

## REGARDING DUJAIL: WAS SADDAM'S TYRANNICAL RULE BROUGHT TO AN UNJUST END?

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### INTRODUCTION:

Saddam Hussein (hereinafter "Hussein"), the feared former leader of Iraq, has been branded by some as the "Arab Stalin"<sup>1</sup> for the scale of his alleged crimes throughout his reign. Hussein's criminal acts include the 1987-88 Anfal campaign, where hundreds of thousands of Kurds were displaced and killed, the gassing of the village of Halabja, where an estimated 5,000 people died, and strings of mass executions, including the massacre of 8,000 people from the Barzani tribe.<sup>2</sup> Despite Hussein's list of numerous crimes against humanity, Hussein was tried in 2005 by a Coalitional Provisional Authority<sup>3</sup>-created court, the Iraqi High Tribunal (hereinafter "IHT"), only for ordering the arrest, displacement, detention, torture and execution of nearly one hundred-fifty people in the village of Dujail, a village thirty-five miles north of Baghdad in Iraq's central Salahaddin governorate.<sup>4</sup> Hussein, along with three senior former Iraqi officials and four lower-level Ba'ath party members, was charged with crimes against humanity for the massacre on Dujail.<sup>5</sup> Hussein, who was subsequently convicted on nearly all counts, was sentenced to death by hanging and was executed in December 2006.<sup>6</sup>

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<sup>1</sup> Rory Carroll, *Saddam Trial to Open with Village Massacre*, GLOBAL POLICY FORUM, June 7, 2005, available at <http://globalpolicy.igc.org/intljustice/tribunals/iraq/2005/0607massacre.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> The Coalitional Provisional Authority was the transitional government in Iraq from April 21, 2003 to June 28, 2004. See CPA/REG 16 May 2003 (stating that the CPA is vested with all "executive, legislative, and judicial authority necessary to achieve its objectives....").

<sup>4</sup> See Carroll, *supra* note 1; see also Christopher M. Rassi, *Lessons Learned from the Iraqi High Tribunal: The Need for an International Independent Investigation*, 39 CASE W. RES. J. INT'L L. 215, 215 (2006-2007).

<sup>5</sup> MICHAEL P. SCHARF & GREGORY S. MCNEAL, *SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL*, 62-63 (Carolina Academic Press 2006).

<sup>6</sup> *Hussein Executed With 'Fear In His Face'*, CNN.COM, Dec. 30, 2006, available at [www.cnn.com/2006/WORLD/meast/12/29/hussein/index.html](http://www.cnn.com/2006/WORLD/meast/12/29/hussein/index.html).

The trial against Hussein was the first for the IHT.<sup>7</sup> Many critics believe the IHT did not provide Hussein with a fair and non-biased trial; those same critics believe that the trial included many violations of the International Covenant on Civil and Political Rights.<sup>8</sup> The accusations against the IHT from the international community after Hussein's trial were overly harsh. Although the IHT did not follow international standards of justice with precision, the IHT fared well in light of the complex blend of Middle Eastern law and international norms that were applied to the process, the political climate at the time, and the lack of an alternative venue.

First, because it is an Iraqi domestic tribunal, the IHT intended to apply Middle Eastern legal norms to the process.<sup>9</sup> While it took international norms under consideration, the IHT never fully intended to comport with the international standards of justice.<sup>10</sup> Second, although the war in Iraq proved to be an unstable environment for the judges, attorneys, and witnesses during Hussein's trial, the IHT and United States military went above and beyond its responsibility to assure their protection.<sup>11</sup>

Third, the IHT itself could not have been anywhere in the world other than Iraq for two reasons. First, members of the IHT wanted to keep the court inside the country to prove to that Iraq was beginning a new era of justice.<sup>12</sup> Second, the IHT had to stay in Iraq because the United Nations Security Council would have most definitely vetoed the creation of an ad-hoc

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<sup>7</sup> See Human Rights Watch, *infra* p. 11 and note 62, at 2.

<sup>8</sup> *Id.* at 36.

<sup>9</sup> MICHAEL P. SCHARF, *Did the Dujail Trial Meet International Standards of Due Process?*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 163-64 (Carolina Academic Press 2006).

<sup>10</sup> *Id.* at 163 (The IHT made clear "...that the Tribunal is to be governed by Iraqi Criminal Procedure, which is based on the civil law model prevalent in the Middle East."); see also Patricia M. Wald, *Iraq, Cambodia, and International Justice*, 21 AM. U. INT'L L. REV. 541, 543 (2006) ("[I]t is fair to say that the majority of international humanitarian law concepts adopted by the ad hoc court charters and the ICC are present in the IST Statute and Rules....").

<sup>11</sup> See Scharf, *infra* p. 7 and note 42, at \*3.

<sup>12</sup> Jerrold M. Post & Lara K. Panis, *Tyranny on Trial: Personality and Courtroom Conduct of Defendants Slobodan Milosevic and Saddam Hussein*, 38 CORNELL INT'L L.J. 823, 835 (2005) ("The Iraqi people feel strongly motivated to prove to the world, that as a nation of law, Iraq is capable of carrying out justice, against even its most brutal dictators.").

war crimes tribunal because of its disagreement with the United States invasion of Iraq, and because the International Criminal Court has no jurisdiction to try crimes committed before 2002.<sup>13</sup>

Despite the death of their tyrannical leader, Iraq seems to be in as troubled a state as ever.<sup>14</sup> Instability and violence still plague the country that once hoped the death of Hussein would finally bring peace. The IHT, however, should not be written off as a complete failure and most certainly should not be judged on the process of its very first trial. Many years from now, the IHT will likely be viewed favorably by the Iraqis as an institution which brought down one of the vilest leaders of the twentieth century.<sup>15</sup>

## **I. WHAT OCCURRED AT DUJAIL?**

### *A. The Atrocity*

The terror that became the Dujail incident and the basis for the prosecution of Hussein all began after a visit by Hussein to the village of Dujail, a visit during which Hussein believed an assassination attempt had been made on his life.<sup>16</sup> Hussein was deceptively full of charisma that fateful day: “Saddam Hussein strides through the street, a fixed smile on his face, waving to the ululating, crowd swarming around him. Anxious soldiers push people back with rifle butts.”<sup>17</sup>

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<sup>13</sup> See SCHARF, *supra* note 5, at 58.

<sup>14</sup> John Simpson, *Divisions Deepened by Saddam's Death*, BBC NEWS, available at [http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle\\_east/6238435.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/6238435.stm), Jan. 1, 2007 (“In death as in life, Saddam continues to divide his enemies....His execution acted like an explosion along the seismic fault-line between the two leading forms of Islam.”).

<sup>15</sup> See President Bush's Statement of Execution of Saddam Hussein, Dec. 29, 2006:

Fair trials were unimaginable under Saddam Hussein's tyrannical rule. It is a testament to the Iraqi people's resolve to move forward after decades of oppression that, despite his terrible crimes against his own people, Saddam Hussein received a fair trial. This would not have been possible without the Iraqi people's determination to create a society governed by the rule of law.

*Id.*

<sup>16</sup> See Hilsum, *infra* p. 4 and note 17; see also Carroll, *supra* note 1.

<sup>17</sup> Lindsey Hilsum, *UK Special 4 Report on the Dujail Incident*, CHANNEL 4 NEWS, Sept. 18, 2005, available at [http://www.channel4.com/news/articles/world/middle\\_east/the+day+they+tried+to+kill+saddam/110790](http://www.channel4.com/news/articles/world/middle_east/the+day+they+tried+to+kill+saddam/110790).

This was just minutes after an assassination attempt on Hussein took place in Dujail.<sup>18</sup> What was to come after Hussein's visit to the village was pure disaster, a disaster deemed by the citizens of Dujail as "al kuritha."<sup>19</sup>

Those citizens of Dujail not associated with the gunmen in the alleged assassination attempt were nonetheless imprisoned, tortured, and killed.<sup>20</sup> The IHT described the events at Dujail that followed the alleged assassination attempt as a systematic attack that included arresting families, "devastating their homes, plundering their properties, and issuing presidential decisions for seizing and devastating gardens as a claim to rebuild and redevelop the small town."<sup>21</sup> The punishment of Dujail citizens was intended to instill terror and fear among the Iraqi people in general.<sup>22</sup> It was a "systematic, calculated plan"<sup>23</sup> implemented under the rule of Hussein to show that those who were against him would pay.<sup>24</sup> One hundred forty-eight citizens of Dujail were sentenced to death and killed as a result of Hussein's investigation, a number that is far disproportionate to the actual number of militants that participated in the assassination attempt.<sup>25</sup>

Beginning July 8, 1982, some of the innocent people of Dujail were deliberately killed while others were coercively displaced after being arrested and detained at Al-Hakimiya and Abu Ghraib prisons and the Lea Desert Detention Camp.<sup>26</sup> Methods of torture conducted on Dujail detainees included, but were not limited to, electric shock; beating; solitary confinement while blindfolded and hands tied; violent beating of all parts of the body; extraction of nails and

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* ("Arrests and killings began immediately, followed by bombardments from helicopter gunships. Soldiers cut down the date palms on which the people depended, and bulldozed their houses.")

<sup>20</sup> *Dujail Trial Opinion*, Part I, 16, [hereinafter *Dujail Part I*], English translation available at [http://law.case.edu/saddamtrial/documents/dujail\\_opinion\\_pt1.pdf](http://law.case.edu/saddamtrial/documents/dujail_opinion_pt1.pdf).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 18.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* (The Dujail terror was implemented against those who "would even entertain" the idea of betraying Hussein).

<sup>25</sup> *Id.*

<sup>26</sup> *Dujail Trial Opinion*, Part III, 30, [hereinafter *Dujail Part III*], English translation available at [http://law.case.edu/saddamtrial/documents/dujail\\_opinion\\_pt3.pdf](http://law.case.edu/saddamtrial/documents/dujail_opinion_pt3.pdf).

teeth; burning; long periods of starvation; hygiene and health care deprivation; and rape.<sup>27</sup> Plaintiff Ahmad Hassan Al-Dujaili testified before the IHT and personally described how Hussein's subordinates tortured him by beating and electrifying him continuously for seventy to eighty days.<sup>28</sup>

Most of the people who requested that complaints be brought against Hussein had not actually seen Hussein order the arrest, imprisonment, torture, or killing of any Dujail citizens.<sup>29</sup> Yet, the complainants were allowed to testify to what they saw, heard, or heard others say—that Saddam ordered his subordinates and subjects to do such acts of torture, encouraged their implementation, and did not take necessary measures to prevent them.<sup>30</sup> No plaintiff personally accused Hussein of torturing him or her, but a majority of the plaintiffs claimed that Hussein should be accountable because “he was the head of state, because he was the custodian and was responsible for his subjects” and because he had assigned to his subordinates the investigation of Dujail, which included the arrest, detention, interrogation, displacement, and horrible torture of innocent civilians.<sup>31</sup>

#### B. *Terror Fueled By Assassination Attempt*

The IHT believes that the Dujail incident arose from Hussein's theory that the people of Dujail were unloyal to him,<sup>32</sup> and Hussein's belief that the villagers were “agents of a foreign power and criminals.”<sup>33</sup> Hussein testified on June 12, 2005, about the alleged assassination attempt, but at this point during the trial Hussein had not yet associated his actions at Dujail with

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<sup>27</sup> *Id.* at 36-37.

<sup>28</sup> *Id.* at 37. Plaintiff testified that he was subject to continuous days of beating and electrifying; he was unmasked and made to watch others endure the same torture.

<sup>29</sup> *Dujail Trial Opinion*, Part II, 44, [hereinafter *Dujail Part II*], English translation available at [http://law.case.edu/saddamtrial/ocuments/dujailopinion\\_pt2.pdf](http://law.case.edu/saddamtrial/ocuments/dujailopinion_pt2.pdf).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 39.

<sup>32</sup> See *Dujail Part I*, *supra* note 20, at 18.

<sup>33</sup> See *Dujail Part III*, *supra* note 26, at 47.

an attempt to retaliate against those who had tried to assassinate him.<sup>34</sup> Hussein claimed he did not ask his intelligence service, his security, or his military intelligence to open an investigation into the matter.<sup>35</sup> Yet testimony of co-defendant Barazan Ibrahim, the former chief of the intelligence service at the time of the Dujail disaster, contradicted Hussein, claiming that Hussein had in fact ordered an investigation of the citizens of Dujail.<sup>36</sup>

Further questioning of Hussein resulted in more denial by the former leader of any organization or planning of the arrests, detaining of families, bulldozing lands, or oppressing the citizens of Dujail.<sup>37</sup> It was not until a year later, on June 12, 2006, that Hussein made the claim that the Dujail investigation, torture, and killings were ordered and conducted in retaliation against the alleged attempt by a small group of militants to assassinate him, which Hussein later used as a defense to the charges against him.<sup>38</sup>

## **II. JUDGING HUSSEIN**

### *A. Charges*

On May 5, 2006, the IHT charged Hussein, pursuant to the Iraqi High Court Criminal Law, with the deaths of nine people who died in the first days of his investigation of Dujail; the unlawful arrest of three hundred ninety-nine townspeople; the torture of women and children; the ordering of razing of farmlands; and the deaths of one hundred forty-eight people who were sentenced to death by Hussein's Revolution Court.<sup>39</sup> Specifically, Hussein was charged, pursuant to Article 12 of the Iraqi High Court Criminal Law, (hereinafter "IHCCL"), with crimes

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<sup>34</sup> See *Dujail Part II, supra* note 29, at 46.

<sup>35</sup> *Id.* (Hussein stated: "We had different organizations like the intelligence service, security, military intelligence which have their own references and who perform their work according to established contexts, but I didn't ask them to open any investigation in this matter.").

<sup>36</sup> *Id.* (Noting when Hussein was questioned about his inability to recall the time around the investigation, he stated, "[I] remember when I want to remember and I don't remember when I don't want to remember.").

<sup>37</sup> See *Dujail Part II, supra* note 29, at 47.

<sup>38</sup> *Id.* at 49.

<sup>39</sup> See SCHARF, *supra* note 5, at 63.

against humanity, which included: (a) willful murder; (b) removal of the population or the compulsory transfer of the population; (c) imprisonment or the strict denial of any type of physical freedoms in a way that contradicts the basic principles of international law; (d) torture; (e) compulsory concealment of people; and (f) other inhumane acts of a similar nature which deliberately caused great suffering or serious harm to the body or mental or physical health.<sup>40</sup>

### B. *Saddam's Defenses Rejected*

Unsurprisingly, one of Hussein's defenses for his actions and orders during the Dujail incident was based on the alleged assassination attempt. Hussein's defense lawyers, however, failed to present any evidence at trial that any gunshots had actually been directed at Hussein during his visit to Dujail in 1982.<sup>41</sup> Hussein truly believed he was entitled to take action against the entire Dujail village that, according to him, had "tried to assassinate him and was populated by insurgents and terrorists allied with Iran at a time Iraq and Iran were at war."<sup>42</sup> According to one of Hussein's lawyers, Khalil al-Duaimi, "[p]unishing those who carried it<sup>43</sup> out is justifiable all over the world. Any president in the position of Saddam would do the same thing."<sup>44</sup>

The IHT heard testimony of twenty-one of Hussein's defense witnesses whose statements were either general or irrelevant to the Dujail incident, based upon what they heard others say or were aimed at proving that there was an attempt to assassinate the former president.<sup>45</sup> The IHT

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<sup>40</sup> See Iraqi High Court Criminal Law Statute, *The Official Gazette of the Republic of Iraq*, Art. 12 (a)-(f), available at [http://law.case.edu/saddamtrial/documents/IST\\_statute\\_official\\_english.pdf](http://law.case.edu/saddamtrial/documents/IST_statute_official_english.pdf).

<sup>41</sup> See *Dujail Part I*, *supra* note 20, at 19.

<sup>42</sup> Michael P. Scharf, *Forward: Lessons from the Saddam Trial*, 39 CASE W. RES. J. INT'L L. 1, \*3 (2006-2007).

<sup>43</sup> The assassination attempt.

<sup>44</sup> MICHAEL P. SCHARF, *Does Saddam Hussein Have a Viable Defense based on the Necessity to Combat Insurgents and Terrorists?*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 172 (Carolina Academic Press 2006).

<sup>45</sup> See *Dujail Part II*, *supra* note 29, at 52.

held that the testimony of the defense witnesses proved to be insufficient to show that the assassination attempt in any way justified Hussein's orders to displace, torture, and kill.<sup>46</sup>

Next, throughout the trial, Hussein vehemently argued that as President of Iraq, he was granted immunity by Iraq's Constitution and repeatedly contested the legitimacy of the tribunal.<sup>47</sup> Yet again, the IHT felt the defense presented no evidence to support the essence of the claim.<sup>48</sup> Hussein's claim of immunity was rejected on several grounds pursuant to Article 15 of the IHCCL including, among other things: charges of crimes against humanity do not allow for immunity; a president, official, or member of the revolution command council or Ba'ath Party command is not exempt from punishment for crimes against humanity; the president has no immunity if he knew or had reason to know that his officials were going to commit crimes against humanity and he did nothing to prevent it; and that the ordering of execution allows for no immunity.<sup>49</sup>

Further, Hussein's defense team also argued that the IHT had no jurisdiction to try Hussein on international crimes against humanity.<sup>50</sup> The IHT rejected the claim, responding that it had jurisdiction to try crimes that not only violated international law, but also those which violated Iraqi law.<sup>51</sup> The IHT further answered that, since Iraq ratified the Geneva Convention of 1949, rules of international criminal law may be applied in Iraq despite the fact that the rules prohibiting crimes against humanity are not stipulated in Iraq's domestic law.<sup>52</sup> IHT members

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 49.

<sup>48</sup> *Id.*

<sup>49</sup> See *Dujail Part I*, *supra* note 20, at 32-33.

<sup>50</sup> *Id.* at 33 ("As for the subsequent requests by the defense attorneys regarding the transfer of trials to the outside of Iraq, there is a firm rule in law certifies that 'crimes committed inside certain lands should be tried in those lands.'").

<sup>51</sup> See *Dujail Part II*, *supra* note 29, at 41.

<sup>52</sup> *Id.* at 42.



justified the Court's jurisdiction on the principal of regional sovereignty—that crimes committed in their lands should be tried within their lands.<sup>53</sup>

*C. Outcome of the case; the Tyrant Hangs*

The IHT held that it was proven beyond a reasonable doubt that Hussein committed the acts charged pursuant to Article 12 and denoted by Article 15 of the IHCCL.<sup>54</sup> The court acknowledged the criminal accountability of Hussein “derived not only from his position as the head of state, or the head of the revolutionary command council, a prime minister, or his position as commander in chief of the armed forces at the time of the incident,” but from Hussein’s issuance of the execution order of Dujail citizens and his collaboration and knowledge of the criminal acts that were directed against them.<sup>55</sup>

The Court went on to acknowledge that, because Hussein failed to take the necessary logical measures to prevent or punish his subordinates for the torture and eventual killing of numerous Dujail citizens, he must be held accountable under Article 15(4) of the IHCCL.<sup>56</sup> The IHT stated that even if Hussein was acting under the pretext of an alleged assassination attempt, there is no “legal, legitimate, or human justification that can be accepted for arresting and detaining hundreds of women, children...and men of Dujail and killing a large number of them.”<sup>57</sup>

The IHT acknowledged in its opinion that it firmly “believe[d], without any reasonable doubt, and as the only logical, acceptable and reasonable conclusion” that Hussein issued orders

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<sup>53</sup> See *Dujail Part I*, *supra* note 20, at 33.

<sup>54</sup> See Iraqi High Court Criminal Law Statute, *supra* note 40, at 9 & 14.

<sup>55</sup> See *Dujail Part I*, *supra* note 20, at 28.

<sup>56</sup> See Iraqi High Court Criminal Law Statute, *supra* note 40, at 14:

The crimes that were committed by a subordinate do not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so, and the superior failed to take the necessary and appropriate measures to prevent such acts or to submit the matter to the competent authorities for investigation and prosecution.

*Id.*

<sup>57</sup> See *Dujail Part III*, *supra* note 26, at 15.

to attack the town of Dujail after the unsuccessful attempt on his life, and a “large-scale attack was ‘not necessary nor appropriate’ for that ‘very limited attempt.’”<sup>58</sup> According to the IHT, the evidence presented proved Hussein’s actions were part of a systematic attack directed against an innocent civilian population.<sup>59</sup>

Hussein was convicted of deliberate killing, the removal or coercive displacement of the residents, the imprisonment or extreme deprivation of physical freedom, torture, and other inhuman acts that have a similar character to what inflicts an extreme suffering, or grave harm, upon the body’s mental or physical health.<sup>60</sup> The charge of coercive disappearance of individuals was dismissed. Hussein was subsequently sentenced to death and hanged on December 30, 2006.<sup>61</sup>

### **III. THE IRAQI HIGH TRIBUNAL**

Hussein’s prosecution and subsequent trial before the IHT “represents not only justice for hundreds of thousands of victims under Hussein, but also the first opportunity to create a historical record concerning some of the worst cases of human rights violations in the world.”<sup>62</sup> At its inception, many had high hopes for the IHT and its attempt to stabilize the rule of law in Iraq. The IHT appeared to some, however, to be “snake-bitten from its conception.”<sup>63</sup>

Many countries, international organizations and human rights non-governmental organizations opposed the IHT from the beginning not only because it followed the United States

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 17:

It is proven to this court that the behavior of the accused Saddam Hussein was part of a large-scale and systematic attack directed against a civilian population through numerous indications and evidence, including the large number of the armed forces, and intelligence systems and Popular army, and through organization and repeated acts of arrest, detention and torture, then killing of that large number of the population.

*Id.*

<sup>60</sup> *Id.* at 46-47.

<sup>61</sup> See Hussein Executed With ‘Fear In His Face,’ *supra* note 6.

<sup>62</sup> Human Rights Watch, *Judging Dujail, The First Trial Before the Iraqi High Tribunal*, Vol. 18 No. 9(E), 3, Nov. 2006, available at <http://www.hrw.org/reports/2006/iraq1106>.

<sup>63</sup> See Scharf, *supra* note 42, at \*2; see also Rassi, *supra* note 4, at 218.

invasion they believed to be unlawful, but also because the court provided for the death penalty and was seen as preventing the deployment of a truly international court.<sup>64</sup> After the Dujail trial, the international community criticized the IHT not only for failing to strictly adhere to established principles of international law, but also for the claimed poor location for the court.<sup>65</sup> It must be acknowledged, despite all of the criticism, that there are positive aspects of the IHT that must not go unnoticed.

#### A. *Brief Background*

The IHT is a judicial body that was established under order of the Coalition Provisional Authority by the Iraqi Governing Council on December 10, 2003, and approved by the Iraqi Transitional National Assembly on August 11, 2005.<sup>66</sup> The IHT was formed on what members of the court call a “self-evident truth,”<sup>67</sup> that is, that countries have the judicial authority to try international crimes just as they do domestic crimes.<sup>68</sup> The IHT has jurisdiction to prosecute high-level members of the former Iraqi regime who are alleged to have committed war crimes, crimes against humanity, genocide, and aggression between 1968 and the end of the Iraq invasion in May 2003.<sup>69</sup>

The IHT has been dubbed an “internationalized domestic court” since its statutes and rules of procedure are modeled upon the U.N. war crimes tribunals for the former Yugoslavia, Rwanda, and Sierra Leone.<sup>70</sup> IHT judges and prosecutors are assisted by international experts,

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<sup>64</sup> *Id.*

<sup>65</sup> See SCHARF, *supra* note 5, at 58.

<sup>66</sup> Heidi M. Spaholz, *Saddam Hussein and the 1<sup>st</sup> on Trial: The Case for the ICC*, 13 BUFF. HUM. RTS. L. REV. 255, 281 (2007).

<sup>67</sup> See *Dujail Part I*, *supra* note 20, at 31.

<sup>68</sup> *Id.*

<sup>69</sup> See SCHARF, *supra* note 5, at 57; see also Wald, *supra* note 10, at 543 (2006).

<sup>70</sup> See SCHARF, *supra* note 5, at 58.

but it is not fully international due to the fact it sits in Baghdad, the prosecutor is Iraqi, and the bench is composed exclusively of Iraqi judges.<sup>71</sup>

### B. *Harsh Criticism of the IHT*

Most civilians that lived and suffered under the wrath of Hussein's rule likely felt relieved when Hussein was sentenced and subsequently put to death, unconcerned with the means by which Hussein was tried and sentenced. Members of the international criminal law community, however, argued that the standards established by the IHT were not those of procedurally fair trials, and that even someone of Hussein's caliber deserved due process of law.<sup>72</sup>

Human Rights Watch (hereinafter "HRW"), argued that the IHT committed several violations of fair trial guarantees set forth in the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), a covenant Iraq ratified in 1976.<sup>73</sup> Other critics attacked the legitimacy of the court due to its location and the political climate.<sup>74</sup> Yet, due to the fact the IHT did as well as possible in the face of political turmoil and the inherent lack of any alternative venues, the IHT fared well under the burdens it faced.

#### i. *Iraqi Due Process*

HRW has criticized the Dujail trial by claiming it undermined several of the ICCPR's guarantees, including, among others: (1) the right to an independent and impartial tribunal; (2) the right to be presumed innocent; (3) the right to be promptly informed of the charges against the accused; and (4) the right to examine witnesses against the accused.<sup>75</sup> These are, however,

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<sup>71</sup> *Id.*

<sup>72</sup> See Human Rights Watch, *supra* note 62, at 36-37.

<sup>73</sup> *Id.* at 37.

<sup>74</sup> See Scharf, *supra* note 42, at \*2.

<sup>75</sup> See Human Rights Watch, *supra* note 62, at 36-37.

international guarantees that have been incorporated by the IHT into Article 19 of the IHCCL,<sup>76</sup> and there is much evidence that is contrary to the notion that the IHT failed in providing procedural due process.

First, an accusation by HWR that the IHT actively encouraged the pre-judgment of the outcome of Hussein's trial by failing to promote a climate of public opinion conducive to a fair trial is preposterous.<sup>77</sup> It would have been virtually impossible at the time of the trial to find persons or places in the world that had not heard of Hussein or formed personal opinions about him and his conduct because the trial of someone as notorious as Hussein would inevitably have been accompanied by "strong opinions and public discussion" as to his guilt.<sup>78</sup>

It is reasonable to assume that no matter where in the world Hussein was tried, his reputation would follow, which would certainly have fostered a climate of impartiality that would have been impossible to prevent. The identity of Hussein alone was enough to make the Dujail trial the center of attention in Iraq and in much of the world, regardless of how the trial was conducted.<sup>79</sup> Hussein was extremely well known throughout the world and the level of media and public interest in his trial was immense.<sup>80</sup> Thus, the IHT should not be blamed for advocating any preconceived notions of Hussein's guilt during the trial or for fostering an environment of impartiality.

Furthermore, in light of Hussein's behavior in court, it seems he was fortunate to have been provided some form of due process. Hussein created many problems in the courtroom,

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<sup>76</sup> See Iraqi High Court Criminal Law Statute, *supra* note 40, at 16.

<sup>77</sup> See Peterson, *infra* p. 13 and note 79, at 289 ("The identity of the lead defendant is enough to make the trial the center of attention in Iraq and in much of the world, regardless of how the trial is conducted.").

<sup>78</sup> See Human Rights Watch, *supra* note 62, at 43.

<sup>79</sup> Jeremy Peterson, *Unpacking Show Trials: Situating the Trial of Saddam Hussein*, 48 HARV. INT'L L.J. 257, 289 (2007).

<sup>80</sup> MICHAEL P. SCHARF, *Is the Saddam Hussein Trial One of the Most Important Court Cases of All Time?*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 230 (Carolina Academic Press 2006).

interrupting many times with comments and speeches unrelated to the lawsuit. In particular, during trial on January 29, 2006, Hussein threatened a witness and compared the IHT to a “whore house” while spitting in the face of a person in the courtroom.<sup>81</sup> This is just one of many of Hussein’s outbursts throughout the duration of the trial.

It was harsh that the international community criticized a newly formed tribunal that was making good faith attempts to give a ruler as heinous as Hussein a legitimately fair trial, especially because Hussein was given more due process than he himself ever would have provided the Iraqi citizens. According to Mowaffak al-Rubaie, Iraq’s National Security Advisor, when Hussein was questioned for the first time after his imprisonment, “He [Hussein] expected to be tortured, to be hanged, or he expected Sanchez [commander of forces in Iraq at the time] to pull out his pistol and empty three or four bullets in his head.”<sup>82</sup> That was Hussein's idea of justice,<sup>83</sup> and “that’s how it would have gone down if he had still been running things.”<sup>84</sup>

Another critique by HRW of the IHT is that Hussein was not promptly informed of the charges against him.<sup>85</sup> HRW claimed that the procedure was not adequately specific in terms of informing Hussein of his role in the commission of crimes against humanity and that the IHT should have followed the international process of charging.<sup>86</sup> The ICCPR’s procedure for filing charges against a defendant includes that prompt, sufficient detail must be provided to a defendant so that he may properly understand in what capacity he is alleged to be responsible for

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<sup>81</sup> See *Dujail Part I*, *supra* note 20, at 24.

<sup>82</sup> Peter Landesman, *Who V. Saddam?*, N.Y. TIMES, Jul. 11, 2004, available at [http://query.nytimes.com/gst/fullpage.html?res=9400E3D6143BF932A25754C0A9629C8B63&sec=&spon=&page\\_wanted=1](http://query.nytimes.com/gst/fullpage.html?res=9400E3D6143BF932A25754C0A9629C8B63&sec=&spon=&page_wanted=1).

<sup>83</sup> See Alan Dershowitz, *Imperfect, But Fair Enough*, WALL ST. J., Nov. 7, 2006, at A12, available at <http://online.wsj.com/article/sb116287107431715272.html> (stating that Hussein was afforded a fair trial despite the fact he denied it to others, and “...by the standards of justice in most Arab and Muslim countries, this trial was extraordinarily fair.”).

<sup>84</sup> See Landesman, *supra* note 82.

<sup>85</sup> See Human Rights Watch, *supra* note 62, at 36.

<sup>86</sup> Miranda Sissons & Ari S. Bassin, *Saddam Hussein on Trial: What Went Awry?*, 5 J. INT’L CRIM. JUST. 272, 281 (2007).

the crime, the particular nature of the defendant's responsibility, and the defendant must be given a concise statement of the material facts that will be used to establish the defendant's responsibility.<sup>87</sup>

Nevertheless, HRW should recognize that the IHT's statutes, rules, and procedures are "internationally inspired"<sup>88</sup>—inspired being the key word. Although the IHT has adopted fundamental safeguards in the ICCPR, the IHT made it clear that the court was also to be first and foremost governed by Iraqi Criminal Procedure, a civil law system that is prevalent in the Middle East.<sup>89</sup> The IHT rules were written to import the rights enshrined in the ICCPR, and there were many provisions of the Iraqi Criminal Procedure Law of 1971 that were not consistent with those rights.<sup>90</sup> The drafters, however, intended the provisions of the IHT Statute to control.<sup>91</sup>

Thus, the IHT had the power to apply its *own* statute in the way it saw fit, because its law is a hybrid of old domestic Iraqi law and those of the current international community.<sup>92</sup> In this regard, the IHT statutes represent a "novel attempt to blend international standards of due process with Middle Eastern legal traditions."<sup>93</sup> The fact that the IHT did not explicitly follow international norms of promptly charging a defendant, by instead issuing a charging instrument

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<sup>87</sup> See Human Rights Watch, *supra* note 62, at 44-45.

<sup>88</sup> See Scharf, *supra* note 42, at \*2.

<sup>89</sup> See SCHARF, *supra* note 9, at 163.

<sup>90</sup> *Id.*

<sup>91</sup> Michael P. Scharf, Gregory S. McNeal & Brianne M. Draffin, *A Teacher's Guide and Supplement to Saddam on Trial: Understanding and Debating the Iraqi High Tribunal*, 31 (2007), available at <http://law.case.edu/saddamtrial/index.asp?t=1>.

<sup>92</sup> See Scharf, *supra* note 42, at \*3.

<sup>93</sup> *Id.* at \*2; see also Triponel, *infra* p. 19 and note 111, at 298 (noting that the IHT's incorporation of aspects of international law with local actors and norms has been beneficial in post-conflict reconciliation and represents an "important innovation" in international criminal law).

at the end of the prosecution's case, does not mean the IHT process completely violated international procedural due process.<sup>94</sup>

Last, HRW accused the IHT of failing to provide the right to cross-examine witnesses against the accused.<sup>95</sup> Hussein, however, was afforded several opportunities to speak at length during the trial on his own behalf, was able to select competent counsel, and along with his defense team, was able to "express [himself] rather freely."<sup>96</sup> The IHT judges "bent over backward" to grant Hussein the right to personally cross-examine his accusers and make statements to the bench, an opportunity he took advantage of thirty-nine times during the course of the trial.<sup>97</sup> Hussein and the other defendants could conduct their own cross-examinations of witnesses and address the court each day after their lawyers finished cross-examination and addressed the court.<sup>98</sup> This "opened the door for Hussein to brow-beat witnesses, make disrespectful statements about the presiding judges and prosecutors, and to frequently make speeches inciting violence against U.S. military forces and the new Iraqi government."<sup>99</sup> In light of Hussein's virtually unlimited ability to cross-examine his accusers, it seems that HRW's claim that the defendant was denied this right is unfounded.

According to Michael P. Scharf, the "sophistication of the Tribunal's legal analysis [was] striking, and...any objective observer reading these pages would have to *disagree* with the Human Rights Watch Report's conclusion that 'the level of legal and practical expertise of the key Iraqi actors in the court ... [was] not sufficient to fairly and effectively try crimes of this

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<sup>94</sup> MICHAEL P. SCHARF, *Did the Dujail Trial Meet International Standards of Due Process?*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 164 (Carolina Academic Press 2006).

<sup>95</sup> See Human Rights Watch, *supra* note 62, at 37.

<sup>96</sup> See Peterson, *supra* note 79, at 278.

<sup>97</sup> See Scharf, *supra* note 42, at \*2.

<sup>98</sup> MICHAEL P. SCHARF, *Lessons From the Saddam Trial*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 236 (Carolina Academic Press 2006).

<sup>99</sup> *Id.* at 237.



magnitude.”<sup>100</sup> Thus, the IHT, in its attempt to apply Middle Eastern law with international legal norms embodied in the IHT Criminal Statute, did not fail to provide Hussein with procedural due process.

ii. *Political Climate*

One of the most significant critiques of the IHT was its location in Baghdad, where the political climate was “highly polarized and very unsafe.”<sup>101</sup> Yet the need for an Iraqi domestic tribunal was deemed essential by some because the trials could “assist the [Iraqi] transition to democracy by demonstrating that no one is above the law.”<sup>102</sup> The greatest concern was for the safety of the judges, attorneys, and witness, especially after the assassination of three defense attorneys.<sup>103</sup>

Right from the beginning of the trial, however, the IHT provided safe accommodation and transportation for the defense attorneys. The defense attorneys, despite their knowledge of the services provided for them, failed to comply with the instructions and rules.<sup>104</sup> Defense attorneys continually appeared on television despite the court’s request not to do so.<sup>105</sup> It is logical to assume the defense attorneys exposed themselves to danger “when they elected to have their faces and identities broadcast during the first day of the trial and when they refused to accept the Iraqi Government and U.S. military’s offers of security.”<sup>106</sup>

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<sup>100</sup> See Scharf, McNeal, & Draffin, *supra* note 91, at 15.

<sup>101</sup> See Spalholz, *supra* note 66, at 282.

<sup>102</sup> *Id.* at 276.

<sup>103</sup> See Human Rights Watch, *Iraq: Defense in Danger*, Oct. 21, 2005, available at <http://hrw.org/english/docs/2005/10/21/iraq11911.htm> (“These trials are commencing in an environment of severe insecurity. Everyone participating in the trial process—judges, prosecutors, victims, witnesses and defense counsel—are exposing themselves to grave risks.”).

<sup>104</sup> See *Dujail Part I*, *supra* note 20, at 25.

<sup>105</sup> *Id.* at 26.

<sup>106</sup> MICHAEL P. SCHARF, *The Significance of the Kidnapping/Murder of Defense Counsel, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL*, 121 (Carolina Academic Press 2006).

Arguably, the assassinations of the three defense attorneys could have been prevented if the three had accepted the security measures that existed to protect judges, witnesses, prosecutors, and the rest of the defense team.<sup>107</sup> Thus, it is unfair for the international community to blame the IHT for the fate of the three defense attorneys killed during the trial, especially because their denial of security was arguably a ploy to justify their boycott of the Dujail trial and an attempt to delay or derail the proceedings.<sup>108</sup>

iii. *Availability of an Alternative Venue*

Despite arguments that Hussein should have been tried in an alternative forum,<sup>109</sup> critics should recognize that there were no viable international alternatives for trying Hussein after his capture in 2003.<sup>110</sup> Neither the International Criminal Court (hereinafter “ICC”), nor a United Nations-created ad-hoc tribunal would have been more appropriate than an Iraqi domestic tribunal for the prosecution of Hussein. At the time of its creation, it was seemingly important that the IHT be a court representative of the community of victims.<sup>111</sup>

The Rome Statute of the ICC states that “it is the duty of every State to exercise criminal jurisdiction over those responsible for international crimes.”<sup>112</sup> Although critics of the IHT argue that the ICC would have been a much better alternative for trying Hussein, the ICC does not have jurisdiction due to the “non-retroactivity” clause in its statute that prohibits the ICC from trying cases arising before 2002.<sup>113</sup> Since most of Hussein’s crimes were committed before that time,

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<sup>107</sup> See Scharf, *supra* note 42, at \*3.

<sup>108</sup> See SCHARF, *supra* note 80, at 122.

<sup>109</sup> See Spalholz, *supra* note 66, at 256 (arguing “Hussein’s trial also illustrates the world’s need for a consistent, swift, and fair application of international law once crimes against humanity have been committed; a task which would be best served by the International Criminal Court.”).

<sup>110</sup> See Scharf, *supra* note 42, at \*4.

<sup>111</sup> See Anna Triponel, *Can the Iraqi Special Tribunal Further Reconciliation in Iraq?*, 15 CARDOZO J. INT’L & COMP. L. 277, 278 (2007) (noting the IHT has potential to contribute significantly to the reconciliation of the Iraqi people with their past as “it was particularly close to the effected community with less internationalized elements.”).

<sup>112</sup> See Scharf, *supra* note 42, at \*4.

<sup>113</sup> *Id.*

and more importantly, because the Dujail incident occurred in the late 1980's, the ICC could not have been a possible venue for Hussein's prosecution.<sup>114</sup>

Furthermore, the ICC's jurisdiction is complementary to national criminal jurisdiction and was never intended to be applicable in all situations,<sup>115</sup> making the ICC a "court of last resort that can only operate when a state with jurisdiction cannot or will not act."<sup>116</sup> Luis Moreno-Ocampo, the ICC prosecutor in 2003, once said that "[n]ational investigations and prosecutions, where they can be properly undertaken, will normally be the most effective and efficient means of bringing offenders to justice; States themselves will normally have the best access to evidence and witnesses."<sup>117</sup> Thus, because Iraq was willing and able to try Hussein under its domestic system, the ICC would not have been the best venue.

Second, critics have argued that a U.N.-established ad-hoc war crimes would have been a more desirable alternative to a domestic court, but establishing such a tribunal requires the approval of the U.N. Security Council.<sup>118</sup> A U.N. ad-hoc tribunal would never have been formed to prosecute Hussein because Security Council members France, Russia and China made it absolutely clear that they would have vetoed any effort to establish such a tribunal because of their assertions that the United States invasion into Iraq was unlawful.<sup>119</sup>

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<sup>114</sup> See SCHARF, *supra* note 5, at 58.

<sup>115</sup> M. Cherif Bassiouni, *Post-Conflict Justice in Iraq: An Appraisal of the Iraq Special Tribunal*, 38 CORNELL INT'L L.J. 327, 357 (2005) (noting "...[C]omplementarity between national and international legal systems is recognized in Article 17 of the ICC statute, which gives priority to the national criminal jurisdictions of states parties that are willing and able to undertake prosecutions....").

<sup>116</sup> Anne K. Heindel, *The Counterproductive Bush Administration Policy Toward the ICC*, 2 SEATTLE J. FOR SOC. JUST. 345, 348-49 (2004).

<sup>117</sup> *Id.* at 351.

<sup>118</sup> See SCHARF, *supra* note 5, at 58.

<sup>119</sup> *Id.*

Further, the U.N. would never have lent its support to a court that employed the death penalty,<sup>120</sup> and the Iraqi people and authorities would never agree to a court that did not have this power; ultimately, these competing views would have created an “immediate and insurmountable” deadlock in the attempt to create an ad-hoc tribunal.<sup>121</sup> The U.N. Security Council did, however, subsequent to Hussein’s fall from power, pass Resolution 1483,<sup>122</sup> recognizing the need for Hussein and the Iraqi Regime to be held accountable for crimes and atrocities committed, but the Security Council failed to take any further action.<sup>123</sup>

Moreover, polls taken in Iraq indicated that the Iraqi people themselves “overwhelmingly expressed the view” that Hussein should be tried in Iraq by Iraqi judges.<sup>124</sup> Clearly the Iraqis did not want to be bound by a U.N. tribunal democracy they did not trust. There is strong evidence that the Iraqi people would have been overwhelmingly opposed to giving control to international authorities due to their mistrust of foreign interference.<sup>125</sup> According to an Iraqi exile, Sermid Al-Sarraf, who took part in planning post-war Iraqi justice: the “U.N. had 15 years to call for a tribunal...if the international community had done its job, we wouldn't need a tribunal now.”<sup>126</sup>

The Bush Administration also favored an Iraqi domestic court because it felt that it could exercise a greater degree of control over it.<sup>127</sup> Some argue that the IHT was a mere puppet for the United States’ agenda, but this is countered by the fact that there was separation between the

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<sup>120</sup> See Rassi, *supra* note 4, at 232-33 (“The UN has noted that serious doubts exist regarding the capability of the IHT to meet relevant international standards. Specifically, the Secretary-General recently stated that UN officials should not be directly involved in lending assistance to any court or tribunal that is empowered to impose the death penalty.”).

<sup>121</sup> Sylvia de Bertodano, *Were There More Acceptable Alternatives to the Iraqi High Tribunal?*, J. INT’L CRIM. JUST. 5(2), 294-300 (2007).

<sup>122</sup> U.N. Doc. S/Res 1483 (2003), 22 May 2003.

<sup>123</sup> See Bertodano, *supra* note 121.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See Landesman, *supra* note 82.

<sup>127</sup> *Id.*

U.S. and the trial itself.<sup>128</sup> However, while the U.S. provided some funding, advisement, and security for the IHT, the judges, head prosecutor, and defense lawyer are Iraqi, and it was Iraqi legislators, elected by the Iraqis, who approved the procedures for the IHT.<sup>129</sup> Moreover, under the IHT statute, the judges and prosecutors are independent and are prohibited from taking guidance from any government.<sup>130</sup> The IHT is representative of those who suffered under Hussein's regime, and since the judges and prosecutors are themselves Iraqi, "their hands are not soiled by the actions of the United States."<sup>131</sup>

In addition, the United States was not the only country that had an interest in bringing Hussein to justice for crimes against humanity. There was also Kuwait, which Iraq had invaded and pillaged; Iran, whose troops Iraq had gassed; and Israel, which took repeated hits from Iraqi Scuds during the Gulf War.<sup>132</sup> Thus, during this period, the Bush Administration continually emphasized that Hussein's fate was for the Iraqis alone to determine.<sup>133</sup>

Accordingly, a domestic venue for the IHT was the only realistic approach. Iraq has a long tradition of justice where crimes were tried under a properly functioning legal system staffed by lawyers and judges with no links to the Ba'ath Party.<sup>134</sup> Although initially members of the IHT had no experience dealing with international crimes, they did have considerable

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<sup>128</sup> See Bassiouni, *supra* note 115, at 346-47 (stating "...[I]t is inappropriate to refer to the [IHT] as an American creature dominated by the U.S. government....[S]ince June 28, 2004, and the passage of sovereignty to the interim government, the U.S. mission in Iraq has assumed the characteristics of a diplomatic mission that is very mindful of Iraq's sovereignty.").

<sup>129</sup> See Peterson, *supra* note 79, at 283.

<sup>130</sup> MICHAEL P. SCHARF, *Can the Defendants Raise the "Tu Quoque" Defense?*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 174 (Carolina Academic Press 2006).

<sup>131</sup> *Id.*; see also Peterson, *supra* note 79, at 259 ("While numerous commentators have faulted the IST for failure to qualify as an international effort and for extensive involvement of the United States in its design, others have defended its Iraqi location and use of Iraqi Arabic language, saying that it will promote 'institutional capacity building....'").

<sup>132</sup> See Landesman, *supra* note 82.

<sup>133</sup> *Id.*

<sup>134</sup> See Bertodano, *supra* note 121.

exposure to complex domestic criminal cases.<sup>135</sup> Thus, the IHT had the capacity to conduct a proper trial and it was the international community that failed by not offering ample support for the process. The injustice, then, exists not in the procedural foundations of the IHT, but exists amidst the failure of other governments and international organizations to lend assistance to the IHT in its first attempt to prove to the world that rule of law exist in Iraq.<sup>136</sup>

#### IV. CONCLUSION

The fact that Hussein and his subordinates were brought to trial for even *some* of their crimes against humanity should be considered a vast achievement and certainly not an absolute failure of procedural due process. The IHT, as an internationalized domestic tribunal, sets an incredible precedent as a model for bringing former leaders to justice throughout the world, as well as a due process standard for ordinary Iraqi courts and courts throughout the Middle East.<sup>137</sup> According to Mark Drumb, professor at Washington & Lee University School Law, the IHT was “constituted amid a sense of giddiness.”<sup>138</sup> He acknowledges further that “...overly ambitious and unrealistic expectations...deflate the tribunal, leaving trial audiences with a sense of relative disappointment.”<sup>139</sup> War crimes are inherently messy and the prosecution of those crimes has proved to be even messier, and arguably none of the major war crimes trials to date have been

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<sup>135</sup> *Id.*

<sup>136</sup> See Human Rights Watch, *supra* note 62, at 6 (noting there was a “...deepening reluctance by other international actors to assist the process...”); see also Rassi, *supra* note 4, at 233:

Even though it appears that UN presence was not a possibility, a separate independent investigation under the auspices of the UN would not have implicated the UN in the imposition of the death penalty. Such an independent investigation would have been a valuable contribution to the strategies for post-conflict justice in Iraq, especially with the future of the IHT now in doubt.

*Id.*

<sup>137</sup> MICHAEL P. SCHARF, *Is the Saddam Hussein Trial One of the Most Important Court Cases of All Time?*, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL, 230 (Carolina Academic Press 2006).

<sup>138</sup> Mark A. Drumb, *The Iraqi High Tribunal and Rule of Law: Challenges*, 100 AM. SOC’Y INT’L L. PROC. 79, 83 (2006).

<sup>139</sup> *Id.*

praised as a model of “fairness, efficiency, or decorum.”<sup>140</sup> Thus it is too early to write the IHT off completely, for there is reason to hope for gradual improvement.

The IHT needs to be given more time before more critiques are placed upon the court that has been deemed by some to be a novel judicial institution.<sup>141</sup> As the IHT conducts more trials on perpetrators of human rights violations, it will “eventually restore the Iraqi justice system to a position of legitimacy and credibility, but such a restoration cannot be expected to occur overnight.”<sup>142</sup> It will take time to build up the human resources and physical infrastructures needed for the weakened Iraqi justice system to recover from years of degradation and corruption.<sup>143</sup>

Erasing the legacy of Hussein will not be an easy task—the Iraqis need time to show that their future judicial system will not in anyway resemble Saddam’s system of justice.<sup>144</sup> The fact that the IHT is in Iraq and that others like Hussein are being tried by Iraqis “will contribute immeasurably to the healing process for victims, and to the sense among Iraqis that they are now in control of their own destiny.”<sup>145</sup>

Accordingly, Saddam Hussein was provided the fairest trial that could have possibly been provided to him at the time<sup>146</sup> – a time when the political and social atmosphere in Iraq was in

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<sup>140</sup> See Scharf, *supra* note 42, at \*5.

<sup>141</sup> *Id.*

<sup>142</sup> David M. Gersh, *Poor Judgment: Why the Iraqi Special Tribunal is the Wrong Mechanism for Trying Saddam Hussein on Charges of Genocide, Human Rights Abuses, and Other Violations of International Law*, 33 GA. J. INT’L & COMP. L. 273, 293 (2004).

<sup>143</sup> *Id.*

<sup>144</sup> See Tripone, *supra* note 111, at 284:

[H]olding individuals accountable is described as a critical component of the process of national reconciliation...[w]ithout some sense of justice for citizens who have either suffered under severely abusive regimes or who are bitterly divided by ethnic slaughter or civil war, the prospects for an enduring peace and for national reconciliation are greatly diminished.

*Id.*

<sup>145</sup> PAUL WILLIAMS, *A Turning Point in the Saddam Trial, in SADDAM ON TRIAL, UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL*, 145 (Carolina Academic Press 2006).

<sup>146</sup> See Dershowitz, *supra* note 83, at A12:

utter turmoil, and a time when the international community was uninterested in supporting anything in Iraq because of its disapproval of the United States invasion. The IHT did an admirable job in adhering to its own blend of Middle Eastern law and international procedural due process norms, given the adversity it faced in its attempt to bring Hussein and others to justice.

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Perfect justice is an illusion. Perfect injustice is a reality, as Saddam Hussein proved when he inflicted it on his perceived enemies for so many years. Now the exemplar of perfect injustice has been subjected to imperfect justice. The result is satisfying, and should serve as an object lesson to the many dictators who continue to terrorize their people and others in the expectation that they will never be brought to justice.

*Id.*