
BUILDING STATES TO BUILD PEACE? A CRITICAL ANALYSIS

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Abstract

Agencies throughout the development, humanitarian, political and defence fields have recently endorsed the centrality of state institutions in post-war peacebuilding. But how can external actors go about peacebuilding in a way that reinforces effective and legitimate states without doing harm? Drawing on an International Peace Institute project, this article calls into question the assumption that peacebuilding can be boiled down to building state institutions. The article argues that the process of building states can actually undermine peace, postulating five tensions between peacebuilding and statebuilding even as it asserts that strong state institutions remain crucial for consolidating peace. Identifying three crucial state functions for peacebuilding, the article emphasises the complex interrelationships among legitimacy, state capacity and security in post-conflict societies.

Introduction

Why are state institutions and statebuilding important? If we assume that they are, how can United Nations organs like the Peacebuilding Commission (PBC), the Secretariat, its funding agencies and programmes go about peacebuilding in a way that reinforces effective and legitimate states?

This article draws principally on the findings of a project exploring the nature of statebuilding, peace and development in war-torn societies. This project of the International Peace Institute (formerly the International Peace Academy) drew on recognised experts in thematic areas and country cases, all scholars who have spent time in policy or practice or practitioners who have written on their experiences, usually in United Nations peace operations and the World Bank.¹ The volume's cases – Afghanistan, Somalia, Palestine, Bosnia, Liberia and East Timor – all involved internal, and often internationalised, wars in which international actors (notably the United Nations) played a crucial part in the war and any attempted process of securing peace. The cases were selected because issues of 'stateness' played an important role, though with variation across cases. The 'stateness' was either juridical, with borders recognised by other states, or empirical – able to exert authority within the territory (Barnett 1995; Jackson & Rosberg 1982). The case studies did not test hypotheses, but generated them through loosely structured comparisons (George 1982), as authors were asked to focus on peace processes and their specific relationship with the trajectory of the state, its legitimacy and its institutions.

After defining key concepts, the article discusses why state institutions are vital and yet often neglected in efforts to consolidate peace after war. Contrary to views in prevailing literature, peacebuilding and statebuilding are not synonymous. Tensions between them require contextualised judgments about sequencing and prioritisation. Despite these

tensions, state institutions play an important part in consolidating peace, and the subsequent section identifies three sorts of state institutions that are likely to be crucial for any post-conflict endeavour. Analysts have already provided significant lessons about each of these sectors – security, public finance and the administration of justice. This article examines how these sectors relate to one another and to elusive state legitimacy.

Concepts and Assumptions

‘Peacebuilding’ here refers to efforts by any actors to consolidate national peace after a ceasefire has been reached.² Beyond referring to the prevention of renewed armed conflict, the conceptual borders of ‘peacebuilding’ enjoy little clarity. ‘Post-conflict’ is used loosely here, referring to a period following a military defeat or negotiated settlement, even though some territories meeting this definition (such as Palestine after 1993 and parts of Afghanistan after 2001) experience a failed settlement or continued or renewed armed conflict.

The ‘state’ here is defined as the collection of institutions that successfully claims the monopoly on legitimate authority and use of force in a given territory.³ Because analysts use the term ‘state’ in such different ways, clarifying these differences is worthwhile. Some analysts emphasise authority that is recognised at the international level. This ‘juridical sovereignty’ refers to the recognition by other states or the international community, emblemised by membership in the UN General Assembly. Others emphasise the ‘institutions’ of government, the administrative capacity of governance. Still others emphasise the state as an entity that represents a territorial political community over and above the government (Scott 2006). This entity includes the institutions of government, but has its own character and speaks for a political community. The definition here emphasises the institutions of government, recognising the links to international recognition and resources, but stressing the relationship between the institutions of governance and the territory’s citizens or population, also known as ‘empirical sovereignty’ (Barnett 1995; Jackson & Rosberg 1982).

Whatever its definition, the state remains an exercise and embodiment of power, not a neutral, benign collection of executive agencies. As Trotsky said, ‘Every state is founded on force’ (Weber 1919). The state represents an order imposed on a territory by a particular

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class or group of elites, but one which (eventually) involves some degree of consent – hence the importance of legitimacy both in the definition of a state and in the process of statebuilding. Here legitimacy refers principally to internal acceptance of and support for a particular governing authority,

though such an outcome is linked both to external recognition of said authority and the processes by which it engages the populace.⁴ The accrual of legitimacy, through various means internationally and internally, is a central part of contemporary state formation.

Why States are Vital for, and Bad for, Post-conflict Peacebuilding

Because they represent certain social interests, states are generally as much a problem for peace and development as they are a solution. This is particularly true where the state acts on behalf of a few persons in their private interest. As for development, states interfere with locally led initiatives, constrain markets and deliver services in partisan ways. Where states extract resources from the population without providing services, where they abuse

or terrify the populace, or where they persecute or discriminate against one or more ethnic or religious groups, states are also an important cause of war.

However, in the past several years, policymakers, scholars and practitioners have begun to see the state as a necessary, even vital, part of peacebuilding and development work. And it is easy to see why. Where international peacekeepers are present, someone must maintain order once they depart. If war among guerrilla groups is to be avoided, then the

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state military and police forces must be not only up to the task, but be managed and held accountable in such a way as to prevent human rights abuses and repression – leading to renewed warfare. They must also be capable of providing public security and enhancing the rule of law. Where

international troops are not present, then the state and its institutions must be able to deliver basic services credibly and resolve social conflicts before they become violent. Just as states can be agents of war, they can also be agents of peace.

For these reasons, among others, international organisations have understandably tended to neglect or bypass states. Development and humanitarian agencies rely heavily on civil society organisations, rather than the state, as partners in their projects. Bilateral donors and UN agencies also rely heavily on themselves or their national contractors to implement development projects.

Of course, non-state actors – be they local or traditional authorities, religious institutions or leaders, NGOs or private companies – increasingly deliver ‘state-like’ services. Even so, the state must act as regulator and rule-giver if a political community is to be maintained and peace preserved. To the benefit of sustainable economies, functioning and legitimate states also provide the infrastructure for sustainable development. All of these factors point to a complementary relationship between peacebuilding and state building, one which exists in many circumstances and should be nourished.

Researchers and peacebuilding agencies have acknowledged the importance of statebuilding for peacebuilding. Paris, for instance, argues that the central weakness of international peacebuilding is its failure to strengthen state institutions before liberalising politics and economies (Paris 2004; Fukuyama 2004; Chesterman *et al* 2005). A UN policy review in 2005 called for placing state institutions at the centre of post-conflict efforts (Call 2005). The World Bank created a ‘Fragile States Unit’ to enhance attention to statebuilding in its work, and many donors have restructured offices dealing with post-war societies to increase attention to state construction (Bensahel 2007; Patrick & Brown 2007). What of substance can we say about post-war statebuilding amid these efforts to improve international outcomes?

Tensions between Statebuilding and Peacebuilding

The findings of the project ratify many ideas about peacebuilding that have gained prominence in the past few years. These include the general neglect of the state by peacebuilders, the negative effects of donor practices on the state (and thus on sustainable peace), and the presence of some common imperatives in crafting legitimate states and strengthening state capacity.

Yet the most provocative findings of the project question much of the new conventional wisdom about fragile states and the dangers they pose to peace and stability. They point to tensions between the process of consolidating peace in a war-torn society and building a self-sustaining state. Such tensions do not exist in every case. Consequently, paying attention to the particular context of a conflictive or post-conflict society is important. Aspiring peace engineers can be effective only by discerning from the context how particular measures will provoke spoilers, bolster warlords, weaken state institutions, undermine a fragile peace process, or add capacity at the cost of legitimacy among certain ethnic or religious groups.

Five tensions between peacebuilding and statebuilding stand out based on the case studies and the thematic components of our project.

1. Statebuilding can spark or facilitate armed conflict, especially if the emergent state is endowed with too many powers too quickly.

Somalia exemplifies this tension. After a decade of unsuccessful initiatives by national and international actors to re-forge a national state in Somalia, one such effort began to

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gain traction in 2004. As Kenneth Menkhaus foresaw in 2005, that internationally supported effort led to renewed warfare in late 2006 (Menkhaus 2008). He argues that by endowing the central state with too many powers too quickly (i.e., with most of the functions of a typical state), statebuilding eventually engendered the armed resistance of those who stood to lose in the process. What are the policy implications? By

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Afghanistan illustrates a more prudent course in statebuilding, as shown in Jake Sherman's case contribution (Sherman 2008). The process initiated with the UN-brokered agreement in Bonn in 2001 brought together the various Afghan factions that had opposed the Taliban. It generated a graduated process of consultations with representatives of regions and different factions, including the main warlords, many of whom had committed atrocities in the 1990s and subsequently. The process was to endow a national government with more and more powers, aware that sudden threats to the power of regional warlords might spark civil war. As of this writing, that process had preserved peace among the victors of the 2001 war, even though Taliban and allied armed resistance to that statebuilding process persisted. In addition, some warlords were co-opted and marginalised, and the national army grew in strength and numbers. Some have criticised this graduated statebuilding strategy for not using greater coercion to confront warlords, for not imbuing the process with more participation and legitimacy, and for not delivering greater security and economic well being to the populace (Donini *et al* 2002). Certainly, the United States and its allies, focussed on the ongoing war against Al Qaeda and the Taliban, showed an unwillingness to commit the troops and resources necessary for some of these measures to transpire. Nevertheless, post-Taliban Afghanistan shows one way in which an effort to preserve peace in most of the territory centred on statebuilding and how constructing that state proceeded so as to prevent the Bonn signatories from resorting to civil war.

2. International peacebuilding undermines statebuilding when it bypasses state institutions, even though this may at times make sense.

The project identified other ways that external actors undermine statebuilding. Sarah Cliffe's and Nicholas Manning's contribution analyses four recurrent problems of international activities: the adoption of ineffective transitional arrangements that reflect many of the aforementioned problems; the assumption that no state structures or capacities exist at the end of a war; the failure to prioritise efforts; and the collateral damage of international presences (Cliffe & Manning 2008). Indeed, the routine behaviour of most international actors often has a negative effect on the state. Such behaviour includes an insistence on delivering aid directly to recipients, refusal to channel aid through state agencies in order to demonstrate accountability to constituents back home, avoidance of domestic decision making in order to expedite apolitical service delivery, and reliance on own-national contractors or international NGOs for service delivery. All of these behaviours may be justified when the state is corrupt, exclusionary or predatory. However, working to reform and enhance the state under such circumstances remains essential to sustainable peace.

Marcus Cox's case study of Bosnia shows the negative long-term consequences of an international mission whose powers trump elected national officials' functions (Cox 2008). In order to rebuff ethnic nationalist spoilers, international actors granted greater powers to the Office of the High Representative (OHR). The High Representative used those powers

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to remove police commanders and elected parliamentarians from their posts. Eventually legislators and other elected officials began to tacitly cede tough decisions to the OHR, which acted without significant accountability. The OHR's enhanced powers implicitly weakened state officials and interfered with the relationship between society and state officials, undermining a tenet of state legitimacy. Not

only can such international state-like authorities leave state institutions artificial or bereft of legitimacy and capacity, but they can also foster dependency, distort democratic processes and create disincentives for compromise.

What if the state is corrupt, authoritarian or exclusionary? The case studies highlight ways that the UN, bilateral donors and international NGOs can try to mitigate the worst effects of a corrupt or exclusionary state without bypassing it altogether. One mechanism is the voting booth. Although democracy is a blunt instrument in curbing corruption in transitional periods after wars, elections can eventually push corrupt power holders out of office. Liberia's experience illustrates this both before and after the election of Ellen Sirleaf-Johnson. Legislative leaders were suspended for corrupt practices, and the Liberian electorate supported a candidate perceived to be distant from warring and corrupt parties. Other cases, such as Palestine and Bosnia in the mid-1990s, show the limits of elections in curbing corrupt state practices (Brynen 2008; Cox 2008).

External actors can also build institutions of accountability, both inside and outside the state. Here creative mechanisms to strengthen state capacities while instituting greater oversight and accountability – emanating from civil society, the legislature and the courts – are the only means to curb short-term predation and strengthen long-term state institutions. Liberia's Governance and Economic Management Assistance Programme (GEMAP), which draws heavily on international powers to oversee expenditures and revenues, nevertheless does not supplant the state entirely. With international checks, Liberian officials continued to carry out their public finance functions. Such combination

of international, regional and state capacities can help external actors ensure state functions work while trying to overcome deep flaws in state governance.

3. *Meritocracy, the main principle of Weberian statebuilding, often must be balanced with central principles of peacemaking – compromise and power sharing – in order for peace to survive the short run and make sustainable statebuilding possible.*

This point reflects the broader finding that steps necessary to consolidate peace may undermine the creation of a state that proves effective in the long run. Like Weber, many advocates of statebuilding emphasise merit-based selection criteria to build apolitical and efficient state bureaucracies. Such criteria favour institutions that can outlive individual leaders and survive the transfer of government from one party or faction to another. However, it is unrealistic to expect the population immediately to rely upon and trust state institutions in societies where people have historically been exploited by state bureaucracies and depended on their personal connections or informal networks to protect and support them. In the aftermath of warfare, distrust of the state will be high if an enemy faction seems to control it.

Under such circumstances, confidence-building measures are necessary, including measures more common to peacemaking: power sharing and compromise. Thus, power-sharing arrangements that guarantee representation of various social groups in the cabinet, the military, the police, the justice system, and other state bureaucracies may help get the state through a transitional period full of fears and uncertainty, even if such measures permit corrupt cabinet secretaries, illiterate police officers, less qualified judges, and incompetent civil servants. Similarly, the need to employ ex-combatants may lead to a more bloated government payroll than the state's economic base can sustain over the long term. The exigencies of peace, therefore, may produce a different sort of state than the 'meritocratic' one generally prized by

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international technical programmes. Bosnia's complicated and multilayered power sharing arrangements are just one example of this approach. Within the Bosnian Federation's cantons, the Minister of the Interior was initially from one ethno-religious group, and the Vice-Minister from another.⁵ Although police from

one ethnic group tended to report only to their co-national among the leadership, creating parallel structures within each police force, this power-sharing arrangement laid the groundwork for greater collaboration over time.

Are there certain state institutions where power sharing is less urgent than others? Yes. Where state bureaucracies require highly technical or specialised skills and where they do not have frequent contact with the population, merit-based criteria can play a greater role. Obviously, merit-based criteria are helpful for creating institutions that operate effectively, and should generally be part of selection criteria. However, in institutions such as the military and police, oversight bodies, and possibly even appellate courts, meritocracy may be combined with measures to ensure adequate representation for ethnic or other important groups in society, with incentives for meritocratic criteria to assume greater precedence over time.

4. *Corollary #1: Going too far in one direction – with a single-minded focus on strengthening state capacities, especially security – if done without attention to inclusiveness, accountability and political processes, can foster human rights abuses, political exclusion, state de-legitimation, and even war.*

In the security sector, the logic of post-conflict peacebuilding is to support a ceasefire and to reduce armaments, troop levels and areas of operation of all military factions, including the state army. In contrast, the logic of state building is to strengthen state military and police capacities to ensure the suppression of any threats to instability or disorder. It is

easy to see how efforts to build the capacity of the state army or police may jeopardise the security of former insurgent forces engaged in laying down their arms and dismantling their units – or, for that matter, the security of civilian populations who have recently suffered under abusive security forces. This delicate and highly political process of security sector reform is the clearest instance where statebuilding programmes must be modified and contextualised in order not to threaten the perceived security of former insurgents or their associated social/ethnic groups. Even where elections have supposedly granted legitimate power to one party, every step in strengthening the state must take into account the potential impact on former enemies who may feel disenfranchised. The disillusionment of former Falantil guerrilla fighters from the west of the country, whose rampages in 2006 jeopardised peace in East Timor, provides an excellent example of the political delicacy of security sector reforms (Bowles & Chopra 2008).

5. Corollary #2: Going too far in the other direction – appeasing spoilers in the interest of peace, while neglecting the development of a sustainable state – can strengthen the hand of repressive or authoritarian state rulers, jeopardising the sustainability of both the state and peace.

Here, the experience of Palestine during the 1990s is illustrative. The Palestinian Authority's institutions were adequate to sustain a state on a par with most developing world regimes, perhaps stronger than neighbours in the region. Yet Rex Brynen's contribution to the project argues that the personalised patronage exhibited by Yassir Arafat disillusioned many supporters of the Authority, for which international donors bear some responsibility (Brynen 2008). Fearing that they would be seen to be partial in a delicate peace process, and perhaps seeing few alternatives, donors set only minimal conditions for improvements in transparency and accountability in their generous assistance to Arafat's government-under-occupation. They pressed for security sector reforms, financial management reforms and greater internal democracy, but chose not to use their leverage to demand that Arafat abandon some of the practices that left the nascent state unaccountable and less effective. This external preference for peace over improved state performance was not the most significant factor in the demise of the Oslo process and Palestinian political authority; however, it set a poor precedent for state conduct and performance.

Building State Capacity and Legitimacy: Helping, not Harming

The tensions between peacebuilding and statebuilding may suggest that external actors can accomplish little or that few generalisations can be reached. Certainly, statebuilding in the wake of war is highly complex and context-dependent. Technocratic formulas and checklists for post-conflict peacebuilding can be useful but also dangerous. Indeed, many project participants underscored the harmful practices by external actors, criticising deficient international resources, strategies, and knowledge of local contexts, reinforcing

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Woodward's findings (2007). Nevertheless, the project participants did not advocate a retreat by international actors from the enterprise of statebuilding. On the contrary, the frustration with neglect of states among international actors led several contributors to plead for placing particular state

institutions front and centre in post-war programming. Although states naturally perform a number of functions that are important for citizens, three functions seem especially pertinent, even indispensable, for preventing social conflicts from transforming into armed conflict.⁶ State capacities to provide security, public finance, and justice and the rule of law are urgent statebuilding priorities unless unusual circumstances dictate otherwise. Other

state services, such as health and education, indirectly influence the prospects for peace, but these three functions have a fairly consistent, direct impact on the ability of the state to prevent relapse into war. This section offers guidelines for how to strengthen these state functions, rejecting simplistic and one-size-fits-all capacity-building approaches.

A focus on statebuilding involves institutionalisation. 'Institutionalisation' here means the process by which a cluster of activities acquires a persistent set of rules that constrain activity, shape expectations and prescribe roles for actors (Keohane 1988:384). Institutionalisation means that sustainability does not depend on any single individual, but on a shared commitment to the principles, procedures and goals of the institution. Building capacity encompasses, but goes well beyond, the individual humans who serve as the main resources for institutions. Many development agencies use 'capacity building' to refer to efforts to train or enhance the productive capacity of individuals. Individuals'

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education, experience and specific training for function are central to the performance of an institution. Of equal importance, however, are the norms, procedures and principles of accountability and management of organisations. How can national elites or donors foster this kind of institutional development for performing core state functions? In examining issues of

capacity in three core state functions – security, public finance and economic policy, and administering justice – this section seeks not to recap the insights contained in extant literature, but to focus specifically on under-emphasised *relationships*. Two sorts of relationships are important – the interactive relationship between capacity-building efforts and political legitimisation, and the links between state structures and other forms of authority above and below the state.

Despite the focus on capacity building here, international actors may sometimes opt to supplant state authorities or functions. In general, however, international assumption of a state's authority should be limited by principles of:

- *Necessity*, as a last resort;
- *Legitimacy*, both the perceived support for such an arrangement among the local population, which is difficult to assess, and the presence of an explicit invitation from national actors with some well-founded claim to legitimacy; and
- *Accountability*, such that international authorities shall report to some combination of international and national-level bodies.

Moreover, in this era of state sovereignty and empowered populations, such international substitution should develop strategies for enhancing the legitimacy and efficacy of state institutions in agreement with national representatives. Both international and national institutions should follow function in their form and operation, rather than forms drawn uncritically from other contexts (Cliffe & Manning 2008).

Capacity for security

In his thematic contribution to the project, Barnett Rubin argues for the political character of security provision (Rubin 2008). He insists that politics, security and legitimacy are intertwined. Too often security provision is seen as a neutral act enabling political deals to be cut or

economies to grow. But political negotiations both depend upon and alter the military capacity of the parties. Security provision is necessary for political processes, but it is a factor shaping those deals and is in turn affected by those deals in a spiral of political reforms and security enhancements – or reversals. Multiple armed groups usually remain once some sort of military ceasefire is reached, whether by negotiation or by defeat. Even where international military troops exercise salient security responsibilities, national armies virtually always coexist with them. Consider, for instance, Bosnia's three armies after 1995, FALANTIL in East Timor, the Northern Alliance and the outcast Taliban in Afghanistan. These groups represent security for some and insecurity for others. The process of building security capacity depends crucially on the political deals and their implementation that occur after an initial ceasefire.

The security capacity and the legitimacy of a national state, either after a negotiated settlement or after military defeat of a regime, depend on one another. Sherman's contribution on Afghanistan shows how the evolving legitimacy of the Bonn-brokered state depended crucially on whether security provision could be wrested from military commanders in some provinces and whether the Taliban created insecurities (Sherman 2008). Cox's case contribution on Bosnia demonstrates how the international security provided by NATO and its allies contributed to a political process that gained momentum, in turn enabling greater unification of the de facto three armies in the country (Cox 2008).

Finally, international actors and internationalised peace operations are not exempt from this interdependent evolution of political and economic processes and security provision. On the contrary, an international security presence is part of the political, economic and

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security panorama, not separate from it in some imagined neutrality. International experience in Iraq tragically demonstrates the negative mutual reinforcement of insecurity and weak international legitimacy. Alternatively, where high levels of resources and legitimacy accompanied intervention,

for instance in Liberia and East Timor, then the security element proved generally successful during the international peace operation.

Capacity for public finance and economic policy

The contribution of Michael Carnahan and Clare Lockhart to the project demonstrates that public finance – the ability of the state to raise and administer revenue and to allocate expenditures – is important for the survival and effectiveness of a state. Drawing partly on their experience in Afghanistan, they show the important role public finance played in the effort to stabilise a country via the strengthening of state institutions. They argue that transparent, rule-based systems of public finance contribute to state legitimacy and stability more than patronage-based systems of co-option (Carnahan & Lockhart 2008:7). They believe that the budgeting process is an especially useful vehicle for fostering a national state and for drawing potential spoilers into that state through negotiations over specific budget items. In Afghanistan, where a power-sharing arrangement emerged from the Bonn accord of 2001, a transparent budgeting process at cabinet level became the policy arena for final decisions, facilitating the accretion of power by Hamid Karzai's administration.

Public finance capacity also has vital and mutually dependent links to legitimacy and security. As Carnahan and Lockhart put it, 'When the government is seen to be delivering services and reporting transparently on revenue and expenditure, its legitimacy is further enhanced' (Carnahan & Lockhart 2008:3). On the security front, they argue that when the

government allocates resources in a transparent and accountable way, 'the influence of spoilers and competing actors can be undermined' (Carnahan & Lockhart 2008:3). The contribution of Michael McGovern to the project shows that corruption in government remained a salient threat to peace in Sierra Leone in 2006, just as it played a significant role in Liberia's reversion to warfare after a peace process in the late 1990s brought Charles Taylor to power through elections (McGovern 2008:11, 14). Demonstrating how public finance can weaken spoilers, Jake Sherman's contribution describes how the Afghan central government exercised greater control over customs revenues collected by regional warlords as a means of weakening their power, though without complete success (Sherman 2008:47; Ghani *et al* 2007).

Carnahan and Lockhart also emphasise how international actors can play a positive role, but more often undermine the development of public finance capacities. International financial institutions, bilateral donors and international NGOs often bypass public coffers and provide aid directly to local communities or to non-state actors, attenuating the link between the state and populace. One study of six post-conflict countries found that aid bypassing the government dwarfed aid through the government in every single case (Boyce & O'Donnell 2007: 5). In post-Taliban Afghanistan, for instance, two-thirds of the services provided to a population derived from donor governments and not from the state, despite deliberate countermeasures by the Afghan government (Boyce & O'Donnell 2007:5). International actors also scoop up talented local staff, depleting the capacity of national states. Finally, international actors often insist that their imported materials and staff incomes be exempt from duties and taxes, undermining state revenues (Boyce & O'Donnell 2007:32-33). These factors argue for channelling international aid through a national budgeting process. On the other hand, rampant corruption may make it inadvisable to channel external funds through the state (Boyce & O'Donnell 2007: 17). The challenge, then, is to balance the costs of channelling international funds through the state with the inevitable need to build state capacities that are accountable and effective.

Capacity for administering justice

Among state functions, the administration of justice is an area where observers of post-conflict reforms virtually always see resistance and deeply disappointing results. From Bosnia to Afghanistan, from Palestine to Liberia, the rule of law has proven singularly difficult to cultivate. In Bosnia, justice institutions remained ethnically biased and largely unreformed by international actors for the first several years after the Dayton Accord. Liberia's political transition opened up only once Charles Taylor was out of the electoral picture by virtue of his detention and the Sierra Leone Special Court's indictment.

Yet even where a transition has brought to power a new regime with popular support, transformation of the justice system has often resulted in a system seen as equally flawed. The case of East Timor offers a telling example (this paragraph draws on Bowles and Chopra

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2008; Jensen 2008). The UN Transitional Administration in East Timor (UNTAET) initially administered justice itself, but quickly handed over the administration of justice to a national process. Yet two years after independence, an evaluation process disqualified the entire judicial personnel:

judges, prosecutors and public defenders. Part of the reason for the mass disqualifications was a new Portuguese language requirement, a tongue spoken by only 5% of the population bizarrely imposed by returning Lusophone exiles. More broadly, the Timorese experience

shows the difficulty of judicial reform. The international community had every opportunity to pursue a context-sensitive programme in a country where traditional mechanisms of conflict resolution had long coexisted with imposed state courts. Unfortunately, neither the UN mission nor Timorese elites paid sufficient heed to these traditional institutions. Although the Timor case had no easy answers, this example shows the challenges of drawing effectively on international capacities while ostensibly building national state capacities.

Erik Jensen's contribution identifies several factors that help to account for this near-universal failure of statebuilding in the judicial realm (Jensen 2008). First, expectations for change are too high, too soon. Second, the specific features of the justice sector impede change. The courts, prosecutors' offices, prisons and investigative police are the purview of experts who consider themselves to have specialised knowledge, whose legal training takes years, whose alleged impartiality leads them to see any critics as biased and ill-motivated, and who are unaccustomed to the notion of having any 'constituency'. The constitutional 'independence' of the judiciary is meant to protect it from political interference, even under oversight from appropriate bodies, but it too often results in the exact opposite: politicisation alongside virtual immunity from accountability.

Finally, in building capacity for justice and the rule of law, informal institutions can be especially important. On the one hand, formal institutions are cumbersome, often blindly imported, and expensive to reform and to operate. On the other, they hold the potential for more transparent monitoring than informal institutions, and may be less subject to historical patterns of social exclusion or sexism. Sustainability, however, requires that the process of reforming legal systems confers legitimacy, both in perception and in deed. The justice sector represents the functional area of the state that could most benefit from greater attention by scholars and practitioners, more high-profile political support, more resources, and especially more innovative ideas and practices.⁷

Conclusion

What are the implications of these findings of the IPI project for theorising about peacebuilding? Building peace is a complex endeavour. It requires not just a commitment and knowledge of conflict resolution theory and practice, nor solely a technical background in economic reconstruction projects or other acronymic specialisations like DDR, SSR and QIPs. Certainly these nuts and bolts are important. However, building capacities is inextricably linked to legitimacy, and legitimacy involves the state and its authority;

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peacebuilding theory therefore needs explicitly to grapple with the state and its institutions. And that relationship is not straightforward. Specific actions to build states (even when done well) may jeopardise peace. And specific efforts to build peace sometimes undermine state capacities. Such actions may well be justified, reflecting

deliberation and sound judgment. But most theories and frameworks of peacebuilding presently omit reflecting on these linkages and tensions.

What are the implications for policy and practice? First, international and national peacebuilders should allow for the necessary legitimacy and capacity of state institutions to be built into frameworks, strategies and programmes. Perhaps the most significant change international organisations and donors could make would be to channel their resources through state agencies. The reluctance encountered in Afghanistan, when the then Finance

Minister, Ashraf Ghani, pressed donors to give resources to the state and to at least inform and coordinate their programmes in his country with the government, suggests the resistance this suggestion will confront. Donors seek safeguards that their resources will neither be frittered away nor line private pockets. The sustainability that only an effective state brings requires supporting and funding state institutions, even when these are imperfect.

And there's the rub. Most post-war states – indeed most states – exhibit some corruption, weak capacity, patron-client networks and resistance to international oversight. Why and how should foreign donors, UN agencies and international NGOs reduce their impact and possibly their credibility locally and at home by channelling their funds via such state institutions? The argument for trying to strengthen the legitimacy of these states should now be apparent. It is vital for the sustainability of peace, development and liberal goods such as human rights and justice. Yet supporting states is not equivalent to unconditional support for corrupt, predatory regimes at the expense of a population. In such circumstances, statebuilding will probably *not* mean strengthening corrupt ministries, but enhancing capacities for accountability and oversight. Following the lead of civil society organisations to enhance the capacity of its organisations or the media to hold states accountable is often a key means of state strengthening.

Effective peacebuilding rests upon the ownership and initiative of local and national peoples. External peacebuilders must simultaneously advance a process involving political actors who enjoy internal legitimacy, of which the state is one of several actors, with a related process of strengthening the legitimacy and capacity of state institutions. It is extremely challenging, but necessary, to strike an appropriate balance of these activities, and coordinate them in such a way to enhance the delicate legitimacy of the state without abetting the marginalisation or disaffection of parties who command a following.

In addition, states and external peacebuilders confront what Ghassan Salamé calls the 'dual legitimacy' problem of state formation (Salamé 1996). On the one hand, their coercive, capital-raising and capital-disbursing roles shape their internal legitimacy, but to the extent that these resources derive from external sources, states must respond to international expectations and pressures. Internal legitimacy of groups or parties often derives largely

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from the use of coercion, yet the liberal international order puts pressure on such groups to sacrifice some of their core resources: guns, informal local taxation schemes (or extortion), or informal leadership of ethnic groups. Furthermore, when national or local leaders cater to foreign pressures and interests, they often lose legitimacy. Even if one agrees that liberal goods – such as greater participation, rights of free speech and association, and unfettered media – strengthen a population's sense of representation and ownership of the state, external support for these goods may itself undermine the legitimacy of the intended beneficiary state or elites. Hence, without careful strategies, external statebuilding may weaken states. Managing two sets of tensions is crucial for creating a sustainable state while keeping peace on track: between external interests and internal legitimisation processes, and between enhancing state legitimacy while supporting political pacts that lie outside (but include) the state.

One possible element in managing these tensions is a creative and concentrated effort to enhance popular participation in early post-conflict processes. Legitimisation is a strange thing, one about which we have little hard-and-fast knowledge. Some post-war societies,

such as East Timor and Kosovo, show that national liberation movements derive a high degree of legitimacy in the immediate aftermath of 'liberation' from perceived occupation, although this legitimacy does not necessarily translate into hegemony at the ballot box. That sort of legitimacy does not necessarily require sustained mechanisms of participation for a new regime. However, where international actors deploy troops to a territory and exercise influence in a political transition (as in Afghanistan, Iraq, East Timor, Kosovo, Haiti, Bosnia and Liberia), mechanisms of participation, usually elections, are necessary to translate even an internationally legitimate deployment of force into a domestically legitimate presence. In Afghanistan, traditional meetings (*loya jirga*) represented a form of popular participation different from elections, though these eventually led to a new constitution and elections.

The legitimisation of a new or reformed state will at some point involve elections. But we know now that elections can both re-ignite warfare and undermine processes of reconciliation and confidence building. Elections should serve state legitimisation, not vice versa. This does not mean that the outcomes should be rigged, but that the timing of elections, their sequencing and conduct should be decided with a view to gaining a sense of ownership and buy-in from the main political parties and the principal social groups,

Balancing these elements – state legitimisation and state capacity, building confidence among enemies, and ensuring the security of the populace – requires knowledge of local context and sound judgment.

rather than serving an international timetable or assuming that the outcome will automatically cast legitimacy on a shaky state. Decision makers (often a combination of national elites and international actors) must strike a context-sensitive balance between such state-legitimising exercises, the need to ensure that the potential spoilers are inside rather than outside these exercises, the need for newly elected governments to have

sufficient capacity, and the need for security. Balancing these elements – state legitimisation and state capacity, building confidence among enemies, and ensuring the security of the populace – requires knowledge of local context and sound judgment.

Despite improvements and enhanced coordination, peacebuilding and development agencies still show an under-appreciation of state institutions. In arguing for a greater emphasis on statebuilding in peacebuilding, this article also argues that peacebuilders should build into their frameworks cognisance of both the general priorities in statebuilding and also the tensions between compelling goals in seeking to advance security, legitimisation and state capacity in post-war societies. These concepts are not simply the components of a technical process, but value-laden, politically charged and interdependent strategic goals for both national and international decision makers.

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Endnotes

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² One should recognise that activities presented as 'peacebuilding' reflect interests, be they state interests or organisational interests, which may be conflict with short-term or long-term peace. For other definitions, see Keating & Knight 2004; Lederach 2005.

³ This adapts the classic definition of Max Weber 1919, para. 4.

⁴ International actors, by recognising certain actors diplomatically, by choosing to speak with or provide resources to certain groups, and by occasional using force, are a salient interactive component of this process.

⁵ Interviews with Dragan Lukac, Director of Police, Federation Interior Ministry, and with three officials of the UN Mission in Bosnia-Herzegovina who requested anonymity, Sarajevo, August 2001.

⁶ For more expansive lists of state functions (such as investment in human capital, or international relations), see Ghani *et al* 2006:111; Cliffe & Manning 2008.

⁷ See, for example, Centre for Policy and Human Development 2007.

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