

Despite Guantanamo, Let's Give Bush a Chance

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It would be hypocritical for the international community of lawyers and human-rights lobby groups to pretend that they did not have longstanding grievances with the presidency of George Bush. In point of fact, most of them would have wished to see him out of public office forever.

The decade-long negotiations pursued by lawyers in the crafting of the Rome Statute are a case in point. This dedicated work resulted in the creation for the first time in history of the International Criminal Court to deal with the perpetrators of war crimes, crimes against humanity and genocide.

Successive US governments supported the creation of the court. But it was not until the last decade of the 20th century that comprehensive studies and negotiations were undertaken, again with the massive support of the US government through the Clinton administration. Indeed, one of former president Clinton's last actions in office was the signing of the Rome Statute to ratify the International Criminal Court.

The international community of lawyers and many US lawyers therefore felt totally betrayed when President Bush took office and purported to "unsign" the Rome Statute. His administration viewed the court as dangerous to American international military peacekeeping operations, allegedly because its soldiers and leaders could be arrested and arraigned before the International Criminal Court.

President Bush would not yield despite assurances that military personnel on UN sanctioned peacekeeping operations would be exempt from the jurisdiction of the court. It now seems that Bush foresaw that the US would engage in "peacekeeping" operations in Afghanistan and Iraq without the sanction of the United Nations. In retrospect, one is tempted to believe that the US invasion of Iraq was already on the cards, leading to the so-called unsigned.

To make it worse, the Bush administration then moved to undermine the jurisdiction and functioning of the court. It knew that, despite its opposition, the court had overwhelming international support. Furthermore, because the court had an international mandate, it would still have jurisdiction over American soldiers and leaders arrested in other countries and brought before it. This scenario was anathema to the Bush administration. To counteract it, it contrived the so-called Article 98 agreements. This device meant that the US could enter an agreement with any willing country in which that country would undertake not to surrender any US soldier suspected of committing war crimes to the jurisdiction of the International Criminal Court.

The "willing" countries "invited" to enter into Article 98 pacts are dependent on the US for foreign aid, military and humanitarian support. Not surprisingly, then, in East Africa, Uganda was the first to sign up. It is thought to be a matter of when, not whether, Kenya and Tanzania execute their own Article 98 agreements. But so far, despite their poverty, the two countries have displayed admirable resistance.

To the great chagrin of the legal fraternity, the US has in this way managed to undermine the authority of the International Criminal Court. The final parting of ways between the Bush administration and the legal fraternity as well as humanitarian groups such as Amnesty International, came in the form of the Guantanamo Bay debacle. The US has always proclaimed itself the champion of the free world, the defender of democracy, the custodian of the rule of law

and the prefect of human rights.

Yet when it detained "enemy combatants" captured in Afghanistan at Guantanamo Bay, the Bush administration meticulously broke every rule in the human-rights book. The captives are held in dehumanising conditions, kept incommunicado without access to their relatives or lawyers and apparently routinely tortured. The full extent of this violation of human rights will doubtlessly be exposed over time. But it is evident that under the severe test of war, the Bush administration buckled and trashed its own Declaration of Independence, the Universal Declaration of Human rights, the Geneva Conventions and a host of other international norms guiding the civilized and humane conduct of war and the protection of human rights generally.

As if this were not enough, the Bush administration has insisted on imposing upon its satellite states a harsh regime of anti-terrorism legislation that undermines existing doctrines and practices of human-rights law.

There is, nevertheless, an emerging school of thought that believes the legal fraternity and the international human-rights lobby have been unfair and unrealistic in their criticism of George Bush. It is argued that there can be no codified rule book of governance. A leader must rule in accordance with the times and the circumstances prevalent during his reign. To insist on the statute book when circumstances dictate otherwise is to cast human affairs in stone.

George Bush took office at a time of unparalleled crisis in American history in the form of 9/11. The rest of the world was also under threat from the dark forces of terrorism. A strong and lasting message was required against terrorism. At least the Taliban regime in Afghanistan had openly identified with the forces of terror and harboured many of its chief architects.

Not only did they provide logistical and material support to terrorist organisations, they also subjugated their own people and ruled them with an iron fist - as did Saddam Hussain. In the end, this school of thought argues that it did not matter that no weapons of mass destruction were found in Iraq. The people of Afghanistan and Iraq were liberated from a perpetual reign of terror. And as if to support this view, in a so-called virtual worldwide vote, the people of Iraq - or those few of them able to go online- actually voted for George Bush.

The democratic elections in Afghanistan and the forthcoming elections in Iraq have opened new avenues. The new freedoms of the press and assembly in these countries have ushered in a new empowerment and a rethinking of long-dominant myths. It is possible that as a by-product of the war and its attendant social, economic and political upheavals, the Middle East may never be the same again - at least in terms of governance.

If democracy eventually takes root in the Middle East, George Bush will go down as a great man in history. We need to give the man a chance. When Winston Churchill first called for the destruction of Hitler and Nazism, he was dismissed as a reckless warmonger. But history eventually acquitted him and he is today remembered as one of history's great leaders. Whether Bush will similarly acquit himself, whether history will be kinder to him, only time will tell.

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