



**SUPPORTING THE RULE OF LAW
AND DEMOCRATIZATION ABROAD**

*Personal Remembrances
From 20 Years Abroad
in 12 Countries*

BRIAN C. MURPHY



Growing out of my experiences with the Democracy Development Initiative (DDI) of the Federal Bar Association, I served abroad supporting democratization and the rule of law in some dozen countries over a 20-plus-year period between 1992 and 2013. This is a reminiscence—both professional and personal—of the most salient aspects of those experiences.

The Fall of the Berlin Wall and the End of State Socialism in Much of the World: An FBA Response Supporting Democratization and the Rule of Law in a Changing World

I was serving as chairperson of the FBA's International Law (IL) Section when the Berlin Wall crumbled on Nov. 9, 1989. That seminal event was followed by an end to state socialism in much of the world (notable exceptions were the Russian Federation, the People's Republic of China, the Democratic People's Republic of [North] Korea, Cuba, and a few other nation-states). The tensions of the Cold War were to be fundamentally altered.

The FBA Democracy Development Initiative

I and William K. Ince, my successor as FBA International Law Section chairperson, determined that the FBA should and would take steps to support democratization and the rule of law in a rapidly changing world.

Along with colleagues, we conceived the DDI as a vehicle within the FBA to provide legal technical assistance to many newly (or would-be) democratizing nation-states. DDI brought together some

150 prominent legal and judicial experts to provide legal and practical guidance on law reforms to receptive nation-states. All work was done on a pro bono publico basis. Concomitantly, FBA National President Al Belcuore led a senior-level delegation to Moscow, Russia, and Almaty, Kazakhstan, to assess needs and to offer FBA assistance in democratization efforts. The group included then-Judge Kenneth Starr of the D.C. Circuit, Columbia University School of Law professor Walter Gellhorn, FBA President Belcuore, and other notable figures. DDI was ably managed by Kenneth Nankin, Hon. Stanley Glod, Hon. Delissa Ridgway, Michelle Sherman, Ince, Alexander Boucher, and myself, among other FBA representatives.

In those early days of dynamic transformation, DDI worked closely with the Central and East European Law Initiative (CEELI, now called the Rule of Law Initiative, or RoLI), of the American Bar Association (ABA). Early DDI/CEELI collaboration focused on the drafting of ethics guidelines for the participating attorneys and on legislative reform proposals in several countries.

A “Balkan Surprise:” From the FBA and DDI to Bulgaria

During the course of our work with DDI, it became clear that the Republic of Bulgaria was among those countries most interested in and receptive to democratization and the rule of law. I had observed that a number of accomplished Bulgarians, notably Deputy Chief of Mission of the Republic of Bulgaria to the United States Dr. Stanimir Alexandrov, Bulgarian Ambassador to the United States Dr. Ognian Pishev, and then-Bulgarian Prime Minister Philip Dimitrov (at the time, the youngest prime minister in Europe and also a lawyer), were exceptionally receptive to Western legal reforms. Indeed, then-Secretary of State Lawrence Eagleburger termed Bulgaria the “Balkan Surprise,” because of its receptivity to post-socialist reforms.

On the strength of these observations, I applied for a Fulbright law lectureship in the Republic of Bulgaria. At that time, in the early 1990s, the Fulbright authorities were open to applications from nonacademicians. I had served as a public servant for more than 20 years, mostly with U.S. government agencies in Washington, D.C., and also in private law practice. I received the Fulbright grant and was designated senior law lecturer at the University of Sofia, Bulgaria. For a three-semester period between 1992 and 1994, I taught on the faculty of law, as well as on the faculty of economics and business administration of the University of Sofia.

Working with bright and aspiring young law students and young lawyers in Bulgaria was the most fulfilling role of my career in public service. I remain in regular contact with a number of my former law students and colleagues.

The culmination of my Fulbright experience came with my being asked by then-Bulgarian Supreme Court Chairperson Ivan Grigorov to invite and escort U.S. Chief Justice William Rehnquist on his first-ever visit to a newly democratic state—Bulgaria. I did

so, and Rehnquist met with many Bulgarian judges during his visit. The Rehnquist visit eventuated in a number of visits, in turn, to the United States by Bulgarian judges. His visit marked the first time in memory that such a senior U.S. official had visited Bulgaria.

Much of the credit for the Rehnquist visit must go to my exceptional former law student and continued close friend, Svilen Todorov, of the Todorov & Doykova Law Firm in Sofia, who so impressed the long-serving clerk of the Supreme Court, Maj. Gen. (ret.) William K. Suter—a long-time friend of the FBA—that he endorsed the chief justice’s visit to Bulgaria. (Todorov and several student colleagues were in Washington, D.C., and met Suter at a luncheon where he was presenting remarks.)

Bulgaria’s Milieu for Law and Related Reforms

When I arrived in Sofia, I was filled with anticipation and was therefore surprised to find that the University of Sofia—notably, the faculty of law—was neither ripe for, nor particularly receptive to, education about the Western legal reforms that I had come to share.

At a time when class attendance at the University of Sofia was optional, my efforts to advertise the availability of my classes on comparative administrative law and the law of international business transactions met largely with indifference and, on the part of some, disdain. The law faculty administration declined to accord me office space and finally—with reluctance—assigned to me a teaching time of 6 p.m. one day per week. This was designed to discourage me and the enrollment of any potential students. At the outset, my “office” was a park bench in front of the National Library of Bulgaria. (This changed only with the arrival of a visiting delegation of legal academicians from the United States, who were assessing the quality of the institution, who insisted that I be given an office. I was loaned the office of Vice Law Dean Dr. Vladimir Petrov, who had been selected for a Fulbright grant at Columbia University School of Law under the sponsorship of professor Walter Gellhorn, himself a strong friend of the FBA.)

I largely overcame this resistance, in part by providing pizza to those who came to my classes and by passing out casebooks to the students (which were quite difficult and expensive to obtain). (At the time, pizza was an acquired taste for the students of Bulgaria, so I was able to bring much home to my then-wife, Mary Ann, and son, David, who were adjusting to the somewhat harsh living conditions in Sofia.)

Later, when faculty and students joined in a strike for higher stipends, causing the cancellation of classes at the university for several weeks, I determined to continue my work in support of the rule of law by working with the judiciary and the National Assembly (parliament) and by revitalizing the long-moribund Bulgarian participation in the Philip C. Jessup International Law Moot Court Competition in and for Bulgaria.

Some years before, a two-person Jessup team had represented Bulgaria in the international Jessup rounds in Washington, D.C., but there had been no Bulgarian participation for several years.

I did so, with a few hurdles to be overcome. Notably, one of the vice law deans sought to derail the final Jessup national championship rounds on the night before the competition by removing a young faculty member, Dr. Valentin Hadjiev, from his voluntary service as a member of the three-judge Jessup panel who would judge the Bulgarian National Jessup rounds. The vice dean designated a member of the National Assembly, who reported for the national championship judging in a highly inebriated state. When he departed, in the middle of oral arguments, not to return, the presiding judge, the

highly accomplished professor Alexander Yankov (who had been Bulgarian ambassador to London and to the United Nations and who also served as a judge of the United Nations Law of the Sea Tribunal) asked me to serve as a substitute judge, which I willingly did.

The winning team members were invited to the international Jessup semifinal rounds in Washington, D.C., where they performed creditably!

A Climate of Corruption in Bulgaria

During my Fulbright tenure, it was clear that this nascent democracy was struggling under the legacy of state socialism. Public corruption was rampant, noticeable in the abuses of authority on the part of traffic police to corruption in high political circles. (I observed this firsthand on multiple occasions—for example, while in the company of law students and a faculty dean who were shaken down by traffic police officers.)

Today, Bulgaria, as a condition of membership in the European Union, has had to confront and ameliorate its legacy of corruption. There is a sustained effort now toward judicial reforms, as well as more transparency in electoral processes with the help of international electoral observers. (I served in such a role in Bulgaria on behalf of the Organization for Security and Cooperation in Europe, or OSCE.)

Bulgaria: A Summary

As the first situs of my work abroad, Bulgaria and Bulgarians earned a very special place with me. A beautiful country, with an educated, upwardly mobile and informed populace, it has indeed proven to be the “Balkan surprise”!

Bulgaria has made much progress in terms of democratization and the rule of law since the fall of the Berlin Wall. Nevertheless, it still has one of the weakest economies in the European Union.

It was my first and, in some ways, my most notable experience abroad.

Unfortunately my employing agency, the Administrative Conference of the United States, in the face of budgetary constraints, eliminated my job at the end of my Fulbright experience before it was itself zeroed-out by the U.S. Congress.

Democracy Fellowship in the Horn of Africa: Kenya, Tanzania, Eritrea, Ethiopia, and South Africa—Official Corruption, Abuse of Authority, Spies, and More

I was invited to interview, and was selected, for the first-ever Democracy Fellowship of the U.S. Agency for International Development (USAID). The Democracy Fellows program was designed to afford an opportunity for the fellowship recipient to contribute to democratization abroad. In my case, as the first-ever Democracy Fellow, I was asked to support a White House-led effort to craft a U.S. government-wide strategy to support conflict prevention, mitigation, and resolution in the Greater Horn of Africa. It was denominated the Greater Horn of Africa Initiative (GHAI) and consisted of international development experts from several U.S. government agencies (one of whom, Gayle Smith, recently became the administrator of USAID).

On behalf of GHAI, I traveled widely to Tanzania, Eritrea, Ethiopia, South Africa, and within Kenya, meeting with conflict resolution professionals, including religious and judicial leaders, and with non-governmental organization representatives. Of particular note were the professional and personal relationships that I developed with senior governmental representatives in several countries.

Dr. Hizkias Assefa, an Ethiopian by birth, educated in the United States (J.D., Ph.D.), had served as executive director of the Nairobi Peace Initiative in Kenya. Assefa had, for many years, declined to meet with USAID officials to avoid the appearance of bias in favor of U.S. government development assistance programs. Overcoming this, I introduced Assefa to the regional USAID mission director in Nairobi, Keith Brown.

I observed firsthand the officially sanctioned corruption that was so rife in Kenya at the time under then-President Daniel arap Moi. I vividly recall the night that I was dining with a guest at the Serena Hotel in Nairobi when we heard a loud crash outside. An open truck carrying many men on its flatbed had hit a tree, causing many injuries. I called for ambulances and police. When the police arrived, they accused me of causing the accident—implausibly, as I had been on foot. I told them they would need to arrest me before witnesses. They declined, as they clearly were seeking to frighten me into paying a bribe. The next day I reported the matter to the U.S. Embassy's regional security officer, who advised me of the perils of dealing with police authorities in Kenya and discouraged me from stopping in the future to offer assistance.

I was also targeted by a Russian espionage agent, who repeatedly sought information from me about U.S. government policies and practices in the region. Again, I reported these contacts to the Embassy's regional security officer, who confirmed that I was indeed being courted by a foreign intelligence operative.

Refugees Study Programme at the University of Oxford, Dr. Barbara Harrell Bond. Long interested in international adjudication, I wished to conduct a comprehensive comparative study of procedural fairness and efficiency on the part of the United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY) and that for Rwanda (ICTR). Bond invited me to apply for a visiting research fellowship at the University of Oxford, which I did.

My conclusion, after visiting and working in several countries in East and Southern Africa, was that governmental leaders were often corrupt and incompetent, but that many of their subjects were spiritually alive and honest, yearning for a better future for themselves and their compatriots. However, with such a pervasive culture of official corruption, progress was slowed and often derailed.

In my view, reform will be generational, requiring hearts and minds committed to change.

Comparing ICTY and ICTR

ICTY

The Oxford visiting research fellowship carried no stipend or other financial support, and this caused me to abbreviate several site visits to The Hague; Arusha, Tanzania; and Belgrade, Serbia. Nonetheless, I embarked for The Hague, the situs of ICTY, where I was able to meet with Deputy ICTY Prosecutor Graham Blewitt, who noted that a comparative review of ICTR and ICTY had never been done, saying that my study would be welcome. With Blewitt's support, I was able

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The Democracy Fellowship also took me to South Africa, where I was privileged to hear President Nelson Mandela speak in Pretoria on Freedom Day. I also met then-Minister of Justice Omar Dulla, with whom I discussed the efficacy and fairness of the Truth and Reconciliation Commission, about which there was much controversy.

As a Democracy Fellow, I traveled widely and encountered, firsthand, humble, and well-minded people who wanted a better, democratic future for their country and for themselves. However, I also witnessed the corruption that was so widespread in the countries of the Horn of Africa, which undermined public trust and support for the rule of law.

Toward the end of the Democracy Fellowship, while attending a conference of peace activists in Nairobi, I met the director of the

to meet with a number of ICTY judges, including the about-to-be-named president of ICTY, U.S. Judge Gabrielle Kirk MacDonald, who helpfully directed me to tribunal documents. The ICTY's judges and public affairs officer were highly supportive of my work.

ICTR

I also visited ICTR, based in the international Tanzanian city of Arusha, on multiple occasions. At ICTR I was able to meet with all judges, with the exception of the Russian judge, who was in poor health.

At ICTR I made a point of interviewing prosecutors and defense counsel. The consensus opinion was that ICTR procedures were fair but not efficient. Long delays in case adjudication were the norm, and this continued until the tribunal stopped hearing new cases late in 2015.

My most memorable and engaging field visit was to Belgrade, Serbia, then a city of international intrigue, where I met with United Nations representatives and defense counsel for former Serbian President Slobodan Milosevic. I was very much welcomed by Serbian bar representatives. These meetings included Toma Fila, the eminent Serbian defense counsel for Milosevic. I also reunited with Belgrade Law Vice Dean and Professor Oliver Antic, whom I had met in Sofia some years earlier, when he came to the commemoration of the 100th anniversary of the faculty of law at Sofia University. Antic shared with me historical (largely Roman) antecedents of Serbian law, pointedly noting that our roots in Anglo-American law could be traced only to the Magna Carta in 1215.

Upon my return to the United States, I prepared a written report that was well received by representatives of the tribunal, including several judges. My principal conclusion was that despite long delays

I seemed to satisfy USAID and was selected to lead this 30-person project made up of lawyers, economists, media experts, and support staff members.

My colleagues in Armenia were highly educated and upwardly mobile. Our project could boast the largest number of Muskie Fellowship alumni of any group in Armenia. (The Muskie Fellowship, named after former U.S. Secretary of State Edmund Muskie, awarded graduate study at U.S. universities for highly qualified university graduates from countries of the former Soviet Union.)

I made a goal of actively supporting our team members for further professional advancement, including providing opportunities for post-graduate study abroad. This was with the strong support of senior project manager Bill Slocum of Chemonics International in Washington, D.C. We focused our work on public procurement law reform, land registration reforms, the establishment of a commercial

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(especially for cases before ICTR), the procedures were viewed by many as fundamentally fair, if not very efficient.

I ultimately truncated my research for financial reasons (I funded all research expenses myself) and moved on to my next role in Central Asia.

Bishkek, Kyrgyzstan

I was selected to be USAID's country manager for Kyrgyzstan, based in the capital city, Bishkek, for the USAID Trade and Investment Project, with primary focus on World Trade Organization (WTO) accession (Kyrgyzstan was the first former Soviet Republic to accede to WTO) and public procurement law reform as a tool to combat corruption. Bishkek was formerly called Fruenze and was the location of choice for Josef Stalin in exiling those who no longer enjoyed official favor. Its broad but nearly deserted boulevards revealed its past glory as a hub for heavy commercial vehicle manufacturing.

However, I never received a contract for my assignment, and so I departed the project. Central Asia was too distant not to have any kind of job protection.

Chief of Party in Armenia

I was invited to "try out" for the position of chief of party for the Rule of Law and Commercial Law Project supported by USAID in Armenia. USAID had sought a change of leadership for the project and wished to assess me in person before finalizing my selection.

court for Armenia, development of a countrywide system of legal assistance bureaus throughout Armenia, legal education reforms, and several ad hoc projects requested by USAID.

We encountered support for our reform efforts in some Armenian ministries but resistance in others. The practices of some public officials harken from the past. I recall bringing a recent law graduate whom we had selected as a lawyer-in-training to a meeting with a deputy minister of justice. The deputy minister told us that he would decline to work with us because the young lawyer, a woman who had graduated first in her law class, had not attended the "correct" faculty of law. In fact, he objected to working with a lawyer who was a woman. When I realized this, we ended the meeting, noting that we would not return until he apologized to my colleague for his sexist demeanor. The point was made.

Once the project was winding down, I regretfully left the project and such able team members, but I was able to recommend as my successor our able deputy chief of party, Gahmk Markarian.

My service as chief of party in Armenia was a notable professional and personal experience in the management of law reform efforts in a nascent democracy.

Post-Genocide Assistance in Rwanda

I left my role in Armenia for Rwanda, where I had been selected to be rule of law adviser and team leader for the provision of legal assistance in the aftermath of the tragedy of the Rwandan genocide.

Rwanda is sometimes referred to as the Switzerland of Africa, with

its mountainous scenery (although I do not believe that Switzerland can claim silverback gorillas as denizens of its ranges, as can Rwanda).

The opportunity to support the restoration of legal process in the aftermath of the Rwandan genocide (when nearly 800,000 people lost their lives over a 90-day period beginning in April 1994) was appealing. I had been selected for this role before I went to Armenia, and the offer was again made while I was in Yerevan. This time I accepted.

The essence of my work was to manage USAID's legal technical assistance through the "Gacaca" informal dispute resolution process. ("Gacaca" referred to "justice under the trees" and was designed as a mechanism to promote reconciliation after the tragedy of the genocide, through local-level bodies that would assess guilt but seek to promote reconciliation.) Those who confessed to their crimes were usually given reduced sentences. I visited a prison for Gacaca convicts and was surprised to observe that only a ribbon or rope-and-post barrier separated the internees from freedom. While in the company of a senior prosecutor, I was surprised to witness the embrace of the prosecutor by many whom he had prosecuted. They seemed genuinely grateful for the "justice" that they had received.

It remains a puzzle to me how such a seemingly gentle people could have been aroused to such violence. Education, or the lack thereof, with few opportunities for economic advancement must surely have played a factor.

With this insight, I tried, in a very modest way, to assist with university fees for several Rwandan youths by hiring them in my home and by granting them funds for their education. Today, they are success stories—because of their efforts, not mine.

Indeed, the economy of Rwanda has made notable progress and is seen as a paragon for other African states (although the longevity in office of Rwandan President Paul Kagame has raised substantial concerns, as he was recently "approved" to run for a third term in office, despite the two-term limit previously stipulated in the Rwandan Constitution).

Haiti and the Missing Minister

After my work in Rwanda, I was invited by USAID/Haiti to travel to Port au Prince for an in-person interview (in French) for the role of team leader and rule of law adviser.

However, the minister of justice, with whom I was to work on a number of law reform initiatives, was absent and could not be located. This made the work that I came to do much more difficult.

After several weeks in Haiti, but before signing a contract, I was offered another role with USAID in Kyiv (also known as Kiev), Ukraine. Realizing how very difficult it would be to accomplish much that was useful in and for Haiti, I opted to go to Kyiv, with its broader portfolio and its visible minister of justice, Serhiy Holovaty.

Commercial Law Adviser for USAID, Based in Kyiv

After Bulgaria, Ukraine likely offered the best opportunity for support of democratization and the rule of law of the states in which I worked.

In this role, I served as division director and team leader for commercial law reform on behalf of the regional USAID Mission for Ukraine, Moldova, and Belarus, based in Kyiv. My principal focus was on reform of the compendious Civil Code of Ukraine, which covered most of Ukraine's civil law provisions, with the exception of family law matters.

I served as chairperson of the legal donor working group, consisting of lawyer-representatives from several bilateral donor groups, including Germany's GTZ, British DFID, the European Union Technical Assistance for the Commonwealth of Independent States (EU TACIS), the International Monetary Fund, and more.

I urged my colleagues to designate reform of the Civil Code of Ukraine as the primary focus as legal donors. They agreed, and legal donor efforts were usefully consolidated. A revised Civil Code of Ukraine finally emerged, albeit after much opposition from those who favored retention of the competing (Stalinesque) Commercial Code.

I also served as chairperson or as a member of request for proposal review committees, reviewing bids from prospective contractors, and I participated in budget- and strategy-setting for the USAID Mission.

At the time, there was freedom of travel (unlike currently in Ukraine, after the Russian "intervention"), and I regularly visited the port cities of Odessa and Yalta in Crimea. I could take the overnight train from Kyiv to Odessa, spend the day at the beach on the Black Sea, and return in time for breakfast in Kyiv the next morning!

I also had an opportunity to teach, on an adjunct basis, at the International Relations Institute of Taras Shevchenko University in Kyiv. I taught law of international business transactions to graduate law students with the blessing of U.S. Ambassador to Ukraine Steven Pifer.

Rampant Corruption Throughout Ukraine

Official corruption in Ukraine was widespread. It was evident in the Verkhovna Rada (Ukraine's parliament) and in the ministries. Even the grades of my and other students were considered fair grist for graft. I was lobbied by members of Rada, who sought higher grades for their offspring. I discussed this with faculty colleagues and ultimately ignored these entreaties. However, this was easier for me than for others, as I was insulated by my full-time job with USAID. Ukrainian faculty members were more susceptible to such pressure.

After nearly two years, I was offered the role of USAID rule of law adviser for all of Russia. I accepted this opportunity because of its breadth and the chance to contribute to the rule of law and democratization in Russia.

Before proceeding to Moscow, I returned to the United States to visit relatives. However, while in the United States, I received a telephone call from the executive officer of USAID/Russia telling me that the job offer was being canceled due to budgetary constraints (which I later learned to be a false excuse).

Having received permission to curtail my final months in Ukraine, I was now left without remuneration. I appealed to USAID to be made whole, and, ultimately, with congressional intervention, USAID agreed to a financial settlement.

Iraq

I held four jobs in Iraq between 2003 and 2010 (although not continuously). I also attended a two-week orientation for the role of legal adviser to the Third Infantry Division of the U.S. Army for my fifth role in Iraq, based in Tikrit. However, with the U.S. withdrawal, that job was eliminated.

I served first as a commercial law adviser, as a contractor with USAID, focusing on accession by Iraq to the WTO (Iraq was accorded WTO observer status), and I coordinated early efforts to reduce the barriers to foreign investment in Iraq. My preliminary

efforts were later supplemented by a senior-level office of private-sector development, headed by a presidential appointee, who was later named as U.S. ambassador to the Republic of Ireland.

After approximately three months with the Ministry of Industry and Trade Coalition Provisional Authority (CPA) advisory team, funding for my work ran out. As I walked the halls of the Republican Guard Palace, I stopped in the office of the Ministry of Justice CPA advisory group. This yielded an on-the-spot offer by the Ministry of Justice CPA senior adviser, Judge (and Col.) David L. Rubini, to join the CPA Ministry of Justice team.

I soon learned that it would be up to me to carry the implementing paperwork to the Pentagon—which I did.

When I returned to Baghdad, Rubini had returned to the United States and had been succeeded by Edward Schmults, former deputy attorney general of the United States.

Schmults, an octogenarian who carried a concealed Glock handgun, told me that my service was needed as the senior legal adviser for real property claims for those whose real property had been confiscated by the former Ba'athist regime. (Saddam Hussein had forced real property owners in the north of Iraq to vacate their property and to relocate to southern Iraq.)

The Iraqi transitional government had, with CPA guidance, established an Iraqi Property Claims Commission (IPCC). This was a significant initiative designed to provide restitution for Iraqis whose property had been confiscated by the former Ba'athist regime. CPA administrator Ambassador L. Paul Bremer strongly supported our work. Funding was to be drawn from the sale of oil reserves. I provided legal advice to the CPA IPCC advisory group, as well as the Iraqi legal committee of the Transitional Parliament and the Office of the Deputy Prime Minister, Dr. Barham Salah. I had the pleasure of working with a talented young lawyer from the Czech Ministry of Foreign Affairs, Dr. Petr Valek.

Very unfortunately, much of our work supporting the restoration of real property rights with restitution has been undone in the period since the withdrawal of coalition military forces.

I was one of two attorneys with the CPA Ministry of Justice advisory team invited to continue this work with the U.S. Embassy that had just been established, and I did so.

The work of real property restitution was done in an atmosphere of much violence. On one occasion, I was to receive a list of documents from a deputy minister the next morning. However, the night before our meeting, he was assassinated in the driveway outside his home, in front of his family. I never received the documents. This was an all-too-frequent depredation. I encountered too many loyal civil servants who paid much for their service, sometimes with their lives.

My final role in Baghdad was with the Anticorruption Coordination Office (ACCO), headed by former Ambassador Joseph D. Stafford. This work brought me into close and regular contact with our counterparts of the British Embassy, the U.N. Development Program, and several nongovernmental organizations, as well as with the U.S. military.

Before my ultimate departure from Iraq, the government of Iraq announced a five-year strategy to end corruption in Iraq. Five years have passed, and the corruption continues.

Liberia

The ABA RoLI (a vehicle similar to the FBA's DDI, which existed be-

fore the ABA program) invited me to serve as country director for its rule of law program in Liberia. In this short-lived role, I worked with the dean of the Arthur Grimes Law School in Monrovia, the minister of justice, and the head of the national police to formulate plans for countrywide legal assistance programs, the training and education of judges, and the provision of academic expertise and supplies to the law faculty.

Unfortunately, my role ended when the ABA regional RoLI manager for Africa and I could not agree on safe accommodations for me and my then-wife in crime-ridden Monrovia.

Afghanistan: Training Judges, Prosecutors, Defense Counsel, and the National Police

Although I retired from the U.S. Department of State in 2005—the first-ever to retire from the U.S. Embassy in Baghdad—I accepted an opportunity to go to Afghanistan to support democratization and the rule of law through the education and training of judges, prosecutors, defense counsel, and the Afghan National Police.

Serving as a contractor with the International Narcotics and Law Enforcement Bureau (INL) of the U.S. Department of State, my role was as legal education and justice adviser with the Justice Sector Support Program (JSSP). JSSP trained Afghans throughout the country, relying on indigenous Afghan attorneys for delivery of the training. After just six months, however, my job was eliminated as the result of a reorganization of JSSP by INL, and I returned to the United States.

Without question, the highlight of my Afghan experience was the opportunity to work with extraordinarily able professionals. I had the privilege of judging Fereshta Abbasi, the first Afghan female member of the national champion Jessup team of law students, from Heart Province. Abbasi so impressed Jessup administrators and USAID funders that, after performing very capably as a Jessup team member in Kabul and then in Washington, D.C., she was invited to return the next year as a Jessup judge in Washington, D.C.

Waheeda Ghazaliam worked full time with the JSSP in Kabul while finishing her law degree, contributing notably to the successes of JSSP. I and others have encouraged her to continue her studies as a legal professional abroad, returning to Afghanistan to support law reforms.

These women, and others like them, have overcome extraordinary hurdles in attaining professional success. They have made—and will continue to make—notably positive contributions to democratization and the rule of law in and for Afghanistan.

Among their male counterparts, Abdul Sami Safay, a former colleague of mine in Kabul, has shown great courage in bringing his family to the United States through the Special Immigrant Visa program (designed for those who have worked to support U.S. government interests in the combat zone of Afghanistan, Iraq, or Pakistan).

These extraordinarily able young lawyers are making a difference in bringing democratization and the rule of law to Afghanistan.

A Final Reminiscence

After 20 years in 12 countries, I must conclude that international development assistance in supporting democratization and the rule of law will have little positive effect without an end to, or a substantial diminution of, official corruption and violence, which challenge the integrity and trustworthiness of governments in the eyes of the citizenry.

Real and lasting progress is achievable principally through the professional and personal contacts made through on-site extended visits. For example, my experiences under the Fulbright exchange program let me accomplish much toward support for democratization and the rule of law in Bulgaria. Shorter, or truncated, experiences, as in Afghanistan, left me with the conclusion that little had been accomplished. The U.S. government can do much better. ☺



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²⁵*In re Chiquita Brands Int'l Inc. Alien Tort Statute & S'holder Derivative Litig.*, 792 F. Supp. 2d 1301, 1317 (S.D. Fla. 2011), discussing *Saperstein v. Palestinian Authority*, No. 04-20225, 2006 WL 3804718 (S.D. Fla. Dec. 22, 2006), *Barboza v. Drummond Co.*, No. 06-61527, Slip op., DE 39 (S.D. Fla. July 17, 2007), *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774 (D.C. Cir. 1984).

²⁶Statement on file with author. See also, D. Scheffer, *The Impact of the War Crimes Tribunals on Corporate Liability for Atrocity Crimes under US Law*, in CORPORATE SOCIAL RESPONSIBILITY?: HUMAN RIGHTS IN THE NEW GLOBAL ECONOMY, (Charlotte Walker-Said & John Kelly eds., Univ. of Chicago Press 2015).

²⁷*Aziz v. Alcolac Inc.*, 658 F.3d 388, 397, 400 (4th Cir. 2011); *Presbyterian Church of Sudan v. Talisman Energy Inc.*, 582 F.3d 244, 259 (2d Cir. 2009); see also, Rome Statute for the International Criminal Court, Art. 25(3)(c).

²⁸*Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1158 (11th Cir. 2005). The D.C. Circuit's current position is unclear, as the seminal case adopting the knowledge standard (*Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 38 (D.C. Cir. 2011)) was vacated in light of intervening changes in governing law regarding the extraterritorial reach of the Alien Tort Statute, see *Kiobel* ... and the standard to be applied for aiding and abetting liability, see *Prosecutor v. Perisic*, Case No. IT-04-81-T Judgment (Feb. 28, 2013). *Doe v. Exxon Mobil Corp.*, 527 F. App'x 7 (D.C. Cir. 2013). However, on remand, the district court again concluded that a defendant is only liable for aiding and abetting if they know that their acts assist the commission of the principal offense. *Doe v. Exxon Mobil Corp.*, No. CV 01-1357(RCL), 2015 WL 5042118, at *10 (D.D.C. July 6, 2015).

²⁹*Doe I*, 766 F.3d at 1023.

³⁰*Doe v. Cisco*, Case No. 15-16909, Dkt. No. 14-1, Motion for Leave to File an Amicus Curiae Brief in Support of Appellants and Reversal (9th Cir. Jan. 11, 2016) at 7. Notably, the outlier case is *Prosecutor v. Perisic*, Case No. IT-04-81-T Judgment (Feb. 28, 2013), the genesis of the confusion in the D.C. Circuit's position. Four of the cases identified by Scheffer post-date that decision, casting significant doubt over any argument that it reflects current customary international law.

³¹*Id.*, quoting *Prosecutor v. Propovi*, Case No. IT-05-88-A, Judgment, ¶ 1758 (ICTY Jan. 30, 2015) and *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Judgment, ¶ 487 (SCSL May 30, 2012).

³²*Id.* at 12.

³³Statement on file with author.

³⁴*Doe v. Exxon Mobil Corp.*, No. CV 01-1357(RCL), 2015 WL 5042118 (D.D.C. July 6, 2015); *Jara v. Nunez*, No. 613CV1426ORL-37GJK, 2015 WL 8659954 (M.D. Fla. Dec. 14, 2015); *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y*, No. C11-2043JLR, 2015 WL 9308296 (W.D. Wash. Dec. 21, 2015).

³⁵See my recent scholarship on this issue, *The United States as an Essential Forum for Litigating the Genocide in Rwanda*, IN THE SHADOW OF GENOCIDE: MEMORY, JUSTICE AND TRANSFORMATION WITHIN RWANDA (S. Wolfe, T. Ansah & M. Kane eds., forthcoming); author draft available at papers.ssrn.com/sol3/papers.cfm?abstract_id=2652730.

³⁶See e.g., *Al Bahlul v. United States*, 792 F.3d 1, 43 (D.C. App. 2015) (Explaining that the plaintiff argued that conspiracy is not an offense under customary international law).

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