

Accountability and Transitional Justice

Washington-area professionals gathered on May 20th for the seventeenth IRG Discussion Forum, Accountability and Transitional Justice. Pierre-Richard Prosper, US Ambassador-at-Large for War Crimes Issues; Michael Miklaucic, Chief Operating Officer of the Office of Democracy and Governance at USAID; and Neil Kritz, Director of the Rule of Law Program at the US Institute of Peace discussed US Administration policies and approaches to transitional justice and the rule of law, building domestic capacity in developing nations and failed states, and innovative strategies for ensuring accountability and effecting reconciliation.

Over the past ten years the US has played a leading role in devising systems and strategies to bring justice and reconciliation to hundreds of thousands of victims of genocide, crimes against humanity, and war crimes in conflicted areas around the world, including the former Yugoslavia, Rwanda, Uganda, East Timor, and most recently, Iraq. The International Criminal Court (ICC), various hybrid courts, and truth-and-reconciliation mechanisms are among the host of tools being

used to provide a reckoning for those who commit these crimes, with varying degrees of success and lasting consequences.

Varied Approaches Needed: Local and International

What has become evident over the past decade is that there is no single best approach to transitional justice in post-conflict areas. The local situation and the history and events that led to it are unique to each area; the only commonalities are the importance of moving past those events, focusing on the grassroots problems that contributed to the conflict, and bringing efforts to achieve justice and reconciliation closer to the people. Attempts at transitional justice ought

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to occur at the local level whenever possible, with the ultimate goal to encourage each state to accept responsibility and exercise judicial functions itself. The role of the United States and the international community should be to facilitate local transitions as feasible.

In countries in transition, the idea of a society governed by law—exemplified in the



From left to right: Henri-Claude Bailly, IRG Advisory Board Chairman; US Ambassador-at Large Pierre-Richard Prosper; Michael Miklaucic of USAID; Neil Kritz of USIP; Asif Shaikh, IRG President and CEO; and William Spencer of IRG.

For More Information...

USAID Office of Democracy and Governance,
www.usaid.gov/pubs/cbj2003/cent_prog/dcha/dg.html

Guidance for Promoting Judicial Independence and Impartiality, (publication of the USAID Office of Democracy and Governance)
www.ifes.org/rule_of_law/judicial_independence.pdf

United States Institute of Peace, www.usip.org/

Rebuilding Afghanistan: A Framework for Establishing Security and the Rule of Law
www.usip.org/ruleoflaw/rebuilding/afghan_mainreport.html

America's Defense Monitor interview with Neil Kritz, Rebuilding in the Wake of War,
www.cdi.org/adm/1145/Kritz.html

American Foreign Policy and the International Criminal Court, remarks to the Center for Strategic and International Studies, www.state.gov/p/9949.htm

Iraqi Jurists Propose Plan for Transitional Justice, Rule of Law in Iraq, usembassymalaysia.org.my/wf/wf0522_jurists.html

UN World Development Report 2002,
<http://hdr.undp.org/reports/global/2002/en/>

contested 2000 US presidential election, which was settled through the court system with no deaths, injuries, or arrests and with all sides accepting the outcome—may not be fully established. The legal and administrative expertise—or the political capacity—to exercise it may be limited or non-existent. International initiatives are needed to provide technical, judicial, and financial assistance to achieve eventual domestic ownership of the state's justice system. In the Balkans, for example, international political and financial influence helped establish not just the International Criminal

important role in “jumpstarting” a justice approach to atrocity crimes, but it is important not to lose focus on the need for long-term solutions and building local capacity. The Bush Administration holds that an international court should not be used as an “easy way out” for a state not willing to take up a case itself. The ICC's case against the Lord's Resistance Army in Uganda, for example, may have been undertaken before determining whether the Ugandan

Tribunal for the former Yugoslavia, but also war crime judicial chambers in Belgrade and Sarajevo to prosecute these crimes domestically.

Yet, building local capacity and political will is a time-consuming process when quick solutions are often demanded.


International tribunals and courts play an

government was willing or able to handle the case itself. International tribunals in Yugoslavia and Rwanda both enjoy primacy of jurisdiction, which allows them to assert their authority over that of the domestic judicial systems. The Rome statute, in contrast, adopted the principle of complementarity, in which the ICC defers to national jurisdiction unless it is unwilling or unable to prosecute. The Bush Administration holds that the inconsistent application of complementarity by the ICC presents clear problems.

Transitional Justice and Development

Development statistics and other empirical evidence garnered over the past ten years indicate that transitional justice initiatives do not directly contribute to long-term development in terms of better security, more liberty and equality, and improved standards of living. There is, however, a direct correlation between the rule of law, the quality of local governance, and the strength of the security sector and traditional

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development indicators. This makes it imperative to consider the opportunity cost of transitional justice undertakings

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and the extent to which the capital outlay for them is lost to other development initiatives. From the development perspective, good governance respects human rights and fundamental freedoms and means decision makers are held accountable. This requires professional, politically neutral security forces and an independent judiciary that enforces the rule of law equally for all and offers non-violent ways of resolving conflicts. In South Africa, post-apartheid security sector reforms made civilian and military forces subordinate and fully accountable to parliament; international intervention in Bosnia and Herzegovina helped to implement civil control over, professionalize, and bring a measure of consensus to the armed forces there.

Lessons Learned

While the lessons learned through such reforms and other transitional justice initiatives are specific to certain times and places and thus not necessarily transferable to other states, the importance of involving the local population in establishing long-term domestic and institutional capacity in the rule of law, social justice, and security is common to all situations. In Rwanda, people voiced their concern that they did not clearly understand the transitional justice process instituted by the

international tribunal. Building the local human capacity needed to achieve such understanding in the first instance and then the capability of implementing it independently requires time, international support, and local political acceptance.

It is also important that various local legal practices and traditional forms of meting out justice be considered and, when appropriate, incorporated into international transitional justice mechanisms. Differences between local and international concepts of justice and human rights may require considerable public outreach and education to bring local standards closer to

About the Speakers

Pierre-Richard Prosper serves as US Ambassador-at-Large for War Crimes Issues and advises the Secretary of State on efforts to address serious violations of international humanitarian law. Previously, Ambassador Prosper was a war crimes prosecutor for the United Nations International Criminal Tribunal for Rwanda and successfully prosecuted the matter of the Prosecutor against Jean-Paul Akayesu, the first-ever case of genocide under the 1948 Genocide Convention and the first case of the Rwanda tribunal.

Michael Miklaucic currently serves as Chief Operating Officer of the Office of Democracy and Governance at USAID. In 2003 Mr. Miklaucic worked in USAID's Bureau for Policy, concentrating on issues related to Iraq, the Muslim world, and security sector reform. His prior work with non-governmental organizations focused on promoting human rights, developing democratic institutions and good governance, and global security issues.

Neil Kritz directs the US Institute of Peace's Rule of Law Program, focusing on advancing peace through the development of democratic legal and governmental systems. At the request of the US Department of Defense, he prepared a curriculum on international law and the promotion of democracy for use in training US and foreign military officials. Mr. Kritz has been called upon to provide advice on questions of war crimes and abuses in Bosnia and Herzegovina, Cambodia, Guatemala, Indonesia, Rwanda, Sierra Leone, and South Africa.

those of the larger world community.

Truth commissions are often seen as a “soft approach”—in Bosnia, efforts by civil society to establish a truth commission were seen to be at odds with the international war crimes tribunal that has jurisdiction—but they play an important role in helping a society recognize both what happened and how it was allowed to happen; tribunals may prosecute perpetrators of the most serious crimes, but

truth commissions can help the local populace come to terms with past abuses and pave the way for a viable post-conflict rebuilding process.

New Model

Iraq can represent a new approach to transitional justice with the establishment of a national tribunal that provides for the possible involvement of international judges and intends to adhere to international standards of justice and human

rights. The possible imposition of the death penalty points to the obvious need for balance between local and international standards.

The immediate benefits of international transitional justice mechanisms are well understood; the more lasting consequences of longer-term interventions can be of even greater importance for the possibility they bring for peace, social reconciliation, and the rule of law.

About the IRG Discussion Forum

The IRG Discussion Forum, a monthly event hosted by Henri-Claude Bailly (chairman of IRG’s Board of Advisors), addresses issues affecting international development. Each session is informal, with guest speakers and attendees participating in a personal capacity. For comments, questions, or information on the Discussion Forum, contact discussionforum@irgltd.com or call IRG at 202-289-0100.

2004 Schedule

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- ◆ When the international community seeks to bring transitional justice to areas where there is either a competent but illiberal justice system in place, such as Algeria, or a near-complete lack of such a system, such as Afghanistan, it is particularly important to apply a holistic approach that addresses concerns in every sector, from police to judges, other legal professionals, and the courts.
- ◆ In disaster areas and cases of failed states, it is particularly important to incorporate any local justice mechanisms that may still exist and accept that it may not be possible to adhere to international standards of justice as completely as may be desired.
- ◆ Joint international/domestic tribunals may be used more often in the future, but should be particularly attentive to the importance of leaving a legacy of domestic local capacity when the international component departs.

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