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Forward: Lessons from the Saddam Trial

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FOREWORD: LESSONS FROM THE SADDAM TRIAL

*Michael P. Scharf**

I. INTRODUCTION

The emerging system of international criminal justice is composed of a spectrum of institutions, from purely international courts (such as the International Criminal Court and the ad hoc international criminal tribunals for Rwanda and the former Yugoslavia) to hybrid international-domestic tribunals (such as the ad hoc Court for East Timor, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia) to purely domestic courts and war crimes commissions. A recent addition to that list that falls somewhere between hybrid tribunals and domestic courts is the so-called “internationalized domestic tribunal,” exemplified by the Bosnian War Crimes Chamber in Sarajevo and the Iraqi High Tribunal (IHT) in Baghdad.

The IHT merits characterization as an internationalized domestic tribunal because its statute and rules of procedure are modeled on the U.N. war crimes tribunals for the former Yugoslavia, Rwanda, and Sierra Leone, and its statute provides that the IHT is to be guided by the precedent of the U.N. tribunals and that its judges and prosecutors are to be assisted by international experts.¹ But the IHT is not fully international or even international enough to be dubbed a hybrid court, since it is seated in Baghdad, its prosecutor is Iraqi, it uses the Iraqi Criminal Code to supplement the provisions of its statute and rules, and its bench is composed exclusively of Iraqi judges.

Internationalized domestic tribunals are seen as a potentially vital supplement to the International Criminal Court, which lacks the resources

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¹ The English translation of the IHT Statute is available at http://law.case.edu/grotian-moment-blog/documents/IST_statute_official_english.pdf. The English translation of the IHT Rules of Procedure and Evidence is available at http://law.case.edu/grotian-moment-blog/documents/IST_rules_procedure_evidence.pdf.

and personnel to prosecute all but a tiny portion of cases in situations where the domestic system is unable or unwilling to do so. As one of the first internationalized domestic tribunals, the perceived success or failure of the IHT is likely to have an affect on the future use of that model of international justice.

Unfortunately, the IHT was snake-bitten from its conception. Many countries, international organizations, and human rights NGOs opposed the IHT from the start because it followed an invasion that they believed to be unlawful, provided for the death penalty, and was seen as preventing deployment of a truly international court. And then, once the Dujail trial began, the proceedings were marred by the assassination of three defense counsel, the resignation of the presiding judge, the boycott of the defense team, the disruptive conduct of the defendants, and finally by an execution that everyone agrees was an utter fiasco. In light of all that went awry, attempting to provide an objective appraisal of the IHT is a bit like assessing the tragic evening of April 14, 1865 by inquiring, "Well, other than that, Mrs. Lincoln, how did you enjoy the show?"

But an objective assessment of the IHT would have to acknowledge that there were in fact some positive aspects as well. For example, the IHT Statute and Rules represent a novel attempt to blend international standards of due process with Middle Eastern legal traditions. It is particularly noteworthy that the Dujail trial was the first-ever televised criminal proceeding in the Middle East, enabling millions of people throughout the region to see the process of justice unfold, warts and all. While the judges of the IHT might not have followed every provision of the tribunal's internationally-inspired Statute and Rules as scrupulously as they should have, the judges bent over backward to grant Saddam Hussein the right to personally cross-examine his accusers and make statements to the bench—an opportunity he took advantage of thirty-nine times during the trial. And while the media reported that the court-appointed public defenders who represented the defendants while their retained lawyers boycotted most of the trial were not up to the task, in fact they were ably assisted by a distinguished British judge who had previously served as defense counsel in cases before the Yugoslavia and Rwanda tribunals. The four-hour closing argument delivered by the public defenders was particularly impressive and ultimately led to the acquittal of one of the seven Dujail defendants and relatively light sentences for three others.

Most importantly, the 298-page, single-spaced opinion of the Trial Chamber,² which was issued on November 22, 2006, meticulously de-

² An English translation of the Iraqi High Tribunal's Dujail Trial Opinion and the Appeals Chamber Opinion are available in the appendix of this journal. 39 CASE W. RES. J. INT'L L., apps. A, B (2007).

scribed the court's findings of fact and conclusions of law, with numerous citations to the past decisions of international tribunals. To assist the judges in preparing their opinion, the U.S. Embassy's Regime Crimes Liaison Office provided translations of the major war crimes judgments of our time, from Nuremberg to The Hague—the first time this body of jurisprudence has ever been made available in Arabic.

The trial chamber's opinion—the first fifty-four pages of which are devoted to responding to the numerous motions and arguments of the defense counsel—addresses many of the objections of the tribunal's critics. For example, the opinion convincingly explains why recusal of the presiding judge was not warranted. While the defense team has publicly complained that it did not have access to all of the evidence in a timely manner, the opinion documents that both the defense and prosecution were provided the entire dossier prepared by the investigative judge, containing all of the evidence the judges considered in arriving at their verdict, three months before the trial commenced.

The opinion also explains that the assassinations of the three defense counsel could have been prevented if the three had accepted the security measures that protected the judges, witnesses, prosecutors, and the rest of the one hundred-member defense team. And throughout, the opinion applies the "beyond reasonable doubt" standard, which should mollify critics who had complained that this standard was not explicitly provided for in the IHT Statute or Rules.

Two points stand out in the Dujail Trial Chamber opinion for establishing noteworthy legal precedent. First, Saddam's main defense was that as a leader, he was entitled to take action against a town that had tried to assassinate him and was populated by insurgents and terrorists allied with Iran at a time when Iraq and Iran were at war. The opinion details why the actions taken against the town of Dujail and its inhabitants "was not necessary to stop an immediate and imminent danger" and how the actions were disproportionate to the threat. In this way, the opinion makes clear that there is a line to be drawn in every country's fight against terrorism and that Saddam Hussein and his co-defendants crossed that line. Second, it is significant that the opinion begins with the case against Awad al-Bandar, the president of Saddam's Revolutionary Court, who was charged with using his court as a weapon by conducting an "illusionary trial" and then ordering the execution of 148 villagers of Dujail, including several individuals who were under eighteen years of age. Ironically, al-Bandar was convicted of doing the very thing critics have accused the IHT of doing: presiding over a trial devoid of due process of law. But the many details of the case against Al-Bandar contained in the Dujail Trial Chamber opinion make it clear how fundamentally different the IHT is from Saddam Hussein's Revolutionary Courts. In any event, the legal analysis of the case against al-Bandar will serve as an important warning to judges in Iraq and elsewhere that they, too,

may face prosecution if they stray from the internationally recognized fair trial requirements.

These may seem like modest accomplishments in light of all that went wrong during the Dujail trial, but in assessing the IHT, one must recognize that there were no other feasible alternatives for bringing Saddam Hussein to justice after his capture in 2003. While many of us would have preferred an international venue, that option was not on the table in 2003 for a variety of reasons. The newly-established International Criminal Court was not available for the trial of Saddam Hussein because of the "non-retroactivity" clause in its Statute, prohibiting the court from trying cases that arose before June 2002. A Security Council-created ad hoc tribunal was not a possibility because France, Russia, and China let it be known that they would veto any effort to establish such a tribunal for Iraq since they felt the U.S. invasion had been unlawful. Simply turning Saddam Hussein over to the ordinary Iraqi courts, on the other hand, was not seen as a viable option either, since the Iraqi judiciary had been left in shambles after three decades of Ba'athist rule.

Some have suggested that the success of the IHT should be judged by how well it has contributed to peace and the transition to democracy in Iraq. Admittedly, in the short term, the tribunal has not proven to be an effective mechanism for reconciliation. In fact the month following Saddam Hussein's execution has been the bloodiest since the invasion in 2003. But history suggests that that is not a fair benchmark for judging a war crimes tribunal. Indeed, recently declassified opinion polls which were conducted by the U.S. Department of State from 1946 through 1958 indicated that over eighty percent of the West German people did not believe the findings of the Nuremberg tribunal and considered the Nuremberg proceedings to be nothing but "acts of political retribution without firm legal basis." By 1953, the State Department had concluded that the Nuremberg Trials had completely failed to "reeducate" West Germans.³

Similarly, Security Council Resolution 827, which established the Yugoslavia tribunal, stated that war crimes prosecutions would contribute to the restoration of peace in the region. However, during Milosevic's four-year trial (2002–2006), rather than being discredited the former Serb leader's popularity soared. Polls conducted during the trial indicated that seventy-five percent of Serbs believed Milosevic was not receiving a fair trial, and sixty-six percent did not believe that he was responsible for war crimes. At mid-trial, campaigning from the courtroom in The Hague, Milosevic won a seat in the Serb Parliament in a landslide election.⁴ The lesson

³ PETER MAGUIRE, *LAW AND WAR: AN AMERICAN STORY* 241, 246 (2000).

⁴ Andre Purvis, *Star Power in Serbia: Slobodan Milosevic's Performance at his War Crimes Trial has Won Him Increased Popularity at Home*, TIME, Sept. 30, 2002, at 46; Gary J. Bass, *Milosevic in the Hague*, FOREIGN AFF., May/June 2003, at 82.

from the Nuremberg and Yugoslavia tribunals is that war crimes trials have always been and are likely always to be divisive, at least in the short term. No matter the strength of the evidence that is presented in the courtroom, and no matter how many people watch the proceedings, those that support the defendants will continue to support them and perceive the proceedings as unfair.

Others have suggested that the IHT should be judged harshly because its first trial was one of the messiest in legal history. Major war crimes trials are inherently messy. War crimes defendants and their lawyers seldom play by the court's rules, desiring instead to transform the proceedings into political theatre. None of the major war crimes trials to date have been praised as a model of fairness, efficiency, or decorum. Indeed, at the conclusion of the Nuremberg trial, Chief Justice Harlan Fiske Stone publicly castigated the Nuremberg proceedings "as a high grade lynching party."⁵ In a speech to Congress that was subsequently reproduced with admiration in John F. Kennedy's Pulitzer Prize-winning book, *Profiles of Courage*, Senator Robert Taft of Ohio harshly criticized every aspect of the Nuremberg project.⁶

Fifty-five years later, the Slobodan Milosevic trial before the International Criminal Tribunal for the former Yugoslavia was similarly subject to widespread criticism, including suspicions surrounding the timing of the indictment (in the middle of the NATO bombing campaign), the manner of Milosevic's surrender (in violation of a judicial order by the Serb Supreme Court), the tribunal's decision to allow the defendant to represent himself (enabling him to disrupt and hijack the proceedings), the judges demeanor (the presiding judge often yelled at the defendant), the replacement of the presiding judge who had fallen ill with a judge who had not been present for the first two years of the proceedings, and the fact that the defendant himself died before the conclusion of the trial.⁷

It is often said that just as courts try cases, so too do cases try courts. As the first trial before the Iraqi High Tribunal, the Dujail case was the test-run for this novel judicial institution. Clearly it had a bumpy start, but judged in light of the unique challenges that the IHT faced, the fact that there were no feasible alternatives available for trying Saddam Hussein, and that war crimes trials are historically divisive and messy, the IHT cannot simply be written off as an utter failure.

⁵ GARY JONATHAN BASS, *STAY THE HAND OF VENGEANCE: POLITICS OF WAR CRIMES TRIBUNALS* 25 (2000).

⁶ JOHN F. KENNEDY, *PROFILES IN COURAGE* 231–44 (1964).

⁷ See Michael P. Scharf, *The Legacy of the Milosevic Trial*, in *BRINGING POWER TO JUSTICE* 25, 25–46 (Joanna Harrington, Michael Milde, & Richard Verdonn, eds.) (2006).

II. "LESSONS FROM THE SADDAM TRIAL"

After the Nuremberg trial sixty years ago, Chief Prosecutor Robert Jackson reported to President Truman that despite the many errors and missteps that occurred during the proceedings, he was consoled by the fact that the lessons from the WWII war crimes tribunal would be instructive for the future.⁸ In this spirit, on October 6–7, 2006, the Frederick K. Cox Center at Case Western Reserve University School of Law hosted an international conference and experts meeting entitled "Lessons from the Saddam Trial."

The October 2006 Saddam trial conference was organized by a program committee consisting of Professor Michael Newton of Vanderbilt University; Professor William Schabas, Director of the Irish Centre for Human Rights at the National University of Ireland in Galway; Mark Ellis, Executive Director of the International Bar Association headquartered in London, and myself. The conference was co-sponsored by the International Bar Association and the Irish Centre for Human Rights and was designated a Centennial Regional Meeting of the American Society of International Law, a Regional Conference of the International Law Association (American Branch), and the Annual Meeting of the International Association of Penal Law (American National Section).

The October 2006 Saddam trial conference included a keynote address and six panels: (1) "Preparing for the Mother of All Trials", (2) "Order in the Courtroom: The Challenges of Trying a Tyrant", (3) "Debate: Did Saddam Get a Fair Trial?", (4) "Saddam on Stage: Assessing the Media Coverage of the Trial", (5) "Lessons Learned from the Dujail Trial: A Cross-Fire Panel", and (6) "Was the Dujail Trial One of the Trials of the Century?" In addition to a number of leading academics, the two dozen expert participants included the ambassador of Iraq to the United States, the executive director of Human Rights Watch, CNN International and Court TV Saddam Trial expert commentators, the former Director of the Regime Crimes Liaison Office, a fair trial observer who sat through the Dujail trial in Baghdad, the deputy director of the State Department Office for War Crimes Issues, the former chief prosecutor of the Special Court for Sierra Leone, the senior legal advisor to the Chambers of the International Criminal Tribunal for Rwanda, the former principal public defender of the Special Court for Sierra Leone, and the former chair of the Drafting Committee for the International Criminal Court.

This special double issue of the *Case Western Reserve Journal of International Law* contains eight articles generated from the October 2006 Saddam trial conference, which makes a significant contribution to the lit-

⁸ ROBERT H. JACKSON, REPORT TO THE PRESIDENT (October 7, 1946), quoted in MICHAEL P. SCHARF, *BALKAN JUSTICE: THE STORY BEHIND THE FIRST INTERNATIONAL WAR CRIMES TRIAL SINCE NUREMBERG*, at 3 (1997).

erature on war crimes tribunals. It also contains transcripts of the debate on whether Saddam Hussein received a fair trial and the “cross-fire” panel discussion of the lessons learned from the Dujail trial. In addition, we have included, as an appendix to the double-issue, the English translations of the Dujail Trial Chamber Opinion and Appeals Chamber Opinion.

Although the views of the individuals who participated in the October Saddam trial conference diverged on many points, they all agreed that much can be learned from the way the Dujail trial unfolded, and that these lessons can help improve the way the Iraqi High Tribunal tackles its upcoming trials, as well as the way the international community can help domestic prosecutions of former leaders accused of atrocities in other parts of the world. To that end, the day following the conference many of the experts participated in a day-long experts meeting, which resulted in a document titled “Ten Lessons from the Saddam Trial” (appended below). While not specifically endorsed by the participants, this document reflects the general points of consensus that emerged from the meeting.

I am extremely grateful to my program committee colleagues for their help in organizing this ambitious project, and to our distinguished panelists for their participation in the “Lessons from the Saddam Trial” conference and contributing to this symposium issue of the *Case Western Reserve Journal of International Law*. My appreciation also goes out to the student editors of this volume who worked diligently on the preparation of this publication.

APPENDIX

TEN LESSONS FROM THE SADDAM TRIAL

*Generated from the October 7, 2006 Cleveland Experts Meeting
Chaired by Michael Scharf
Co-Rapporteurs: Gregory McNeal, Christopher Rassi, &
Brianne Daffin*

Lesson # 1: There should be a presumption against undertaking domestic war crimes trials in countries languishing in a conflict environment.

The International Criminal Court's "complementarity regime" reflects international recognition that domestic trials have advantages over international trials and are to be preferred unless the national courts are unable or unwilling to prosecute. At the same time, it must be recognized that in the best of circumstances, undertaking international war crimes trials is arduous; in a country plagued by sectarian violence and devoid of reliable security mechanisms, the premature launching of such a trial can be reckless and potentially futile. It also runs the risk of negating the potential benefits to the broader criminal law system. In such circumstances, a more responsible and viable option may have been to utilize a neutral jurisdiction, preferably in the relevant region. In the current IHT trials, extreme and immediate steps must be taken to guarantee the protection of defense counsel, as well as the judges, prosecutors, and witnesses—whether they desire such protection or not.

Lesson #2: Post-conflict countries that undertake domestic war crimes trials need unbiased international assistance.

Referring to the Iraqi High Tribunal as a domestic court is a misnomer. Behind the scenes, the United States played a crucial role in drafting the tribunal's Statute, collecting evidence to be used by the prosecution, and providing both security and financing to the tribunal. Although the United States, as an occupying force, should not have been the one to unilaterally play this role, international assistance for a domestic war crimes tribunal following the fall of an authoritarian regime is indispensable. In the future, transitional justice should be a key goal that attracts legal and administrative support from across the international spectrum. Serious consideration should be given to foregoing the death penalty as the price for obtaining international support and involvement. The international community should provide substantial training in international criminal law to jurists, including defense attorneys, serving on domestic war crimes tribunals. An international perspective on substantive and procedural law concerning crimes of

genocide, war crimes, and crimes against humanity is essential, and international best practices serve to supplement established domestic norms to provide an integrated model.

Lesson #3: Steps should be taken to further internationalize the Iraqi High Tribunal.

Like the Statute of the War Crimes Chamber of the Court of Bosnia and Herzegovina, Article 3(5) of the IHT Statute provides for the appointment of one or more foreign judges to join the Iraqi judges on the bench, but without explanation none were ever appointed. Such an appointment of a distinguished Arabic-speaking judge from the region would greatly promote the perception of the IHT as a fair and competent judicial institution, without sacrificing the essential Iraqi character of the tribunal. In addition, the Statute provides for the appointment of international advisers to assist the judges, prosecutor, and defense team. To date, the identities of the non-U.S. advisers working with the tribunal have been kept confidential for their protection, but this has led to the misperception that the only foreign advisers are members of the U.S. Department of Justice Regime Crimes Liaison Office, which in turn makes the tribunal appear to be an American-controlled enterprise. In future trials, more advisors selected by respected NGOs such as the International Bar Association should be recruited to assist the tribunal, and their contribution (if not their identities) needs to be made public.

Lesson #4: Steps should be taken to strengthen the independence of the Iraqi High Tribunal.

An independent and impartial court is a fundamental prerequisite for meeting international standards of fairness in a trial. Any appearance of government influence is a damning indictment of a court's independence. During the Saddam trial, there were several instances in which the government made inappropriate comments and attempted to interfere with the proceedings. Article 4(4) of the IHT Statute, which provides that the Iraqi Presidency Council may transfer judges from the IHT to the Higher Judicial Council for any reason, should be amended. Judges should only be removable for cause and only through a decision of the other IHT judges, not the unfettered whim of the executive branch. In addition, Article 33, which provides that no person who was a member of the Ba'ath party shall serve as a judge or other officer of the IHT, should be revised to make clear that removal of judges on grounds of former Ba'ath party membership shall occur only via the IHT's internal fact finding and disciplinary procedures.

Lesson #5: Domestic war crimes trials should be kept short and focused.

Domestic war crimes courts should be judicious in deciding the charges brought against a defendant and in deciding the best sequence of cases. The court must be very conscious of the balance between lengthy delays needed to adequately prepare for trial and the rights of potential defendants held for extended periods pending trial. The legal predisposition to charge all the crimes attributable to an individual in one conglomerated case can lead to excessively lengthy trials, while the practice of charging specific situations will generally necessitate repetitive trials of senior officials. In any event, the length of trial will be a critical factor in the public perceptions of the process. The IHT was correct in selecting, as its first case against Saddam Hussein, a relatively straightforward incident of criminality. The Dujail case was manageable and the documentary evidence was remarkably strong, enabling the tribunal to narrow its focus. On the other hand, Saddam Hussein's execution after the Dujail verdict deprived victims of seeing him stand trial on other much more serious charges.

Lesson #6: Pre-trial motions need to be resolved as they arise.

Consistent with Iraqi and international law, Saddam's defense counsel filed a series of motions addressing issues such as the impartiality of the judges and access to witnesses and documents. One of the most glaring shortcomings of the tribunal was its failure to articulate a response to these motions until the final trial chamber opinion was issued at the end of the Dujail trial. The court's silence significantly weakened its transparency and undermined the credibility of the judicial process. In future trials, the IHT should make it a practice to issue written opinions addressing such issues as they arise, consistent with the normal practice of Iraqi courts and the international war crimes tribunals. In addition, the IHT should maintain a regularly updated list of all motions filed and all scheduling decisions.

Lesson #7: Domestic war crimes tribunals must utilize accepted tactics to maintain control of the courtroom without trammeling on the rights of the defense.

Trying former leaders is always a messy affair, especially when a decision has been made to televise the proceedings gavel-to-gavel, and the defendants have indicated an intention to disrupt the trial, distract public attention from the evidence against them, and turn the televised trial into a political stage. To ensure decorum and protect the integrity of the process, the judges in a domestic war crimes trial should be prepared to take a number of steps, which have been undertaken successfully by other tribunals.

First, standby counsel should be appointed at the start of the trial. They should be trained and assisted by international advisors. At the start of

the trial, the judges should explain the purpose of standby counsel, release general information about their qualifications and experience, and describe the conditions in which they will be asked to take over for retained defense counsel. The Yugoslavia and Rwanda tribunals and the Special Court for the Sierra Leone successfully employed standby counsel. The very existence of such standby public defenders may deter misconduct by the defense, since the defense lawyers know they can be replaced, if necessary, at a moment's notice. In addition, if misconduct persists after due warning, the tribunal should not hesitate to hold retained counsel in contempt of court and subject them to appropriate disciplinary sanctions for conduct that would merit such action in an ordinary court. In such cases, the presiding judge needs to dispassionately explain in open court why the steps taken were warranted.

Second, defendants must be warned that they will lose their right of self-representation (or in the Iraqi context, their right to ask follow-up questions after their lawyers are finished questioning a witness) and may face expulsion or other sanctions if they act disruptively or inappropriately in the courtroom. Persistent disruption after such a warning should result in temporary exclusion, followed by a calibrated response proportionate to the degree and persistence of disruption. If the defendant is expelled from the courtroom, he must be permitted to follow the courtroom proceedings and be able to speak with counsel remotely via communications link.

Lesson #8: The IHT's appeals process must be sufficiently deliberative.

The timing and substance of the Appeals Chamber decision was one of the most controversial aspects of the Dujail trial. The IHT should maintain a verbatim written transcript of court proceedings, which should be made available to the prosecution and defense in a timely manner so that they can prepare an appeal. Sufficient time must be allocated to all parties to raise specific allegations of factual or legal error. The Appeals Chamber decision must sufficiently address each legal and factual issue raised in a detailed manner. The time required to compose the Appeals Chamber decision should be sufficient to prepare the opinion and must not be driven by external political or emotional factors unrelated to the facts of the case.

Lesson #9: Domestic war crimes tribunals must make gender justice a priority.

Domestic war crimes tribunals should ensure fair representation of women judges, prosecutors, and other staff. They must also include individuals in the registry (including victims and witnesses units), chambers, and prosecution offices with legal expertise in sexual and gender violence, as well as expertise in trauma related to crimes of sexual violence. Such

provisions recognize the fact that many of the victims of war crimes and related atrocities are women, and that women jurists, prosecutors, and other court staff bring important perspectives to the gender crimes that tribunals should prosecute.

War crimes tribunals are designed not only to prosecute the leaders of regimes that have engaged in mass violations of humanitarian law, but also to serve as a model for a newly-emerging judicial system by employing international rules for the protection of the rights of the defendant and standards of due process. They should also serve as a model of gender equality by appointing women to serve visible roles as judges, prosecutors, and other prominent positions. Domestic war crimes tribunals should disclose the gender representation of each trial bench, along with other basic information about the qualifications and experience of the judges (but not put them at risk by disclosing their identities). The same should be disclosed with regard to the prosecution office, registry, and defense bar. Just as it is important that women serve as prominent members of government, so too should women participate prominently in war crimes tribunals. Before and during trials, domestic war crimes tribunals should also provide for judges, prosecutors, and other tribunal players training sessions on gender sensitivity and dealing with sexual violence. Efforts must be made to insure that such tribunals provide an enabling environment for victims of sexual violence before and during their testimony and keep victims of sexual violence informed about court proceedings thereafter. Prosecutors and investigating judges must make prosecuting and investigating gender crimes a priority from the outset.

Holding perpetrators of mass violations against women accountable for their acts has been a slow and tortuous process. Experience has shown that including women judges in war crimes tribunals particularly makes a difference. Tribunals should implement creative and proactive ways of encouraging a local populace to support war crimes trials, rather than concluding that said society is "just not ready for this." Outreach to women in the diaspora should also be considered where it may be thought to be particularly difficult to enlist local women in visible roles. While gender parity and justice is never convenient, it is a fundamental aspect for lasting and credible justice.

Lesson # 10: Domestic war crimes tribunals must make effective public outreach a priority.

Domestic war crimes tribunals should create a public outreach office to provide regular briefings on the court and trial developments. Not only would this enhance public knowledge about court proceedings, it would impede the constant speculation, misinformation, and rumors that so often overwhelm high-profile trials. The IHT failed to create an effective

public outreach office. Consequently, Iraqi citizens and the international community were essentially left to use their imaginations when judging the tribunal's proceedings. As evidenced by the decision to televise the proceedings, the IHT was designed in part to serve an educative function. But the procedural decisions of the IHT were usually shrouded in mystery, as little attempt was made to clarify the many public misconceptions as they arose during the Dujail trial. If the Iraqi people are ever going to feel ownership over the IHT proceedings and if the international community is ever going to accept the tribunal as legitimate and fair, they need to fully understand what is going on in the courtroom, and the message should not have to be filtered through the press.

To remedy this problem in the future, the presiding judge should explain procedural decisions in open court, even if this is not traditionally done in Iraqi trials. Where decisions are made in closed sessions, explanation for going into closed session should be given in open court, and a summary of what occurred in the closed session should also be delivered in open court after closed session. In addition, the IHT should appoint an experienced lawyer or experienced journalist with a legal background to head the Public Outreach Office (a role eventually undertaken by the chief investigating judge Ra'id). The IHT Public Outreach Officer should issue an official statement every day of the trial (in both Arabic and, where resources allow in, English and/or French), explaining what went on that day and answering the questions that the public and press are likely to have about the day's proceedings. Such official press statements, together with trial exhibits, transcripts, budgets, annual reports, and other court documents, should be posted (in both Arabic and, where resources allow, in English and/or French) on the tribunal's website on a daily basis for worldwide viewing.

Domestic war crimes tribunals should also run public service announcements on local and international television and radio, hold town hall meetings via the radio, the tribunal website, and where security permits throughout the country. They should develop a media program with workshops, bringing in selected domestic and international journalists to cover the tribunal and its trials. They should prepare, publish, and disseminate to key stakeholders and the public a handbook titled "what you need to know about the [domestic] war crimes tribunal." Public outreach should focus not only on the particulars of the day to day proceedings, but also on the importance of the right to a fair trial, and the presumption of innocence until proven guilty.