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Supporting Justice and Accountability in Iraq

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Thank you for that kind introduction. It is a privilege to be here and I appreciate the opportunity to address Chatham House and to see and meet so many European colleagues. This historic forum provides an excellent opportunity for us to share our views about important international legal matters, including justice and accountability in Iraq.

Just last week in London, nations across the international community came together to renew and redouble their commitment to a safe, secure and democratic future for Afghanistan. At the conference, Secretary Rice noted that "in a safe and secure and democratic Afghanistan the world will have a lasting friend and a lasting fighter for peace." I hope that through our conversation this evening, we can agree that a renewed commitment and a redoubled effort for justice and accountability in Iraq would go a long way toward ensuring a safe, secure and democratic Iraq - an Iraq that will be a lasting friend and at peace with its neighbors and itself.

We all know that the United States and some of its European and other allies have disagreed about the war in Iraq. In recent months, though, as the result of hard work on both sides of the Atlantic, we seem to have turned a corner. An international consensus has emerged that a free, democratic and united Iraq is strategically essential. We are increasingly working together to support Iraq's transition to freedom and democracy.

Yet, international support for Iraq remains lacking in one key respect. Despite important progress on elections and the Constitution, the international community has largely failed to support Iraqis in their pursuit of justice and accountability through the Iraq Tribunal. This is regrettable. We know from history that justice and accountability are critical elements of reconciliation following a period of repression. Iraq is no different.

For nearly a quarter of a century, Saddam Hussein and his regime ruled by terrorizing their people and their neighbors and committing human rights violations and war crimes on a scale among the most horrific in human history.

Again and again, the United Nations, the world's democracies, and non-governmental organizations condemned the atrocities and human rights abuses of the regime and called for justice and accountability.

In 1991, Human Rights Watch assailed Saddam's regime as "a well organized police state" and "one of the most brutal and repressive regimes in power today." The executive director of Human Rights Watch, called Saddam's Anfal campaign the "purest case [of genocide] I have ever seen since the Nazis." "If Saddam Hussein and his regime are not held responsible for ethnic murder on such a scale," he asked in 1992, how will Serbia or any other state in which tribal, clan and religious rivalries threaten civilized behavior be deterred?"

The UN Special Rapporteur's September 2001 report similarly condemned the regime for "the sheer number of executions," the number of "extrajudicial executions on political grounds," and "the absence of a due process of the law." As early as 1992, he had concluded that the regime's human rights violations were "so grave and [were] of such a massive nature that since the Second World War few parallels can be found."

Amnesty International reported throughout this period on the disappearances of hundreds of thousands of persons in Iraq and documented the macabre forms of torture used by Saddam Hussein and his regime, including crucifixion, hammering nails into the fingers and hands, spraying insecticides into a victim's eyes, branding with a hot iron and using bees and scorpions to sting naked children in front of their parents. As early as 1989, Amnesty concluded that "Iraq clearly and uncontrovertibly presents a situation of the most flagrant and massive violation of human rights. None cries out more for international attention and action."

Following the fall of Saddam's regime, the UN Security Council unanimously passed Resolution 1483, affirming "the need for accountability for crimes and atrocities committed by the [regime]" and calling upon Member States to "deny safe haven to those members of the previous Iraqi regime who are alleged to be responsible for crimes and atrocities and to support actions to bring them to justice."

The newly freed people of Iraq took decisive action. In one of its first orders of business, the Iraqi Governing Council, on December 10, 2003, established the Iraqi Special Tribunal to prosecute senior-level former regime officials for war crimes, crimes against humanity, genocide, and three Iraqi law crimes. And from the beginning, the Iraqis have sought international support for a domestic Iraqi trial mechanism. In October 2003, the Iraqis presented a detailed list of needs to the Madrid Donors Conference. In October 2004, the Iraqi Deputy Prime Minister sent a letter to more than 20 countries seeking additional assistance. He emphasized that international support would be essential to the Tribunal's success and that the "process of investigating and prosecuting these crimes is a critical step for the Iraqi people." He added that the "transparency and expediency of this process is important to the healing process."

The United States has provided significant support to the Tribunal. We established a Regime Crimes Liaison Office (RCLO), and allocated \$128 million to support the Iraqi-led process. And let me be clear about that: The United States is providing critical assistance to the Tribunal, but this is an Iraqi court, an Iraqi effort, an Iraqi-managed process. The judges are Iraqi. And the decisions and orders of the Court are Iraqi. Our task is to support the Iraqis' efforts, taking care to respect the Tribunal's independence and providing assistance as requested by the Tribunal.

The RCLO has provided logistical assistance where the Tribunal has been hampered by poor infrastructure and also legal and law enforcement expertise to the judges as they pursue their investigations. The RCLO funds and coordinates all mass grave exhumation projects, document management systems, a courthouse construction project and the training and coordination of the Tribunal's security. On the legal and investigative side, the RCLO provides training to the judges, international legal research, and strategic investigative guidance. With valued exceptions - including the British and Australian governments and NGOs, such as the International Bar Association, the International Legal Assistance Consortium and INDICT, the International Campaign to Indict Iraqi War Criminals - these U.S. efforts to support the Tribunal represent almost all of the international assistance provided to date.

The UN and other international institutions with special expertise have not just refused to help, they have criticized the Tribunal publicly from the sidelines. The UN leadership specifically prohibited UN personnel, including judges and prosecutors working for international tribunals, from providing any assistance. There is only one international adviser to the Tribunal despite a provision in the Tribunal's Statute calling for advisers to bolster the effort and an international fund established to pay for them. Some key NGOs have refused to help as well, declining to share with Tribunal investigators evidence entrusted to them by brave Iraqis.

Requests by Iraqis for assistance, and numerous appeals by U.S. officials, including our former Ambassador-at-large for War Crimes Issues, Pierre Prosper, have fallen on deaf ears. At the end of last year, Secretary Rice assessed the situation as dismal. "I'm sad to say," she said, "that the international community has barely done anything to help Iraq prosecute Saddam Hussein."

It is difficult to reconcile the international community's effective boycott of the Tribunal with the insistent calls for justice and accountability that existed prior to the Iraq intervention. We have heard several reasons why governments and NGOs are reluctant to help, but none justifies a comprehensive failure to assist the Tribunal.

First, some have argued that the international community cannot support investigations in Iraq because the new Iraqi government has retained the death penalty. This is hardly unprecedented; few countries have confronted brutal former regimes without the death penalty as an option. In any event, considerable support could be provided without supporting the death penalty, such as through assistance with investigations, witness interviews, and exhumations. The UK, for example, has focused on judicial, investigative, and administrative training to ensure that their support to the Tribunal is death penalty neutral. In other contexts, countries and international institutions that oppose the death penalty have found ways to provide judicial assistance to countries with the death penalty. The World Bank has numerous judicial reform programs in countries with the death penalty and the EU has assisted the Rwandan justice sector, even though Rwanda has a death penalty. Last year, the EU offered to assist Iraq with its broader rule of law initiatives despite the fact that it is the general scheme of punishment in the Iraqi justice system that permits the application of the death penalty, not anything in the Tribunal's Statute.

A second objection is that Saddam should only be tried before an international tribunal specially created for that purpose. Arguing that only the United Nations or the international community can dispense justice is paternalistic, and contrary to the principle of complementarity, which properly suggests that an international tribunal should not be - and, practically speaking, cannot be - the default choice of the international community.

International practice should promote domestic accountability and reinforce, not erode, domestic legal systems. The Iraqis chose a

domestic court, with international support, so that trained Iraqi judges and prosecutors could conduct fair and impartial trials and the Iraqi judicial system would develop stronger capacities to investigate and prosecute serious crimes over the long term. At the same time, it is an internationalized court, and draws heavily on the experience and precedent of UN tribunals for the former Yugoslavia, Rwanda, and Sierra Leone.

The decision to invest in and be governed by a domestic Tribunal is an important symbol that the rule of law has returned to Iraq. Iraq's long legal tradition began as far back as the Code of Hammurabi - our task is to help them reclaim that tradition.

Some countries and organizations have refused to provide assistance because they believe the legal structures and protections of the Tribunal do not meet international standards - for example, objections have been raised to the Iraqi standard of proof for a conviction and the processes for appointing and removing judges and prosecutors.

The concern that the Tribunal might fail to meet international standards is a compelling reason to participate - not to abstain. U.S. advisors have been working hard with the Iraqis - from the negotiation of the Tribunal's Statute to the recent amendments to the Statute and Rules of Procedures adopted by the Transitional National Assembly - to ensure that the Tribunal will meet international standards.

Criticisms of the Statute and the Rules of Procedures have generally not been accompanied by offers of assistance. The best way to improve elements of the Tribunal's due process structure is to accept the Iraqis' invitation to work with them directly. Given that the Iraqis have moved forward with a domestic tribunal and many Iraqis are risking their lives every day to carry out the trials, it is unhelpful to question their methods without offering assistance.

Some critics of the Tribunal have pointed to recent difficulties that the Tribunal has faced - resignations of judges, outbursts by Saddam Hussein, delays, killings of defense counsel - to argue that the Tribunal won't succeed. They contend that an international court would have avoided these challenges.

Dispensing international criminal justice has always been challenging. At the Nuremberg trial, the court endured Herman Goering's polemics. At the International Criminal Tribunal for Rwanda, Jean-Bosco Barayagwiza boycotted his trial and refused his assigned counsel. Slobodan Milosevic's tactics and outbursts have contributed to his trial moving into its fifth year. It simply cannot be said that international tribunals have always been models of decorum and efficiency and have avoided the types of problems Saddam's trial has faced so far.

Whether international or domestic, trials of this magnitude have to survive and defeat the last crude manipulations of despots. A defendant should not be allowed to avoid justice simply by refusing to attend hearings or to submit to a court's rules. We have already seen resilience from the Iraqi Tribunal. Last week, notwithstanding Saddam Hussein's refusal to attend his hearing, witnesses were called and gave haunting testimony, and court-appointed defense counsel subjected them to able questioning. The testimony of these witnesses and many other victims of abuse that have come forward to tell their stories and provide evidence of Saddam's atrocities has been televised across Iraq, proving to the Iraqis that justice is being served. Although the daily work of the Tribunal has not received the same coverage outside of Iraq that it has received in Iraq, the process is, in fact, working.

It is hard to resist the conclusion that the boycott of Saddam Hussein's trial by the international community stems from lingering resentment over the war in Iraq. It is hard to see why disagreements about the war should be held against the Iraqi people, whom everyone agrees have suffered grievously and deserve justice and accountability. The Iraqis unambiguously seek and unquestionably need international assistance in securing both.

All of the concerns about the Tribunal are really compelling reasons why the broader international community needs to reengage with it. If there are well-founded objections to how matters are proceeding, the answer cannot be abstention and criticism from afar, it must be engagement and constructive assistance of the kind the international community has provided so many times before.

What, specifically, can the international community do to help the Tribunal?

First, more humanitarian assistance is needed to locate, exhume, and identify victims from at least 180 confirmed mass graves sites in Iraq. The Tribunal would benefit enormously from additional exhumation experts, funding and technical assistance for the humanitarian identification of remains.

Second, countries and organizations could provide international advisors for the Tribunal's Defense Office, Appellate Chamber, and Prosecutor's Office. If a particular country or organization is unable to provide advisors, it could fund other advisors through an International Bar Association-managed fund established for this purpose.

Third, the Tribunal's administrative sections needs technical support for example, media experts for the Tribunal's outreach section, internet experts for the Tribunal's website, support and Arabic-language materials for the Tribunal's library, and administrative and financial support for the Tribunal's docketing facility and secure evidence unit.

Fourth, countries and organizations could provide financial and logistical support to the Tribunal's witness and judicial protection programs. These programs are vital to the success of the Tribunal and represent options for the international community to assist the Tribunal in death penalty neutral ways.

Fifth, NGOs and other countries should share information and evidence of abuses in their possession. These archives will not only aid in the process of holding perpetrators responsible for atrocities but will help the Iraqis, through this process, to better document the historical record of the prior regime's horrors.

Each day, brave Iraqi judges, prosecutors, defense attorneys, victims and witnesses proceed with the Tribunal's work in the face of dangerous challenges. Just as the international community has set aside old divisions in other areas and come together to support the Iraqis in their transition to freedom and democracy, we must join together to support the Iraqis in their pursuit of justice and accountability. Indeed, the international community has much to gain from the Tribunal's success keeping faith with our words, helping Iraqis heal their wounds, restoring the rule of law, preventing any relapses, and signaling to other despots that their crimes will not be forgotten. As for the Iraqis, they are fully committed to seeking justice, ensuring accountability and bridging differences among Iraqis. The tasks before them are enormous. And the risks are grave. But through their suffering and their courage they have earned our support.

Detention Issues

Before closing and taking your questions, I would like to take a few minutes to address issues relating to the U.S. detention operations, which I know continues to generate significant controversy.

Let me review several of the basic U.S. positions on these issues:

First, we believe we have been and still are engaged in an international armed conflict with al Qaeda. They have attacked our embassies, our military vessels and military bases, our capital city, and our financial center. On September 11, they killed nearly three thousand people, including 67 British nationals. The UN Security Council has reaffirmed our right of self-defense in relation to their attacks, which were planned and launched from abroad, in resolution 1373. In the context of this conflict, we believe that the appropriate legal framework for the detention and transfer of al Qaeda is the international law of war. While domestic criminal law has been used in the past to deal with terrorism, we believe that traditional systems of criminal justice, which were designed for different needs, do not adequately address the threat posed by this enemy, which continues to plan and launch attacks of a magnitude and sophistication previously achievable only by organized states.

Second, U.S. intelligence agencies, and the intelligence agencies of European and other countries, are engaged every day in gathering vital, life-saving information. Rather than condemn intelligence-gathering activities or imply that all intelligence activities, for example, all flights involving our CIA, are per se illegal or improper, responsible individuals should support and encourage these intelligence efforts as a means to protect our citizens.

Third, the U.S. Government does not confirm or deny intelligence activities. Allegations about U.S. intelligence activities in Europe and elsewhere have become so hyperbolic as to be absurd. Critics will now accept the most preposterous speculations and rumors and circulate them as fact. By their very nature, intelligence activities must be carried out secretly, and we cannot comment upon them.

Lastly, we believe renditions, in appropriate circumstances, can be a useful tool to bring terrorists to justice or prevent them from carrying out terrorist acts. Both the U.S. and European countries have used renditions for many years. Renditions are not per se unlawful, and the European Court of Human Rights has upheld their legality in the past. In conducting renditions, the U.S. Government has respected and will continue to respect the sovereignty of European countries.

Against this backdrop, let me add the following comments:

In its activities relating to detainees, the United States Government complies with its Constitution, its laws, and its treaty obligations.

We have made clear our position on torture: U.S. criminal law and treaty obligations prohibit torture, and United States policy is not to engage or condone torture anywhere. In the context of renditions, U.S. Government policy, applicable to all agencies, is not to transport anyone to a country if we believe it more likely than not that the individual will be tortured. Where appropriate, the United

States seeks assurances that transferred persons will not be tortured.

Where there have been cases of unlawful treatment of detainees, the U.S. has vigorously investigated and, where the facts have warranted it, prosecuted and punished those responsible.

Secretary Rice made clear in December that as a matter of policy the United States will not authorize interrogations involving cruel, inhuman, or degrading treatment, as defined by U.S. obligations under the Convention Against Torture.

More recently, our Congress passed and the President signed the Detainee Treatment Act, which included the well-known McCain Amendment. Contrary to press accounts, the McCain Amendment did not prohibit torture. Our federal criminal laws already prohibited torture. Rather, the McCain Amendment codifies in U.S. law the prohibition against cruel, inhuman, and degrading treatment contained in Article 16 of the Convention Against Torture and makes clear that the prohibition applies to the treatment of all detainees under U.S. control anywhere in the world. Moreover, the Act provides for the first time that federal courts may review the decision of military commissions, a change long-sought by the international community.

I also want to correct a misperception that has arisen concerning the President's signing statement in bringing this Act into law, which included a standard statement indicating that the President would interpret the Act consistent with his authorities under the U.S. Constitution. The President's signing statement reflects a frequently-reiterated executive branch position about the execution of laws within the context of the President's constitutional responsibilities, and was not meant to indicate that the President planned to ignore the provisions of the Act.

In closing, let me reiterate that the U.S. Government recognizes that issues relating to the detention of individuals suspected of terrorist activities remain a matter of concern in the UK, in Europe, and elsewhere. At the same time, however, we would like to see responsible officials and commentators in Europe promote more balanced discussion within their own countries, among themselves, and with the United States on these issues. We are deeply concerned by the one-sided treatment and rush to judgment that this issue has received in Europe, especially among governments who know from painful experience that the terrorist threat is real, not imagined, and that governments have a critical responsibility to protect their citizens from terrorist attacks.

U.S. officials are prepared to engage in continued dialogue with our European partners about these issues, just as we have had discussions and debate at home. These issues are complex and deserve serious consideration. There are not easy answers. But we must ensure that our discussions and the public attention paid to these issues remains healthy and balanced. In raising questions about the treatment of terrorists, we must not forget that our societies remain under serious threat of terrorist attack. In questioning the value of certain intelligence activities, we must not forget the vital contributions that our intelligence and security services, and cooperation among them, make to protecting our citizens. And we must not forget the strong historic ties between the U.S. and Europe and that our countries are based on the same fundamental values, including the protection of freedom and respect for rule of law. If we are to succeed in fighting the terrorists who threaten our societies, it is vital to have an international consensus on these issues. We must not let the consensus between the U.S. and Europe in opposing terrorism be torn apart.

Again, thank you for inviting me to Chatham House. I would now be happy to take your questions.



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