

Testimony of

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June 25, 2003

The Senate Committee on the Judiciary Subcommittee on the Constitution, Civil Rights and Property Rights and the Senate Committee on Foreign Relations Subcommittee on Near Eastern and South Asian Affairs

Hearing on "Constitutionalism, Human Rights, and the Rule of Law in Iraq"
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Chairman Cornyn, Chairman Chafee, Senator Feingold, Senator Boxer and, Members of the joint Subcommittees, I am pleased to be here today as a member of the Iraqi Jurists' Association, the Working Group on Transitional Justice of the State Department's Future of Iraq project and a Muslim American attorney from California, to discuss the challenges which face Iraq and the Coalition Provisional Authority (CPA) with regard to re-establishing the Rule of Law in this post-Saddam era.

The Iraqi Jurists' Association (IJA) was formed almost 3 years ago and was the largest consortium of Iraqi judges, lawyers, prosecutors and law professors outside Iraq. Last year, IJA teamed up with the State Department's Future of Iraq project to form the Working Group on Transitional Justice which, in turn, prepared a 750 page report entitled "The Road to Re-establishing Rule of Law and Restoring Civil Society--A Blueprint." This report, originally in the Arabic language, was finalized and adopted on March 23, 2003. A summary of this report in English was also prepared. The Working Group and the report itself benefited from internationally recognized experts in the area of Transitional Justice such as Professor Cherif Bassiouni, President of the International Human Rights Law Institute at DePaul University, Professor Alex Boraine, President of the International Transitional Justice Center, former deputy chair of the Truth and Reconciliation Commission in South Africa and Mr. Neil Kritz, Director of the Rule of Law Program at the U.S. Institute of Peace and many others.

Now, with more than 80 prominent legal personalities and after a recent trip to Iraq by the IJA chairman, Dr. Tariq Ali Al-Saleh, the organization is in the process of transferring its headquarters from London to Baghdad where it is expected that Iraqi jurists from inside the country will take the lead in transforming the IJA into an effective civic institution with a mission to help create, educate and defend an independent judiciary.

The challenges on the road to restoring rule of law in Iraq can be broken down into two categories: those facing the Iraqi people and those facing the Coalition Provisional Authority (CPA), and in particular the role of the United States. The Working Group report goes into great detail as to the challenges facing the Iraqi people. I will spend my time here today, addressing what I believe are the challenges to the CPA and the U.S. in particular.

The three major challenges I see are:

1. Delivering on Promises
2. Applying Appropriate Resources to the Task
3. Understanding Iraqi Society and Enfranchising Iraqis

1. Delivering on Promises

The U.S. has a small window of opportunity to make good on its promises before the situation in Iraq spirals out of control. A definitive success in Iraq may be the key to restoring our image as a nation that stands for liberty, democracy and respect for human rights, both at home and abroad.

In the eyes of Iraqis inside Iraq, prior U.S. foreign policy was marked by broken promises, the most prominent of which was the one made immediately after the first Gulf war, which promised US support for the Iraqi people if they were to rise up against Saddam. When they did in overwhelming numbers (14 of 18 provinces were liberated from Ba'ath party rule), the US and other allied forces watched by as Saddam brutally massacred tens of thousands of civilians to maintain his grip on power.

Now, while Iraqis are on the whole relieved and genuinely appreciative that Saddam was removed, they are also simultaneously wary about the coalition forces' "true" intentions behind this action. They ask the question, after supporting Saddam during the Iran-Iraq war, defeating him in Kuwait but tacitly supporting his efforts to stay in power, enforcing devastating sanctions which ultimately strengthened his rule and punished the Iraqi people, what has changed?

It is critical that the CPA understand this backdrop and the environment in which it operates. The initial objective of moving in quickly with civilian and humanitarian assistance to effect an immediate improvement in the day to day living conditions was unquestionably the correct policy. Unfortunately, and without regard to root causes, in the areas of security, lack of electricity, telephones and other basic services this policy has not been fully achieved. Because of this backdrop, there is very little room for delays and mistakes, which the Iraqi people perceive in the context of a continuum of past policies.

2. Applying Appropriate Resources to the task

I'd like to describe this challenge by way of a specific example taken from the front page of the Washington Post on May 21, 2003, in an article entitled, Ad-Libbing Iraq's Infrastructure. One of the examples of this "Ad-Libbing" was the case of the courts in the southern city of Najaf. A recent law school student and Army reservist from Wisconsin with 1 year of training in Arabic was tasked with re-establishing the courts in this city. One of the first actions was to have all of the lawyers vote on which judges would keep their positions. For perspective, if this were done in Los Angeles Superior Court, I can guarantee you that many lawyers would not be voting for the best qualified, most impartial judges. This is not a knock on this service person, she is executing her orders to the best of her ability. This is a critique of the policy that fails to understand and appreciate the needs and apply the appropriate resources to the task.

This is not an isolated incident. In early May, the Department of Justice sent a judicial assessment team to Iraq. Not one of the roughly 11 members of the team were Iraqi legal professionals (or even native Iraqi-Arabic speakers), despite the fact that the DOJ conducted a 2-week training program on international humanitarian law for 25-30 prominent Iraqi jurists in late March.

If I were a jurist inside Iraq, witnessing these events, I would think to myself that the CPA and/or the US are not taking this task seriously.

3. Understanding Iraqi Society and Enfranchising Iraqis

Part of the problem with assessing the appropriate resources is a fundamental lack of understanding of Iraqi society, its history and its people. Many assumptions are made based on experiences in other countries, such as Afghanistan, post World War II Germany and Japan, etc.

Iraq is a country with a legal tradition which predates Saddam Hussein and the Ba'ath party. Its legal system is based on a combination of Shariah law (derived from the Ottoman era) and Civil law (derived from the French legal code). Among its people are highly qualified legal professionals: judges, lawyers, prosecutors and law professors, both

inside and outside the country. Piecing together a legal framework for this transitional period is not as complex as in the example of Afghanistan.

And, unlike Germany and Japan of the WWII era, Iraqis did not elect nor freely accept the Ba'ath party nor Saddam's regime. The main victims of Saddam's regime was his own people and they sacrificed greatly in numerous attempts to rid themselves of this regime. The vast majority of lower level members of the Ba'ath party joined not out of belief or loyalty but out of dire necessity or fear of death.

How does this understanding change the CPA's approach? First, most Iraqis are more than happy and willing to participate in and take the lead in the de-ba'athification process. The Iraqi people do not need to be convinced about the evils of the prior regime: they know it, they lived it and many died because of it. It is critical not to disenfranchise those who would otherwise be supporters. This has happened with the disbanding of the military, with hundreds of thousands of people dependent upon their salaries for their basic survival.

Second, among Iraqis themselves there are qualified professionals with sound reputations both inside and outside Iraq. It is critical that the CPA tap into this important resource. I know that this effort has begun in certain Ministries, but it needs to continue and expand. Iraqis, in particular in the legal field, are very sensitive about outside involvement, including from the Arab world especially if they are from countries perceived to have benefited or cooperated with the prior regime. Even for exiled Iraqis, their role should be limited to advising, consulting and assisting and not include positions of authority unless specifically elected by the people themselves in free and open elections.

Based on my conversations with trusted sources in-country, Iraqis are feeling like strangers in their own country. Either through neglect, lack of understanding, or for the sake of expediency, current efforts seem to be avoiding direct Iraqi involvement and their opinions in important decisions. Disbanding the military in such a manner is one such example.

This must not happen with the formation of the constitution. To ensure maximum participation in this process, some jurists in the IJA recommend a multi-phased process. The first phase would be to hold a national referendum on the form of government (as an example, whether it would be a republic, parliamentary or presidential system, constitutional monarchy, etc.) and once that decision is made by the Iraqi people, a group of elected representatives could be formed to draft the constitution with the assistance of international and domestic legal experts. To protect the long term stability of a democratic Iraq, there would need to be a strong and independent judiciary with a mandate to review the constitutionality of actions of the other two branches of government.

Conclusion

These are not insurmountable challenges. I am optimistic for one simple reason and that is, if I may echo the words of Chairman Cornyn in one of his recent speeches:

"After defeating our enemies in World War II, we left behind constitutions and representative government, not permanent military authorities - and we can do the same in Iraq." (AEI, 6/10/03).

Because of this tradition, the U.S. is uniquely positioned to succeed in this important undertaking. Any failures in Iraq reflect on all of us and will have a long-lasting negative impact on US interests in Iraq, the region and the rest of the world. Iraqis do not make distinctions between the Pentagon or the State Department, Democrats or Republicans. This is a massive undertaking which requires the best talents of all. The consequences of success and/or failure will also be shared by all.