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Payam Akhavan

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Justice, Power, and the Realities of Interdependence: Lessons from the Milošević and Hussein Trials

Payam Akhavan†

“You shall not render an unjust judgment; you shall not be partial to the poor or defer to the great: with justice you shall judge your neighbour.”
(Leviticus 19:15)

On September 30, 1992, I attended a fateful meeting at the Intercontinental Hotel in Zagreb, Croatia. A recent graduate of law school, I felt privileged to be part of a high-level diplomatic mission entrusted with investigating humanitarian law violations in the former Yugoslavia. We had been dispatched by the Conference on Security and Cooperation in Europe (CSCE)¹ in response to the horrific accounts of “ethnic cleansing” that had shattered Europe’s post-Cold War euphoria. Like many others, I was outraged by the radical evil unfolding in the Balkans, and in my youthful idealism I wanted justice to be done. Yet, as Ambassador Hans Corell of Sweden opened the meeting, there was a feeling that we were unwitting participants in a political farce. The specter of genocide once again haunted Europe and there was no resolve to intervene. If anything, Slobodan Milošević was considered indispensable to stability in the Balkans and appeasement of his regime was the prevailing policy. Against this backdrop I felt somehow that our mission was merely a pretension of concern.

It was apparent from the outset that given the scale of the atrocities, the conventional model of human rights reporting was grossly inadequate. The shield of state sovereignty had to be pierced and the perpetrators held individually accountable for their crimes. This was an ambitious undertaking in an entrenched culture of impunity that had countenanced the likes of Pol Pot, Idi Amin, and Mengistu. The report’s recommendation that an international criminal tribunal be established was greeted with skepticism by some, with ridicule by others. Nonetheless, soon after, as pressure mounted to “do something”, or to appear to be doing something, the United Nations Security Council established a Commission of Experts, followed by the International Criminal Tribunal for the former Yugoslavia (ICTY) in May 1993. When I joined the ICTY Prosecutor’s Office in its very first days, the war was still raging and the nascent institution’s success

† S.J.D., Senior Fellow, Yale Law School, Cornell International Law Journal, Spring Symposium 2005, “Milošević and Hussein on Trial” Ithaca, 25 February 2005

1. Now known as the Organization for Security and Cooperation in Europe (OSCE).

was far from certain. The Prosecutor's Office had no budget, no staff, and above all, no Prosecutor had yet been appointed. While eleven prominent judges were paraded before television cameras to create the image of a court in action, the docket was empty and unlikely to be filled any time soon. As the first Legal Advisor, instead of historical grandeur, I felt despair that beyond lowly war criminals like Duško Tadić, the grand conspirators of ethnic cleansing would never be captured. There was a manifest contradiction between a peace process that ratified territorial gains made by "ethnic cleansing" and a justice process aimed at prosecuting the very same crimes. This was no Nuremberg Tribunal. It was like threatening Hitler with prosecution while acquiescing in the annexation of Poland.

At the outset, the ICTY was either relegated to a mere bargaining chip with warlords, or dismissed as an impediment to the peace process. After all, what incentive would leaders have to end the war if they faced prosecution at the end? Naïve idealism, the political realists told us, must give way to "power realities." This conception of realism reflected a current of thought dating back to antiquity. It called to mind the Athenians pronouncement to the Melians in *The Peloponnesian War* that "the standard of justice depends on the equality of power to compel and that in fact the strong do what they have the power to do and the weak accept what they have to accept."² This, however, was not the world of antiquity. It was the world of the late twentieth century, a world in which the futility of divisive ideologies at whose altar millions were sacrificed had led to a gradual acceptance of international cooperation, an emerging albeit grudging consciousness of humankind's inextricable interdependence, a world in which events in the most remote reaches of the planet would have inevitable repercussions on all. In this world, the potential for perpetual instability in Europe was also an ever-present reality, and the link between bringing ethnic demagogues to justice and a lasting peace was an inescapable fact. Some mystified ethnic war in the Balkans as an expression of primordial hatred, an inevitable "clash of civilizations" in which ethnic separation was the only solution. But as United States Ambassador Warren Zimmerman observed, instead of "spontaneous combustion" it was more accurate to say that the conflagrations in former Yugoslavia were the work of "pyromaniacs," political elites who incited ethnic hatred and violence as an instrument of control.³ The war was foremost about the seduction of absolute power, and its instrument was the political homogenization of a deceived and fearful multitude against an imagined enemy. Conversely, the remarkable display of "people power" in the streets of Belgrade that precipitated the downfall of Milošević demonstrated that this was not a war of peoples. Rather, it was a war between ethnic fascism and multiethnic democracy, a war where accountability was a vital antidote to tyranny founded on the suppression of truth. Against this background, the disjunction between

2. THUCYDIDES, HISTORY OF THE PELOPONNESIAN WAR 401-02 (Rex Warner trans., Penguin Books 1972).

3. WARREN ZIMMERMAN, ORIGINS OF A CATASTROPHE: YUGOSLAVIA AND ITS DESTROYERS - AMERICA'S LAST AMBASSADOR TELLS WHAT HAPPENED AND WHY 210 (1996).

realpolitik and justice was more a reflection of obsolete cynicism rather than astute statesmanship. The ICTY succeeded beyond what any of us had imagined because of the grudging realization that “soft power” in judicial guise was a significant instrument of post-conflict peace-building, the benefits of which went far beyond the boundaries of the former Yugoslavia.

Beyond such pragmatic considerations there was another dimension to interdependence, that of the relationship between justice for others and our self-conception as liberal democracies, as civilized societies committed to human rights. This political identity is a valuable cultural commodity, a source of national self-confidence and the projection of influence abroad. It is essential to the rationalization and legitimization of political systems, elites, and priorities, even vital for satisfying the increasing demand for inner meaning in an empty consumerist culture. What we call “power realities” are not immutable god-given phenomena as some would believe. They are reflections of our identity, of what we stand for as a people, of what we choose to prioritize in the democratic process, of whether our votes are influenced more by the Monica Lewinsky scandal or the failure to stop the Rwandan genocide. In this sense, our response to the cries of the victims, the prosecution of war criminals, is also about the need to affirm our self-conception, about the production of social meaning. But I have come to see that the lines between compassion and condescension, between empathy and exploitation, between genuine engagement and pretension of concern, are not always distinguishable. I have learned that the image of justice in the eyes of those whom have lost all they had, for whom residual human dignity is a last refuge, is of paramount importance if we are committed to their empowerment through the restoration of lost humanity.

As I became part of a self-contained war crimes industry, I found that the suffering of others was often a platform for the self-serving demonstration of liberal virtue, or an opportunity to display academic brilliance, political acumen, or bureaucratic prowess. Despite the pious incantations and platitudes to the contrary, I found the victims often reduced to objects of pity rather than human subjects whose voices should be heard. The seduction of fame and career, the glamour of making history, of doing something great, our self-glorification as heroes and saviors, all of these impulses missed the deeper meaning of justice and the humility that it demands of us. If there is any space for the cult of heroism, for celebration of superhuman qualities, it should be reserved for those hapless people who demonstrated the resilience of the human spirit against overwhelming odds; those who struggled for daily survival during the siege of Sarajevo, the bereaved mothers of Srebrenica who still search for the remains of their sons, the girls of Foča who endured repeated rape and yet still had the courage to testify against their tormentors, those who go on living despite unbearable grief and anguish. It is in their presence that we find the best proof of our inherent nobility, of the power of justice to redeem the shared humanity that binds us together.

On July 1, 2004, the morning that Saddam Hussein was to make his first appearance in court, I received a call from CNN Headline News. They wanted someone to comment on this newsworthy spectacle and apparently the caption “former U.N. prosecutor” made me eminently qualified. As I rushed to the studio in Manhattan, I was at a loss as to what I should say. It was not because I had nothing to say. On the contrary, I had too much to say, and I could not reduce it to simplistic sound bytes. Unlike the former Yugoslavia, Iraq was next door to my land of birth Iran, and the crimes of Saddam and the history of his appeasement by the international community was in some way part of my personal universe. I commented in the interview that Saddam was a heinous criminal whose prosecution was a momentous occasion for introducing accountability for human rights violations in the Middle East. Inwardly, however, I had serious concerns as to whether this opportunity would be squandered by manipulating the truth for political ends. This I felt would discredit justice and breed cynicism in the expectant eyes of people in the region. But the situation was rather complex and could not easily be conveyed in sound bytes to a public with a short and selective memory.

While most of the debate surrounding the Iraqi Special Tribunal had revolved around fair trial guarantees or the qualification of judges, it was prosecutorial independence and discretion that concerned me most. I had learned in the ICTY the obvious fact that the choice of investigations ultimately determines the scope and content of the historical record produced by legal proceedings. I also knew that the construction of the truth about Saddam’s Iraq, the exposition of the lessons learned from prosecution of his regime’s crimes, was no simple matter, not least because those who now championed justice for the Iraqi people were once Saddam’s apologists, going so far as to deny the genocide against the Kurds. In an interdependent world, the appeasement of power and the blatant disregard of human rights had helped to create a monster who had come to haunt the same forces that once befriended him.

This unfortunate past is perhaps best portrayed by the chemical attack against the civilian population of Halabja on March 16, 1988, during the Iran-Iraq war, an attack that in many respects embodied the evil of Saddam’s regime and marked the early stages of the genocidal Anfal campaign against Iraq’s Kurdish people. In his 2003 State of the Union Address, President Bush referred to this incident in justifying the invasion of Iraq: “The dictator who is assembling the world’s most dangerous weapons has already used them on whole villages—leaving thousands of his own citizens dead, blind, or disfigured If this is not evil, then evil has no meaning.”⁴ A glimpse of the horrors of what transpired in Halabja may explain why I agree fully with this description of evil yet remain ambivalent about whether the Iraqi Special Tribunal will be a befitting response to Saddam’s crimes.

4. President George W. Bush, State of the Union (Jan. 28, 2003), *available at*: <http://www.whitehouse.gov/news/releases/2003/01/20030128-19.html>.

In early 1988, the Iran-Iraq war was approaching its climax. Iraq had escalated the "War of the Cities" in order to force Iran to negotiate a ceasefire. Starting on February 29, 1988, Iraq fired as many as 182 SCUD missiles at Tehran over a fifty-two day period.⁵ Saddam had instigated the war in September, 1980 with the occupation of Khoramshahr, which he claimed for Iraq based on its predominantly Arabic ethnic composition. Evoking the imagery of the Islamic conquest of Zoroastrian Persia by the Arabs, and playing on the mythical division between Semitic Arabs and Aryan Persians, he called the war *Qadisiyyat Saddam* in memory of the battle fought on the plains of that name in 636 A.D. Saddam was exploiting the political upheaval of the 1979 revolution and the disintegration of the Shah's army, but ultimately underestimated the unified nationalistic response of Iranians, and the willingness of the Islamic Republic to use and prolong the war as a means of consolidating the power of Iran's absolutist theocracy. Kanan Makiya writes that contrary to popular belief, Iraq's aggression "had nothing to do with rancour over possessions, competition for economic assets, greed for territory, or alleged Iranian intentions . . . Saddam Husain's decision to wage war had an independent meaning to it because it was so fundamentally gratuitous."⁶ The pinnacle of absolute power, Makiya writes, "allowed the notoriously 'cautious' Saddam Husain to translate well-founded self-confidence into megalomania. A demonstrably successful projection of Ba'hist power . . . would have catapulted Saddam" to realize his fantasy of becoming the new Gamal Abd'ul Nasser, leading the mythical Arab nation to glory and victory.⁷ While the people of Iran suffered terribly, the Islamic Republic exploited the outpouring of Iranian nationalism to crush internal political dissent in the name of the war and revolution. Khomeini soon "elevated the war to the realm of the spiritual by converting a territorial invasion motivated by political ambition into God's war against the infidel."⁸

The war took a terrible toll. The Behesht-e-Zahra cemetery south of Tehran is a chronicle of this tragedy that scarred an entire generation in Iran. It is a seemingly endless city of death, containing some of the 750,000 Iranian casualties of this war. Framed portraits and personal articles litter the graves as reminders for those who still mourn their loss. Sandra Mackey, a Middle East expert, writes of her visit to Iran that:

Almost any Iranian can testify to personal loss. In a mud-walled house in a small village, a woman wrapped in a chador drew deeply on a cigarette and told me about her son who stepped on a mine. An engineer in his early forties lost six cousins ranging in age from sixteen to forty-nine. A man selling fresh pomegranates in the bazaar in Tehran wept about his fourteen-year-old who never returned from the front. And a young, melancholy busi-

5. See HUMAN RIGHTS WATCH, *GENOCIDE IN IRAQ: THE ANFAL CAMPAIGN AGAINST THE KURDS*, at 102 n.19 (1993).

6. KANAN MAKIYA, *REPUBLIC OF FEAR: THE POLITICS OF MODERN IRAQ* 270, 272 (1989) (using pseudonym Samir al-Khalil).

7. *Id.* at 273.

8. SANDRA MACKEY, *THE IRANIANS: PERSIA, ISLAM AND THE SOUL OF A NATION* 319 (1996).

nessman described the day in 1988 when an Iraqi [SCUD] missile hit a Tehran apartment house, killing his wife, the mother of his five-year-old daughter. Those who survived the war's battlefields walk on crutches and canes. They live their lives without sight. They sell cigarettes on the street because a bullet in the head, too dangerous to remove, has closed the door on real employment. Thousands more escaped physical injury but not mental torture. Over and over, doctors and educators told me stories about a whole generation of men whose minds more than their bodies are damaged by war.⁹

It was on March 13, 1988 that Iranian *pasdaran* Revolutionary Guards and Kurdish *peshmerga* launched a joint attack against Iraqi forces to take the strategically important town of Halabja. By March 15, the Iranian forces were seen walking through the streets chanting "God is Great! Khomeini is our Leader!" On March 16, the Iraqis counter-attacked with conventional air strikes and artillery shelling. By around three o'clock that afternoon, the villagers were overwhelmed by an unusual smell of garlic and apples. An eyewitness named Nasreen explained how these smells were carried into her house by the wind. When she checked on a caged partridge in the house, she saw that the bird had fallen on its side and was dying. She looked out the window: "It was very quiet, but the animals were dying. The sheep and goats were dying." She ran into the cellar where her family was sheltering from the bombardment and told everybody "[t]here was something wrong with the air." Everybody panicked not knowing what they should do. She felt a sharp pain in her eyes. "Then the children started throwing up. They kept throwing up. They were in so much pain, and crying so much. They were crying all the time. My mother was crying. Then the old people started throwing up." Nasreen and her family decided to escape from the cellar that had now been transformed into a gas chamber. "The leaves were falling off the trees, even though it was spring" she recalled. "There were smoke clouds around, clinging to the ground." As she ran, she saw people "lying frozen on the ground. There was a small baby on the ground, away from her mother. I thought they were both sleeping. But she had dropped the baby and then died. And I think the baby tried to crawl away, but it died, too." Another witness recalls that a woman named Hamida tried to save her two-year old daughter "by allowing her to nurse from her breast" thinking that this would spare her from breathing the gas. "The baby's name was Dashneh" he recalled. "She nursed for a long time. Her mother died while she was nursing. But she kept nursing."¹⁰

It is estimated that up to 5,000 civilians expired in this attack alone. It was the first use of poison gas to exterminate women and children since the gas chambers of the Holocaust. It was not to be the last as Ali Hassan Al-Majid, otherwise known as "Chemical Ali", enthusiastically implemented Saddam's *Anfal* liquidation policy against the Kurds. Audiotapes

9. *Id.* at 332.

10. See Jeffrey Goldberg, *The Great Terror*, THE NEW YORKER, Mar. 25, 2002, at 52-54.

of his remarks at Ba'ath Party meetings recovered by Human Rights Watch in 1991 indicate that he had nothing to fear: "I will kill them all with chemical weapons! Who is going to say anything? The international community? Fuck them! The international community and those who listen to them."¹¹ Why would Chemical Ali be so confident about committing genocide with impunity?

During this period, the United States was preoccupied with containing revolutionary Iran's ambitions and protecting oil supplies in the Persian Gulf. According to a former government official, "[h]aving gone through the 440 days of the hostage crisis in Iran . . . the period when we were the Great Satan, if Iraq had gone down it would have had a catastrophic effect on Kuwait and Saudi Arabia, and the whole region might have gone down."¹² In the pursuit of this conception of the "national interest," Donald Rumsfeld had been dispatched as President Reagan's envoy to meet with Saddam Hussein in Baghdad in December 1983. He was instructed to facilitate the restoration of diplomatic relations that had been severed earlier because of Iraq's support of terrorism. A now declassified message from Rumsfeld to the State Department regarding the outcome of the meeting in Baghdad refers to the "obvious pleasure" of Saddam at a letter from President Reagan and later to Rumsfeld's comment which indicated the United States was opposed to an outcome of the war that "weakened Iraq's role or enhanced interests and ambitions of Iran."¹³ The bilateral relationship was quickly strengthened. The United States soon began a covert program to provide Iraq with "critical battle planning assistance at a time when American intelligence agencies knew that Iraqi commanders would employ chemical weapons in waging the decisive battles of the Iran-Iraq war."¹⁴ According to a New York Times article:

The covert program was carried out at a time when President Reagan's top aides, including Secretary of State George P. Shultz, Defense Secretary Frank C. Carlucci, and Gen. Colin L. Powell, the national security adviser, were publicly condemning Iraq for its use of poison gas, especially after Iraq attacked Kurds in Halabja in March 1988.¹⁵

According to PBS Frontline, Washington Post, and Newsweek reports:

German, British, and American corporations sold Iraq military hardware, arms technology, advanced computers, and key ingredients for the manufacture of missiles and chemical and biological weapons, with the active approval of the U.S. government Among the items purchased by Iraq . . . were American-built helicopters that were used, U.S. government officials

11. HUMAN RIGHTS WATCH, *supra* note 5, at 349.

12. Patrick E. Tyler, *Officers Say U.S. Aided Iraq in War Despite Use of Gas*, N.Y. TIMES, Aug. 18, 2002, at A1.

13. Cable from Charles H. Price II, United States Embassy in United Kingdom, to the Department of State, Rumsfeld Mission: December 20 Meeting with Iraqi President Saddam Hussein ¶¶ 2, 14 (Dec. 21, 1983), available at <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB82/iraq31.pdf>.

14. Tyler, *supra* note 12 at A1.

15. *Id.*

concluded, in poison gas attacks on the Kurds.¹⁶

The Reagan and Bush administrations fought congressional efforts to impose sanctions against Iraq for the mass-murder of Kurds in Halabja. Sixty officers of the Defense Intelligence Agency continued to provide support for the classified program. According to a veteran of the program, the Pentagon “wasn’t so horrified by Iraq’s use of gas It was just another way of killing people—whether with a bullet or phosgene, it didn’t make any difference.”¹⁷ Given the propaganda benefits of Halabja for Iran, the Defense Intelligence Agency even took the extraordinary step of publishing a report suggesting that Iran was responsible for the use of poison gas at Halabja. Stephen Pelletiere, the senior CIA political analyst of Iraq during the Anfal campaign and later a professor at the Army War College, was one of the authors of this report, though he had no expertise in medical or forensic sciences. In a disturbingly ironic twist, on January 31, 2003, the New York Times published an op-ed piece by Pelletiere entitled “A War Crime or An Act of War?” in which he argues remarkably that:

Before we go to war over Halabja, the administration owes the American people the full facts. And if it has other examples of Saddam Hussein gassing Kurds, it must show that they were not pro-Iranian Kurdish guerrillas who died fighting alongside Iranian Revolutionary Guards. Until Washington gives us proof of Saddam Hussein’s supposed atrocities, why are we picking on Iraq on human rights grounds, particularly when there are so many other repressive regimes Washington supports?¹⁸

And what’s more, many groups on the political left opposed to the American invasion of Iraq seized on this article and invoked this shameful attempt at genocide denial in their “anti-hegemonist” discourse to suggest that President Bush’s reference to Halabja in his 2003 State of the Union speech was a lie. This sordid twisted tale of political cynicism helps explain why Chemical Ali was so confident that he could commit genocide with impunity. Perhaps it also explains why Saddam was sufficiently emboldened to invade Kuwait in 1990, given the unconditional support that he received even as he exterminated his fellow citizens. It would not be unreasonable to suggest that had the Iraqi Ba’athist regime continued to act in furtherance of the American “national interest” we would not be seeing Ali Hassan Al-Majid standing trial for genocide before an Iraqi Special Tribunal today.

This brings me to my ambivalence about an Iraqi Special Tribunal in which investigations appear thus far to conveniently disregard Saddam’s crimes against the Iranian people, although crimes committed during the occupation of Kuwait feature prominently. The International Military Tribunal at Nuremberg stated that initiating “a war of aggression . . . is not only an international crime; it is the supreme international crime differing

16. Leo Casey, *Questioning Halabja: Genocide and the Expedient Political Lie*, DISSENT MAGAZINE, Summer 2003, at 62.

17. Tyler, *supra* note 12, at A1.

18. Stephen C. Pelletiere, Op-Ed., *A War Crime or An Act of War?*, N.Y. TIMES, Jan. 31, 2003, at A29.

only from other war crimes in that it contains within itself the accumulated evil of the whole.”¹⁹ Notwithstanding the debate about the definition of the crime of aggression under international law, inclusion of the events surrounding the invasion of Iran is essential to constructing an accurate and representative historical record of Saddam’s rise to absolute power and his consequent repression of the Iraqi people. Excluding this episode of state criminality would be the equivalent of the Nuremberg Judgment omitting Hitler’s aggression against the eastern lands and the inextricable link between external war and internal consolidation of authoritarian rule. Beyond determination of individual guilt, the historical narrative that emanates from the Iraqi Special Tribunal should not only benefit the Iraqi people, but also the international community. Of course, it is more expedient to construct a self-image as heroes and saviors rather than accomplices to war crimes and genocide. Public exposure to the truth is, however, essential for a healthy democracy and if any lessons are to be learned about the consequences of such cynicism on future relations with the Middle East, there must be a genuine reckoning with the past.

The omission of Saddam’s war against Iran in investigations at a time when the United States is pre-occupied with Iranian containment fails to distinguish between the Islamic Republic’s conservative rulers on the one hand, and the people of Iran on the other. Even those with a realist persuasion in foreign policy have come to realize the importance of supporting the popular will in Iran. In proposing a “new approach” towards Iran that emphasizes a “non-violent transition to democracy”, the Committee on the Present Danger, co-chaired by George Schultz and James Woolsey, remarks: “Iran’s people . . . are our allies. They want to free themselves from Khamenei’s oppression and they want Iran to join the community of prosperous, peaceful democracies.”²⁰ While there is indeed nothing like living under an anti-American theocracy to make people pro-American, if the people of Iran are considered allies would it not be in America’s best interests to recognize their suffering under Saddam’s imposed war? Would this not be a welcome expression of goodwill that would help win hearts and minds? Would it not also provide an opening, an incentive for examination of the Islamic Republic’s injustice against its own people at some point in the future? Who will answer for the thousands of *Basij* child soldiers from poor devout families in rural Iran who were used as human minesweepers by the *pasdaran* Revolutionary Guards? These children are also in the endless graves of Tehran’s Behesht-e-Zahra cemetery, having sacrificed their lives in the belief that the imitation brass keys hung around their neck would open the door to paradise in the afterlife. Beyond the war, who will answer for the thousands upon thousands of dissidents who were tortured behind the walls of Tehran’s notorious Evin prison or those who

19. 22 THE TRIAL OF GERMAN MAJOR WAR CRIMINALS: PROCEEDINGS OF THE INTERNATIONAL MILITARY TRIBUNAL SITTING AT NUREMBURG GERMANY 426 (1950), available at <http://www.yale.edu/lawweb/avalon/imt/proc/09-30-46.htm>.

20. THE COMMITTEE ON THE PRESENT DANGER, IRAN – A NEW APPROACH 1 (2004), available at http://www.fightingterror.org/newsroom/CPD_Iran_policy_paper.pdf.

were hanged in public squares from cranes following summary show trials?

Beyond the Iran-Iraq war, the impact of the Iraqi Special Tribunal and a genuine U.S. commitment to accountability has far-reaching consequences on civil society and democracy in Iran, consequences that should not be underestimated. This potential impact is recognized even by those realist elements in the American political establishment who are not known for a particularly strong commitment to human rights, or who view Iran primarily if not exclusively through the prism of security rather than justice and democracy. The Committee on the Present Danger observes, for instance, that the April 1997 Mykonos trial in which a German court implicated Iran's leaders in the assassination of Kurdish dissidents had an important impact on Iranian opinion "contributing to the big vote for Khatami that year, perceived as a reformer."²¹ The Committee even proposes that the United States "seek the cooperation of like-minded governments, leading toward creation of an international tribunal to try Khamenei."²² Nevertheless, it is one thing to pursue accountability for the mere sake of political expedience, and yet another to pursue human rights for its own sake. An indication that the United States is genuinely committed to accountability beyond narrow *realpolitik* considerations such as nuclear containment or support for terrorism would greatly influence Iranian public opinion and civil society at a crucial moment in United States-Iran relations, and at a moment when the Iranian people and the international community are urgently attempting to further a non-violent and lasting transition to democracy in Iran.

The Milošević and Hussein trials represent important milestones in the tortuous historical path towards accountability for the most serious international crimes. Despite their many shortcomings, these judicial experiments mark a radical departure from the culture of impunity that has prevailed for so long. Each involves a complex and multifaceted context requiring a tactful mediation between law and politics, a delicate balance between the global and local. Each contributes in its own measure to the transformation of the boundaries of power and legitimacy in international affairs, to a subtle but far reaching socio-pedagogical process that instills subliminal inhibitions against State criminality that induces a condition of habitual lawfulness. Military power can eliminate threats in the short-term, but in an inextricably interdependent world, long-term peace and stability can only be sustained by the power of legitimacy. If war crimes trials are contaminated by selective prosecution and distortions of the truth, if they become mere instruments of political expedience, the significant progress made in the past decade in establishing a credible system of international criminal justice will be seriously undermined.

21. *Id.* at 5.

22. *Id.*