

Sabah Al-Mukhtar

Good morning ladies and gentlemen.

I would like to talk about the judiciary of Iraq because it is important to address at least a little bit the historical background of the issues. The American war and occupation of Iraq was conducted on the premise of weapons of mass destruction, Iraq's alleged association with Al Qaeda, its involvement in terrorist activities and therefore its threat for the world. The US together with the UK and some other countries somehow managed to involve the UN, even if in my point of view the use of force was never properly authorized. The proclaimed objective was to spread democracy and establish a rule of law in Iraq but I would like to suggest that this wasn't the real objective. Besides the fact that there has always been a policy of demonizing, division and ruling politics concerning Iraq, what actually happened was a complete destruction of the Iraqi judicial system in order to prove that Iraqis are unable able to run a judicial system and whatever may be, it is not the fault of the Americans, the UN, Europe or anyone else, but the fault of the Iraqis who are all sectarian.

Now, in order to examine my point, I will go into the elements. Basically there are **five points**:

- **Legitimacy:** Was what happened lawful and legitimate?
- **Legislation:** What did the imposed legislation represent?
- **Judiciary structure:** How was it was operated, how it was run?
- **Judges:** Who were the people who ran the system of justice?
- **Police and the law enforcement agencies:** How did they act?

To address the aspect of legitimacy we need to go back in history. I would like to suggest that already before 11 September 2001 there were no weapons of mass destruction in Iraq and no links to Al Qaeda and the idea to democratize Iraq was invented. That's why the US had the so called "Iraq Liberation Act" which was probably signed by the president of the USA on the 31st of October 1998, long before 11 September 2001 and before the weapons of mass destruction. Article 3 proves that it was the policy of the United States "to support efforts to remove the regime headed by Saddam Hussein from power in Iraq and to replace it by another." This law was probably behind the reason behind the war. No country in the world has ever promulgated a law in order to change the government of another country. Such a law contradicts Article 2 Paragraph 4 of the UN Charter, saying that "All Member States shall refrain from threats or use of force against the territorial integrity of political independence of any state...."

Now one in 1998 however objected the law and nobody said that this law violated the UN Charter, neither the US, who had promulgated the law, nor Europe, the United Nations, or the Arab countries. It is important to understand that this was the declared US policy in 1998 and it

was based on this law that they began to plan the situation in Iraq following the regime change. They set up the so called “Future for Iraq Project”, FIP, which was a State Department and gathered together around 250 quotes from Iraqis, that were either Iraqi by origin but of foreign nationality (France, Britain, USA) or traitors that were opposed to the regime, people prosecuted by the previous regime, but still labeled Iraqis. Those 250 people set up about 16 working groups, some dealing with the military situation, some with the economy, some with the social structure, some with the housing situation and some with the education situation. Most of those 250 proclaimed Iraqis were highly academic Americans who alleged to know Iraq better than anybody better than any Iraqi, but this was make-believe. They thought they could restructure the whole country on all levels. One of the 16 working groups was working on the intermediary of justice in Iraq. Somehow they decided that all laws of Iraq needed to be changed but many of the so called experts had never been to Iraq for the last 20 or 30 years. So they didn’t even know the situation. They didn’t know the history of Iraq and they didn’t realize the changes that had taken place in the society in-between. The FIP project was subsequently finally renamed by the Ministry of Defense into the Office of Reconstruction and Humanitarian Assistance (ORHA). The ORHA subsequently became the Coalition Provisional Authority (CPA), which was the government appointed by the Americans, and the name went into the UN resolutions. I don’t want to tackle UN resolutions and the system of the UN here, but finally there were many resolutions by the UN. One of them even refers to the Samawa Declaration. The name “Samawa Declaration” goes back to a public meeting held in Samahwa by Dr. Ahmed Al-Chalabi, whom most of us know. The announcements made by Ahmed Al-Chalabi became known as the Samawa Declaration and they have gone into Security Council resolutions and influenced decisions about the future of Iraq.

Concerning the legitimacy we need to have to look at a vast number of factors. The Americans assigned Bremer, who issued about 100 orders as well as, memoranda, orders and declarations. Doing so, he changed the whole legal structure of Iraq but changing laws in occupied territories is illegal under international law. Even if war and occupation occur, which is already unacceptable in itself, occupiers have duties and rights. One of the rights is the right to control the occupied territory; at the same time the occupier has the duty not to change any law or regulation, because this is a temporary arrangement. Despite all, Mr. Bremer completely restructured Iraq.

Bremer promulgated a new constitution, drafted by Noah Feldman, who was professor of Islamic law at Yale University. The entire legislation was changed. The company law was one of the newly issued orders, because Bremer considered the law necessary to ensure that the Iraqi economy became a free market. Bremer also changed the structure of the courts. New courts were created, like the Baghdad Central Court, despite the fact that Baghdad already had two criminal courts. But the new one could be filled with judges of his own choice and inclination. With Resolution 13, he summarily dismissed fifty percent of all judges, even if many cases were in the waiting line since at least two years. Bremer thus dismissed almost 50% of all the judges

on the basis that they were Baathists, Saddamists, etc. The new court issued the regulations for the appointment of the new judges. The required prequalification criteria for the newly appointed judges was that they needed to be opposed to the previous regime, had never been Baathists or in any way associated with the previous regime. Professional qualification did not play a big role. So they set up these courts. They set up the judges. Many judges were not qualified because they had graduated from law schools but never had practiced. It was not uncommon in Iraq that people with a law degree became merchants or construction workers or directors of companies. So some of these people were appointed, given a three month course and made judges. This strategy ruined courts and legislation and even until now there is the de-baathification policy.

Regardless of what anybody might think about the Baathists, they are not at all a racist political movement, they are a pan-Arab movement. Maybe some of them were bad, as any large political movement, but this does not affect the overall principle that they are Iraqis. Such a system of discrimination of a political party inside a democratic Iraq penalizes people for their political views. As a result almost 4 million Iraqis were disenfranchised, around a million Baathists banned from doing their work. If we carefully assume that each of them has three dependents, i.e. wife and two kids (although Iraqis usually have bigger families) we are looking at 4 million disenfranchised people.

Now let's have a look at the police and law enforcement agencies. One of the biggest crimes following the occupation was the dismantling of the state. Any member of the previous law enforcement agencies (military, police, traffic police) was dismissed. Already before Bremer an Ex-New York police chief had reorganized the police service in Baghdad, even if he did not possess any knowledge of the local mentality and language. The previous police had experience and knew their business. These people were all dismissed and nobody knew how to deal with criminals anymore since the newly appointed were completely inexperienced.

On top of this, two weeks ahead of the US-invasion in 2003, the Iraqi government had released around 16,000 criminals because otherwise they would have been killed in the bombing. After the war these prisoners suddenly declared to be anti-Saddam, anti-Baathists and having been incarcerated for political or sectarian reasons. Many of them were appointed. So the Americans created a system of criminals and gave a uniform to people without any national allegiance, but rather an allegiance to a tribe, a man or a sect. So this is how the state was dismantled. The result of such a policy is reflected in UN reports, that clearly show how unlawful practices have become widespread, among them torture, disappearances, abuse, rapes, absence of fair trials, abductions at checkpoints, arbitrary detentions and enforced confessions like: "If you don't confess we're going to rape your wife, whose name is ...". By this way Iraq has sentenced 1500 people and it has become the country that hangs more people than any other in the world. Such practices have frequently been condemned, but it's just lip service, whether it is by the Human Rights Council or the European Parliament.