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NEWS ANALYSIS

Hussein's Trial Offers Both Peril and Promise to Iraq and U.S.

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BAGHDAD, Iraq, June 30 — When Saddam Hussein is charged with crimes against humanity in an Iraqi court on Thursday, much more will be at stake than his own fate.

For the people of this country, the Iraqi Special Tribunal could open the door for a thorough accounting of the crimes committed by his notoriously repressive government.

For the fledgling Iraqi government, it could offer an opportunity to shore up confidence among a weary citizenry.

For the Bush administration, known for its dislike of international criminal tribunals, it could mean a chance to establish a war-crimes court it can hold up as a model.

Mr. Hussein appeared before an Iraqi court on Wednesday, after being held in American custody for seven months, but his formal trial is unlikely to begin before next year, Iraqi officials said.

With so much at stake, the proceedings carry as much promise as peril. Already, questions have come up about whether the Iraqi Special Tribunal, relying on Iraqi law and American legal expertise, can produce credible, transparent proceedings or whether the result will amount to little more than victor's justice — or victim's vengeance.

On the one hand, the trial of the former dictator could deliver a degree of empowerment to a country still reeling from the excesses of Mr. Hussein's rule. On the other, it could present the defendant with a political platform of his own.

Compared with war-crimes courts from Nuremberg to Sierra Leone, the Iraqi Special Tribunal is unique in that it is not an independent international judiciary from the start. The Iraqi government has insisted on trying him in the country, under Iraqi law and by Iraqi judges. American lawyers and law enforcement agents have been dispatched to sift through the evidence against Mr. Hussein, dig up mass graves for forensic proof of his crimes and develop the prosecution strategy.

Critics say they wonder whether an Iraqi judiciary, crippled from years of isolation and repression, is up to the task of carrying out such a complex war-crimes case. They also question the degree of American influence over the entire enterprise. The Federal Bureau of Investigation is leading the investigation, along with the Bureau of Alcohol, Tobacco and Firearms and agents

from the Justice Department. The American military is guarding Mr. Hussein, even as he is transferred to the legal custody of the Iraqis. Washington is financing the court.

"The tribunal, the statute, can be seen as a microcosm of the larger undertaking," said Richard Dicker, head of transitional justice for Human Rights Watch, the New York-based rights group. "It's an occupation-supported effort with Iraqi judges and lawyers."

Americans guiding the process say they are taking pains to preserve independence and credibility. American expertise is needed now to rebuild a judiciary eroded under Mr. Hussein's rule. But with time and training, they say, Iraqis will be in full control.

One American legal expert working on the tribunal said all key decisions, including what people are to be investigated, what charges are to be brought, and what evidence is to be heard, would be made by the Iraqi judges who are to sit as a panel at each trial. Eventually, he said, speaking on condition that he not be named, the Iraqi judges would probably ask the Americans to step aside.

"There clearly will be a certain time and place when the Iraqi Special Tribunal will say, 'We're up to speed, we don't need any more help,' and that will be it, we'll be on our way," he said.

The charges against Mr. Hussein are likely to include a range of crimes against humanity, including genocide, in connection with roughly a dozen specific incidents, from the quelling of the 1991 Shiite uprising to the 1988 poison gas attacks that killed 5,000 people in the Kurdish village of Halabja. According to the statute that established the tribunal last December, any crimes committed between July 1968 and May 2003 fall under the court's purview.

Mr. Hussein's lawyers have already challenged the very legitimacy of the court, created last December by the now-defunct American-appointed Iraqi Governing Council.

Several vital issues remain unresolved. The rules of evidence are still being drafted. A witness protection program must be developed. Potential documentary evidence lies scattered across the country, subject to tampering and loss. The widespread insurgency has made it difficult to appoint judges and prosecutors, and the handful of those who have been selected have not yet been identified, out of concern for their security. A sufficiently secure building has not yet been found to house the tribunal.

The Iraqi experiment will differ from the growing body of protocols on international criminal tribunals in important ways.

Both the International War Crimes Tribunal for Yugoslavia and the corresponding body for Rwanda are seated outside the two countries, in an attempt to keep the trials from stirring further unrest. The Special Court for Sierra Leone, while it is taking place inside that country, relies on international human rights law and is made up of judges and lawyers from both Sierra Leone and outside the country. There is no prohibition, as there is here, on trying a citizen of another country.

The Iraqi Special Tribunal will rely on a mixture of international and domestic laws. "We try to meet as many international standards as we can, while keeping it a domestic tribunal," said Salem Chalabi, the administrator of the court and a nephew of the former American ally, Ahmad Chalabi.

He added that he did not want to be accused abroad of "running roughshod over rights."

Many Iraqis say they do not want Mr. Hussein to use the trial to advance his own political platform, as Slobodan Milosevic has been able to do in the tribunal in The Hague.

"Our courts will try to get a ruling as soon as possible," said Nor al-Din, an Iraqi judge who was imprisoned by Mr. Hussein's government and will, therefore, not serve on the tribunal in the former dictator's case. American lawyers assisting the Iraqi tribunal say Iraqi rules of procedure will give judges wide discretion to curb defendants who attempt to use the hearings for political ends.

Many Iraqis say that having a court composed of fellow Iraqis try the former dictator could provide a kind of catharsis that an international tribunal could not.

L. Paul Bremer III, the American occupation chief who left Baghdad on Monday after the formal transfer of sovereignty to Iraq, said he was deeply touched by the extent of trauma suffered by many Iraqis. Mr. Bremer said in an interview before leaving the country that Iraq's return to normality would depend, in some measure, on finding ways to heal the psychological scars suffered under Mr. Hussein.

"These people lived in a society where any mistake was potentially fatal," Mr. Bremer said.

He recounted a dinner conversation with an Iraqi woman. In tears, the woman told him her younger brother had been taken away from his school by secret police agents after a "prank" in which he had mildly criticized Mr. Hussein. The boy was never seen again, and the woman told Mr. Bremer she was so fearful of betrayal by her own family that she waited more than 20 years, until Mr. Hussein's capture by American troops last December, before telling her own children that she had a brother who was lost.

Concern has been expressed that defendants' rights could be prejudiced if they are tried under laws that were put on Iraq's statute books under Mr. Hussein and then modified by the Americans. One legal expert responded by saying that changes made by the occupation authority were aimed at removing prejudicial elements, including provisions that discriminated based on ethnicity or political beliefs.

Privately, some legal experts who are independent of the tribunal worry that the new government's rush to try Mr. Hussein could turn the effort into a high-profile political charade. One such expert here said he feared it might be undermined by violence, a fragile judiciary and the government's "political immaturity."

"You need better security, you need better capacity, you need the new government to have seasoned a bit and to have embedded itself in the psyche of Iraqis," the expert said.

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