

December 31, 2006

## **Hussein's Case Won't Bolster International Human Rights Law, Experts Fear**

By Marlise Simons

PARIS — Saddam Hussein is one of the few modern leaders to have been tried and executed for his crimes and other abuses of power. Most dictators of the past century have died of natural causes at home or in comfortable exile — or at the hands of assassins.

But with trials of former leaders becoming more common in the past decade, there are other distinguishing features in the Hussein case: he was the first former leader to be tried by a domestic court for crimes against humanity — a crime enshrined in international law — and put to death for it.

His dawn hanging on Saturday further stands out because the new international legal institutions, like the International Criminal Court and the temporary tribunals that are trying war crimes cases in the former Yugoslavia, Rwanda and Sierra Leone, do not impose the death penalty.

Despite this application of international law against Mr. Hussein, experts say, his conviction for crimes against humanity has not significantly reinforced efforts to apply concepts of international human rights law around the world. They argue that the trial has been too widely perceived, both in Iraq and abroad, as a chaotic and politicized process with many serious flaws carried out by inexperienced judges. “It's highly doubtful that courts elsewhere might cite this judgment, given its poor credibility,” said Richard Dicker, director of Human Rights Watch's international justice program.

Although domestic courts are now trying cases that include violations of international human rights law, the credibility of the Baghdad tribunal was also questioned by some because it was organized by the United States. European countries that had been asked for help said they could not participate because they had abolished the death sentence.

Rights groups and some international lawyers have deplored the execution as hasty. Some said the execution, based on a comparatively small case involving the killing of 148 civilians, cut short Mr. Hussein's second and far weightier trial for genocide, the gravest charge.

“Such a rapid execution before the conclusion of the genocide trial is a serious legal setback and harms the credibility of the court,” said Antoine Garapon, director of the Institute for Advanced Legal Studies in Paris. He and some other lawyers argued that even if others were to stand trial for genocide against the Kurds in 1988, the person deemed most responsible would never face judgment.

Many Kurds, in fact, say they have mixed feelings about his execution because it denies them the satisfaction of seeing Mr. Hussein face further evidence of genocide presented at the Kurdish trial, which was only a few weeks away from a conclusion.

“To execute such a criminal, a man who reveled in his atrocities, is an act of justice,” Najmaldin Karim, president of the Washington Kurdish Institute and a former refugee from Mr. Hussein’s repression, wrote in an Op-Ed article published Saturday in The New York Times. “Sadly, however, we have not had full justice. Saddam Hussein did not confront the full horror of his crimes.”

Mr. Hussein is the second notorious dictator to escape a verdict on genocide charges. The other is Slobodan Milosevic, the former president of Serbia, who died of a heart attack in March in a United Nations cell during his trial at the war crimes tribunal in The Hague.

The best-known precedents for Mr. Hussein’s execution are the post-World War II trials carried out by the victorious Allied powers: the hangings of the military and political leaders of Nazi Germany and the war crimes trials in Tokyo of Japan’s wartime leadership.

At that time, as now, debates raged over whether the trials conducted by victorious forces were morally wrong or whether they were politically and psychologically indispensable. Some argued that those trials of the late 1940s did more harm than good and should never have taken place. Winston Churchill, Britain’s wartime leader, had always urged that the Nazi leaders be executed, without trial.

But since then, the Nuremberg trials, more so than the widely criticized Tokyo trials, have come to be regarded as the crucial precedents for trials involving grave human rights violations, specifically for the creation in 1993 of the first international tribunal, dealing with war crimes in the former Yugoslavia. “The Yugoslavia tribunal brought alive and gave meaning to criminal offenses that had been on the books for years, and led eventually to charges of crimes against humanity against Saddam Hussein,” Mr. Dicker said.

Benjamin B. Ferencz, a former prosecutor at Nuremberg, said on his Web site on Saturday: “Whether a remorseless mass killer should be sentenced to death is a difficult question. There can never be a balance between the lives of a few mass murderers and the lives of their countless victims. Humanitarian law has moved away from imposing death as a penalty. It should be left to Iraqi judges to decide what is most appropriate to bring peace and reconciliation to their war-ravaged country.”

In only a few other cases in the past half century has a political leader been tried and put to death under his country’s own laws. In 1979, the former Pakistani prime minister, Zulfikar Ali Bhutto, overthrown in a military coup, was executed for the murder of a political opponent after a much-criticized trial.

In December 1989, the ousted Romanian dictator, Nicolae Ceausescu, was executed after an anti-Communist uprising. But the rushed and secret trial preceding his killing by firing squad was widely seen as summary justice. Benito Mussolini was simply shot by Italian partisans in 1945 while trying to flee to Switzerland. Anastasio Somoza of Nicaragua was blown up in his car by Argentine guerrillas in 1980 while in exile in Paraguay. Laurent Kabila, the former Congo leader, was shot and killed by a palace guard.

Only occasionally have former dictators been brought to trial in circumstances widely recognized as fair. During trials of former members of Argentine military juntas in 1985, five of the nine defendants were given long sentences in a civilian court but were pardoned a few years later. The former Rwandan prime minister, Jean Kambanda, pleaded guilty to genocide and was sentenced to life in prison by the United Nations war-crimes tribunal for Rwanda.

Manuel Noriega of Panama was sentenced to 40 years in prison for drug trafficking by an American court but was never judged for human rights or other abuses.

More often, political leaders have escaped into exile and resisted extradition attempts. Jean-Claude Duvalier, the former president of Haiti, fled to France. Idi Amin of Uganda died in peace in Saudi Arabia. Pol Pot died in bed before the new Cambodian war crimes tribunal began its work. Fulgencio Batista fled Cuba and lived the rest of his life in Portugal, and Mobutu Sese Seko fled Zaire, now Congo, and died in Morocco.

But it may become more difficult to hide for people responsible for atrocities, because more countries are willing to apply international law and to call for or execute international arrest warrants.

Augusto Pinochet was arrested in Britain, although he was finally allowed to return to Chile for health reasons, where he died this month. Attempts to prosecute him followed him to his deathbed. Some aging leaders of the Khmer Rouge may finally be judged for the mass murder they inflicted on Cambodia.

Efraim Rios Montt and several other former military leaders of Guatemala are wanted by a Spanish court on charges of genocide of the Indian population. Ethiopia's former ruler, Mengistu Haile Mariam, was found guilty of genocide this month after a trial in absentia. He is in Zimbabwe, protected by its government. These men are not expected to be brought before a court.

Meanwhile, Charles Taylor, the former dictator of Liberia, is waiting in a cell in The Hague, where judges of the Special Court for Sierra Leone plan to start his war crimes trial in 2007.

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