



USEF PANEL DISCUSSION NOTES

November 4, 2004

Justice in the Balance: Judicial Reform in Egypt and Iraq

Speaker

Dr. Cherif Bassiouni, Professor of Law and President, International Human Rights Law Institute of DePaul University College of Law (IHRLI)

Moderator

Ambassador Nicholas Veliotos, Chairman, USEF

Co-Host

American Bar Association, Washington, DC

Dr. Bassiouni began his presentation by outlining IHRLI's current contributions to the judicial systems in Iraq and Afghanistan and then moved from this experience into a discussion of the Egyptian judicial system.

Through a USAID contract, IHRLI is currently helping to restructure law schools and establish legal clinics to strengthen Iraq's legal institutions. To date, 43 professionals have successfully completed a rigorous training program. While stressing the positive outcomes of the program and describing it as a vanguard of things to come, Bassiouni cautioned that success can only be achieved through a comprehensive approach. He warned that it would be a severe mistake to train only a segment of the system.

In Afghanistan, IHRLI has focused on educating judges. As a result, 450 diverse judges have been trained, including young women and older tribal judges. The Chief Justice of the Supreme Court has come to recognize the young women's talents and is shortly expected to appoint 50 female judges. The educational program has a deliberate and substantial Egyptian bias. The courses are taught in Arabic to avoid sequential interpretation and offered by Egyptian judges and trainers. As the Afghan legal system of the 1960s was modeled after the Egyptian system, the program appeals to the trainees. Analogous to the lessons learned from the Iraqi program, Bassiouni stressed the need for continuity, complementarity and comprehensiveness.

Bassiouni continued by explaining that, through time, legal systems and laws have been documented as a continuum of civilizations. Legal systems have proven to be the ligament that binds a society together. Not only have such systems been fundamental in resolving inter-personal disputes, but they have been crucial for all governing bodies. With legal systems in place, those who reign can govern more effectively and successfully deliver legal rights through social services.

The notion of governance within an independent judiciary has largely been developed in response to unforeseen challenges or the presence of exemplary individuals in leadership positions. Moving through history, Bassiouni explained, cultural and historical contexts

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have impacted its functionality. For example, the Egyptian Constitution can only be understood in its cultural context. Several articles in the Constitution of 1970 stress the importance of judicial independence and resistance to the interference of other authorities. Referencing his grandfather's contributions to the Constitution of 1923, Bassiouni explained that the constitution contains provisions against exile as it was drafted by individuals who had been subjected to this tool. The leaders of the intellectual, independence and nationalist movements during this period instigated legal reforms that strengthened the rule of law. On account of their contributions, the Constitution of 1923 became linked with national aspirations and was embraced with a sense of pride within Egyptian society.

Having highlighted the strengths of Egypt's judicial system, Bassiouni turned to its weaknesses. He pointed to insufficient training and widespread corruption as the two most severe problems. While fewer and fewer law school graduates are joining the judiciary system, police academy graduates with significantly less legal training now fill many of the positions. To address this particular problem, Bassiouni has pushed for the establishment of a new legal academy in Egypt, modeled after the Justice Academy in Bordeaux, France. In addition, Bassiouni expressed a need for professionalizing legal administrators and raising salaries to expedite the system's work and combat corruption.

In concluding, Bassiouni stated that the Egyptian judiciary is indeed a functioning system. However, it also needs shoring up by local forces. To underscore this point, Bassiouni made reference to a popular Arab folk hero, Goha, who, in one tale, searches for his lost wallet not in the dark location where he lost it, but rather under the street light, because the light is better there. Bassiouni said that change should be driven by locals who are intimately familiar with Egyptian peculiarities and know where solutions can be found.

Q&A Highlights

Q: How can public confidence be improved?

A: To eliminate corruption, both factors of the equation, supply and demand, should be addressed. This would include designing strategies to induce compliance, reinforcing ethical standards through incentives and mechanisms of control as well as tightening admission to the profession.

Q: While in Egypt, did you sense a public desire for constitutional changes?

A: Yes, there is a noticeable movement, which advocates for change. Within this movement, however, pragmatism is lacking and it is driven more by politics.

Q: Could you please elaborate on the relationship between the Egyptian legal system and the international legal system?

A: There are a many outstanding Egyptian legal figures that have influenced the Arab world. Nine Arab countries have adopted articles of the Egyptian constitution verbatim and 90% of judges in the Gulf are Egyptian. Given our cultural base and world

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perspective, Egyptians are well positioned to relate and contribute to international initiatives. However, due to the U.S. administration's massive campaigns against the International Criminal Court, Egypt and many other countries have not ratified the ICC. They could do so and seek separate bilateral agreements with the U.S., as some others have done.

Q: Article 2 of the Constitution affirms Islam as the state religion and *Sharia* law as the principal source of legislation. Does this pose a challenge to the judicial system?

A: The problem is not the law but rather the political dynamics in the country. A popular tale tells the story of an observant Muslim who seeks advice from his *Imam* after a dog has relieved himself on the man's prayer wall. The *Imam* tells the man to destroy the wall but, when told that the wall in question is the party wall to his own apartment, the *Imam* tells the man just to purify the wall with a little bit of water.