

Postwar justice; justifying war

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AMERICA AT WAR. Two observations: An expert on international law says the justice system that is established after the war in Iraq will determine how the rest of the world eventually views current U.S. actions. A history professor notes that although Americans see themselves as reluctant combatants, that image actually makes it easier for them to go to war.

The Iraqi Baath regime has waged a vicious war on its people and any neighbors within arm's reach since 1968.

Its war crimes include using poison gas against Iraqi Kurds and holding Kuwaiti POWs whose fate is still unknown after 10 years. Moreover, the regime has committed an estimated 100,000 extrajudicial killings and tortured and raped tens of thousands of Iraqi civilians.

The Iraqi people have lost all expectations of fundamental human rights, instead enduring large-scale, arbitrary arrests and detentions, displacement and unlawful seizure of property.

They, as well as the international community, deserve justice at war's end, ostensibly one of the reasons for the U.S. military intervention.

But justice must be seen by the eyes of many beholders. Success or failure will significantly affect the perceptions of the U.S. all over the world. For sure, if the Iraqi people do not feel satisfied, they will turn to street vengeance, and the main justification for U.S. military intervention will disappear.

Justice also depends on whether the U.S. decides to administer Iraq, as it plans to do, or

whether it will turn that task over to the UN.

If the U.S. acts as the national authority, whether alone or with an Iraqi civilian government, setting up post-conflict justice will be a question of enacting a decree that has the force of national law. That kind of order can go into effect quickly.

But if the U.S. cedes control to the UN, results will take much longer to achieve.

There are several models for seeing that justice is done.

One is the Yugoslavia and Rwanda tribunals established by the Security Council. But it is unlikely that model will be used in Iraq because of the costs and other complex administrative and political problems.

Another is an exclusively Iraqi-established tribunal empowered by the ruling authority that will run postwar Iraq. This poses the problem of judges, prosecutors and investigators who are free from the influence of the Baath regime and who can act impartially and effectively. But this is a surmountable problem and would be the easiest model for the U.S. to establish. The drawback? It would have the fingerprints of the U.S. on it, possibly tainting the proceedings as victor's justice. It also would require long-term U.S. commitment.

This leaves one viable model, which the UN has used in Sierra Leone and which may be used in Cambodia.

It is the mixed-tribunal formula under which the judges, prosecutors and investigators are both local and foreign. To limit the costs and make the process more expeditious, the non-Iraqi judges, prosecutors and investigators would be from Arab countries. This would be congruent with previous Iraqi judicial practices and those of other Arab countries, which predominantly use Egyptian judges.

But just as important is ridding the country of the Baath Party influence.

Who will be purged, and how? If the hunt is too rigorous, no one will be left to run the bureaucracy; if it is too lenient, criminals may still be in control.

One proposal

A group called the Iraqi Jurists Association, working on a Department of State project I also participated in, prepared a plan based on the following elements.

A judicial process with two tracks. The first is a special court to try major offenders, estimated to be between 50 and 100, accused of genocide, crimes against humanity and war crimes, as defined in international law. Because Iraq ratified the Geneva Conventions and the Genocide Conventions, this poses no legal problems. This court would require five chambers of three judges each and an appellate chamber of five judges, with seven supplemental judges, for a total of 27. Of these, 14 would be Iraqi and 13 would be from other Arab countries.

The second track would rely on the reorganized chambers of the Iraqi criminal court, using its existing criminal codes, but without the special laws enacted by the revolutionary council. These codes borrow from their Egyptian counterparts and contain the crimes that other criminal laws of the world have. These chambers would deal only with serious crimes such as murder, manslaughter, rape, battery and robbery. This would require about 70 judges.

A "Forgiveness and Reconciliation Commission" would deal with all other cases through multiple panels of three: a presiding jurist and two lay participants. They would handle as many as 100,000 cases in view of the large-scale violations committed. The panels would receive individual complaints as well as voluntary pleas from perpetrators who apply to it. In that respect, it would resemble the South African Truth and Reconciliation Commission. The panels would try to reconcile the parties after the perpetrator's admission of guilt and acceptance of responsibility. They could provide restitution or compensation from the perpetrator or compensation from a general fund. The panels also could refer cases for prosecution if they discovered a crime that falls within the jurisdiction of the special court for major offenders or of the reconstituted criminal court.

A legal commission of Iraqi and Arab jurists, with support from international experts, would work on a constitution, legal reform and a new judicial system.

Iraq's administrators would have to complete important groundwork before all this could happen.

Iraqi judges, prosecutors and investigators, as well as those sitting on the forgiveness and reconciliation panels, would have to be vetted to guard against undue influence by the Baath Party and to ensure impartiality and competence.

An overall administrator would be needed, with responsibility for management, finances and coordination.

Laborious undertaking

This is a complex operation that requires a large support staff, adequate court space, extensive record-keeping and logistical support. It would take several months to set up. In the meantime, a mechanism should be established to detain accused offenders and to give the people of Iraq a feeling that justice will follow.

Just as important, this laborious undertaking would record what Saddam Hussein's regime did and would serve as a historical reminder of the evils of dictatorship.

The world will be watching to see how the U.S. addresses this vital, difficult obligation. The U.S. must not flinch.