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Teaching Notes for CHAPTER 18: The Iraq War: Efforts During Conflict to Address Past Atrocities and Seek Accountability

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TEACHING NOTES

CASE STUDY

The Iraq War: Efforts During Conflict to Address Past Atrocities and Seek Accountability

By Sandra L. Hodgkinson*

This case examines a hybrid model for addressing both past atrocities and establishment of a culture of human rights protection in a country plagued by decades of human rights abuses. The CPA's establishment of an office to support these human rights issues was unique for a military occupation force during a period of ongoing hostilities. At the highest level, this case explores the issue of whether war-torn nations should seek justice for past atrocities, particularly when there are ongoing hostilities and security concerns. It raises more specific questions about whether or not human rights protection can be enshrined in a government-run entity or whether an outside watchdog group is the preferred mechanism. At the most granular level, the case questions the value of modern-day DNA identification processes to identify missing persons where the crimes have lasted for decades, and there are large numbers of missing persons. Finally, it addresses the challenges associated with administering a domestic war crimes tribunal during ongoing hostilities when much of the international war crimes community has decided not to provide adequate support.

BACKGROUND

Prior to the launch of the Iraq War, the U.S. government assembled a team of experts to focus on human rights and transitional justice issues. The purpose of this effort was to establish a centralized effort to address past human rights atrocities and re-establish a culture of human rights protection in Iraq. The Coalition Provisional Authority (CPA) created an Office of Human Rights and Transitional Justice which was dedicated to this effort. To address past atrocities, this office collected oral testimonies, created memorials, assisted Iraqis in the identification of remains lying in mass graves, and supported the Iraqi effort to build the Iraqi High Tribunal (IHT), the war crimes tribunal which held members of the former regime accountable. To re-establish a culture of human rights protection in Iraq, this office supported a newly created Ministry of Human Rights, the development of human rights nongovernmental organizations, and other human rights related functions, such as human rights treaties, and efforts to monitor Iraq's prison system. Both the decline of the security situation in Iraq and the broad international opposition to the Iraq War brought unique challenges to these institutions.

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TARGET AUDIENCES

1. U.S. government agency officials with national security responsibilities
 - a. National Security Staff
 - b. State Department
 - c. U.S. Agency for International Development
 - d. Defense Department
2. High-level U.S. military personnel and staffs
 - a. Senior military staffs (Joint staff, combatant commands, services)
 - b. Senior military leaders
 - c. Civil-military planners
 - d. Civil Affairs officers
3. U.S. government agency officials with responsibilities for the protection of civilian persons in post-conflict environments, and accountability for human rights abuses.
 - a. State Department's Office of War Crimes Issues (S/WCI), Office of Conflict, Reconstruction and Stabilization (S/CRS), and International, Narcotics and Law Enforcement (INL) Bureau
 - b. U.S. Agency for International Development's Office of Transition Initiatives (USAID/OTI) and Disaster Assistance Relief Team (DART)
 - c. Justice Department's Office of Overseas Prosecution, Development, Assistance and Training (OPDAT), and International Criminal Investigations Development, Assistance and Training (ICITAP) programs
4. Academic experts in human rights protection and transitional justice
 - a. J.D. programs with specialization in international humanitarian law
 - b. M.A. and Ph.D. programs focused on post-conflict stabilization, human rights and transitional justice.
 - c. Undergraduate courses in political science.

ISSUES TO CONSIDER

1. What role does accountability play in countries recovering from conflict?
 - a. Should peace-building efforts be more significant than justice for past crimes?
 - b. At what point does justice become revenge? How can you protect against this?
2. Is a hybrid model of looking at past human rights abuses, and building a culture of human rights for the future a good thing?
 - a. If so, are there other models that will achieve this?
 - b. How have UN operations in the past modeled human rights protection and accountability for past crimes?

3. Should human rights protection be enshrined in a government institution, such as a Ministry, or should it be an independent watchdog?
 - a. What are the merits of each?
 - b. What role does civil society play in ensuring human rights protection?
4. With respect to the identification of remains, should a high-tech, expensive DNA program with exceptional accuracy be the model? Or alternatively, should we be willing to accept more rudimentary, less accurate, home-grown solutions which are cheaper and faster?
 - a. What are the downsides of each?
 - b. Is there a “market” for DNA and other high-end programs which drive experts to recommend them in places where they really are not the best solution?
 - c. What other high-end products does the international war crimes expert community “sell”? Complex databases for evidence collection?
5. Why do you think the international community was so reluctant to support the Iraq High Tribunal?
 - a. Wasn't there general consensus that the crimes of Saddam's regime were heinous?
 - b. Do you believe that the international community genuinely failed to support the tribunal because of the death penalty, and its location in Baghdad, or could it be opposition to the Iraq War policy in general?
 - c. More broadly, do you believe that international expert assistance should be tied to specific conditions (e.g. no death penalty, certain due process requirements?) What are the pros and cons of this?
6. How do you feel about the outcome of Saddam Hussein's trial?
 - a. Would it be a better outcome if he had been convicted but received a sentence of life imprisonment? If that had happened, where do you believe he would be today?
 - b. Alternatively, had he gone to the Hague, how far along do we believe his trial would be?
 - c. Should he have been tried for all of his crimes at once, or for one of his crimes only (e.g. the Dujail trial or another)?
7. Should the Iraq High Tribunal have continued operations, as it did, when the security situation deteriorated? What are the pros and cons of this?
8. More broadly, where does the balance lie in allowing countries to pursue their own justice rather than having the international community do it for them?
 - a. Discuss whether or not the ICC (if it has jurisdiction) should take jurisdiction in similar cases.
 - b. Use this experience to argue for or against a domestic war crimes tribunal in Libya.

9. While not the purpose of this specific case, this is a useful backdrop to discuss the extent of the damage that the Abu Ghraib scandal caused for U.S. legitimacy in Iraq.
 - a. How do you think it affected the Iraqi perception of U.S. respect for human rights? Do they believe the U.S. practices what it preaches?
 - b. Given that Abu Ghraib was a notorious torture center under Saddam's rule, was it a mistake for the U.S. to operate the prison at all? Do you think the damage would have been quite as severe if the abuse occurred at an unknown or new facility somewhere in the Iraqi countryside?

Exercises

1. Role play - Diplomacy: Break the students into groups of four. Have two students serve as advisors to the Iraq Governing Council in the summer/fall of 2003 providing advice on the most essential aspects of their proposed war crimes tribunal to the international community, including the consequences they will suffer if they do not accept this advice. Have two students play the Iraq Governing Council, laying out why it is essential that Saddam Hussein be tried on Iraqi soil, in Arabic, using the death penalty. This is an exercise in diplomacy and effectiveness.
2. Role Play - Empathy: Break the students into groups of two. One student will play a grieving mother/father at the scene of a mass grave site. The other student will play a member of the CPA in the spring of 2003. What do you say? How do you approach them? This is an exercise in empathy, compassion and maintaining composure.
3. Mock Trial: Assign one student of the class to play a disruptive, unruly Saddam Hussein who is being televised during the Dujail trial. Assign another student as the Chief Judge of the trial. The remaining students can be spectators and court personnel in the courtroom/audience. Watch how the Chief Judge handles the situation. This is an exercise which demonstrates the power of perception (fairness of the trial, control of the judge, etc.) and the power of grand-standing.