

The Financial Times (London, England)

April 10, 2003, page A15

### **The UN must help bring back justice to Iraq**

Anne-Marie Slaughter and William Burke-White

The debate at the heart of this week's summit between George W. Bush and Tony Blair has centred on the United Nations' role in a postwar Iraq. While a broad UN remit - encompassing political and military matters - would be ideal, it may be more than either the Americans or the continental Europeans are currently willing to accept. A more promising strategy would recognise three successive stages of UN involvement: humanitarian, judicial, and political/military.

The joint statement issued from Belfast appears to envisage a role for the UN beyond humanitarian activities. It restates the commitment made in the Azores to seek UN resolutions endorsing "an appropriate post-conflict administration for Iraq". However, even for diplomatic-speak, this formulation is strikingly vague. Equally striking is the omission of any reference to UN involvement in the creation of a new Iraqi judiciary.

This is unfortunate. Engaging the UN immediately in bringing Iraqi criminals to justice would serve a wide range of interests. For the US and the UK, a UN-sponsored judicial process would provide an opportunity to present evidence of war crimes and stockpiling of prohibited weapons by the Iraqi regime. For the Iraqi people, it would assist the training of jurists and provide deep engagement in the re-establishment of the rule of law. For the international community, US commitment to the process could stimulate a transatlantic rapprochement.

Such an approach bears little resemblance to America's vision of a postwar judicial process. On Monday, the US announced plans for a two-track effort. Under this plan, US and British military tribunals or domestic courts will try violations of the Geneva Conventions by Iraqi forces in the present war. Pre-war abuses by Saddam Hussein's regime against the Iraqi people will be left to a new Iraqi judiciary, purportedly already in training.

Trying Iraqi soldiers for violations of the Geneva Conventions is in accord with international law. States that opposed the use of force are unlikely to want to try those Iraqis who fought back. So US or British military tribunals or courts may well be the only option for trying these crimes.

But the more important question concerns justice for the perpetrators of crimes against the Iraqi people and the world over the past decade. Iraqi judges, newly trained by occupying forces, and Iraqi exiles selected by those forces, would be likely to lack legitimacy in the eyes of the Iraqi people. Overseas governments and publics would be sceptical too.

A better alternative would be a mixed international and local tribunal such as the one recently suggested by M. Cherif Bassiouni, the international criminal law expert, in the New York

Times Magazine. Along the lines of the courts recently created in Sierra Leone and East Timor, trials would be conducted by mixed panels of Iraqi and international judges applying both domestic and international law. Such a court would be UN-sponsored and could investigate and prosecute war crimes and crimes against humanity. In addition, in an extension of the existing doctrine of international criminal law, the Security Council could establish individual responsibility for violations of prior Security Council resolutions. The involvement of international judges would ensure the fairness and accuracy of the proceedings while allowing the Iraqis to try their own. The involvement of Iraqi judges would help assure the legitimacy of the proceedings in the eyes of the Arab world.

The US and Britain have agreed that the “UN has a vital role to play in the reconstruction of Iraq”. An important next step is for the Security Council to act on a resolution, perhaps submitted by Mr Blair himself, proposing the creation of a mixed Iraqi-international court. If such a resolution passed, the onus would then be on the new Iraqi government to comply with it.

The only likely obstacle to passage of such a resolution would be the US. But the Bush administration has left the door open for international involvement if the Iraqis so choose. The Senate, in a surprising move, has passed a bill including Dollars 10m (Euros 9.3m) for “investigations into allegations of war crimes, crimes against humanity or genocide committed by Mr Hussein or other Iraqis, and for the establishment of an international tribunal to bring these individuals to justice”. And above all, a US veto of such a resolution, at a time when British soldiers are fighting and dying alongside US soldiers, would seem dastardly indeed.