

Saddam's Arrest Raises Troubling Questions

By Stephen Zunes | December 15, 2003

The capture of former Iraqi dictator Saddam Hussein by U.S. occupation forces is likely to result in one of the world's most brutal tyrants of recent decades finally facing judgment for his crimes against humanity. It has also boosted morale in an administration desperately trying to justify its invasion and occupation of Iraq—which they initially justified on false pretenses. While U.S. allegations that Iraq actively supported the al Qaeda terrorist network and possessed weapons of mass destruction in the months prior to the U.S. invasion appear to have been deliberate falsehoods, no one can challenge the fact that Saddam Hussein was a ruthless dictator.

Unfortunately, Saddam's capture will not likely improve the situation for U.S. occupation forces or for those seeking justice against war criminals.

The Impact on the U.S. Occupation

Saddam Hussein's capture is not likely to reduce armed resistance to U.S. occupation forces. While some of the guerrillas have clear ties to Ba'athist elements associated with the former regime, Saddam was not directing guerrilla operations against American forces. He has no experience in guerrilla warfare and his military titles were exclusively those he awarded to himself. (As a young man, he was denied admittance into Iraq's military academy.) Furthermore, there are no indications that the hide-out from which he was captured had any communications equipment capable of directing military operations.

Furthermore, most independent observers believe that the vast majority of the ongoing Iraqi resistance is based upon popular opposition to the U.S. occupation, not out of support for the former regime. Therefore, Saddam Hussein's capture will not likely dampen the opposition.

Nor will it lead to greater cooperation by Iraqis with American occupation forces. The failure of more Iraqis to cooperate is not, as U.S. officials have asserted, because they feared Saddam Hussein would return to power. After alienating the vast majority of his own people through years of brutal and arbitrary rule before going down in ignominious defeat, it was hard to imagine him ever returning to power, even if U.S. occupation forces were eventually driven out.

The biggest fear among Iraqis is not what Saddam might do to those who work with U.S. forces but what other Iraqis might do to them if they are perceived as being collaborators with a foreign occupier. An even bigger reason

why more Iraqis are not cooperating with Washington is simply their widespread opposition to the U.S. occupation itself. Saddam's capture will not likely change that situation either.

While in power, Saddam cynically manipulated the Iraqi people's sense of nationalism and resentment toward Western imperialism as key components in his effort to build a totalitarian state and his cult of personality. That does not mean, however, that that sense of nationalism no longer has widespread appeal among ordinary Iraqis. While Saddam Hussein may have been to Ba'athism what Josef Stalin was to Marxism, that doesn't mean that the U.S. occupation of Iraq won't end up looking like the Israeli occupation of the West Bank.

This is why even Saddam Hussein's harshest critics in Iraq and elsewhere in the Arab world are experiencing such mixed emotions—joy and relief that the tyrant is in custody, but a great uneasiness that his capture was engineered by U.S. occupation forces that illegally invaded and occupied a sovereign Arab nation.

What Kind of Justice?

As one of the most notorious dictators and war criminals of recent decades, international human rights groups and prominent jurists have called upon the United States to hand over Saddam Hussein to a United Nations-sponsored international tribunal to be tried for crimes against humanity.

Such a UN-backed tribunal, consisting of both local and international jurors, has indicted former Liberian President Charles Taylor, the notorious African war lord who is responsible for at least as many deaths as Saddam Hussein. Special UN-sponsored war crimes tribunals have also been set up to prosecute leaders and perpetrators of the 1994 Rwandan genocide as well as those responsible



for ethnic cleansing and other war crimes in the former Yugoslavia during the 1990s, including former Serbian leader Slobodan Milosevic.

However, the Bush administration has refused to consider such an option in this case, instead stating its intent to turn Saddam Hussein over to a special tribunal set up by the Iraqi Governing Council, a group of pro-Western Iraqi exiles and local representatives of the country's various ethnic communities appointed by U.S. occupation authorities. The regulations for the five-person tribunal were drafted largely by U.S. government lawyers who pointedly ruled out any direct role for the United Nations in the process.

Furthermore, while the death penalty would not be an option in the proposed international tribunal, it would be a likely outcome in the U.S.-organized proceedings. In virtually every country in recent decades where a dictatorship was overthrown in a popular uprising, one of the first acts of the new government has been to abolish the death penalty. This is not likely to occur in Iraq, however, where the government was thrown out by invading forces from the United States, the only Western industrialized democracy that still executes its prisoners.

Even though a trial as U.S. occupation authorities envision may be procedurally fair and even though Saddam Hussein certainly deserves to be brought to justice, he will likely be tried under a body set up by an occupation authority of a foreign government that illegally invaded the country. As a result, Saddam's eventual punishment—however well-deserved—will not advance the cause of justice. It will be widely seen as a kind of “victor's justice,” where Saddam Hussein is perceived to be tried not because of an objective assessment of the seriousness of his crimes—such as a prosecution under the International Criminal Court or some other UN-sponsored tribunal—but because he was on the losing side of a war.

For example, one of the principal war crimes for which Saddam is likely to be prosecuted is the genocidal Anfal campaign against Iraq's Kurdish minority in the 1980s, which resulted in deaths of more than 80,000 civilians and the destruction of more than 4,000 villages.

The Bush administration appears to be in no hurry, however, to prosecute Turkish officials for their genocidal campaign against that country's Kurdish minority during the 1990s, where over 3,000 Kurdish villages were destroyed and over two million Kurds became refugees in an operation in which more than three-quarters of the weapons were of U.S. origin. The U.S.-backed war cost over 40,000 lives, primarily Kurdish civilians. President

Bill Clinton and congressional leaders of both parties successfully blocked efforts by human rights groups to stop U.S. support for the repression.

Indeed, the United States has repeatedly demonstrated its lack of concern regarding war crimes when the perpetrator is an ally.

For example, Indonesia's General Suharto, who ruled his predominantly Muslim Southeast Asian nation for 34 years, has even more blood on his hands than does Saddam Hussein. He oversaw the purges of suspected leftists in the mid-1960s, taking over a half a million lives. His invasion and occupation of East Timor ten years later resulted in the deaths of 200,000 people, more than one hundred times the estimated number of Kuwaitis killed under the 1990-91 Iraqi occupation of that oil-rich sheikdom. Yet Suharto was a favorite ally of the United States under both Republican and Democratic administrations until the dictator was ousted by his own people in a largely nonviolent popular uprising in 1998. He currently lives in comfortable retirement with absolutely no efforts by the United States to bring him to justice.

The United States helped stymie efforts to prosecute its one-time ally General Augusto Pinochet, despite widespread crimes against humanity during his bloody rule in Chile. The Bush administration—with bipartisan support in Congress—has also given strong diplomatic, military, and financial support to Israel's right-wing prime minister Ariel Sharon, who has been responsible for a series of war crimes over several decades.

Meanwhile, the Bush administration—again, with bipartisan congressional support—has consistently sought to undermine the International Criminal Court (ICC), established in July 2002, in the apparent belief that the United States alone has the right to determine who gets to be tried for war crimes and who does not. For example, Congress overwhelmingly passed a law in 2002 that prohibits U.S. cooperation with the International Criminal Court, restricts U.S. participation in UN peacekeeping operations to situations where U.S. forces are explicitly exempt from prosecution for any war crimes, bans the sharing of U.S. intelligence with the ICC, prohibits most foreign aid to countries that ratify the ICC statute, and authorizes the president to use “all means necessary and appropriate” to free from captivity “any U.S. or allied personnel held by or on behalf of the ICC,” including a military attack on The Hague.

The message seems to be that a war criminal will only be brought to justice if he challenges U.S. foreign policy pre-

rogatives. By contrast, if a war criminal is an American ally, he is not only safe but will be openly supported.

Even putting aside the moral and legal questions raised by such a policy, these double-standards are likely to make Saddam Hussein come across to many as more of a martyr and victim of U.S. imperialism than the war criminal that he is. According to Harold Koh, a Yale law professor who served as assistant secretary of state in the Clinton administration, “The image of him in the dock day after day will become a human symbol of the humiliation many Iraqis feel their country is being subjected to.”

As long as the United States opposes the International Criminal Court and uses the prosecution of war criminals as a sinister political tool rather than a universal principle of justice, the impact of a trial could be to increase the polarization and resistance in Iraq rather than help mend a nation that has suffered so much from dictatorship, war, sanctions, and occupation.

The United States and Saddam Hussein

Modern Iraq is a creation of British colonialists who established control over the territory following the fall of the Ottoman Empire in 1918, essentially creating the country from three Ottoman provinces. A nationalist coup in 1958 overthrew the pro-British monarch, limiting Western influence in the country and shifting the ideological orientation toward left-wing nationalism. The Baath Party—espousing pan-Arab nationalism, socialism, and anti-imperialism—first seized power in 1963. Saddam Hussein rose to prominence in the late 1970s, purportedly with quiet U.S. support, since he favored shifting Iraq’s foreign policy away from its pro-Soviet position to that of non-alignment.

Despite imposing a brutal totalitarian system and a cult of personality around his leadership, the United States joined the Soviets, French, and British in recognizing Iraq’s importance in the regional balance of power. All maintained a largely cooperative relationship with Saddam Hussein’s exceptionally oppressive regime, much to the chagrin of human rights advocates. While U.S. officials never considered the Iraqi regime an American ally, as some critics have claimed, Iraq was nevertheless seen as a strategic asset with which the United States could cooperate throughout the regime’s dramatic military buildup in the 1980s.

Ironically, many of the organizations and individuals now calling for a UN-sponsored proceeding were active in

exposing Saddam’s human rights abuses back in the 1980s while the U.S. government was covering them up.

The March 1988 massacre at Halabja—where Iraq government forces killed upwards of 5,000 civilians in that Kurdish town by gassing them with chemical weapons—was downplayed by the Reagan administration, even to the point of claiming that Iran, then the preferred American enemy, was actually responsible. The Halabja tragedy was not an isolated incident, as U.S. officials were well aware at the time. UN reports in 1986 and 1987 documented Iraq’s use of chemical weapons, which were confirmed both by investigations from the CIA and by U.S. embassy staff who visited Iraqi Kurdish refugees in Turkey. However, not only was the United States not particularly concerned about Saddam’s ongoing repression and the use of chemical weapons, the United States actually was supporting the Iraqi government’s procurement effort of materials necessary for the development of such an arsenal.

Furthermore, officials from the U.S. Defense Intelligence Agency were stationed in Baghdad to pass on satellite imagery to the Iraqi military in order to help them target Iranian troop concentrations, in the full knowledge that Saddam was using chemical weapons against Iranian forces.

During the 1980s, American companies, with U.S. government backing, supplied Saddam Hussein’s government with much of the raw materials for Iraq’s chemical and biological weapons programs. A Senate committee reported in 1994 that American companies licensed by the U.S. Commerce Department had shipped large quantities of materials usable in weapons production in Iraq, noting that such trade continued at least until the end of the decade, despite evidence of Iraqi chemical warfare against Iranians and Iraqi Kurds. Much of this trade was no oversight. It was made possible because the Reagan administration took Iraq off of its list of countries supporting terrorism in 1982, making the country eligible to receive such items. This re-designation came in spite of Iraq’s ongoing support of Abu Nidal and other terrorist groups.

As late as December 1989, just eight months prior to Iraq’s designation as an enemy for having invaded Kuwait, the Bush administration pushed through new loans to the Iraqi government in order to facilitate U.S.-Iraqi trade. Meanwhile, according to a 1992 Senate investigation, the Commerce Department repeatedly deleted and altered information on export licenses for trade with Iraq in order to hide potential military uses of American exports.

Seeking Justice

For many years, human rights activists have called upon the United States to get tough with Saddam Hussein's regime. Iraq's invasion of Iran, support for international terrorism, and large-scale human rights violations were all valid grounds for military sanctions. Perhaps most significant was Iraq's use of chemical warfare against both Iranian troops and the country's civilian Kurdish population during the 1980s—by far the largest such use of these illegal weapons since World War I. The response of the world's nations was a major test as to whether international law would be upheld through the imposition of stringent sanctions or other measures to challenge this dangerous precedent. The United States, along with much of the world community, failed. U.S. agricultural subsidies and other economic aid flowed into Iraq and American officials looked the other way as much of these funds were laundered into purchasing military equipment. The United States also sent an untold amount of indirect aid—largely through Kuwait and other Arab countries—which enabled Iraq to receive weapons and technology to increase its war-making capacity and repressive apparatus.

When a 1988 Senate Foreign Relations committee staff report brought to light Saddam Hussein's policy of widespread killings of Kurdish civilians in northern Iraq, Senator Claiborne Pell introduced the Prevention of Genocide Act to put pressure on the Iraqi government. However, the Reagan administration successfully moved to have the measure killed.

It is also important to note that the devastation to Iraq's military capabilities caused by the Gulf War bombing,

military sanctions, and inspections regime—combined with the safe haven created for the Kurds in northern Iraq by the United Nations—resulted in a substantial reduction in Saddam Hussein's repression during the past dozen years as compared with the first half of his rule.

In other words, the vast majority of the war crimes committed by Saddam's regime took place during the period in which he was supported by the U.S. government. This may be the primary reason why the United States objects to any kind of international tribunal, since it would more likely bring the U.S. role in Saddam's repression to light than a trial set up by the Bush administration's appointed Iraqi surrogates.

Finally, it should be noted that the twelve-year-long U.S.-led economic sanctions against Iraq, combined with the destruction of much of the country's civilian infrastructure during the devastating five-week U.S. bombing campaign in early 1991, contributed to the deaths of hundreds of thousands of Iraqi civilians—primarily children—from malnutrition and preventable diseases.

Given that the public health impact of such policies was well-documented for more than a decade, a case can be made that those U.S. officials responsible for such policies could themselves be guilty of war crimes and should—like Saddam Hussein—face justice in an international tribunal.

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