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Role for U.N. in War Crimes Trials

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American officials recently announced details of their proposed plans for judicial reconstruction in Iraq. These plans miss a crucial opportunity to re-engage with the international community. Worse, the proposed plans ignore the lessons learned from Bosnia, Cambodia, East Timor and Rwanda about how local justice inevitably gets intertwined with local politics.

The current plan calls for a three-part process: (1) U.S. military tribunals for the perpetrators of war crime against American forces; (2) a truth-and-reconciliation commission for crimes by lower level Ba'ath officials; and (3) a yet-to-be constructed Iraqi judiciary to try the leaders of Saddam Hussein's government accused of international crimes.

Much of this makes sense. The Geneva Conventions authorize the United States to try war crimes committed against Americans. Likewise, an Iraqi-led truth-and-reconciliation commission may have an important role to play in national healing once a legitimate new government has consolidated power.

But, the core of the administration plan to construct an Iraqi judiciary to try the most brutal criminals whose acts the United States repeatedly cited as justification for deposing Saddam is fundamentally flawed.

The U.S. case for war rested on the existence of weapons of mass destruction and the heinous acts of Saddam's regime. The United Nations has a crucial role to play in helping us prove both elements of that case to the world and to the Iraqi people.

Inviting U.N. inspectors back is critical for verifying the existence of any weapons U.S. teams find. Similarly, a U.N.-sponsored court with a mix of Iraqi and international judges particularly from the Arab world will reduce the risk that hastily installed Iraqi judges will be seen U.S. puppets and, hence, validate the resulting judgments.

Involving the United Nations in judicial reconstruction and accountability also allows us to benefit from significant U.N. experience. Today, post-conflict courts first established by the United Nations are operating relatively effectively in Bosnia, Kosovo, East Timor and Sierra Leone. Much has been learned. Sacrificing that wealth of knowledge because of the administration's anger at members of the Security Council who refused to back the war is petty. Moreover, we have a chance to reach out to our allies at little cost to U.S. interests. Europe is deeply committed to international justice and may well see U.N. involvement in any Iraqi judicial process as appropriate regardless of the legality of the war itself.

A proposal currently being circulated in academic and non-governmental communities argues for a U.N.-sponsored mixed tribunal of foreign and local judges applying both Iraqi and international law. The few qualified, pre-Saddam, non-exile Iraqi judges would participate and provide domestic legitimacy. In East Timor, for example, local judges have provided invaluable cultural perspective, despite lacking judicial experience. Arab judges would garner the support of much of the Middle East and lend needed experience in Islamic law and culture. Judges from the rest of the world would offer resources and expertise. Distinguished U.S. or British jurists with experience in international criminal law, rather than military officers, should be chosen for such an assignment. Just as in East Timor, where local judges are learning quickly from their international colleagues, newly trained Iraqi judges would eventually gain the experience and competence to take over.

At present, Iraqi judges lack both the experience and the legitimacy to provide real justice. Returning Iraqi refugees even those trained in law are likely to be viewed as imposed by coalition forces. Direct U.S. involvement in constructing an Iraqi judiciary can certainly provide training and resources, but possibly at the cost of undermining the credibility of the judges they train. The United States which is currently viewed in much of the Arab world as an occupying power set on imperial expansion has yet to prove its benevolent intentions to the Iraqi people.

Even if U.S.-supported Iraqi courts were operating tomorrow, they would likely fail for a more fundamental reason. The Bush plan misses the political reality of judicial reconstruction. Building a fair and effective justice system in a post-conflict society is a deeply political endeavor.

The experience of international trials in Bosnia shows that international judges provide essential political cover for governments committed to accountability but unable to bear the domestic costs. In the Balkans, for example, Bosnians and Serbs alike can blame the international judges for trials and convictions that might otherwise lead to political backlash. If justice is to be achieved, especially given the religious, political and cultural divides in Iraq and the potential for perceived bias, the international community must on occasion serve as a political whipping boy for any new Iraqi government. Let the Iraqis blame the United Nations, rather than one another or the United States, for decisions that some will inevitably dislike.

The driving force behind the current Bush administration proposal, U.S. Ambassador for War Crimes Pierre Prosper, has considerable experience in the international courts for Rwanda and Yugoslavia. He rightly concluded that they are often inefficient, taking years to prosecute and even longer to convict. But he should also recognize that purely domestic courts are not a viable solution either. A U.N.-sponsored tribunal of local and international judges can avoid the inefficiencies of a purely international court, while retaining its legitimacy and political advantages.

Justice in Iraq must be more than merely “credible,” to quote one senior U.S. official. It must be legitimate, accurate and effective, both in perception and reality. If done right, we can help the Iraqis achieve accountability for the crimes of Saddam's regime, enhanced political stability and a well functioning judiciary.

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