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U.S. Wants Iraqis to Judge Hussein

By THOM SHANKER and NEIL A. LEWIS

WASHINGTON, July 31 — The United States has plans to create a special tribunal of Iraqi judges to try Saddam Hussein for crimes against humanity if he is captured, State Department officials and administration legal advisers said today.

"We're looking for an Iraqi-led process to deal with these abuses," a senior State Department official said. "It's important that we bring ownership of these matters to the Iraqi people."

The official, who spoke on the condition of anonymity, said the administration had ruled out seeking a broad-based international tribunal or a United Nations-led effort to try Mr. Hussein. However, the official said, the Iraqis who would lead the court could seek assistance from other Arab countries or elsewhere.

"But it will be up to them," the official said. "The Iraqis will play the undisputed leadership role in this process."

As military officials sound more optimistic that an increasing number of tips from Iraqis will help locate Mr. Hussein, discussion within the administration over how to deal with the ousted Iraqi leader, if captured, has accelerated in recent days.

American administrators in Baghdad and officials in Washington have devoted their attention to how to form a court that would have the authority to try Mr. Hussein on charges of crimes against humanity, including attempted genocide against the Kurds and marsh Arabs of Iraq.

Judge Gilbert S. Merritt, of the United States Court of Appeals for the Sixth Circuit, recently returned from several weeks in Iraq advising the American and Iraqi authorities about establishing war-crimes courts and other legal issues. He said officials were looking to create a tribunal that would have the stature to be seen as free of American control.

"Many Iraqi judges and lawyers said to me that they believe it is important that they be given the authority to try him if he is captured," said Judge Merritt, the former chief judge of the circuit court. He said the most important reason for doing so was that it would be "a vote of confidence in the Iraqi judiciary to have them conduct any such trial."

Judge Merritt said the judges could be chosen from the several who were dismissed or exiled under Mr. Hussein's government. He said the principal proposal was for a three-judge panel of newly reinstated jurists.

United States officials in Baghdad have said they hope to have some sort of working court system in place over the next several months for crimes like murder. But administration officials said today that war crimes trials for Mr. Hussein or any of his senior aides would not necessarily have to wait until a court system was fully functional. "This can proceed on a swifter track," the senior State Department official said.

The Iraqi tribunals, officials said, would be used to try Mr. Hussein and members of his government or military for actions against Iraqis, not for any violations of the laws of war that might have occurred in the American-led conflicts with Iraq in 1991 and this year.

Bush administration officials have previously said that any violations of the laws of war committed by Iraqis against Americans in those conflicts might be prosecuted before American military tribunals. But from discussions with officials, it appears the administration has not made that issue a major part of its planning about Mr. Hussein's legal fate, instead focusing on a solely Iraqi tribunal.

United Nations officials, however, have been considering different approaches. Early in July, the United Nations convened a small group of international legal scholars and Iraqis in Baghdad to discuss what kind of trial would be best if Mr. Hussein were captured.

One scholar invited to advise the United Nations-sponsored group, Diane F. Orentlicher, a professor of international law at American University here, said participants discussed several specific options. Among them were granting jurisdiction to an international tribunal, organizing a hybrid court of Middle Eastern judges working with Iraqis, or waiting for Iraq's new legal system to mature sufficiently to do the job, she said.

But the United States has shown little appetite for international tribunals, notably refusing to participate in the recently established International Criminal Court. That court could not be used for most of the potential human rights issues in Iraq anyway, because it can only deal with crimes that occurred after July 1, 2002.

American diplomats have said that some Iraqis oppose an international tribunal outside of the country, because that might diminish the impact of the justice meted out, which is viewed as important to the political development of post-Hussein Iraq.

A hybrid legal system could follow the lines of the court established for Sierra Leone, Ms. Orentlicher said, as well as one proposed for Cambodia.

The international legal session in Baghdad was called by Sergio Vieira de Mello, the United Nations special representative to Iraq. Attempts to reach him by telephone in Baghdad today were unsuccessful. But in briefing the Security Council last week, he said that given the gravity of the crimes in question, "I believe there is much merit in

considering the establishment of a mixed Iraqi and international panel of experts to consider in detail the options that would best suit Iraq."

Any trial, officials noted, would depend on Mr. Hussein's being taken alive. Pentagon officials have said that decision rests largely with him, and they cite as an example the battle this month in northern Iraq in which Mr. Hussein's sons, Uday and Qusay, violently resisted American troops and were killed.

Bush administration officials and their legal advisers say they are contemplating some kind of prosecution for as many as 200 high-ranking Iraqi officials on whom they have compiled dossiers.

In addition to calling witnesses, prosecutors in an Iraq trial would be able to use a large cache of documents taken out of Iraq during the Persian Gulf war in 1991. The documents, which detail mass killings at Saddam Hussein's behest, were obtained by Kurdish militia fighters who raided the offices of military and Baath Party security officials in the northern cities of Erbil, Kirkuk and Sulaimaniya.

In addition, Indict, a London-based group, has been collecting accounts of atrocities from Iraqis that could be used in any trials of Iraqi officials.

Peter W. Galbraith, a former American diplomat who is a board member of Indict, said a United Nations tribunal would be preferable to one conducted by Iraqis.

"The evidence that could be presented is overwhelming, and these cases would be easy to try," he said. "This case should be taken before the world."