

St. Antony's Lecture

March 2023

IRAQ 2018-2019: THE RULE OF LAW: A PERSPECTIVE¹

Introduction

1. It is an honour and a pleasure to be here at St Antony's, this most prestigious College, renowned in the field of international relations, and to deliver this Lecture "*IRAQ 2018-2019: THE RULE OF LAW: A PERSPECTIVE*", as part of the College's Seminar on Iraq, 20 years after 2003. I am most grateful to Prof. Eugene Rogan, Director of the Middle East Centre at the College, and Professor of Modern Middle Eastern History at the University of Oxford, for his kind invitation to me to do so.
2. I should be clear: the views expressed in this Lecture are personal and my own.
3. In October 2017, thanks to the FCDO² and the recently appointed Lord Chief Justice, Lord Burnett of Maldon, the President of the Supreme Judicial Council of Iraq, Chief Justice Dr Faiq Zidan ("CJ Zidan") was invited as a guest to the annual Opening of the Legal Year ("OLY") Ceremony. In that Ceremony, representatives of our³ Judiciary attend a Service at Westminster Abbey and parade across the road to Westminster Hall, wearing their Ceremonial Robes. Historically, the Ceremony involved Judges praying for guidance at the start of the legal year; today it is as much about reaffirming a commitment to the Rule of Law.

¹ With particular thanks to CJ Zidan, HMA Jon Wilks, Mark Thompson and Ben Yallop (all as described in the Lecture), for their assistance in its preparation. Responsibility is, however, mine alone.

² As it now is.

³ England and Wales. For shorthand, "England" or "English" as the case may be.

4. On the next day, CJ Zidan met with the recently appointed UK Ambassador to Iraq, Mr Jon Wilks CMG, accompanied by Mr Mark Thompson, at the time Justice Advisor at the British Embassy, Baghdad. Later that day, CJ Zidan attended a meeting with a number of English Judges, of whom I was one (in the light of my interest in the Judiciary's international relations work).
5. CJ Zidan observed, forcefully, that he was very impressed with the OLY Ceremony; it demonstrated the respect in which the English Judiciary was held, its independence, and the importance of the Rule of Law; he would organise something similar in Iraq. I encouraged him, not knowing of course whether he would see this through. He then said to me, "and you must come". Again, I agreed, dare I say it, wondering whether I would hear anything further. I should not have doubted CJ Zidan's resolve and strength of purpose, or the support that would be forthcoming from HMA and Mark Thompson.
6. A little over 3 months later, in January 2018, together with two Judicial colleagues⁴ and supported by Mr Ben Yallop from the Judicial Office⁵, I found myself in Baghdad, attending the inaugural Iraqi Judiciary Day – a first for Iraq and, as I understand it, for the Region. A year later, my colleagues and I returned to Baghdad, for the 2019 Iraqi Judiciary Day, this time on a visit also including Amman and Erbil. My attendance at the two Iraqi Judiciary Days comprised two of the proudest and most humbling days I experienced in 18 years as an English Judge. Proud, because of the honour shown to the English Judiciary; humbling,

⁴ The Rt Hon Dame Anne Rafferty DBE and HH Judge Andrew Hatton, Director of Training at the Judicial College.

⁵ Then Head of the Judicial Office International Relations Team, now Principal Private Secretary to the Lord Chief Justice.

because that honour reflected a wider and enduring yearning for the Rule of Law, together with the good governance it underpins, of which the reputation of our English Judiciary was emblematic. Those visits also demonstrate the success and potential of Judge-to-Judge, peer-to-peer, international Judicial Diplomacy or Engagement (for convenience, “Judicial Engagement”).

7. More of those two days presently but they provide the focal point for this Lecture, in which I seek to explore three principal themes:
 - (I) Progress in the Iraqi Judicial System, post-2003;
 - (II) The contribution made by Judicial Engagement;
 - (III) Institutionalising Judicial Engagement.

Law and Iraq

8. A focus on recent troubled decades should not result in overlooking that the history of the Judiciary in Iraq goes back to ancient times, to 4500 BC, when it is said that the first court in history was established in the city of Ur in Dhi Qar, and the Ur Nammu Law was enacted, perhaps the oldest law in history.⁶ The Ur Nammu Law thus preceded Hammurabi’s Law by about 350 years, itself of a venerable age. Contained in its famous legal obelisk, it is one of the most important historical artefacts from Mesopotamia, because of its standing as the first known written legal document and the guidance it provided for life in the Iraqi civilisation of its time. When therefore we are discussing the Rule of Law or the Iraqi Judiciary, it is right to acknowledge the historical roots and tradition, as the cradle of civilisation, of which Iraq can be justifiably proud and from which today’s Iraqi Judiciary can draw strength.

⁶ I am indebted to CJ Zidan for this and other information on the Iraqi Judiciary, relied upon in this paper.

9. In the more immediate past, it has to be recognised that the Rule of Law was essentially defunct under Saddam Hussein, prior to 2003. The Judiciary was part of the Executive; at that time, it could not be meaningfully described as independent of the Executive or free from political interference.⁷
10. Many developments post-2003 are undoubtedly controversial and for the time being will remain so. However, the measures of the *Coalition Provisional Authority* (“CPA”) undoubtedly gave a boost to the independence of the Judiciary, including the re-establishment of the Council of Judges⁸ and its independence from the Ministry of Justice.⁹
11. As can now be seen, the Iraqi Judiciary operates on a constitutional basis emphasising its independence from Parliament and the Executive, and the separation of powers.¹⁰ Arts. 87 and 88 of the (new) 2005 Constitution are expressed in unequivocal terms:
- “**Article 87:** The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.
- Article 88:** Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice.”
12. Furthermore, Law No. 45 of 2017, the Supreme Judicial Council Law, issued on 23 January 2017, stipulated that a Supreme Judicial Council be established, with financial and administrative independence. Unsurprisingly, perhaps, 23 January is the day fixed annually for celebrating the work of the Iraqi Judiciary.

⁷ See, *Regime Change and the Restoration of the Rule of Law in Iraq*, Raid Juhi al-Saedi, in *International Law Studies*, Volume 86, *The War in Iraq: A Legal Analysis*.

⁸ That had existed prior to Saddam’s time.

⁹ *Regime Change*, *ibid.*

¹⁰ See (CJ Zidan), the 2005 Constitution of the Republic of Iraq, Arts. 19, 47, 87 and 88.

13. Under the leadership of CJ Zidan, the increasing role played by the Iraqi Judiciary in the life of the State is a notable development – for an institution which had not previously enjoyed public confidence. The Judiciary’s in-box is daunting, extending to terrorism, corruption, drugs, public order and a new (2022) Code of Judicial Conduct to enhance judicial integrity. The Judiciary’s role in election monitoring is particularly striking, demonstrating increased public confidence and respect. Likewise, noteworthy was the Supreme Judicial Council’s decision to suspend its work when demonstrators attempted to occupy its building – a suspension, as I understand it, maintained until the demonstrators withdrew. We are in England and Wales extremely fortunate that Judicial personal security has not (generally) given rise to life threatening risk¹¹. By contrast, judicial duties are performed in Iraq against a background of 75 murdered/martyred Judges in Iraq’s recent turbulent history¹².
14. As it seems to me, whatever reservations there might remain, this is demonstrable progress in the Iraqi Justice System; a clear post-2003 gain. Especially in the context of the last 30-40 years in Iraq, realistically, such progress and reforms take time. Overnight transformation is not to be expected.

The English Judiciary, English law and London

15. What links the United Kingdom and Iraq, or more specifically for tonight’s purposes, the English Judiciary and the Iraqi Judiciary? Professor Rogan’s magisterial work, *The Arabs: A History*¹³, traces the

¹¹ Though, sadly, the same cannot be said of Northern Ireland.

¹² CJ Zidan’s figures.

¹³ 2010, as updated (“*The Arabs: A History*”); at pp. 234 and following

history of UK involvement with Iraq from its post-World War I origins. More specifically, coming to 2018, Iraq was a priority interest of HMG, *inter alia*, with a view to combating *Daesh* and other threats to the UK's national security, together with a wider interest in seeing Iraq transition to more stable, prosperous and democratic times with accompanying trade and other benefits. Any such transition is, to put it no higher, extremely difficult without a functioning justice system and Judiciary.

16. If that explains why Iraq was a priority for the UK in 2018, we should next factor in the international scope of the English Judiciary's interests and activities. English law and London as a centre for international dispute resolution, are world leaders. The English Judiciary is pivotal to the English law "brand". It enjoys, rightly but not immodestly or complacently in my view, the highest reputation, anchored so firmly, as it is, in the Rule of Law. Whether termed an aspect of "soft power" or of "Global Britain", the standing of English law and London assist both in the export of the UK's core values, to which the Rule of Law is fundamental, and the value of the UK's exports. Even in purely financial terms, that value is considerable: recent figures suggest that the UK legal services sector generated a trade surplus of £5.9 billion in 2019¹⁴.

Matters do not end there. As Lord Burnett expressed it¹⁵:

"The rule of law and English law have a hidden value going well beyond the value of the legal services or the legal sector, enormous though that is."

¹⁴ Contained in a speech by Lord Hodge, Deputy President of the UK Supreme Court; The Guildhall Lecture, delivered on 4 October 2022, *The Rule of Law, the Courts and the British Economy*.

¹⁵ See too, The Lord Burnett of Maldon, Lord Chief Justice, *The Hidden Value of the Rule of Law and English Law*, Blackstone Lecture 2022, Pembroke College, Oxford, 11 February 2022, at para. 15.

Indeed, it can properly be maintained that English law underpins hundreds of trillions of pounds of annual business activity in the UK and internationally, extending far beyond the legal sector – a value in significant part stemming from the independence of the Judiciary and the robust and fair way in which the English legal sector operates.¹⁶ Financial considerations are, of course, only a part (an important part though it is) of the picture.

The 2018 and 2019 visits

17.(I) *The context: Judicial Engagement:* Having said what I have as to the English Judiciary, it remains necessary to ask: why were English Judges in Baghdad and elsewhere in the Region? The primary role of an English Judge is, after all, to hear applications, trials or appeals in Court (in England) and to give rulings or judgments in the individual case. The reality, however, is that Judicial duties extend well beyond the courtroom, including Judicial leadership roles and international relations.

18. The umbrella under which the English Judiciary may engage in Judicial international relations can broadly be described as promoting or enhancing the Rule of Law. As expressed by the *Judicial Office*¹⁷:
“Promoting respect for the Rule of Law and the independence of the judiciaries is a focal point of our judiciary’s work.”¹⁸

19. There are obvious constraints on international Judicial engagement.

First, Judges are a scarce resource; their absence from the court room

¹⁶ See the key findings of an economics and financial consulting firm, in the 2021 *Oxera Report*, <https://legaluk.org/report/foreword/>.

¹⁷ *Guidance for the Judiciary: A Strategy for International Judicial Engagement 2021-2025*, at p.5

¹⁸ The Rule of Law is of course not simply an optional add-on, of lawyerly interest only. Its importance for institutions, good governance and stability, can hardly be over-stated.

always requires justification. Secondly, the Judiciary has a very small budget for international Judicial Engagement. Thirdly, some engagements entail an acute consideration of reputational risk – unless judicial engagement is confined to relationships with those States with whom the United Kingdom is already fully aligned on all Rule of Law questions (and there is limited value in echo chambers), once the Judiciary ranges outside that comfort zone, a balance must be struck between the benefits of engagement and the reputational risk should things go wrong. The benefits of judicial engagement, in the right circumstances, are, however, considerable and need to be appreciated, as I will seek to show.

20. The English Judiciary constitutes the independent 3rd branch of the State¹⁹. It follows that in the conduct of (Judicial) international relations, Judges are independent of the Executive; indeed, the value of Judicial engagement in this area would be lost were it otherwise. That said, it is not for the Judiciary to free-lance on foreign policy, so that when engaging with a foreign Judiciary, English Judges (while preserving their independence) would necessarily liaise closely with the FCDO.

21. The value added by Judicial engagement in the international relations sphere is found in the potential of peer-to-peer (Judge to Judge) Judicial Engagement. In the words of the Judicial Office²⁰:

“There is a unique value in judges talking to each other, sharing experience and developing thinking together. Countries’ prosperity and security are enhanced by supporting judicial systems, individual rights and the Rule of Law.”

¹⁹ The others of course being Parliament and the Executive (Government).

²⁰ *A Strategy for International Judicial Engagement, op cit*, at p.4

Bringing together Judges from different States has advantages and attractions comparable to, for instance, military: military engagement. There is an immediate common ground and a readiness to engage Judge to Judge, which cannot be assumed when the alternative might be UK officials (no matter how eminent) with a foreign Judiciary alone. It bears immediate emphasis, that the approach of the English Judiciary to international relations is always to share their experience with those who are interested in engaging; it is never to lecture or pontificate - and we have no monopoly on good ideas. The decision to engage and the decision whether or not to act on the ideas emerging from such Judicial engagement are for the host country. For the engagement to be sustainable, here, as elsewhere, there must be mutual benefits.

22. Summarising, it is in the Rule of Law context (fundamental to the UK's core values) that the 2018-2019 visits are to be seen. While, of course, the English Judiciary cannot be everywhere, the importance attached to Iraq by the UK provided an ample justification for these visits.

23. (II) *The 2018 visit:* Various features remain indelibly in my memory. First, the respect and warmth of our welcome from the Iraqi Supreme Judicial Council, led by CJ Zidan. On a personal level, I am proud to say that that warmth continues to this day – but the welcome reflected more than personal chemistry (most important though that is). Personified by CJ Zidan, it reflected a deep-seated desire to move away from the troubles of past decades and to look to a better future in which the Rule of Law would underpin improved governance and prosperity. Representing the English Judiciary at a very senior level and through its world-class reputation, the attendance of my colleagues and I demonstrated powerful support for this yearning. As already explained, pride and

humility were concurrent emotions for us as Guests of Honour at this first ever Ceremony, inspired by the English OLY. Exchanges characterised by openness and, importantly, trust, were the natural consequence of direct Judge to Judge engagement.

24. Secondly, the Iraqi Day of the Judiciary was as moving as it was inspiring.

The pageantry alone was impressive, involving a parade of hundreds of Judges and an important speech by CJ Zidan. The symbolism – elevating the Judiciary in a society where until recently the Rule of Law was defunct and the Judiciary lacking in prestige, together with highlighting its independence – was even more so, not least having regard to the loss of life suffered by the Judiciary in the immediate past. Some idea of the nature of the Events we attended in 2018-2019 and this year's Day of the Judiciary²¹ can be obtained from the **photographs** which I now show you. Underlining its importance, the Ceremony was televised and featured on multiple Iraqi news channels.

25. Thirdly, on both our visits, tight security was essential and we benefited from it, while essentially confined to the Green Zone – a reminder of the constant pressures on the overwhelming majority of the Iraqi Judiciary who cannot live their lives in that Zone.

26. Fourthly, and I shall come back to this, the conditions for a successful visit were all satisfied. Thus, CJ Zidan provided host country leadership, giving strong and warm support to the engagement, as did others in Iraq with whom we met. Equally, through HMA and Mark Thompson²² (the operational lead), we had the fullest support of the Embassy, without which our work could not have been undertaken; gratifyingly, HMA was

²¹ Which appears to be very similar.

²² And their Embassy colleagues, very much including the locally employed Iraqi staff.

very visibly accorded suitable prominence at the Day of the Judiciary Ceremony, evidencing the strength of the relationships he had so clearly forged.

27.(III) *The 2019 visit:* Everything said about the 2018 visit applies to the 2019 visit, with the qualification that the security position struck us as a little more relaxed²³ – though again we enjoyed close protection throughout. There were, however, additional, important features of the 2019 visit, to which I next turn.

28.To begin with, the visit commenced in Amman, where we engaged with the Jordanian Judiciary, including His Excellency the Chief Justice, and the Justice Ministry, much assisted by HMA and the excellent DHM, Laura Dauban²⁴. Judicial Engagement in Jordan was itself of great interest, extending to discussion of delays in appeals and the relationship between the Judiciary and the Bar. In the event, the Chief Justice of Jordan, like us, attended the 2019 the Iraqi Day of the Judiciary as a guest of honour.

29.A notable feature of this second visit was the prominence of women Judges in Iraq (of whom we met a significant number) and the impressive then Chair of the Iraqi Bar Association, Ms Ahlam Alami - forward- and outward-looking and anxious to raise standards.²⁵

30.Additionally, our visit took us from Baghdad to Erbil and warm engagement with the KRI Judiciary, with the full support of the KRI Government at the highest levels.

²³ There have of course been subsequent security downturns.

²⁴ Who had become aware of the Iraq visits and sought to replicate them in Jordan.

²⁵ Though the internal affairs of the Iraqi Bar Association are emphatically not for us, that Ms Alami was subsequently displaced is a matter for regret and evidences the continuing effort required to embed progress. Gratifyingly (to this observer), more recently still, Ms Alami has still more recently returned as Chair.

- 31.(IV) *Mutual Benefits*: This is not a travelogue. Having outlined the visits, in their context, let me turn next to the benefits for both the UK and Iraq arising from those visits. There are a number, which I endeavour to summarise as follows.
- 32.First, the visits, at the very senior level already described, affirmed the UK as the Iraqi Judiciary's trusted international partner of choice. Tangible results²⁶ flow from this development, including an openness to respectful guidance and advice, the provision of training, enhancing bilateral cooperation on Counter Terrorism matters and permitting a better understanding of the workings of the Iraqi Justice System – extending to the obtaining of acknowledgments of the importance of transparent due process and compliance with fundamental human rights principles.
- 33.Secondly, flowing from these visits, the signing on 2 October 2019 of a *MoU* between the FCDO (through the Permanent Under Secretary, Lord McDonald, as he now is) and the Iraqi Judiciary represented by CJ Zidan, securing cooperation, promotion of bilateral engagement and knowledge sharing, together with the provision of capacity enhancing opportunities. Again, the prestigious nature of the signing ceremony appears from the *photo*, I now show you.
- 34.Thirdly, CJ Zidan and I (in my case on behalf of the Lord Chief Justice) signed a *Letter of Exchange for Cooperation* between the Judiciary of England and Wales the Judiciary of Iraq. As that Letter stated, it was *“intended to be symbolic of this friendship [between the Judiciaries] and to demonstrate the mutual determination of both judiciaries to share*

²⁶ Which can be mentioned publicly.

best practice and, looking ahead, to shape society based on law and the rule of law.” The aims underlying this Letter bear recounting:

“i. Protecting individual rights, liberty and security;

ii. Providing a secure foundation for investment;

iii. Strengthening the efforts to combat corruption;

iv. Supporting the fight against terrorism;

v. Recognising the strides, achieved and intended, by women in the Judiciary and in the law.”

That the fulfilment of such aspirations takes time and is unlikely to proceed without bumps in the road does not in any way diminish the importance of the direction established by these declarations. Although currently dormant²⁷, this MoU provides an obvious foundation for future cooperation.

35. Fourthly, the visits became well-known in the Region, enhancing the standing of the Iraqi Judiciary. CJ Zidan took the lead in inviting regional counterparts (of whom I have already mentioned the Chief Justice of Jordan) to the second and (I understand) subsequent Iraqi Day of the Judiciary Ceremonies. Furthermore, the visits resulted in a subsequent London Dinner, attended by CJ Zidan with counterparts from Jordan and Qatar.

36. Fifthly, the visits facilitated the integration of the Iraqi Judiciary in international Judicial structures, notably the *Standing International Forum of Commercial Courts* (“SIFoCC”), where Iraq has been a regular attendee since 2018. Utilising this platform at the most recent SIFoCC meeting in Sydney²⁸, CJ Zidan’s Address spoke of the formation of

²⁷ Indeed, the Letter itself may have lapsed through effluxion of time over the Covid period.

²⁸ November 2022

independent Commercial Courts from 2010, in keeping with Iraq opening its economy to the world and in accordance with *Investment Law No. 13 of 2006* and underlined that Iraq had ratified the *New York Convention* (fundamental to international arbitration) through *Law No. 14 of 2021*, so that the Convention is now enforceable in Iraq.

37. Sixthly, the visits have been followed by a significant expansion of the roles of women in the Judiciary, including the establishment (with CJ Zidan's strong support) of the Iraqi Association of Women Judges and, with the UK's assistance, its membership of the International Association of Women Judges as the Iraqi Chapter, believed to be the first in the Region. In his Sydney speech, CJ Zidan alluded to the fact that the Judiciary in Iraq currently has the highest number of female Judges in its history, including a female Judge heading the Commercial Court in Baghdad and the Financial Services Court. It was additionally noteworthy that (as mentioned) the head of the Iraqi Bar Association at the time of our second visit was Ms Ahlam Alami, the first woman to be appointed to this role.

38. Seventhly, the visits saw an improvement in the relationship between the Iraqi Judiciary and the Iraqi Bar, a vital relationship in which, put neutrally, there had hitherto been considerable room for improvement. As emphasised by the visits, trust, understanding and engagement between Judiciary and Bar are of the first importance to the justice system.

39. Eighthly, the second visit, involving Erbil as it did, stimulated engagement between the Courts in Baghdad²⁹ and the semi-autonomous KRI. Additionally, that visit assisted in the arrangement of a

²⁹ With final Federal responsibility for Iraq

meeting between the IBA and the Kurdish Bar Association, facilitating an agreement between those two Bar Associations as to lawyers' practising rights within the disputed internal territories – an agreement supported by CJ Zidan.

40. Ninthly, the visits assisted with the increased importance and improved prominence of the Iraqi Judiciary in the life of the nation. Thus, in recent years, the Judiciary has had (as already recounted) significant roles in election monitoring, along with issuing decisions relating to territorial disputes, including, importantly, the KRI independence referendum. Furthermore, the visits provided the springboard for encouraging the Iraqi Judiciary to publicise its work and decisions, extending to an English language website.

41. (V) *Unfinished business*: It must be recognised that what I am describing is work in progress. There is unfinished business. That does not detract from the accomplishments I have sought to highlight but it is a reminder of the work to be done.

42. My impression from the outside – I have not been in Iraq, to my regret, since 2019 – is that corruption, terrorism and security, very much including judicial security, remain ongoing concerns. These are obviously grave matters. Additionally, the Iraqi Courts, both in Baghdad and Erbil have been faced with a mountain of terrorism cases flowing from the rise and (hopefully) fall of *Daesh*. Inevitably, international observers will scrutinise, critically, the fairness of these proceedings.

43. Moreover, the access, openness and dialogue between the UK, the English Judiciary and the Iraqi Judiciary was forged by personal links. I do have a concern as to what happens when individuals move on, highlighting, to my mind one of the most important and as yet unfulfilled

requirements in this area: institutionalising international Judicial Engagement.

44. For the future in Iraq, it is my hope that the problems of corruption and terrorism will be successfully confronted, so that the Iraqi Courts can truly prioritise the development of law, meeting international standards, to support investment and prosperity. It is a long road but the Iraqi Judiciary has set the course it wishes to follow – and an outside observer can only wish it well and endeavour to provide support; the alternative would be a counsel of despair.

The Region

45. A word on the wider Region. You do not need me to underline the importance of the Gulf Region and the Middle East generally to the UK. Nor could anyone reading *The Arabs: A History* fail to be struck by the importance attached to law, *just law*, in the statecraft of the Region.³⁰ Here, as elsewhere internationally, law and justice matter, regardless of historical failings.

46. International commerce requires or at least benefits greatly from courts and laws in which international investors can place confidence. Noteworthy developments include, if I will be forgiven short-hand, the “free-zone” Courts in Dubai (the DIFC Courts, of which I am a Judge), Qatar and Abu Dhabi. It would be unwise to fail to grasp that law reform is very much part of the major reform programme under way in the Kingdom of Saudi Arabia, under the rubric of Vision 2030.

³⁰ See, for instance, pp. 33 (Suleyman the Magnificent) and 51 (the “circle of equity”).

47. With such developments in neighbouring States, the importance of the gains made in Iraq in the Justice sector following 2003, should not be under-valued.

The three principal Themes: Concluding remarks

48. Pulling the threads together, I outline my conclusions as follows:

- (1) There has been demonstrable and impressive progress in the Iraqi Justice System since 2003.
- (2) Judicial Engagement, in and resulting from the 2018-2019 visits, has made an appreciable and significant contribution to such progress.
- (3) There remains the need to institutionalise Judicial Engagement.

I elaborate briefly on each.

49. *First*, as to post-2003 progress in the Iraqi Justice System, there is a very long way to go but there should be no gainsaying the demonstrable and impressive progress made since then.

50. *Secondly*, anxious though I am to avoid over-statement, the contribution made to such progress through Judicial Engagement in and resulting from the 2018-2019 visits, was appreciable and significant. This was indeed a significant initiative, generating the results already outlined - the antithesis of a mere one-off judicial photo opportunity.

51. I acknowledge at once, the qualifications to be made, so as to keep perspective:

- (i) The visits were short, necessarily furnishing snapshots at given points in time.
- (ii) The visits did not transform my colleagues or me into Iraqi experts or diplomats. The credit for the state of bilateral relations

between the UK and Iraq belong to the UK's professional diplomats and their Iraqi counterparts.

- (iii) The gains achieved in the Iraqi judicial system are primarily due to the wisdom, skill and determination of Iraqis, led by CJ Zidan.

52. All this is accepted. But it can fairly be said that Judicial Engagement in the course of and resulting from the visits stimulated and facilitated the developments I have described and, to my mind, are illustrative of the gains which can be achieved by “judicial diplomacy” or “judicial engagement” in the right circumstances³¹. Here, the conditions for success were happily aligned: a dynamic local leader, CJ Zidan, committed to the reforms and advances I have outlined; the fullest support from an immensely skilled Ambassador and a key advisor on the ground. The visits stand as a case study in this regard.

53. *Thirdly*, there remains the need to institutionalise Judicial Engagement. To my mind, this is a missing link, which I continue to hope the FCDO will some time address. Within the Judiciary, with the strong support of the present³² Lord Chief Justice, and the involvement of excellent individuals, including in key roles, much thought has been given to the strategic development of international Judicial Engagement. Illustratively, however, except for CJ Zidan, all the individuals (closely involved in the visits) of whom I have spoken have moved on. Judicial engagement solely based on individuals is bound to be vulnerable, at both the Judicial and FCDO ends. If it is sought to sustain the gains to be made from Judicial Engagement, an institutional structure will be essential – one that recognises the independence of the Judiciary

³¹ Any cost:benefit analysis of the visits would yield impressive results.

³² But shortly, outgoing.

involved³³ but is backed by the permanence of the FCDO, so that at the start of each new engagement there is not uncertainty (sometimes incomprehension) as to the role of a Judge in this area. To be clear: institutionalising Judicial Engagement would not intrude on the independence or internal operations of the Judiciary; it would instead provide the mechanism for continuity in the relationship between the Judiciary and the FCDO, optimising the contribution to be made by the FCDO, to the benefit of both in the sphere of international Judicial Engagement. The costs are low or minimal. The potential for gain for the UK, harnessing its world-leading reputation in the Rule of Law sphere, massive. But we have yet to do it.

54.Thank you.

Sir Peter Gross

³³ A fundamental consideration.