

A show trial in the making: Iraqi officials outline charges vs. Saddam Hussein

Joseph Kay
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The case being prepared against Saddam Hussein by American authorities and their Iraqi collaborators is increasingly assuming the character of a political lynching.

The Iraqi government said this week that the prosecution will focus on 12 charges and the trial will begin within two months. American officials had previously indicated that Hussein would not be tried before 2006, after the tribunal had prosecuted several lower-ranking officials in Hussein's Baath Party government.

Iraqi officials have openly acknowledged that Hussein's trial is being moved forward entirely for political purposes. According to an Associated Press account, "Iraqi authorities believe the trial against Saddam...will have a major effect on curbing the violent insurgency."

That is, they see the trial of Hussein as a means of intimidating the section of the Iraqi population that is engaged in active opposition to the American military and the new Iraqi government. It is intended to be nothing more than a pretext for executing Hussein.

Laith Kuba, a spokesman for the Iraqi government, declared, "We are sure that these 12 charges are enough to bring Saddam severe punishment. There is no use wasting time" in dealing with all the possible charges that could be brought against Hussein.

By "severe punishment," Kuba is referring to the death penalty, which was reinstituted in Iraq only last month, in part for the express purpose of dealing with Hussein.

While the judges and prosecutors will be officials or appointees of the new Iraqi government, the entire proceedings will be carried out under the watchful eye of the American authorities. The law under which Hussein and other former Baathist officials are being held and tried was promulgated by the United States, which has no legal basis for exercising authority over the people of Iraq. For this reason, Hussein has refused to recognize the legitimacy of the tribunal and his lawyers have indicated that they will not present a defense.

Hussein, along with the other Iraqi prisoners, has been held by the US military largely incommunicado at the Camp Cropper detention center near Baghdad. His lawyers have been able to meet with him only infrequently since his capture in December 2003, and one lawyer charges that the American

military has been moving Hussein from camp to camp.

The *New York Times* notes in a June 7 article that American advisers will be closely involved in every aspect of the trial. "More than 50 American advisers," the newspaper reports, "have been training several hundred Iraqi investigators and judges, none of whom had experience with human rights laws or handling such complex cases." The article continues: "With American advice, the Iraqis will decide what charges to bring and will run the trials."

The procedure of the tribunal will be extremely circumscribed. American officials have no interest in setting the stage for a trial like that of Slobodan Milosevic, the former leader of Yugoslavia. Milosevic has on several occasions successfully turned the proceedings at The Hague into an indictment of the American-led air war against Serbia.

Hussein will not be allowed to challenge the legitimacy of the trial as a whole. He will have no forum to defend himself politically, and will not have the right to call American officials to testify.

It is clear that the trial will include no legal safeguards. US and Iraqi officials will point to the character of the Saddam Hussein regime as justification for their violation of democratic principles. However, Saddam Hussein is no better and no worse than innumerable dictators supported by the US at one time or another, when it suited Washington's interests.

More importantly, it is a travesty of democratic principles to base the character of such a legal proceeding on the character of the person on trial. Whatever one thinks of Hussein, his prosecution at the hands of the US military reeks of illegality.

In organizing the trial, the US involves itself in a mass of contradictions. It is a delicate task to choreograph the proceedings in such a way as to sidestep them. For the Americans, anything but an entirely scripted trial is unacceptable, for not only is the US involved in countless crimes against the Iraqi people today, it shares a high degree of culpability in the principle charges being leveled against Hussein.

The *New York Times* article of June 7 cites American legal advisers to the Iraqi tribunal as stating that one of the key charges to be leveled against Hussein concerns the use of chemical weapons against Iraqi Kurds in the late 1980s, toward

the end of the Iran-Iraq war. Aside from uncertainties about who was responsible for these attacks—whether Iran or Iraq—the *Times* neglects to mention that at the time Hussein was a close ally of the United States.

There is substantial documentary evidence demonstrating that the United States was aware of Iraqi use of chemical weapons against Iran as early as 1983. However, this did not stop the American military from becoming more and more involved in the conflict on the side of Iraq. It also did not prevent Secretary of Defense Donald Rumsfeld, then President Reagan's special envoy to the Middle East, from traveling to Iraq on two occasions to assure Saddam Hussein that the US was committed to continued military aid. (See "The diplomacy of imperialism: Iraq and US foreign policy—Part five: Donald Rumsfeld and the Washington-Saddam Hussein connection" and "Part six: Reagan administration deepens ties with Hussein")

There are indications that charges might be brought against Hussein for the Iran-Iraq war itself. This is a gross simplification of historical events. A serious examination of the causes of the war would have to include an inquiry into the role of at least two other actors—Iran and the United States.

Not only did the US encourage Iraq to increase pressure on Iran, culminating in war, but Iraq was eventually able to impose a favorable settlement in 1988 only after direct American intervention in the war. This culminated in the shooting down of an Iranian passenger jet by an American war ship, the USS Vincennes, an act that was a clear violation of international law. (See "The diplomacy of imperialism: Iraq and US foreign policy—Part eight: The end of the Iran-Iraq war")

Incidents such as the chemical weapons attack on Iraqi Kurds have been cited innumerable times by President Bush as evidence that "Saddam Hussein killed his own people." How do these actions differ in substance from those carried out by the US military and its Iraqi partners today? The US has mounted a counterinsurgency operation in Iraq that dwarfs anything Saddam Hussein was capable of organizing. It currently includes operations in Baghdad and western Iraq that have resulted in mass arrests and an unknown number of casualties.

According to Gregory Kehoe, the former top American adviser to the Iraqi tribunal, the investigators will seek to establish that Hussein bears "command responsibility" for various atrocities, including the chemical weapons attacks. That is, they want to establish that he knew about the crimes either before or after they occurred, but did nothing to stop them or punish those who committed them.

This is dangerous legal territory for the American authorities. On such grounds, President Bush and other top American officials could be found guilty of any number of crimes, including the abuse and torture of Iraqi and Afghan prisoners at US detention facilities. Not only was this abuse a product of policy set at the highest levels of the American government, but

ever since evidence of the abuse became publicly known, the US has engaged in a whitewash of all but a handful of low-level soldiers.

Iraqi officials say that the first charge to be leveled against Hussein involves the killing of 160 men from the Shiite village of Dujail, following an attempted assassination of Hussein. And what of the mass arrests and indiscriminate bombings carried out by American troops in Iraq?

In retaliation for the killing of four American contractors in the city of Fallujah, American troops and their Iraqi cohorts cordoned off the city and invaded it last November. In the course of the invasion, most buildings and homes were damaged or destroyed, and an untold number of Iraqis—insurgents as well as civilians who were unable to escape—were killed.

Hussein is also to be charged with the invasion of Kuwait in 1991. But if the invasion of Kuwait is to be declared an illegal aggressive war in violation of UN statutes, on what grounds can the United States claim legality for its invasion of Iraq?

Robert Jackson, the chief American prosecutor of Nazi war criminals at the Nuremberg Tribunal, declared in June 1945, "If certain acts of violation of treaties are crimes, they are crimes whether the United States does them or whether Germany does them, and we are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us."

In the trial of Saddam Hussein, the United States has pledged itself to precisely the opposite principle: It reserves for itself the right to try anyone for crimes when it considers it expedient to do so, while ignoring its own culpability in these crimes and its involvement in new crimes being carried out today. Even among Iraqis who oppose Hussein, this trial will be largely seen as an illegal and sordid travesty.



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