

As Saddam Trial Proceeds, Court Learns Lessons From Past

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In the 60 years since the Nuremberg trials, the world has attempted to hold numerous political leaders and military operatives to account for human rights violations and crimes against humanity.

From Latin America and Africa to Europe and the Middle East, each campaign of genocide, mass slaughter, torture and disappearance has been different, and every post-crisis country has a different capacity for finding justice.

Such trials, like the regular civilian legal systems in every nation, are not perfect. Each time a dictator or executioner is brought to court, the world has to draw on the experience of previous trials and do the best it can.

The trial of Saddam Hussein is just the latest attempt. Richard Dicker, the director of the International Justice Program at Human Rights Watch, emphasized how difficult it is to establish a court and try dictators such as Hussein. "By virtue of the crimes being tried, they are uniquely complex and highly charged proceedings, which will put a strain on any court," he told *The Washington Diplomat*.

But that being said, Dicker and many others have been critical of the trial on several fronts. Human Rights Watch had advocated a mixed Iraqi-international system, along the lines of the system that tried the leaders of Sierra Leone after that nation's civil war ended in 2002.

In Sierra Leone, international resources and expertise aided the limited local court system, based in Freetown. The result has been better communication with the people affected, letting them know what's happening. "The court correctly understood how important it was to reach out to the population," Dicker said.

In Baghdad meanwhile, defense attorneys have been assassinated,

Hussein's repeated—and oftentimes colorful—outbursts have disrupted the procedures, witnesses and defendants have sniped directly at each other instead of speaking to the judge, lawyers have threatened and staged walkouts, and the general environment is still a war zone.

In October, Human Rights Watch condemned many aspects of Hussein's trial, attacking the Supreme Iraqi Criminal Tribunal for what it called an inappropriate standard of proof, inadequate protections against self-incrimination, and its requirement for swift implementation of the death penalty with no appeal if sentenced, among other concerns.

What's more, critics say, the Iraqi judges, of whom only the Kurdish chief judge has been publicly identified, are too inexperienced to try such a defiant defendant for such heinous atrocities—under fire and under a microscope.

“This would be a difficult trial to conduct in any event,” said Dicker. But conducting it almost exclusively with Iraqis and judges who have been denied the experience of a fair, transparent court system makes the task all the tougher, he added.

Kani Xulam, director of the American Kurdish Information Network, supported the U.S.-led war to remove Hussein. But he agrees that the court, including the chief justice, is inexperienced. He points to the Koran that Hussein brought into the court—a move widely ridiculed as a desperate pander to Muslim extremists—as the kind of mischief that shouldn't be allowed. With Hussein ready to disrupt or showboat at any opportunity, Xulam said the court could lose control and miss the chance to obtain vast amounts of information during the trial about atrocities committed under Hussein's rule.

What's worse, Xulam fears an Arab anti-Kurd backlash from those who will inevitably see the proceeding as a railroading by the Kurdish judge. “This operation requires a scalpel, and the Kurdish chief justice has an ax in his hand,” Xulam said. “You need finer tools. You need respect for truth; you need to get into details.”

Of course, some parties—such as governments or companies that may be complicit in some of Hussein's crimes—would like some of those secrets to disappear and are pleased with the very narrow focus of the charge against Hussein, who is accused of involvement in the 1982 slaughter of 148 people in the town of Dujail following a reported assassination attempt.

In Xulam's view, for various reasons, the trial ought to have been held at The Hague by an international tribunal, like that of former Serbian dictator Slobodan Milosevic. The violence and chaos in Iraq, with murdered attorneys and terrified witnesses, is hammering at the trial's quest for credibility. "It will be, to a certain degree, a mockery of the law, and that's sad," he said.

Milosevic's trial in The Hague, meanwhile, has its own problems. Dicker said the Milosevic case demonstrates the tension between two essential but competing values: On the one hand, the court needs scrupulous respect for the rights of the accused, to ensure that the trial is both fair and perceived as fair. On the other hand, he said, the judges have to manage the trial as efficiently as possible, keeping the defendant from using it as a soapbox or dragging it out for years and years, as many say Milosevic has done.

The judges "have bent over backward to extend to him the benefit of a fair trial. And I think they've gone too far sometimes in not exercising a firmer hand," said Dicker. "They've gone the extra three miles."

Milosevic has also been allowed to represent himself at his trial, which "has made it clear that there have to be some restraints that have to be imposed to have an orderly trial," said Linda Malone, professor at William and Mary's Marshall Wythe School of Law in Williamsburg, Va., and director of the law school's Human Rights and National Security Law Program.

Malone and one of her classes have a direct involvement in the Hussein trial. Responding to questions asked by the Regime Crimes Liaison Office of the U.S. Department of Justice, the law students are analyzing issues and providing answers for the Iraqi judges, functioning in effect as their clerks.

Malone said Hussein's court is grounded more in local law than most tribunals. Iraq, she noted, has a rich tradition of law going all the way back to the Code of Hammurabi.

The trend for future cases, Malone said, is that nations will want more and more to handle their own prosecutions within their own systems. The capacity for such a trial is a matter of pride and indication of recovery for some nations; on the other hand, they often need international help to move forward. Local courts give more direct accountability to the actual

victims, but they also run the risk of being overzealous as local victims try to exact revenge.

A spokeswoman for the Embassy of Serbia and Montenegro would not comment directly on The Hague trials, noting that those people were under the jurisdiction of the tribunal and not the Serbian government. But the spokeswoman added that the nation is cooperating with the court and understands its importance as a step toward eventual membership in the European Union.

In Chile, former dictator Augusto Pinochet has been newly indicted on tax evasion charges after winning a temporary reprieve due to his health problems. Human rights groups hailed his arrest in 1998 as a victory for human rights and a wake-up call for tyrants everywhere. But now Pinochet, 90, continues to live at home under house arrest in Chile and may die before being held accountable for his alleged crimes.

In Peru, the Shining Path rebel group committed atrocities in the name of its revolutionary Maoist ideology, but some of those officials who clamped down on them—including former President Alberto Fujimori—face or could face indictment. Shining Path Leader Abimael Guzman was captured in 1992, allegedly after overseeing thousands of executions. His conviction by a military court was overturned in 2003 (along with the convictions of hundreds of others), and he's now being retried and detained. Meanwhile, Fujimori may be arrested if he returns home, where some of his old officers are in the same prison as the Shining Path guerrillas they once pursued.

In Rwanda, tens of thousands could face trial by local authorities or retribution for the genocide that occurred there in the 1990s. The catastrophe in the Darfur region of the Sudan remains unresolved. And in November, a Belgian court could indict the former president of Chad, called by some “the African Pinochet,” who could be extradited from Senegal to face charges. So international law experts can expect many opportunities to refine the way the world tries its war criminals.

“This is an evolving process,” said Malone. “There will always be new problems that haven’t been addressed, and there will always be a need for some kind of accountability.”

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