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The Spaceship Has Landed Who's Justice Anyway? Justice in Situations of Ongoing Conflict – A Prosecutor's Point of View

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**The Spaceship Has Landed
Who's Justice Anyway?**

*Justice in Situations of Ongoing Conflict
A Prosecutor's Point of View*

David M. Crane¹

Is the justice we seek, the justice the victims want in societies in conflict or in transition? I am not so sure, maybe.

As international criminal justice evolves into a discipline within our profession, it is imperative that we consider the cultural aspects of the justice we seek on behalf of victims of atrocity. It may not be the outcome they want whether it is in Iraq, Cambodia or elsewhere.

Justice comes in many forms in various societies. We've seen attempts in Rwanda, in an overwhelmed justice system, to try thousands upon thousands of perpetrators of the genocide in the early 1990's. Additionally, while in Sierra Leone, I saw the Truth and Reconciliation Commission seek to reconcile truth and justice for the victims of that ten-year long civil war, along with the international tribunal there, where I was its' Chief Prosecutor. Other local domestic ways in Sierra Leone to seek justice and to reinsert child soldiers back into society were the cleansing ceremonies. This was a type of justice to be sure.

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In Iraq we should not ignore, but respect, how the judges, as well as the staff of the IHT, are laying their law and custom over the proceedings. Despite my disdain for the way the IHT was created outside of international norms by the United States, Iraqi judges are taking Iraqi law, along with various principles of international law, and shaping it for their use to ensure that justice is done from an Iraqi point of view. It has become their tribunal, despite the public perception that it is a US manipulated aberration.

It is the Iraqi's who are going to have to live with the result and I think that the judges know this as well. In my mind, the IHT has only one chance to get it right, as we did in West Africa. One slip and the entire process could unravel. The fragile respect for the rule of law shattered. One could argue that it did shatter with the gruesome execution of Saddam Hussein.

All this aside, how did we take culture and custom into consideration in West Africa, keeping in mind that the Special Court was for and about the people of Sierra Leone? First, we went out and listened to the people, asking them what was justice to them and what result they would want to see happen. Secondly, we took that input and factored it into our discussions on who we indicted, why, and under what charges. Third, we listened to the victims as they made their statements and ensured that each team had the appropriate Sierra Leonean presence during the interviews. Gender and child victims were especially cared for culturally. This allowed us to understand the witness' perspective and to take care that this perspective was given its due. Factoring in culture, also, allowed for us to plan for that perspective in preparing our case in chief.

Fourth, we continued to monitor our witnesses and victims throughout the entire process by creating a witness management program within my office, a first-ever unit in a tribunal. It was staffed by Sierra Leoneans. Fifth, we ensured that all personnel within my office were culturally aware of their surrounding and that they respected where they were. It was one of my key briefing points during my welcome of newcomers. We encouraged my office to embrace the culture and learn from it. I believe it was helpful as we prepared for and examined our witnesses in court.

To be able to watch Sierra Leoneans come in and give testimony in their language, with their perspectives to the crime(s) respected, and to see them walk out with their heads held high; knowing this, and that true justice had been done, both internationally and locally, was an important signal to the people of West Africa that the rule of law, regardless of how it is applied, is more powerful than the rule of the gun.

Though we cannot, nor would I even suggest otherwise, substitute customary approaches to our international criminal procedures, practitioners should still seek ways to ensure that the victims, the citizenry and populace, have a sense that what is being done is just, and to the extent it will mesh with custom and culture so much the better. In West Africa we did not want this to be seen as white man's justice, a charge the indictees leveled at us from time to time. With care and respect for the local culture and custom, we avoided that charge. Truly, tribunals and courts are created for and about the victims. We should never forget that.