

Bringing Saddam to Justice:

A Status Report

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Brief Analysis

In order to assess policy implications of war crimes tribunals, it is essential to understand the nature of these crimes. The term "war crimes" refers to a body of law more than five hundred years old, though it is profoundly shaped by World War II and the Holocaust. When in 1993-94 the United Nations Security Council established International Criminal Tribunals for the Former Yugoslavia (in The Hague) and for Rwanda (in Arusha, Tanzania), the jurisdiction of the tribunals was limited to four categories of crimes:

- **Genocide:** This crime was given a specific legal description by international convention in 1948. The prosecution of this crime requires proof of specific intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group, as such, through killing, torture, or other means. The element of specific intent makes this very difficult to prove in court.
- **Crimes against humanity:** As defined by the Rwanda tribunal, these crimes consist of murder, enslavement, deportation, imprisonment, torture, rape, or persecution on political, racial or religious grounds, when committed as part of a widespread or systematic attack against a civilian population on national, political, ethnic, racial or religious grounds.
- **Grave breaches of the Geneva Conventions of 1949:** The conventions provide for protection of prisoners of war and civilians.
- **Violations of the laws and customs of war:** This refers to international treaties and customary international law like the 1925 treaty banning the use of chemical weapons.

The Yugoslav war crimes tribunal was the first international criminal tribunal since Nuremberg and Tokyo. From the outset there was skepticism as to how the indictees could be brought to justice. Today, 31 indictees have been taken into custody. While there are 32 war criminals still at large, including Radovan Karadzic, their day before the tribunal will come. The indictment of Karadzic by itself led to his exclusion from the Dayton peace process and his relegation to the periphery of Bosnian politics.

Evidence of Saddam's crimes: As Secretary of State Madeleine Albright has said, Saddam Hussein is a "repeat offender" with a long record. It is important that the international community be aware of Saddam Hussein's criminal conduct. This conduct includes:

- Actions taken by the Iraqi regime during the Anfal campaign in the late 1980's against the Kurds in northern Iraq.
- Actions against Iranians during the Iran-Iraq war.

- The invasion and occupation of Kuwait and the torture and killing of Kuwaiti civilians.
- Actions taken by the regime against the Marsh Arabs in southern Iraq following the Gulf War.
- Destruction of the Kuwaiti oil fields. As the Iraqi army was fleeing in 1991, they were ordered to destroy or release into the Gulf, some seven to nine million barrels of oil. Despite the extraordinary effort by the Kuwaitis to clean up this environmental disaster, significant damage remains.

One incident stands out among the list of abuses Saddam Hussein visited on the Iraqi people, that of Halabja. A little more than ten years ago, Saddam's forces dropped poison gas on the Iraqi town of Halabja. In addition to the initial casualties, birth defects, cancers, and neurological disease run rampant all as a result of Saddam's willingness to violate the 1925 chemical weapons convention by using poison gas.

> The U.S. government is in the process of pulling together a record of the crimes of the Iraqi regime so this information can be used by a prosecution team. Some years ago, Human Rights Watch and the Senate Foreign Relations Committee collected 5.5 million pages of Iraqi documents captured in northern Iraq. The U.S. government has now scanned these documents onto 176 CD-ROM disks, to aid those who would prosecute this case. The Kuwaiti government, universities, and non-governmental organizations have accumulated a great deal of information concerning Iraq's occupation of their country. Despite the great risks involved, the people of Kuwait carefully documented all the atrocities committed by Saddam's occupation forces.

An International Criminal Court: The Clinton Administration has long been an advocate of the establishment of an International Criminal Court. Talks concerning the establishment of this court began at the United Nations in 1995. Aside from U.S. support, key nations in the Middle East like Israel, Jordan, and Egypt have been in favor of this court. It is consistent with U.S. interests to build a permanent court that would deter genocide, crimes against humanity, and war crimes on a large scale.

The International Criminal Court must be focused on crimes like mass killings and atrocities of that sort on a grand scale. The court should not turn into a human rights court, and it should not take on cases that clearly should be prosecuted at a national level. Using the principle of "complementarity," the court should not intervene when a country's national legal system can assume responsibility for bringing a perpetrator to justice. Instead, the court should guarantee that persons committing war crimes in countries lacking responsible institutions will be brought to justice.

Prospects: It would be premature to speculate on what kind of court could be set up to deal with bringing Saddam to justice. Given the indications of interest on the part of other Security Council members concerning this issue, there may be headway in this area in the near term.

At the upcoming diplomatic conference in Rome, the United States and its allies will try to convince the world of the need to establish a permanent International Criminal Court. Getting the international community to sign an international criminal court treaty is a difficult, but not impossible task.

This Special Policy Forum Report was prepared by Jonathan Lincoln.

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