

SYMPOSIUM: RETHINKING THE FUTURE: THE NEXT FIVE YEARS IN IRAQ

INTRODUCTION

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Since the fall of the Saddam Hussein regime in 2003, countless experts have opined on Iraq's future, prognosticating (dare we say even pontificating), in an attempt to set forth with great precision the way forward in Iraq. With the five year anniversary of the overthrow of Saddam Hussein in sight, the *American University International Law Review*, and the Public International Law and Policy Group ("PILPG") hosted *Rethinking the Future: The Next Five Years in Iraq*,¹ a symposium that moved beyond the current rhetoric, and openly debated Iraq's future. The organizers designed a program to

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1. The organizers also wish to extend their sincerest thanks to the American University Washington College of Law for its support of this event.

question the current direction of Iraq and challenge the participants to rethink the future of Iraq.

This volume contains several submissions by symposium participants. This brief introduction is designed to highlight the discussions that occurred over the two day event and act as a primer for the articles that follow. Each subsection below describes an element of the symposium. These elements focused both on the headline grabbing issues of today (war crimes, partition, etc.) as well as those issues lurking on the horizon (water rights, displaced persons, etc.). All summaries below are the interpretation of the authors and are not intended to impute a position upon any panelist or speaker.

I. THE PARTITION POTENTIAL

The devolution of political power in Iraq is one of the central issues facing Iraqis. Since 2003, propositions for devolution have included a range of approaches; from a central government structure, to one more akin to modern day federalism, to the extreme of outright partition or dissolution of the state. Discussing these options and the intricacies of political devolution were Professor Paul R. Williams, Executive Director, PILPG; Tony Blinken, Chief Foreign Policy Advisor to Senator Joseph R. Biden, Jr. (D-DE); Daniel P. Serwer, Vice President, United States Institute of Peace; Laith Kubba, Senior Director for the Middle East and North Africa, National Endowment for Democracy; and Professor Carole O'Leary, American University School of International Service.

The panelists generally saw hope for a compromise between the Shi'a Arabs, Sunni Arabs, and the Kurds. They agreed that partition of Iraq into three autonomous regions likely will lead to increased tensions between the factions. The panelists also highlighted the cross-cultural miscommunication that can result from using terms such as "soft or hard partition" and "federalism," noting that many Iraqis associate the term partition with a western imposed division of the country.

The panelists appeared to coalesce around a federal structure with strong devolution of power. This model was thought to present the greatest likelihood of reducing ethnic and sectarian division and encounter fewer logistical problems in its implementation.

Furthermore, a strong federalist structure may reduce mass displacement of Iraqis and provide for better resource sharing and distribution.

The panelists differed on their visions of the nature of the stronger federalist structure. While several panelists discussed a federalist structure based on the three main ethno-sectarian groups in Iraq, Prof. Williams posited that encouraging partition, and thereby the mass movement of Shi'a into a Shi'a controlled region, and Sunni and Kurdish populations likewise, would only strengthen the ethno-sectarian divide and further fragment Iraq. An article by Professor Paul Williams and Matthew T. Simpson, contained in this volume, directly criticizes the division of Iraq along ethno-sectarian lines and proffers an alternative approach to the political future of Iraq; a federalist approach based on the eighteen governorate model and reinforced by mechanisms protective of minorities and displaced persons.²

II. MEETING RESISTANCE

Since the 2003 invasion, insurgent movements greatly disrupted the efforts of coalition forces towards securing Iraq. *Meeting Resistance*, an award winning documentary by Steve Connors and Molly Bingham, examines the goals of the insurgency and interviews many Iraqis fighting against what they perceive as an American occupation of Iraq. Following a private screening of the film, the filmmakers led an enlightening discussion with the audience and members of the Iraqi diaspora on the nature and motivation of the Iraqi insurgency. While several members of the diaspora in attendance noted their frustration with Iraqis who chose to perpetuate violence, Connors and Bingham highlighted the economic conditions that often leave Iraqis with no other choice. The infrastructural devastation resulting from years of violent conflict, the constant threat of bombings in marketplaces and other acts of violence, as well as the exodus of much of the economically productive class of Iraqis has left the economy in shambles, and Iraqis with limited avenues for relief. Capitalizing on this destitution, the insurgent

2. Paul Williams & Matthew T. Simpson, *Rethinking the Political Future: An Alternative to the Ethno-Sectarian Division of Iraq*, 24 AM. U. INT'L L. REV. 191 (2008).

movements offer devastated Iraqis hope of protection and security, and the resources they need for daily living. One central conclusion of this discussion was the need for economic reconstruction programs initiated in tandem with security development programs to ensure sustainable political and economic development, thereby giving Iraqis opportunities other than to join the insurgency.

Akin to *Meeting Resistance's* focus on the insurgency in Iraq, included in this volume is an article by Darin Johnson, former advisor to the US Ambassador to Iraq.³ In it, Johnson makes an assessment of the military surge and the benchmarks associated with defining success in post-Saddam Iraq. Johnson concludes that continually relying on Iraqi government progress as benchmarks for U.S. success is misplaced. Instead, in a post-surge environment, new measurements for success in Iraq will need to be developed as the "New Way Forward" strategy is again updated and modified to reflect the ongoing and changing environment.

III. TRANSITIONAL JUSTICE – WAR CRIMES

Transitional justice is another important issue in post-Saddam Iraq. Saddam Hussein and his Ba'ath Party manipulated the divisions in Iraqi society, placing the Sunni Arab minority in positions of power and limiting opportunities for the majority Shi'a Arabs and Kurds. When the regime collapsed, the formerly oppressed groups asserted their representative status.

Participating on this panel were Mike Newton, Vanderbilt University School of Law; Michael Scharf, Managing Director, PILPG, author of *Saddam on Trial*; Professor David Crane, Syracuse University, Chief Prosecutor for the Special Court of Sierra Leone; and Judge Ra'id Juhi al-Saedi, Former Chief Investigative Judge and Spokesman for the Iraq High Tribunal.

The panelists discussed the prosecution of war crimes in a transitional justice system, examining both the importance and difficulty of transitional justice systems to the reconciliation process. The panelists addressed the difficult distinctions between those culpable individuals who actively conspired with the regime from

3. Darin Johnson, *2007 in Iraq: The Surge and Benchmarks—A New Way Forward?*, 24 AM. U. INT'L L. REV. 249 (2008).

those absolvable individuals who merely associated with regime members.

The panelists noted that in January 2008, to combat the harsh effects of the 2003 De-Ba'athification law—which the Coalition Provisional Authority designed to remove Ba'ath party influences from Iraqi government, but unjustly excluded many Iraqis who had joined the Ba'ath party as a condition of their public service—the Iraqi government passed the “Accountability and Justice Law.”⁴ The “Accountability and Justice Law,” has been criticized for potentially leading to further exclusion of Sunnis from thousands of government positions. The effects of the law, however, are yet to be seen, as communication issues within the government have stalled progress.

The panelists also discussed the importance of war crimes prosecutions to the restoration of the rule of law in post-conflict countries. Many options are available to post-conflict countries seeking to prosecute war criminals, including the International Criminal Court and other specialized courts. Iraq created a unique domestic war crimes tribunal to try members of the deposed Ba'athist regime.

Judge Ra'id Juhi al-Saedi, the former Chief Investigative Judge for the Iraqi High Tribunal, shared his experiences in working for the tribunal and emphasized the important role that the tribunal plays in restoring the rule of law in Iraq. While the Iraqi High Tribunal received criticism for the rushed nature of its creation, the insufficiency of its procedures and appeals processes, and the inexperience of the Tribunal's members, many others view the Tribunal as a success. A significant benefit of a domestic war crimes tribunal, such as the Iraqi High Tribunal, is its unique capacity to initiate and develop a strong presence of the judiciary in the national fabric, to develop the expertise of judicial officers, and to raise public awareness of the judicial system. The Iraqi High Tribunal attracted many internationally-recognized war crimes prosecution experts such as symposium panelists Michael Scharf, Michael Newtown, and David Crane. As Judge al-Saedi noted, such assistance not only catalyzed the commencement of the trials, but

4. See MIRANDA SISSIONS, IRAQ'S NEW “ACCOUNTABILITY AND JUSTICE LAW” (Inst. for Transnational Just., 2008) available at <http://www.ictj.org/images/content/7/6/764.pdf>.

also provided the tribunal judges with training and experience that they are now able to apply throughout the Iraqi judicial system.

IV. ISLAMIC LAW AND THE IRAQI CONSTITUTION

Iraqi politicians and religious leaders face the challenge of incorporating Islamic beliefs into the Iraq Constitution, while maintaining a secular, democratic state. Dr. Isobel Coleman, Senior Fellow and Director of the Women and U.S. Foreign Policy Program at the Council on Foreign Relations and Dr. Ann Elizabeth Mayer of the Wharton School, University of Pennsylvania discussed the influence of Islam on the Iraqi Constitution and the role Islam plays in post-Saddam Iraq. Both panelists noted the varying interpretations of the Sunni and Shi'a Islamic traditions, and the inconsistencies that may result when Sunni and Shi'a politicians and leaders interpret provisions of the Constitution. Dr. Mayer posited that the social and political context, rather than the constitutional text, drives the influence of Islamic law in Muslim countries. Dr. Coleman noted that secular movements, particularly women's groups and NGOs, often oppose allowing a greater role for Islam in the Iraqi Constitution.

The panelists concluded that the instability in Iraq prevents scholars from fully evaluating the role that Islam will play in the governance of Iraq. To date, however, Islamic law clearly predominates over personal status matters in Iraq. Currently, Iraqis may bring their case before either a family law court, presided over by experts in Islamic law, or to the civil court, presided over by civil law judges.

The future of Islamic law in Iraq is likely to depend on both the balance of power between the factions in Iraq as well as the strength of the national judiciary. Mediation and adjudication through traditional Islamic law mechanisms will be more likely to dominate if the Iraqi citizenry does not trust the national civil judiciary and if the judicial system does not develop to adjudicate the critical mass of cases flooding into the courts. Regardless of whether the use of Islamic law in Iraq expands into other spheres of governance, Iraqis will likely continue to rely on Islamic law courts to resolve matters of personal status. Successful integration of the Islamic law courts

into the national judiciary may encourage greater trust in both local and national governance structures.

V. STRATEGIC WATER: THE EUPHRATES TIGRIS RIVER BASIN

Water, though often taken for granted, may play a defining role in the future of Iraq. Originating from mountains in Turkey and passing through Syria, Iraq, and Iran, the Tigris and Euphrates rivers are Iraq's main water sources and require thoughtful strategic agreements to regulate and apportion use among the interested parties. Professor Rick Lorenz, University of Washington, Jackson School of International Studies, led a discussion evaluating the strategic role that water will play in the development of Iraq. An article by Professor Lorenz on this subject is also included in this volume.⁵

Increased levels of pollution, reduced water flow, and a severely degraded infrastructure all threaten Iraq's water supply and the ability to use the water supply effectively. With respect to supply, Professor Lorenz explained that Turkey holds the dominant position with regard to Iraq's water supply, and that the rapid development of the South Eastern region of Turkey will have a major impact on the continuing flow of water into Iraq. Professor Lorenz concluded that although the water supply itself is unlikely to be a source of conflict, Iraq's neighbors may use water supply as a bargaining chip in interstate relations. The potential for such strategic use of water, led Lorenz to conclude that without a plan to preserve the long term "strategic" water for Iraq, and without prompt action, any gains in the security or economic sphere in Iraq may be limited.

VI. LIVES IN THE BALANCE: TOWARDS A SECURE SOLUTION FOR IRAQ'S DISPLACED

The recent Iraqi government-sponsored busses bringing Iraqi refugees back from Damascus mark the beginning of what will be a long process. In *Lives in the Balance: Towards a Secure Solution for*

5. Rick Lorenz, *Strategic Water for Iraq: The Need for Planning and Action*, 24 AM. U. INT'L L. REV. 275 (2008).

Iraq's Displaced,⁶ participants discussed the challenges facing the international community, the Iraqi government, and civil society as Iraqis begin to return home. Tim Irwin, the Senior Public Information Officer for U.N. High Commissioner for Refugee's ("UNHCR") Washington office, described the challenges the United Nations Refugee Agency faced in helping Iraq's displaced, noting that UNHCR cannot help those displaced within Iraq. Roberta Cohen, Senior Adviser at the Brookings Institution in the Brookings-Bern Project on Internal Displacement, noted the difficulties that displaced Iraqis face in immigrating to other countries, particularly the United States, which admits very few Iraqi refugees every year because of its concern for "importing terrorism." Kirk Johnson, founder of The List: Project to Resettle Iraqi Allies, exposed the lack of U.S. aid to Iraqi displaced persons, sharing accounts of Iraqis that became insurgency targets as a result of the assistance they provided to coalition forces, only to be displaced from their homes with no support or assistance by the coalition. Michael Youash, Project Director for the Iraq Sustainable Democracy Project, brought the human rights situation in Iraq into sharp focus by describing the plight of minority groups in Iraq, who face persecution and violence and lack protection from the Iraqi government or coalition forces. The panelists concluded that the situation of Iraq's displaced is dire, and called upon the Iraqi government, with help from the international community, to make meaningful commitments and efforts to improve the situation.

Roberta Cohen's article in this volume highlights the need for political accommodations in the interest of Iraq's refugees and internally displaced persons.⁷ While she acknowledges some progress on the political front, she expresses concern that progress has been limited on major issues including: the sharing of oil revenues; the development of an effective national army and police force able to deal with sectarian and tribal violence; the disbanding of local militias and armies; the implementation of a more decentralized form of government; and a decision on the future status

6. This panel discussion was supported by the Washington College of Law Immigrant's Rights Coalition.

7. Roberta Cohen, *Iraq's Displaced: Where to Turn?*, 24 AM. U. INT'L L. REV. 301 (2008).

of Kirkuk. According to Cohen, “[w]ithout movement on these issues, large scale violence could potentially resume in different parts of the country with substantial deaths and the increased displacement of people.”⁸

Additionally, Michael Youash’s article highlights the need to prevent the ethno-religious cleansing of Iraq’s indigenous ChaldoAssyrians.⁹ Youash notes that ChaldoAssyrians, and other vulnerable minorities who will follow in their footsteps, are essential to keeping Iraq ethnically and religiously heterogeneous, which is an essential ingredient for democratization.

VII. THE ROLE OF THE INTERNATIONAL COMMUNITY IN THE REBUILDING OF IRAQ

The symposium concluded with a discussion on the role of the international community in the rebuilding of Iraq. The discussion was moderated by Tom Farer, Dean of the University of Denver Graduate School of International Service and involved a thrilling debate between Sumir Sumaidaie, Iraqi Ambassador to the U.S., and Zainab Salbi, founder of Women for Women International.

The discussion focused on the appropriate role for the United Nations and other major international actors in the rebuilding and development of Iraq. Ambassador Sumaidaie emphasized the need for the continued support of the international community to help rebuild Iraq. Ms. Salbi challenged the Ambassador, calling on both the Iraqi government and the international community to do more to serve and protect the Iraqi people, arguing that human rights receive less protection now than they received under Saddam Hussein.

Ms. Salbi concluded that the continued instability of Iraqi society and government paints a bleak picture for the next five years in Iraq. Ambassador Sumaidaie, however asserted that with the needed international assistance and an improved security situation, the next five years in Iraq will see steady improvement toward a unified and prosperous Iraq.

8. *Id.* at 339.

9. Michael Youash, *Iraq's Minority Crisis and U.S. National Security: Protecting Minority Rights in Iraq*, 24 AM. U. INT’L L. REV. 341 (2008).

CONCLUSION

The symposium, *Rethinking the Future: The Next Five Years in Iraq*, highlighted the major issues that must be addressed for the next five years in Iraq to be a prelude to a stable and prosperous Iraq moving into the future. Panelists collectively provided a framework for achieving this outcome, focusing on governance structures, improved and integrated security forces, increased assistance for displaced persons, and the creation of programs for sustainable use of natural resources; while underscoring the necessity of continued financial and capacity building assistance from the international community. The next five years in Iraq will require a focused approach to political, economic, and social development at the local, regional, and national levels. Tackling these major issues will inspire greater faith in disheartened Iraqis in their government and trust between the Iraqi factions, as well as create opportunities for the Iraqi citizenry. While scholars, politicians, and humanitarians agree that rebuilding Iraq will be a long and bumpy road, steps taken on this road over the next five years will create a foundation for a stable and prosperous Iraq moving into the future.