other things, Serbian literature and history; this test will make the Faculty inaccessible to most non-Serbs.<sup>63</sup> In a 2000 co-operation agreement between the Law Faculty of Pristina University and international donors, the University undertook not to discriminate on

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<sup>60</sup> This frequently causes problems, inducing these students to neglect their classes for ‘on the job’ training in well-paid jobs.

<sup>61</sup> This is certainly the experience in the South Caucasus; see Waters, *supra* note 50.

<sup>62</sup> On the culture of peace concept, see D. Adams, *UNESCO and a Culture of Peace. Promoting a Global Movement* (Paris: UNESCO, 1995).

<sup>63</sup> Council of Europe and the European Commission, “Law Faculty Review in Bosnia and Herzegovina” (Sarajevo, 2004) at 32.



the grounds of admission. Despite this, there were no ethnic minority students at all in the first cohorts following the war. In fairness this may have been because many would-be minority applicants had fled or self-selected themselves out of the admissions process. On the other hand, no attempt at outreach was made to minority students who remained in Pristina and who may have wished to start or continue their studies. The Faculty all speak Serbian and the statute of the University not only contains a non-discrimination provision, but makes allowance for classes to be taught in the “Albanian language or other official languages of Kosovo.”<sup>64</sup> More than five years after the Kosovo conflict ended, there are no Serb or Roma students enrolled at the Faculty and only seven students from other minority groups.<sup>65</sup> Aside from discrimination in admissions, discrimination can also apply in grading, promotion and administrative action such as providing transcripts to alumni from an opposing group.

If direct discrimination is relatively easy to spot and monitor, the way in which the substantive law taught hampers reconciliation is more nebulous, though as important. Scholars of nationalism and conflict have for some time identified how historical narratives can promote difference and particularized identities. These narratives entail myths of ethnic, religious or linguistic purity, ethnogenesis (which people was there first) and superior civilization.<sup>66</sup> Myths of victimization also make an appearance as the excesses of one’s own side are forgotten and “cultural life is directed to broadcast the injuries carried out against us”.<sup>67</sup> In such cases, those who peddle ethnic or nationalist myths seek to essentialize and reify a certain identity and in turn to exclude others from that identity. The professions of these myth peddlers are usually described as being those of the historian, politician, journalist and literary scholar. Unfortunately, lawyers and law teachers also join those ranks.<sup>68</sup> Law, of course, can be a cultural marker as much as folklore, a flag or an anthem. And this is not necessarily a bad thing, even where there is an ethnic connection. Attachment to

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<sup>64</sup> Statute of the University of Prishtina, Agreed Final Version of 9 June 2004, Articles 6 and 148 [copy on file with author].

<sup>65</sup> Interview with the Dean of the Law Faculty on 22 September 2005.

<sup>66</sup> See G. Smith *et al.*, eds., *Nation Building in the Post-Soviet Borderlands: The Politics of National Identities* (Cambridge: Cambridge University Press, 1999).

<sup>67</sup> C. Hedges, *War is a Force that Gives us Meaning* (New York: Random House, 2003) at 64.

<sup>68</sup> Though rarely are nationalist teachings so explicitly imported into the legal curriculum as in Nazi Germany, where the three year law programme “was modified to incorporate coverage of the cornerstones of National Socialist thought; race, soil, blood, Teutonic history and folklore.” [M. Lippman, “The White Rose: Judges And Justice In The Third Reich (2000) 15 Conn. J. Int’l L. 95 at 109].

the Quebec or Scottish legal systems, for example, can help sustain a healthy legal diversity in the world.<sup>69</sup> It is often forgotten, however, that law as an identity badge can also serve to exacerbate conflict. It can be a symbol or an instrument of division in ethnic conflict, and not only where law is discriminatory or blatantly immoral as in an apartheid regime, but, in some circumstances, in the promulgation of ordinary legislation such as a civil code. Law as a cultural marker can, like folklore or language, be manipulated into a divisive force.

There is a discernible pattern in ethno-political conflict in how law is used and how it is taught. As indicated earlier, the law department in South Ossetia teaches only Russian law, as that self-declared Republic wishes to join the Russian Federation. No attempt is made to teach Georgian law or to teach law in the Georgian language. This is despite the fact that some ethnic Georgians continue to remain in South Ossetia and that a negotiated settlement with Georgia is ultimately the only long-term solution to the conflict.<sup>70</sup> The same is true in Nagorno Karabakh where only Armenian law is taught. The foundational documents of many would-be independent states reaffirm the message that the existence of statehood is based on ethnicity, even though these provisions exist side-by-side boilerplate liberal constitutional clauses. For example, the Constitution of South Ossetia declares that the Republic is “building its relations with the Republic of North Ossetia-Alania on the basis of ethnic, national and historical-territorial unity and socio-economic and cultural integration.”<sup>71</sup> Similarly Nagorno Karabakh’s independence declaration recalls the “Armenian people’s striving for unification as natural and in line with appropriate norms of international law”.<sup>72</sup> It appears law teachers involved in ethno-political conflict rarely express a critical view of such legal instruments, at least on their “own side”.

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<sup>69</sup> On links between cultural identity and globalised law see N. Kasirer, “Lex-icographie mercatoria” (1999) 47 Am. J. Comp. L. 653. On “sustainable diversity in law” see H.P. Glenn, *Legal Traditions of the World* (Oxford: Oxford University Press, 2000) at 333.

<sup>70</sup> Georgian and South Ossetian police already conduct joint patrols.

<sup>71</sup> Article 8 of the *Constitution of the Republic of South Ossetia* (8 April 2001) [unofficial translation on file with author].

<sup>72</sup> *Declaration on the Proclamation of the Nagorno Karabakh Republic* (2 September 1991) [unofficial translation on file with author]. The passing of “laws” can be a powerful symbol, even when there is not only no *de jure* right to pass the law but also no *de facto* power. A good example is the proclamation of a constitutional law for a “Republic of Kosovo” in 1990 by Albanian members of a provincial assembly, acting in secret [Malcolm, *supra* note 22 at 347].

Even where a legal order is somewhat fixed, as in Bosnia following the 1995 Dayton Agreement, the emphasis of teaching in law departments can fail to recognize that legal order. Thus it is reported that Bosnian law departments de-emphasize state level constitutional law or legislation, and focus instead on the entity level and specifically the three de facto territories –Bosniac, Serb and Croat - the Federation, Republica Srpska and Brcko.<sup>73</sup> In the Bosnian city of Mostar, there are two law departments, one ethnic Bosniac and the other ethnic Croatian. Despite their proximity to each other, the two departments generally avoid contact and rather seek contact with ethnic confreres in more distant Faculties.<sup>74</sup> Similarly at the University of Banja Luka, an ethnically Serb law department ‘imports’ visiting lecturers from Serbia, rather than looking to, for example, the better staffed but ethnically Bosnian University of Sarajevo.<sup>75</sup>

Law in these ethno-territorial examples is used as a proxy and metaphor for continued ethnic conflict and continued “resistance”. Not only are the foundational documents of new or would-be states (declarations of independence, referenda results and so forth) stressed as being legal and natural, the disappearance of prior laws is also seen as progressive (being the laws of the “occupier” for example). In these cases, nationalist legal visions are reified and legal pluralisms denied. In much the same way as myths are spread about language (the disintegration of Serbo-Croatian along with the disintegration of Yugoslavia) and history (myths of victimization), law serves as both a symbol and an instrument of division.<sup>76</sup> As one author studying ethnic conflict in Sri Lanka puts it: “At the heart of ethnic conflict is a belief in the existence of cultural and ethnical purity, and a concomitant fear of mixing and borrowing. Hybridity...has to be suppressed and becomes the site of anxiety.”<sup>77</sup> Unfortunately, once this reification of culture, ethnicity, race or religion takes place – manifested through law and other social sites - it becomes difficult to stand down without losing face.

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<sup>73</sup> On the “fragmented” nature of legal education in Bosnia, see International Crisis Group, “Assessment of Legal education in BiH”, a document prepared for the Independent Judicial Commission in March 2002 [copy on file with author] and the “Law Faculty Review, *supra* note 63.

<sup>74</sup> “Law Faculty Review”, *ibid.*, at 38. This is not surprising given that ‘feeder’ primary and secondary schools are also ethnically split.

<sup>75</sup> Interview with an ABA-CEELI Liason Officer in Bosnia on 24 January 2005.

<sup>76</sup> G. Smith, et al., *supra* note 66 and Hedges, *supra* note 67 at 32-33.

<sup>77</sup> N. Silva, ed., *The Hybrid Island: Culture Crossing and the Invention of Identity in Sri Lanka* (London: Zed Books, 2002) at i.

This Part established that law schools have a mixed record with respect to ‘technical’ reconstruction, and a generally poor record with respect to social reconstruction. The article turns now to the role of the international community, which has increasingly expressed its desire to assist in rebuilding both the education and justice sectors after war.

### **3) International involvement with reconstruction**

As noted in the Introduction, education researchers have amassed an impressive literature on education and conflict (sometimes subsumed under the broader category of education in emergencies). This research has been well-funded by international agencies as well as the usual academic funding bodies and has allowed for some impressive inter-country surveys as well as national case studies and thematic studies. The latter have dealt with issues such as child soldiers, education for girls and forced migrants and education for peace. International intergovernmental bodies themselves (especially UNICEF and UNESCO) and an array of NGOs have produced numerous studies, plans, and ‘lessons learned’ documents. One particularly impressive initiative is the promulgation in 2004 of Minimum Standards for Education in Emergencies by the Inter-Agency Network for Education in Emergencies.<sup>78</sup> The standards – built on a broad consensus among relevant international and local actors - set out tools and standards for reconstructing education in emergencies, including armed conflict. While nominally applicable to all forms of education, they in fact – both by their terms but particularly with respect to subsequent implementation – focus on primary education. This is typical of work in the education sphere. Academics and practitioners alike have focused almost exclusively on primary education and, to a lesser extent, secondary education and aspects of lifelong learning for adults such as basic literacy.<sup>79</sup> When higher education is mentioned in the academic or policy literature, it often appears as a footnote to the focus on primary education. Given the staggering number of children who do not receive any formal education in conflict affected areas – an estimated 27 million - this

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<sup>78</sup> Inter-Agency Network for Education in Emergencies, “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction” (2004), available at <http://www.ineesite.org/standards/>.

<sup>79</sup> See T. Brown, “Time to end neglect of post-primary education” (2005) 22 *Forced Migration* 31.

focus is perhaps understandable.<sup>80</sup> Writing on education in Liberia, one study bluntly states that “given that 25% of children complete grade five, primary education needs to be the main focus for this moment.”<sup>81</sup>

The focus on primary education is also reflected in international instruments, both rights-focused instruments and those centred on development. The 1989 Convention on the Rights of the Child provides in Article 28 that states shall:<sup>82</sup>

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education [...];
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;

The right is clearly tiered, with the most concrete obligations coming in the area of primary education. In terms of development-focused instruments, the Dakar World Education Forum in 2000 developed a framework for action to achieve basic Education for All (EFA) by 2015.<sup>83</sup> Similarly, the Millennium Development Goals include ensuring that, by the same year, “children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.”<sup>84</sup>

Despite a lack of focus on higher education, it would be unfair to say that universities – and particularly law schools – do not benefit from international assistance for post-war reconstruction. They simply do so in a less coherent or consistent way than the primary education sector. There are at least four actors which may contribute to the restoration of legal education: intergovernmental organizations (IGOs), NGOs, foreign universities and donor states. IGOs, notably the UN and its

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<sup>80</sup> L. Heninger, “Who is doing what and where?” (2005) 22 *Forced Migration Review* 7 at 7.

<sup>81</sup> Women’s Commission for Refugee Women and Children, “Help us Help Ourselves: Education in the Conflict to Post-conflict Transition in Liberia” (New York, 2006) at 11.

<sup>82</sup> It should be noted that the Universal Declaration of Human Rights in Article 26(1) states that “everyone has the right to education” though it goes on to prioritize elementary education. Other international instruments setting out rights to education include Convention Relating to the Status of Refugees (1951); the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War; and the Covenant on Economic, Social and Cultural Rights (1966).

<sup>83</sup> Education For All: Meeting Our Collective Commitments Text adopted by the World Education Forum Dakar, Senegal, 26-28 April 2000. Available at [http://www.unesco.org/education/efa/ed\\_for\\_all/dakfram\\_eng.shtml](http://www.unesco.org/education/efa/ed_for_all/dakfram_eng.shtml).

<sup>84</sup> United Nations Millennium Declaration of 18 September 2000, GA Res 55/2, Para 19. Available at <http://www.un.org/millennium/declaration/ares552e.pdf>.

agencies, but also regional organizations such as the Commonwealth and the Council of Europe, can play an important role where the political decision is made to engage.<sup>85</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) is the lead UN agency in the field of post-secondary development assistance. Though its assistance to post-conflict universities has been *ad hoc* to date – the organization has not traditionally worked in the field on emergency humanitarian assistance – it appears to be developing a more coherent approach to the post-conflict environment.<sup>86</sup> In the emerging ‘cluster approach’ to humanitarian emergencies, however, the United Nations Children Fund (UNICEF) is the lead agency in the field of education assistance. Given the organization’s mandate to protect and promote childrens’ rights, higher education has not been placed squarely on the humanitarian response agenda. Other UN bodies should also be noted. Although the United Nations Development Programme and the Office of the High Commissioner for Human Rights (OHCHR) have concentrated their legal education efforts on the public, vulnerable groups, professions and security forces, they occasionally work with law schools on curriculum reform, staff training and library provision. The United Nations High Commissioner for Refugees (UNHCR) has funded legal clinics in universities and provides university scholarships for refugee students. The UN has also occasionally played a direct governance role in education. The transitional administration in Kosovo is a clear example of this, where the co-rector of the University of Pristina was appointed by UNMIK in 1999.

In 2004 the UN Secretary-General in a “Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” called for rule of law efforts to be made a central plank of post-conflict reconstruction. After noting that legal education has sometimes received short shrift, the report states that “legal education and training and support for the organization of the legal community, including through bar associations, are important catalysts for sustained legal development.”<sup>87</sup> It remains to be seen whether the report – and the recent focus on

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<sup>85</sup> Engagement is not always the case, as in the separatist territories of the South Caucasus.

<sup>86</sup> See IIEP-UNESCO, *Guidebook for planning education in emergencies and reconstruction* (Paris: UNESCO, 2006).

<sup>87</sup> “Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” (3 August 2004), UN Doc S/2004/616.

developing a package of post-conflict justice ‘tools’ - will increased UN support for legal education at universities.

NGO programmes focused on academia may be interdisciplinary or specific to law. For instance, the Open Society Institute has several programmes to assist universities in the transition countries of East and Central Europe and Eurasia, including those affected by conflict.<sup>88</sup> The American Bar Association’s Central European and Eurasian Law Initiative (ABA-CEELI), on the other hand, assists law faculties only, in areas such as curriculum reform.<sup>89</sup> The International Committee of the Red Cross (ICRC) should also be mentioned here – though it is a hybrid between an IGO and an NGO - for disseminating literature and providing courses on international humanitarian law in many post-conflict law departments.<sup>90</sup> Indeed in some departments the ICRC will be the only source of international legal material.<sup>91</sup> Next, foreign universities, usually funded by official aid agencies from their home countries, seek collaboration (often called “linking”) with post-conflict universities to exchange faculty, provide scholarships for students and donate books. There are also some regional and international groupings of law schools which serve a peacebuilding function. Notably, the European Law Faculties Association and the European Law Students Association have served to help reintegrate law teachers and students respectively from conflict-affected areas of Europe and Eurasia through conferences and exchanges.<sup>92</sup> The newly formed International Law Faculties Association promises to do similar things on an international level. The mission of the latter association includes “foster[ing] mutual understanding of and respect for the world’s varied and changing legal systems and cultures as a contribution to justice and a peaceful world” and “strengthen[ing] the role of law in the development of societies through legal education”.<sup>93</sup> Foreign universities may also establish full-fee paying branches as profit-making ventures.<sup>94</sup> Finally, individual donor states, or their official

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<sup>88</sup> See [www.soros.org](http://www.soros.org).

<sup>89</sup> See [www.abanet.org/ceeli/home.html](http://www.abanet.org/ceeli/home.html).

<sup>90</sup> On ICRC engagement with universities see <http://www.icrc.org/Web/eng/siteeng0.nsf/html/educuni>.

<sup>91</sup> For example, the only books on the shelf of one Azerbaijani University, observed in Baku on 24 April 2004, were books on International Humanitarian Law provided by the ICRC.

<sup>92</sup> See <http://elfa.bham.ac.uk> and <http://www.elsa.org>.

<sup>93</sup> See s.1 of the Charter for the International Association of Law Schools, available at <http://www.ialsnet.org>.

<sup>94</sup> On the establishment of such universities in Afghanistan see H. Ibrahimi and H. Gardesh, “Elite Universities to Open”, Institute for War & Peace Reporting (29 October 2003) [[www.iwpr.net](http://www.iwpr.net)].

aid agencies (USAID, DFID and so on), may provide aid directly. Often one or two countries will spearhead reform efforts, for a mix of humanitarian and strategic reasons.<sup>95</sup>

Despite the depth of international engagement with legal education in some post-war countries, this engagement is by no means a 'sure fix' for what ails the sector. First, it is obvious from the sheer numbers of actors involved that coordination of aid is necessary. It does not always happen, though in some cases, good efforts have been made. For example, the Organization for Security and Cooperation (OSCE) in Europe attempted to take the lead role on coordinating assistance to the Law Faculty in Kosovo and to that end devoted a full-time staff member from the start of its recovery efforts. The result was partially successful, but often duplication is the order of the day and priorities such as classroom heating are not met while numerous players sponsor moot court competitions and short-term training programmes. Second, and this is an issue to which the Conclusion returns, international actors have focused too much on the role of legal education in reconstruction and insufficiently on the role it might play in reconciliation. Other challenges facing international efforts include clashes of legal cultures (common lawyers aiding civil law systems is a frequent source of such clashes), a lack of capacity/donor interest to see reform through in the long run, lack of planning, corrupt and poorly trained local counterparts and poor choice of personnel to lead the aid efforts (incapable or unwilling to understand local needs and work with local partners). In sum, just as post-war law schools themselves have a mixed record in terms of reconstruction, the international community's efforts at assisting those law schools is similarly sketchy.

In the Conclusion, an agenda for law schools and international actors to reconstruct legal education in a more coherent and transformative manner is put forward.

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<sup>95</sup> Not surprisingly, the US had taken the lead in supporting Iraq's universities: "US to take lead in 'modernising' Iraq" *The Times Higher Education Supplement* (20 June 2003). DFID has supported a university in British-occupied Basra: [untitled article] *Times Higher Education Supplement* (24 October 2003). Frequently, neighbouring countries (such as Austria in Bosnia and Turkey in Afghanistan) will devote substantial resources to post-conflict education.



## Conclusion: Reconceptualising the Post-War Law School

Although describing basic rather than higher education, the author of an influential report for UNICEF argued that after war “the education system must be rebuilt rather than merely re-instituted; it must change in profound ways.”<sup>96</sup> In the context of basic education this has meant, among other things, democratization of the classroom, equal access for boys and girls and peace education. This transformative approach to education not only serves to improve teaching and learning per se, but also assists in preventing future conflict. As argued in the previous section, we have seen evidence of technical reconstruction and even reform at post-war law schools in the Balkans and Caucasus. What we have not seen at law schools, at least in these two conflict-affected regions, is profound or transformative change. Yet there are examples of how law schools, and universities more generally, can profoundly change after war. Following the Second World War, British, American, Canadian law schools did make transformative change. So did law schools in defeated Japan and Germany, where real efforts were made to undo fascist influences.<sup>97</sup> At West German universities, the desire for change even shaped campus architecture. New buildings were intended as “peace reform” with, for example, the advent of democratic, small and co-educational group living for students.<sup>98</sup> Among the victorious allies in the common law world, there were various suggestions put forward to change the direction of legal education and many saw the end of war as an opportunity to recreate legal education in terms of curriculum, teaching methodology and even the aims of legal education.

In terms of curriculum the need for public and administrative law courses was stressed in order for law schools to reflect the importance of the new and expanded role of the state. In turn this would require, some suggested, a greater understanding

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<sup>96</sup> M.J. Pigozzi, “Education in Emergencies and for Reconstruction: A Developmental Approach” (New York: UNICEF (working papers), 1999), available at <http://www.unicef.org/girlseducation/files/EducEmerg.PDF>.

<sup>97</sup> Though some have raised doubts as to the depth [see R. Zimmermann, “Was Heimat hiess, nun heisst es Hölle’ The Emigration of Lawyers from Hitler’s Germany: Political Background, Legal Framework, and Cultural Context” in Beatson & Zimmermann, *supra* note 2 at 68-69] or timing of denazification [see S.P. Remy, *The Heidelberg Myth: The Nazification and Denazification of a German University* (Cambridge: Harvard University Press, 2002)].

<sup>98</sup> S. Muthesius, *The Postwar University: Utopianist Campus and College* (New Haven: Yale University Press, 2000), chap. IV.

of social sciences and humanities on the part of law students.<sup>99</sup> Similarly, international and comparative law courses would be needed to reflect the “enlarged world of law” and to reduce international misunderstanding.<sup>100</sup> With respect to teaching methodology, it was suggested, professors would have to present “living law”, providing tools to law students to “serve society” through law reform, government, private practice and international affairs.<sup>101</sup> Students would also be more critical minded and law professors would need to adjust their teaching to the fact that simply imparting “accepted wisdom” would not suffice. Other facets of the classroom would need to change, including the admission of women in greater numbers.<sup>102</sup> In discussing the purposes and ethos of post-war education, it was clear that wholesale change was intended. Law schools would have to help graduates in “building the law of the new life which is to come”<sup>103</sup> The new law would be fairer, more accessible to all and would reflect the “freedom, dignity and responsibility of the individual person” as well as “the dignity and responsibilities of the individual in his relations to others”.<sup>104</sup> All of these lofty goals have not been met, but there is no denying that post-war reforms were significant and continue to form the backdrop of current legal education in much of the common law world..

Turning to the post-Cold War ethno-political conflicts, how then can legal education better assist with national reconciliation or at least social reconstruction? First, essentialism in law teaching has to be avoided. Ambiguity and legal pluralisms which accord with basic human rights standards must be recognized and accepted. Few have recognized this link between legal diversity and peace, though as Patrick Glenn notes, “[a]cting positively to sustain diversity in law should improve communication between lawyers of the world. It should enhance the prospect for peaceful settlement of disputes, enhance the legal mission.”<sup>105</sup> Teaching public international law also has the potential to be a positive force in post-war legal education. And the International Law Association should be commended for its

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<sup>99</sup> Vanderbilt, *supra* note 1 at 327.

<sup>100</sup> L. Green, “Legal Education after the War” (1945-46) 24 N.C. L. Rev. 433 at 434. And see Wright, *supra* note 3 at 158.

<sup>101</sup> Kronstein, *supra* note 3 at 380.

<sup>102</sup> Wicker, *supra* note 3 at 700.

<sup>103</sup> G.K. Gardner, “Legal Education for the Needs of the Country after the War” (1944-45) 40 Iowa L. Rev. 340 at 354.

<sup>104</sup> Green, *supra* note 100 at 436 and 437.

<sup>105</sup> Glenn, *supra* note 69 at 333.

attempts to make international law a compulsory course on first degrees in law.<sup>106</sup> However, teaching international law by itself is insufficient. It should be taught in a process oriented way – stressing the importance of the peaceful resolution of disputes – and not as a vehicle to reinforce a binary, intransigent opinion (territorial integrity *or* self-determination) or an exclusionary vision of international legal history.<sup>107</sup> It is particularly important that international human rights law (focused on individual as well as group rights), and international humanitarian law (which has the advantage of avoiding the *jus ad bellum* question) be on the curriculum. Where possible, these courses should be team-taught by international and local lawyers. These are concrete steps which can be taken and where the international community is involved, it should use its leverage to ensure that they are taken. This may involve conditionality in terms of aid (and avoiding the blind rush to donate) and monitoring, though admittedly this sits uncomfortably with academic freedoms.

If the way in which substantive law is taught after conflict were to change, this would help create the grounds for social reconstruction. It is not however sufficient. The methodology of education itself must more fundamentally shift to education for peace. This is an area which has been thoroughly explored elsewhere and does not lend itself, particularly, to the analysis of legal scholarship.<sup>108</sup> Three points however need to be made at this juncture. First, experts on peace education stress that the nature of conflict itself must be explicitly addressed in schools and universities. Law departments in many stable societies have now introduced alternative dispute resolution (ADR) courses - this is a trend which should be encouraged when working with post-conflict law departments. At present, ADR courses are sometimes run, but not in any systematic way. Courses should also be provided for law teachers, not only to develop domestic capacity in the area, but so that these teachers might reflect on the way in which they present substantive law to their students. When promoting

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<sup>106</sup> See the Reports of the International Law Association's Teaching of International Law Committee: [http://www.ilahq.org/html/DISPLAY\\_COMM\\_DETAILS.ASP?ID=1009&COMM=Teaching+of+International+Law](http://www.ilahq.org/html/DISPLAY_COMM_DETAILS.ASP?ID=1009&COMM=Teaching+of+International+Law).

<sup>107</sup> At a law class on genocide observed on 24 April 2004 in Baku, Azerbaijan, students were asked to name genocides. While Armenian actions during the Nagorno Karabakh war were listed as constituting genocide, no student mentioned the Armenian genocide under the Ottoman Empire, which is generally recognized as the first modern genocide. On the role international law can play in avoiding conflict, see S.R. Ratner, "Does International Law Matter In Preventing Ethnic Conflict?" (2000) 32 N.Y.U. J. Int'l L. & Pol. 591.

<sup>108</sup> See generally Davies, *supra* note 8. Though for a look at peace education written by a legal scholar see M. Minow, "Education for Co-Existence" (2002) Ariz. L. Rev. 1.

peace through education, the substance of disputes cannot be avoided – in some cases there are aggressors and victims and to suggest otherwise would be unjust and unwise - but the need for co-existence cannot be neglected either. The second point is that when working with post-conflict law departments on inculcating a culture of peace, the international legal basis for peace education can be usefully cited. Article 13 of the 1966 International Covenant on Economic, Social and Cultural Rights provides that “education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.” Some soft law instruments expand on this. For example, a 1974 UNESCO Recommendation states in part that: Education should stress the inadmissibility of recourse to war for purposes of expansion, aggression and domination, or to the use of force and violence for purposes of repression, and should bring every person to understand and assume his or her responsibilities for the maintenance of peace.”<sup>109</sup>

Finally, it should be stressed that education in conflict or in the post-conflict stage should not be unduly pathologised. As one expert on education and conflict puts it: “there are grave omissions – or contradictions – in the curricula of both stable and conflictual societies, omissions which contribute to a continued acceptance of war.”<sup>110</sup> Outsiders engaged in legal education reform after war must be aware that seemingly stable societies have not got it all right. One need think only of the acrimonious “culture wars” on US campuses, the fact that in some UK law schools international law is not even on the curriculum, or the disregard by some Canadian law departments of the country’s bijuridical traditions, to realise that the ideals expressed following the Second World War have not yet been achieved in the western world. As in all international reconstruction efforts, the importance of humility on the part of outsiders must be underlined.

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<sup>109</sup> UNESCO *Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms* (19 November 1974), art. 6.

<sup>110</sup> Davies, *supra* note 8 at 5.