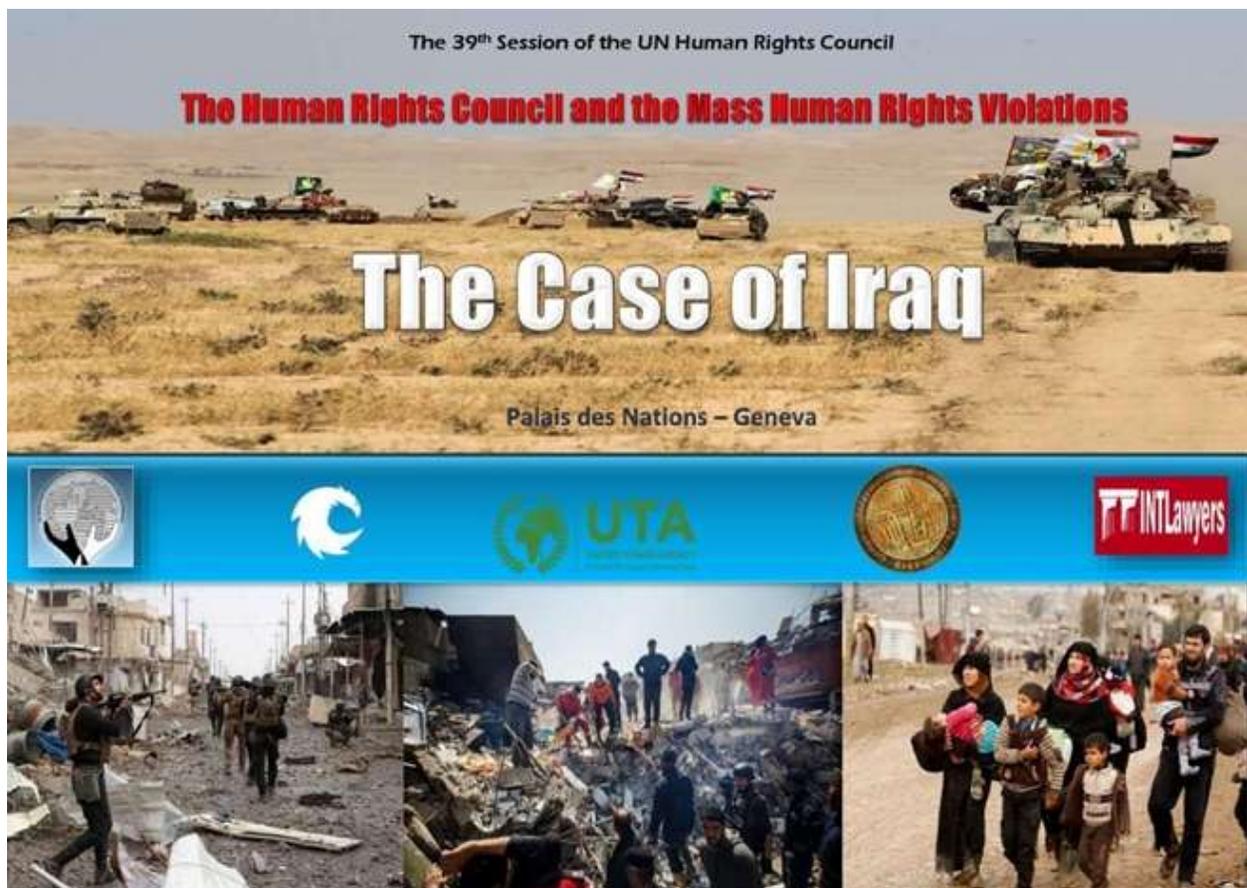




## Side-Event: The Case of Iraq The Human Rights Council and the Mass Human Rights Violations

United Nations - 25 September 2018



### Concept Note:

Two former UN officials, who headed the Human Rights Office in Iraq spoke about their experiences in the country and what the UN should have done in relation to the human rights violations in Iraq. They criticized the overall UN role there and at the end of their talks suggested that the whole UN presence in

**Iraq can be better replaced by appointing a Special Rapporteur on the human rights situation in Iraq.**

**An expert lawyer focused on international criminal justice and he gave his perspective on how to proceed with regard to accountability for the crimes of aggression against Iraq. He also spoke about other war crimes perpetrated during the invasion and occupation and about achieving justice for the Iraqi people. He gave his insight about the UN Human Rights Council and was adamant about change on several levels.**

**This side event was held on 25 September 2018 during the 39th Regular Session of the UN Human Rights Council at the United Nations in Geneva, Switzerland. It was co-organized and co-sponsored by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD) together with United-Towns Agency for North-South Cooperation, Geneva International Centre for Justice (GICJ), International-Lawyers.Org along with other non-governmental organizations.**

## **Panelists:**

### **John Pace:**

Mr. John Pace is the **former Senior UN Human Rights/Humanitarian Official** in Liberia, Iraq, Lebanon, Palestine and Nepal. He was entrusted by the UN Secretary-General to undertake a number of missions, including ‘good offices’ missions to Nigeria, Cambodia and Kuwait. In recent years, he has focused on strengthening the protection of human rights and respect for the rule of law in conflict and post-conflict situations and the design of procedures and institutions for the protection of human rights.

### **Tahar Boumedra:**

Mr. Tahar Boumedra is the **former UN Human Rights Chief of the UN Mission in Baghdad**, and then served as Advisor to the UN Secretary General’s Special Representative for Iraq. He has a deep knowledge of the involvement of non-state actors in Iraq and in other Arab countries. Prior to his time in Iraq, he conducted training for Yemeni prison directors as part of a program of the Penal Reform International. As a result, he has an intimate knowledge of the criminal justice system in Yemen.

### **Inder Comar:**

Mr. Inder Comar is a **U.S. lawyer and the Executive Director of Just Atonement**, a legal non-profit organization dedicated to building peace and environmental sustainability. He is a recognized expert on international and U.S. law as it relates to crimes of aggression, immunity of high-ranking officials, and the war in Iraq. He represented Sundus Saleh in the case Saleh v. Bush et al. He has been actively involved in the only case yet filed in the US that questions the legality of the war in Iraq.

## **Moderator:**

### **Daniela Donges:**

Ms. Daniela Donges is the **President of Scales for Justice** and is the former human rights officer at Geneva International Centre for Justice (GICJ).

## Panel Discussion

Ms. Daniela Donges



The moderator **Ms. Daniela Donges** opened the side-event and introduced the issues that the panelists would cover and discuss. She said that the War in Iraq is illegal and investigations into several aspects of the war are lacking. Without the needed investigations there will be no accountability and the international community will lose its credibility.

Mr. John Pace



The first speaker, **Mr. John Pace**, began his presentation by recalling the special procedures of country rapporteurs, of which Iraq was subject. When the invasion took place in 2003 the mandate of the Special Rapporteur (SR) had ended and developed into the United Nations Assistance Mission for Iraq (UNAMI). Mr. Pace noted that this move was considered as a great hope toward monitoring human rights in Iraq. A system was set up in several Iraqi cities and the job was to construct a base of information based on interviews with victims and families of victims. However, even though they made some headway, the main obstacle was being unable to get information out to various organs which could do something about the human rights situation – this was

because Iraq was under an occupation. Nonetheless, he said that UNAMI carried on the good work of monitoring and reconstruction.

Mr. Pace noted that over the first few years of being in Iraq, political structures were formed, and the first Constitution was established. Also, the Ministry for Human Rights was created and Mr. Pace and his team were tasked to support it, which worked really well for some time. However, over time the focus on human rights in Iraq began to wane as it was really no longer about the protection of the individual and the family.



At the domestic level in Iraq, individuals had less and less recourse to remedy because there was no one they could address themselves to. UNAMI would produce a report to the Office of the High Commissioner for

Human Rights (OHCHR) and the United Nations Security Council (UNSC) with regard to technical assistance. However, this assistance eventually became unbalanced.

Mr. Pace went on to note that the emergence of ISIS created a distraction from looking at human rights in Iraq because the UN started focusing on atrocities committed by ISIS. There were several reports dealing with the human rights situation in Iraq, but none covered the situation of the families, youth, judicial system, etc. In other words, he said there was nothing covering the daily reality of the Iraqi population such as the right to life, freedom from torture, etc. Mr. Pace said that the Council has been dancing around the reality of human rights violations in Iraq but was not actually tackling it. For this reason, we need investigations.



When the Council was formed in 2006 it was meant to replace the Human Rights Commission as it had become too politicized. However, he believed very little has changed in the evolution from the Commission to the Council. He felt that the Council has become somewhat toxic as it has closed its doors to civil society. Mr. Pace noted that this discussion on Iraq is a mainstream issue and should thus be taking place at the main Council session and not in a room on the side. Additionally, civil society needs to play a much bigger role as non-governmental organizations (NGOs) are in the center of the work. He also said that we can't have a serious discussion of human rights without the involvement of civil society. We currently have a lopsided Council that is isolated from the reality on the ground. Thus, civil society needs to find better ways of strengthening their actions on these issues. He ended by noting that this situation applies not only to Iraq but other countries as well.





[Click here](#) to watch the full record of Mr. Pace's presentation.

Tahar Boumedra

#### WORKING TOWARDS FINISHING THE MANDATE OF UNAMI



The second speaker, **Mr. Tahar Boumedra**, picked up where Mr. Pace left off. He recounted how when he joined UNAMI it was radically transformed by a Security Council Resolution, adopted in 2007, which redefined the mission and purposes of UNAMI. As a result of the change, monitoring of the human rights situation in Iraq could only be done with the expressed authorization of the government of Iraq. This was a major distraction as it meant that UNAMI and all UN agencies could not do anything without a request from the Prime Minister's Office. Mr. Boumedra asserted that these developments were a serious obstruction to monitoring human rights in Iraq. In fact, he joined UNAMI on the day the Status of Forces Agreement (SOFA) came into force. The SOFA Agreement is the arrangements between the United States and the government of Iraq for the withdrawal of American forces after the gradual drawing down of other allied forces.

Mr. Boumedra then focused on the hot issues of concern during his time in Iraq (2008–2012). This was the period when the Prime Minister of Iraq, Nouri Al-Maliki, was well established in his office and expanded his authority. By way of example, he explained the extent of control that Iraq had over UNAMI – his chief's mandate was not renewed by UN Secretary-General Ban Ki Moon due to disputes with Prime Minister Al-Maliki who was not pleased with election results and requested UNAMI to recount the ballots. His request was refused and thus he decided to get rid of the UNAMI chief who eventually left the country.



### SITUATION OF PRISONS IN IRAQ

When SOFA agreements came into force, the American authorities, specifically Task Force 134, were in charge of running the prisons in Iraq. When prisoners are released usually the human rights officers are involved in supervising their release. Mr. Boumedra was the intermediary between Iraq and the American forces. He said that there are certain details about the release of prisoners that, when known, provide an understanding of how people disappear and are assassinated. He then told of the lopsided process that Task Force 134 used to classify prisoners according to degrees of how dangerous they were perceived. Prisoners convicted of killings and common crimes were considered less dangerous than those suspected of posing a possible threat to security and order. Those were classified as the top concern.

Before prisoners were fully released, they were categorized according to how dangerous they were perceived. Those of top concern were given a badge and white banner for their head in order to be easily recognized among those who are going to be released and those who will be handed over to be kept in detention centers by the government of Iraq. There were others waiting outside the detention facility for prisoners who were easily recognizable, due to a badge on their chest and banner on their head. Those prisoners would eventually disappear. He also mentioned that there was a huge discrepancy between the number of prisoners released to the government of Iraq by the American forces and the figures as reported to UNAMI. The discrepancies between these figures are counted as disappeared persons and no one takes responsibility for them. He noted that up until today nobody knows where they went or what happened to them. He added that the policy regarding prisons is based on a sectarian basis considering that 85% of the prison population is Sunni.





Mr. Boumedra noted that due to the new UNAMI mandate, access to prisons was not easy because the Iraqi government had to give its agreement. The decision on access to prisons taken by the Iraqi authorities meant that UNAMI had very limited access to prisons. The prisons run by Iraqi authorities were in complete ignorance of International Humanitarian Law and the rule of law in general. While Iraq law allows for the Ministry of Justice to run prisons, separate prisons are also run by the Ministry of Interior, Ministry of Defense, Ministry of Labor and Social Affairs for juveniles, as well as, private services and the Office of the Prime Minister. Mr. Boumedra gave the example of Sharaf Prison where many, disappeared persons, end up. Prisons and detention centers are also run by political parties, especially in the northern Kurdistan region. This situation made it extremely difficult for UNAMI and NGOs to access these prisons where a lot of abuses and torture took place.

Mr. Boumedra said that the former Minister for Human Rights acknowledged never-before-seen abuses in these prisons and detention centers and such information was also passed on to UNAMI through the Iraqi Security Forces. He also mentioned that planning arrangements to visit such prisons could take up to a month and the security and escort necessary was massive and dramatic.

Returning to the numbers, he said that the figures of victims UNAMI received were reported by the Iraqi Security Forces. These included figures, for instance, of bodies thrown in the streets who the Security Forces said were killed by Daesh (ISIS) and Al-Qaeda. However, credible witness testimony claims that people were killed in prison and their bodies thrown into the streets.





After 2010, UNAMI created a new mechanism for the protection of minorities. Boumedra noted that there are levels of favoritism where some minorities are more protected than others, which he personally objected to and said, “We need to protect on the basis of citizenship, the rule of law, and access to justice.” In other words, all Iraqis should be protected according to the rule of law and justice system of Iraq. Unfortunately, he warned that creating such biases might inadvertently further divide the society in an un-reconcilable way.

He noted that in terms of security each staff person cost USD 1,000 per month and the Mission had over 1,000 staff members.

Considering these numbers, he questioned whether it was really worth it to keep UNAMI going while the job of monitoring really needs only one person, a Special Rapporteur on the human rights situation in Iraq. To end, he posed a question, “*Shouldn’t we request a UN Special Rapporteur and close down UNAMI?*”



[Click here](#) to watch the full record of Mr. Boumedra's presentation.

#### Inder Comar

The third speaker to take the floor was Mr. Inder Comar who spoke on the illegality of the invasion and occupation of Iraq and ended with his overall personal take on the entire situation. He began by noting that on 20 March 2003 the US led countries to invade Iraq. Now 15 years later, it is internationally accepted that it was an illegal act, but unfortunately, we consider it as a remote crisis.

In light of this, Mr. Comar questioned whether we can, today, hold leaders accountable for the invasion and occupation of Iraq. Ultimately, the question is whether we can ever hold great powers responsible. He said that if we are unable to do this then it is only a matter of time before we witness the annihilation of another state.

He recalled that, regarding the invasion of Iraq, there was only one attempt to hold the perpetrators accountable when a group of Iraqis asked for an inquiry into crimes of aggression against Iraq. This was the Saleh v. Bush case, which had evidence and testimonial accounts. The evidence revealed discussions early in the Bush Administration of how the US planned to invade Iraq and also showed that on and after 11 September 2001 there was widespread discussion on how to utilize the tragedy of 9/11 as a reason to invade Iraq. Reparations for the Iraqis were even considered at this point. All the evidence was presented to the Federal Court asking for an investigation and asking for reparations to be paid to Iraqi civilians. Unfortunately, in 2014 this effort was dismissed because a US court found that then-US President George W. Bush had immunity, not under international law, but under domestic US law. The court also decided that US law on this issue of immunity was more powerful than any international law obligations.

Despite several opportunities to discuss crimes of aggression, the court declined and specifically said that this was something they were unwilling to undertake. Mr. Comar expressed his disappointment and said this is indicative of the extent national courts will go to in order to protect their own leaders. When we talk of great powers, this is indicative of how the situation can develop. However, he also suggested that international law is so vague that great powers can actually do what they want.



#### HOW CAN WE MAKE GREAT POWERS ACCOUNTABLE FOR THESE CRIMES?

Mr. Comar stated his belief that we can create a world governed by international law and that this is the vision of the United Nations. However, this will require several changes at the international, national, and personal level. He said that although international law recognizes the 'crime of aggression' there are very few avenues for jurisdiction. While the International Criminal Court (ICC) now has jurisdiction, he reminded that the Iraq War happened long before this jurisdiction was activated and that the US is not party to the Rome Statute.

Nonetheless, he went on to say that the addition of the crime of aggression to the Rome Statute is very important as it requires countries to think about crimes of aggression. This gives hope that the ICC can evolve and become more relevant.

Mr. Comar reflected on the United Nation's failure in general to investigate the invasion. However, he noted that right after the invasion Kofi Annan, then-Secretary-General of the UN, publicly stated his perspective that the invasion was illegal. He also criticized the UN Human Rights Council (HRC) for not investigating the crimes of aggression and other related human rights situations in Iraq.



#### WHAT CAN WE DO TO OPEN AVENUES OF ACCOUNTABILITY AT THE INTERNATIONAL LEVEL?

In answering this question, Mr. Comar said that we have to contemplate reform, which is generally hard to do but the only other alternative is the status quo. The status quo means that there remains the possibility for some countries to totally destroy other countries, and this is something that we have to reject. To this end, Mr. Comar stressed the need to discuss UN Security Council reform and that we have to remove the exemption from scrutiny that great powers have given themselves through the Security Council and its veto power. The current Security Council framework is an impediment to genuine peace and makes it an active agent of war and conflict. This is evidenced by its failure to secure the safety of Iraqi civilians and the failure of following France's recommendation to invest more time into investigating the presence of weapons of mass destruction in Iraq. Mr. Comar warned that such an atrocity will happen again if nothing is done to reform the Security Council, the Human Rights Council, and the status quo.

He went on to note that, while currently there is no perfect institution, the International Criminal Court is a permanent institution that must be used and valued. Furthermore, we need to acknowledge the legal technology that has been invented. He said that we must never accept people like Michael Bolton who believe that the US must remain free to commit crimes with impunity. Instead, we must admit that such people are allowing the US to destroy countries in the Middle East.



Mr. Comar suggested that more can be done by the Human Rights Council. For example, he agreed with appointing a Special Rapporteur on the situation of human rights in Iraq. At the same time, he also noted that the Council is under attack by those involved in the invasion of Iraq who wish to avoid scrutiny. He underscored that we must do more to support the work of the Council.

To make human rights a reality for everyone, we need far more determined and coherent action. The work of civil society is best served by engaging directly in the work of the international community at the UN and not walking away from it.

## CHANGE AT THE NATIONAL LEVEL

At the national level, he encouraged countries to think about the concept of universal jurisdiction. They should have their doors open to civil and criminal investigation and prosecution of any individuals who have committed grave violations of international law.

Mr. Comar reminded the audience of the example of General Pinochet who had a warrant issued for his extradition on account of his crimes while he was the leader of Chile. This was an unexpected development. He acknowledged that while it was a very difficult action, independent nations who support the rule of law should always remember this example. He then recalled that in 2003 Belgium tried to do something similar by investigating the Amiriyah shelter bombing of 1991 by the United States. However, the US threatened to end Belgium's status as a center for international institutions and Belgium was then forced to stop the investigation. Given these examples, Mr. Comar said that it will be tough to investigate and hold great powers accountable for their offenses against international law, but the alternative is to live in a world where the strong continue to exploit the weak.

He said that crimes of aggression must be recognized as a supreme crime of international law. It has been well defined by the Nuremburg Trials and through the ICC amendments. Great powers are not going to police themselves and will not allow their own courts to scrutinize their leaders. To this end, Mr. Comar reiterated the need to encourage countries to seriously think about the idea of universal jurisdiction and implementing the rules of international law through the national and regional courts.

## What is Universal Jurisdiction..?

- Defined as "a legal principle allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim"<sup>(1)</sup>



## CHANGE AT A PERSONAL LEVEL

The third level of change, he said, was at the personal level. Speaking through personal experience, he remembered the 9/11 event and said that American leaders intentionally and outrageously took advantage of the terrorist attack to create a permanent state of emergency. It was a terrible period in the country's political history; it created a state of exception that put US actions outside the realm of the rule of law and continues to maintain this conduct today. US leaders continue to lie to the American public and the international community about Iraq's connections to Al-Qaeda and about the Iraqi weapons of mass destruction program.

Mr. Comar said that the American public remains unwilling to admit that actions of their government killed and displaced millions of people, created untold levels of suffering and destroyed the legacy of the Nuremberg Tribunal and the international framework that was put in place after World War II to prohibit aggression. He cautioned that America's glorification of empire and devotion to war is not only a great evil but is destroying its own society and the security of the world in general. He noted that the environment in America is far more dangerous today than before 9/11. He stressed that we have to reject the glorification of war and the making of nuclear weapons.

At a personal level we have to commit ourselves to democratic principles such as fundamental human rights, and peaceful settlement of disputes according to the rule of law including the international rule of law. This change requires a degree of sacrifice, and personally we have to choose different paths and develop a politics that calls for dialogue and civilization instead of domination and empire. In the words of Camus, "We cannot side with murderers or accomplices of murderers."

In conclusion, Mr. Comar underscored that if we do nothing to change the current status quo then we are looking at the threat of some form of human extinction. The only way to challenge this is to adopt a different

world view at the national and international level, and we must commit to dialogue. This will require a great type of courage from all of us because we have to face the reality of the state of the world. He ended by saying that he hopes we can find the courage to resist the call of empire and to fight for democracy through democratic means.



[Click here](#) to watch the full record of Mr. Comar's presentation.

## International Criminal Court vs Universal Jurisdiction

- **International Criminal Court (ICC)** : judicial body of political entity that "investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community; jus cogens norms" (PREVIOUS PRESENTATION)

- Established by Rome Statute (132 members)
- Prosecute Individuals

**Universal Jurisdiction:** not a court, nor a judicial body but a legal principle

### Differences:

1. The extent of jurisdiction
2. Periodic constraint (July 1, 2002)
3. Uniform standard vs state criminal codes

## INTERACTIVE DIALOGUE

Ms. Donges summarized the panel discussion by pointing out common themes: a lack of accountability, tremendous human rights violations, and the weakness of UN institutions. She said that we heard the speakers talk about impartial investigation and the need for reforms at all levels, including the Human Rights Council.



### ORGANIZERS OF THE EVENT

The moderator gave the floor to a representative of one of the main organizers who on behalf of their organization thanked the other organizers including GICJ and EAFORD, and also thanked the panelists for sharing their experience. The representative thanked the audience members for their presence and encouraged all in attendance to pay attention to the current and future human rights situation in Iraq.

### QUESTIONS, COMMENTS, AND ANSWERS

1. An audience member commented on the negative role of the UN and noted that Mr. Boumedra spoke a lot about detainees and the prisons situation and the difficulty in monitoring prisons and assessing detainees. He commented on similar situations in other countries in the Middle East. He then asked how to improve the role of UN mechanisms in light of the deteriorating situation in the Arab region and the weaknesses in the system?
2. Another audience member questioned why, with the influence of activists and human rights defenders and their calls to stop all these wars and torture in prisons, people seem to react after these events happen instead of taking actions to prevent them?
3. A third audience member commended Mr. Pace for his courage and Mr. Boumedra for choosing to go to Iraq during such difficult times. He asked what lessons were learned from the UN experience in Iraq and how to avoid a similar situation in regard to the case of Libya, Yemen, and Syria. He also asked about transitional justice 15 years after the invasion of Iraq and whether it will be a priority and reality during these tough times.

Finally, he asked about civil society, saying that there was hardly any civil society involvement in Iraq prior to 2003 but that afterwards we have witnessed a huge number of NGOs supported by the UN, but where are they now?

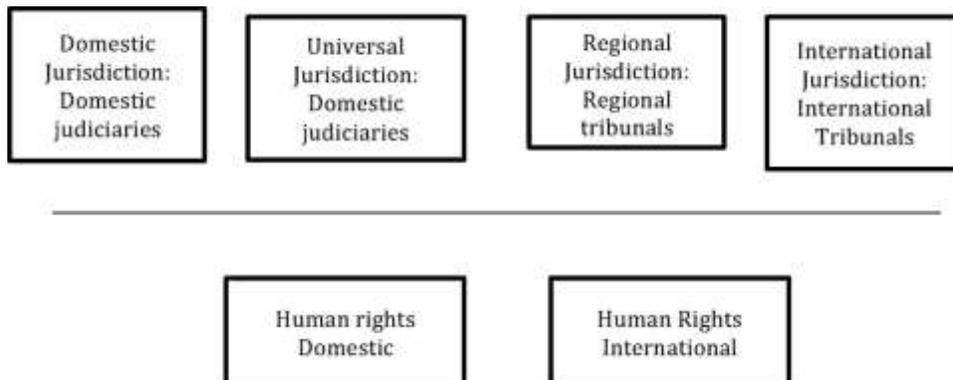


## RESPONSES AND CONCLUDING REMARKS



Mr. Pace, with regard to human rights violations, said that we have to distinguish between identification of the violations of the individual's basic rights and the way the said violation is handled, for instance, through a bilateral procedure. Nonetheless, the priority should lie with identifying the violations of basic rights because it is the common denominator. Regarding lessons learned and prevention, he noted that based on experience with disasters, prevention has always been a late comer. Unfortunately, the efforts of the international system remain primitive, and this is due to the absence of respect for the individual by those who are governing. Lessons learned include the need to be honest about the realities and not to build on presumptions or half-truths. We have to develop a cure for this malaise whereby the identification of this malaise must come first. We are constantly learning from the experiences we have, and we must not blindly apply actions taken in one place in another as each situation is unique. On transitional justice, we have to ask ourselves what the implications are of transitional justice and access to justice. Transitional justice has to be situation-specific, carefully devised and monitored, and adjusted constantly. He ended by saying the gap between the Human Rights Council and the individual has become "cosmic". Civil society needs to organize itself.

Mr. Boumedra recalled that UNAMI has a very strict mandate in terms of finance and policy. On the rule of law, he said there is a real institutional crisis in the UN. Due to this, months are spent discussing who gets what in terms of budget and in terms of programs to be implemented on the ground. At the end of the year, the government of Iraq ends up telling UNAMI what to do and chooses the agency that implements the program. These realities make all UN agencies in Iraq completely inefficient especially due to the security requirements.



## The HRC and the Mass Human Rights Violations

# The Case of Iraq

Tuesday 25 September 2018

Room XXV 11:00 to 12:30

Palais de Nations

Room XXIV



**John Pace**

Former Senior UN human rights/humanitarian official in Liberia, Iraq, Lebanon, Palestine and Nepal. He was entrusted by the UN Secretary General to undertake a number of missions, including 'good offices', missions, to Nigeria, Cambodia & Kuwait.



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A U.S.-American lawyer and the Executive Director of Just Atonement. He is a recognized expert on international and U.S. law, and the war in Iraq.



**Daniela Donges**

President "Scales for Justice" & former human rights officer at Geneva International Centre for Justice. She will be the Moderator of the side event.



**Tahar Boumedra**

Former UN Human Rights Chief of the UN Mission in Bagdad, and then as Adviser to the UNSG's Special Representative for Iraq. He has deep knowledge in the involvement of non-state actors in the Arab countries.



Watch the full video of the side-event in [English](#) or [Arabic](#)

Previous co-sponsored side-events on Iraq by EAFORD at the UN Human Rights Council:

- [Side-Event at UN: The 15th Commemoration of the Invasion and Occupation of Iraq](#)
- [Side Event at UN: Destruction of Mosul | Civilians in Armed Conflicts](#)
- [Side Event at UN: The Other Face of Terrorism](#)
- [Side Event at UN: ISIS and Other Terrorist Groups](#)