

Victor's Justice? The Lessons of Nuremberg Applied to the Trial of Saddam Hussein

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I. INTRODUCTION

As a nation historically adverse to international entanglements, the United States' first foray into international legal proceedings at Nuremberg was an unprecedented success. Although a clear victor in World War II, the nation recognized the need for a sense of righteousness within its victory and that this "righteousness could best be achieved by judicial proceedings."¹ On November 20, 1945, the four Allied powers began their prosecution of the major Nazi leaders.² From the outset, United States Supreme Court Justice Robert H. Jackson, lead prosecutor for the United States, presented the tone of Nuremberg in clear, moralistic lines of right and wrong, good and evil.³ Due to the horrors of

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1. WILLIAM J. BOSCH, JUDGMENT ON NUREMBERG: AMERICAN ATTITUDES TOWARD THE MAJOR GERMAN WAR-CRIME TRIALS 216 (1970). Before convening the London Conference where the Charter of the International Military Tribunal was created, the British delegation favored simply shooting the Nazi leaders without holding a trial. BRADLEY F. SMITH, THE ROAD TO NUREMBERG 188-91 (1981). Even Winston Churchill declared that a fair trial would be impossible and simply a "farce." *Saddam Hussein's Trial: Undignified, but Not a Farce*, ECONOMIST, Feb. 16, 2006, at 12.

2. DAVID IRVING, GÖRING: A BIOGRAPHY 486 (1989).

3. Scott W. Johnson & John H. Hinderaker, *Guidelines for Cross-Examination: Lessons from the Cross-Examination of Hermann Goering*, BENCH & BAR OF MINN., Oct. 2002, at 22, available at <http://www2.mnbar.org/benchandbar/2002/oct02/cross-exam.htm>.

the Holocaust and the hardships of the war, the American people quickly subscribed to the notion that the trials were indeed a battle between good and evil, and clearly America was fighting on the side of good. In the end, the public accepted these trials as legitimate exercises of law and applauded the U.S. role as the avenger of justice against the Nazis, not least of all because of the “belief that war was ultimately a moral rather than a political question.”⁴ But most importantly, as psychologists noted, “the ultimate success of the [Nuremberg trials] depended upon [public] reactions to the judicial process.”⁵

However, not all Americans gave their approval to the Nuremberg trials. Small segments of the population called the trials a mere display of “Victors’ Vengeance” and a “kangaroo court” meting out predetermined punishments.⁶ Some did not accept what appeared to be the creation of new laws to try these particularly heinous defendants and the imposition of ex post facto laws.⁷ In addition, some of the defendants refused to play the part of contrite sinner and submit to the role that their Allied prosecutors wished them to play.⁸ Nonetheless, the overall success of the trials completely overshadowed these flaws; Nuremberg is now remembered as an ultimate display of justice and the preeminent international tribunal.

Today in Iraq, the United States has embarked upon its second foray into international legal proceedings. Yet, whether the trial of Saddam Hussein will be remembered as favorably as the Nuremberg trials is deeply in doubt. Although there are obvious differences between the trial of Hussein and the trials of the Nazi leaders, this Comment traces several of the key similarities between the two, including the location within the country where the conflict occurred, the charges against the defendants and the law created at the trials, the behavior of the defendants, and the public attitudes toward the trials. Through comparisons of the similarities, this Comment suggests that, in order to convince the world that Hussein’s trial is indeed a legitimate proceeding, the United States must avoid the faults of Nuremberg and implement in Iraq the lessons learned from that trial. This Comment also suggests that the United States might increase both the real and the perceived legitimacy of

4. BOSCH, *supra* note 1, at 216 (citing Louis Morton, *From Fort Sumter to Poland: The Question of War Guilt*, 14 WORLD POLITICS 389 (1962)).

5. *Id.* at 204 (citing Sheldon Glueck, *Justice for War Criminals*, 60 AM. MERCURY 275 (1945)).

6. *Id.* at 96, 110 (citation omitted).

7. REPORT OF ROBERT H. JACKSON, UNITED STATES REPRESENTATIVE TO THE INTERNATIONAL CONFERENCE ON MILITARY TRIALS 295-309 (1945).

8. *See* IRVING, *supra* note 2, at 487-506.

Hussein's trial by inviting more international participation in the Iraq Special Tribunal, depoliticizing the Iraqi judiciary, strictly enforcing evidentiary and courtroom procedure at the trial, and, most importantly, restraining Hussein himself to prevent him from becoming a martyr in the eyes of the Iraqi people. Nevertheless, this Comment recognizes that, even if these recommendations are implemented, the Hussein trial may never be seen as fully legitimate in the eyes of both the American and Iraqi public. As Asli Bâli noted, "[t]he question of whether a tribunal perceived by Iraqis as having been convened under the authority of an occupying army can escape the appearance of victor's justice is an extremely important one."⁹ If Hussein's trial is not perceived as being legitimate, it could pose serious questions, not only about the legitimacy of the new Iraqi democracy, but also about the ability of the United States to participate in a fair international trial.

II. HISTORY OF THE SUPREME IRAQI CRIMINAL TRIBUNAL

United Nations Security Council Resolution 1483, passed in May 2003, provided the first official international recognition of the status of the United States and the United Kingdom as occupying powers in Iraq.¹⁰ On December 10, 2003, the Coalition Provisional Authority (CPA) created the Iraqi Special Tribunal (IST) to try members of Hussein's regime accused of atrocities and war crimes.¹¹ Specifically, the IST had jurisdiction to prosecute Iraqis accused of genocide, crimes against humanity, war crimes, and violations of specific Iraqi laws in existence before the CPA occupation.¹² On June 28, 2004, the CPA transferred all power and formal sovereignty to the Iraqi interim government.¹³ Due to concerns that the IST would continue to be perceived as an American creation, the Iraqi government promulgated Law No. 10 (2005) (Law No. 10), which dissolved the IST and instituted the Supreme Iraqi Criminal Tribunal (SICT).¹⁴ There seems to be no significant difference between

9. Asli Ü. Bâli, *Justice Under Occupation: Rule of Law and the Ethics of Nation-Building in Iraq*, 30 YALE J. INT'L L. 431, 465-66 (2005).

10. S.C. Res. 1483, U.N. Doc. S/RES/1483 (May 22, 2003) [hereinafter S.C. Res. 1483].

11. Coalition Provisional Authority Order No. 48, § 1, 44 AL-WAQAI AL-IRAQIYA 125, 125-26 (Mar. 2004) (Iraq).

12. Statute of the Iraqi Special Tribunal art. 10, 44 AL-WAQAI AL-IRAQIYA 127, 127 (Mar. 2004) (Iraq). Those preexisting Iraqi laws include prohibitions against attempting to manipulate the judiciary, wasting national resources, squandering public assets and funds, and pursuing policies that may lead Iraq into war with another Arab nation. *Id.* art. 14, at 139.

13. Julia Preston, *Transition in Iraq; Defining Transfer of Formal Sovereignty*, N.Y. TIMES, June 29, 2004, at A10.

14. Law No. 10 (2005), Law of the Iraqi Higher Criminal Court, 47 AL-WAQAI AL-IRAQIYA 2-23 (Oct. 2005) (Iraq). The Iraqi Higher Criminal Court is also referred to as the SICT.

the mandate of the IST and that of the SICT,¹⁵ suggesting that the SICT will act in essentially the same capacity as the IST.

According to Law No. 10, the SICT has three core functions: adjudication, investigation, and prosecution.¹⁶ Within the adjudicative function, there are five adjudicative judges and one chief judge who hear the merits of cases before them at the trial chambers.¹⁷ The investigative function is carried out by investigative judges who have the authority to collect evidence and communicate with parties that have information relevant to the trial.¹⁸ The chief investigative judge also has the authority to select non-Iraqi experts to aid in the investigations.¹⁹ The cassation chamber, composed of nine judges, sits above the adjudicative and investigative judges and may review their judgments and decisions.²⁰ Finally, the prosecution function is conducted by public prosecutors, and similar to the investigative judges, the chief prosecutor may appoint non-Iraqi experts to assist in the prosecution as needed.²¹

On October 19, 2005, the SICT began prosecuting Hussein in Case Number 1, concerning the massacre at al-Dujail.²² According to the SICT statements, after shots were fired at Hussein's motorcade, the government detained nearly seven hundred residents in an investigation of the incident.²³ One hundred forty-eight of those residents were condemned to death by the Revolutionary Court, and another forty-six died later in prison.²⁴ The SICT indicted eight members of Hussein's party, including Hussein, on charges of "premeditated murder, false imprisonment, forcible expulsion of residents, destruction of agricultural land, and confiscation of the victims' land and orchards."²⁵ On April 19, 2006, the prosecutors' experts announced that it is unequivocally Hussein's signature that appears on the execution orders of the 148

15. Compare Statute of the Iraqi Special Tribunal arts. 1-38, 47 AL-WAQAI AL-IRAQIYA 127-148 (Mar. 2004) (Iraq), with Law No. 10 of the Iraqi Higher Criminal Court arts. 1-40, 47 AL-WAQAI AL-IRAQIYA 2-22 (Oct. 2005) (Iraq).

16. Law Library of Congress, Report on the Trial of Saddam Hussein: Tribunal, http://www.loc.gov/law/public/saddam/saddam_trib.html#jurisdiction (last visited Mar. 18, 2006).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. Law Library of Congress, Report on the Trial of Saddam Hussein: Present Prosecution, http://www.loc.gov/law/public/sadam/saddam_pres.html (last visited Mar. 18, 2006).

23. *Id.*

24. *Id.* The Law Library of Congress lists the number of victims as 184, but the actual number is believed to be 148.

25. *Id.*

victims of the al-Dujail massacre.²⁶ In contrast, the defense attorneys presented witnesses claiming that at least fifteen of the alleged victims at al-Dujail were not, in fact, murdered and that ten are still alive today.²⁷ The SICT is expected to render the verdict in this case on November 5, 2006.²⁸

III. COMPARISON OF THE TRIALS

From the outset, the differences between the Nuremberg and Iraqi trials and the conflicts surrounding them are quite apparent. In the case of Iraq, there has been no world war leading to an international consensus on the guilt of the defeated nation. Nor is there an international coalition of prosecutors composed of the victors of such a war. Nonetheless, these differences do not prevent a comparison of the similarities between the two trials nor an analysis of the ability of the Nuremberg experience to influence that of the SICT. For example, the Nuremberg trials were conducted amid the destruction of World War II, while the sounds of bombs and gunfire are heard every day in Baghdad, where the SICT holds its trials. Similarly, the Nazis were vilified by the Allied prosecutors just as the Ba'ath party was criticized and targeted by the CPA. And, just as the United States had custody of a number of the defendants at Nuremberg, so, too, did it have custody over Hussein before the transfer of power to the Iraqis.²⁹ However, this Comment examines only those similarities that directly relate to establishing the legitimacy of these separate legal proceedings. Through this examination, this Comment demonstrates that the United States has ignored several of the lessons provided by Nuremberg, committed similar mistakes in Iraq, and, consequently, jeopardized the future legitimacy of the trial of Saddam Hussein.

26. BBC News, *Saddam 'Did Sign Death Warrants'* (Apr. 19, 2006), http://news.bbc.co.uk/2/hi/middle_east/4921864.stm.

27. BBC News, *Saddam Lawyers Dispute Executions* (June 5, 2006), http://news.bbc.co.uk/2/hi/middle_east/5049330.stm.

28. Associated Press, *Witnesses in Saddam Hussein Trial Recall Massacres of Kurdish Detainees* (Oct. 18, 2006), http://www.ihl.com/articles/ap/2006/10/18/Africa/ME_GEN_Iraq_Saddam_Trial.php.

29. In Nuremberg, the United States had custody of ten of the major war criminals. TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR* 63 (1992). The CPA transferred legal custody of Hussein and eleven other prisoners to Iraq on June 30, 2004. Donna Miles, *Coalition Transfers Legal Custody of Saddam Hussein* (June 30, 2004), http://www.defenselink.mil/news/Jun2004/n06302004_200406302.html. However, Hussein was physically transferred to Iraq security officials on July 1, 2004. Law Library of Congress, *Trial of Saddam Hussein: Historical Context*, http://www.loc.gov/law/public/saddam/saddam_hist.html (last visited Mar. 17, 2006).

A. *Location Within the Country of Conflict*

Before the German capitulation, the United States had done very little planning on how to handle a defeated Germany.³⁰ The lack of planning was ultimately blamed on President Roosevelt and his reluctance to consider making such plans even after the entry of the United States into World War II in 1941.³¹ However, on May 2, 1945, President Truman issued an executive order providing for the participation of the United States in the prosecution of Nazi war criminals and naming Justice Jackson as the nation's representative at those proceedings.³² On this basis, Justice Jackson worked with the representatives of the other Allied powers at the London Conference of June 26, 1945, to develop the substantive law and methods of procedure and prosecution for the trial of the European war criminals.³³ During the discussions of July 4, 1945, Justice Jackson suggested that the proposed military trials be held in Nuremberg to avoid complications with crowds and lack of sufficient space and facilities in Berlin and also to create a symbolic link with the city perceived to be the birthplace of the Nazi movement.³⁴ Although General Nikitchenko, one of the Soviet representatives, voiced opposition to holding every trial in Nuremberg and suggested that criminals who committed crimes in foreign nations should be tried in those locations, the Conference came to an implicit understanding that Nuremberg would be the seat of all trials.³⁵ Indeed, Professor Gros, an international law scholar and French representative to the Conference, summarized the fundamental reasons for choosing Germany as the location of the trial by stating:

It seems most important to have those people tried [in Germany] and tried as major war criminals because they are responsible for all crimes against the United Nations. Taking the case of Göring—he is responsible for many

30. See JOHN GIMBEL, *THE AMERICAN OCCUPATION OF GERMANY: POLITICS AND THE MILITARY, 1945-1949* xi, 1 (1968).

31. SMITH, *supra* note 1, at 13.

32. Exec. Order No. 9547 (1945).

33. REPORT OF ROBERT H. JACKSON, *supra* note 7, at III.

34. *Id.* at 157.

35. *Id.* at 157-59. Although General Nikitchenko finally acquiesced to holding the first trial at Nuremberg, throughout the summer discussions he continued to assert the notion that the Allied powers should be able to try different criminals in locations other than Nuremberg or even Germany. *Id.* at 280-81. Specifically, he suggested that Karl Hermann Frank be tried in Czechoslovakia because he committed crimes there and he "might be demanded by the local population for local trial so that they might be sure the criminal had been caught and suffered just punishment." *Id.* at 157.

crimes in Europe, and it would be very difficult to settle the question of where he should be tried other than Germany.³⁶

Thus, the representatives of the Allied powers deliberately chose the location of the Nuremberg trials within Germany to coincide with the locus of decision-making for the crimes committed by the defendants. Furthermore, the choice of the specific city of Nuremberg was an attempt to draw a parallel between the roots of the Nazi movement and the world's condemnation of it. This reinforced the American perception of the trials as legitimate legal proceedings against evil at its roots.

Similarly, Baghdad, a city within the country where conflict occurred, was chosen as the primary seat of the IST.³⁷ According to the Statute of the Iraqi Tribunal, other locations within Iraq may be used for trial purposes upon a written request by the president of the tribunal and a determination of the governing council or successor government.³⁸ However, the scene of conflict is the only similarity between the locations of these trials. In marked contrast to the Nuremberg trials, the Iraqi tribunal has been convened in the center of an ongoing conflict and great insecurity. Ruti Teitel suggests that Baghdad was chosen in an effort to buy peace through justice and to "advance conciliatory purposes."³⁹ But he cautions against this mixing of the trial and nation-building functions, noting that "ordinarily the pursuit of justice is thought to be plausibly in tension with peacemaking often understood to involve compromise and closure."⁴⁰

By locating the trial within Iraq, the United States has attempted to draw a parallel of legitimacy between its intervention (and subsequent nation building efforts) in Iraq and the legitimacy of the Hussein trial, which ultimately predicates the success of the former upon the favorable outcome of the latter.⁴¹ Yet, this parallel does nothing to enhance the legitimacy of the IST itself; in fact, it detracts from it. Because the trial serves arguably three different purposes—punishing war criminals, justifying a foreign nation's invasion of another sovereign, and bolstering a new regime—neither the American nor the Iraqi people will be able to

36. *Id.* at 159.

37. Statute of the Iraqi Special Tribunal art. 2, 44 AL-WAQAI AL-IRAQIYA 127 (Mar. 2004) (Iraq).

38. *Id.*

39. Ruti Teitel, *The Law and Politics of Contemporary Transitional Justice*, 38 CORNELL INT'L L.J. 837, 857, 859 (2005).

40. *Id.* at 859.

41. Teitel notes that the first postponement of the trial reflected a shift away from using the tribunal to justify the U.S. invasion toward assisting the growth of a democratic Iraq through the "delegitimation of the prior regime and the legitimation of the present successor regime." *Id.*

view the outcome of the tribunal as a legitimate exercise in justice. The crimes with which Hussein and his codefendants are charged have no connection to the U.S. intervention in Iraq,⁴² and there is no relationship between Baghdad and the situs of the defendants' alleged crimes.⁴³ Consequently, the SICT does not gain any legitimacy based on its location in Iraq, much less Baghdad, as did the Nuremberg trials through their location in Germany.⁴⁴

B. Charges Against the Defendants and the Law of the Trials

Article 6 of the Charter of the International Military Tribunal at Nuremberg listed the crimes for which the Nazi leaders could be tried, including "the crime of being party to a common plan or conspiracy to wage wars of aggression,"⁴⁵ crimes against peace, war crimes, and crimes against humanity.⁴⁶ At the start of the first Nuremberg trial, twenty-one individual defendants and seven defendant groups were charged with at least one of these four counts.⁴⁷ By the conclusion of the trials, nineteen people had been convicted of at least one of the enumerated tribunal crimes, and twelve were put to death.⁴⁸ Perhaps the most infamous defendant was Reichsmarschall Hermann Wilhelm Göring, who was indicted and found guilty on all four counts.⁴⁹

42. The IST has jurisdiction over crimes committed between July 17, 1968, and May 1, 2003, which include genocide, crimes against humanity, war crimes, and violations of stipulated Iraqi laws. Statute of the Iraqi Special Tribunal, arts. 1, 11-14, 44 AL-WAQAI AL-IRAQIYA 127, 133-39. The Bush Administration's initial justifications for the invasion of Iraq, as approved by Congress, include preventing Hussein from developing, stockpiling, and deploying weapons of mass destruction against other nations and Iraqi citizens. *Threats and Responses; Resolution that Congress Approved on the Right To Use Force in Iraq*, N.Y. TIMES, Oct. 12, 2002, at A12 [hereinafter *Threats and Responses*]. For a more in-depth analysis of the war and its beginnings, see JOHN KEEGAN, *THE IRAQ WAR* (2004).

43. There are at least forty documented chemical attacks against the Kurds by the Ba'ath Party, none of which occurred in Baghdad. See Human Rights Watch, *Genocide in Iraq: The Anfal Campaign Against the Kurds* (July 1993), available at <http://www.hrw.org/reports/1993/iraqanfal/>. For a discussion of not only Hussein's campaign against the Kurds but also his acts against other peoples such as the Marsh Arabs, see Michael J. Kelly, *The Tricky Nature of Proving Genocide Against Saddam Hussein Before the Iraqi Special Tribunal*, 38 CORNELL INT'L L.J. 983 (2005).

44. It must be noted that a connection between the location of a trial and its underlying causes is not a requirement for legitimacy of the proceeding, as demonstrated by the international approval of the International Criminal Tribunal for the Former Yugoslavia, which is located in an entirely separate country from where the alleged conflict occurred.

45. ROBERT K. WOETZEL, *THE NUREMBERG TRIALS IN INTERNATIONAL LAW* 6 (1962).

46. Charter of the International Military Tribunal at Nuremberg, art. 6, Aug. 8, 1945 [hereinafter *IMT Charter*].

47. WOETZEL, *supra* note 45, at 1-2.

48. *Id.* at 7-14.

49. *Id.* at 7.

Despite the large number of convictions and overall success, one of the greatest criticisms of the Nuremberg trials has been the way in which the tribunal created and applied law.⁵⁰ Among the most controversial actions of the International Military Tribunal at Nuremberg (IMT) was the decision to institute the crime against peace.⁵¹ While drafting the charter of the IMT, the Allied representatives argued over the definition of such a term.⁵² The tribunal never defined the term “aggressive war” as a crime against peace, yet it accepted the notion that an aggressive war was illegal, based on documents such as the Kellogg-Briand Pact.⁵³ However, crimes against peace have all but disappeared from charters of modern international criminal tribunals, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).⁵⁴ Yet, the IMT’s use of crimes against humanity and war crimes has survived to the present day, as evidenced by the charters of the ICTY and the ICTR.⁵⁵

Similar to the IMT at Nuremberg, the SICT has jurisdiction to try war crimes and crimes against humanity.⁵⁶ Such standard bases of culpability lend an appearance of legitimacy to the court that applies them; by adopting these crimes, the Iraqi tribunal has furthered this appearance by creating a link with the Nuremberg trials and internationally accepted law. However, this link is tenuous at best. The connection between the U.S. role in World War II and the formation of the Tribunal does not exist with regard to the U.S. invasion of Iraq and the institution of the SICT. These differences between the two tribunals detract from any legitimacy the SICT gained by choosing to prosecute the Ba’ath Party for war crimes and crimes against humanity.

50. *Id.* at ix.

51. *Id.* at 122. The crime against peace is a two part charge for the “planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.” IMT Charter, *supra* note 46, art. 6(a).

52. REPORT OF ROBERT H. JACKSON, *supra* note 7, at 295-309.

53. WOETZEL, *supra* note 45, at 159-65.

54. *See* Statute of the International Tribunal, May 25, 1993, 32 I.L.M. 1192 [hereinafter ICTY]; International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. Doc. S/RES/955 (Nov. 8, 1994) [hereinafter ICTR]. It is interesting to note, however, that the Rome Statute of the International Criminal Court has retained a version of crimes against peace that criminalize “crimes of aggression.” Rome Statute of the International Criminal Court, art. 5, July 17, 1998, 37 I.L.M. 1002.

55. ICTY, *supra* note 54, arts. 3, 5; ICTR, *supra* note 54, art. 3.

56. *See* Law No. 10 of the Iraqi Higher Criminal Court arts. 12-13, 47 AL-WAQAI AL-IRAQIYA 9-13 (Oct. 2005) (Iraq).

While the charter of the IMT criminalized specific acts committed during the course of World War II, from 1939 to 1945,⁵⁷ the jurisdiction of the SICT stretches from July 17, 1968, through May 1, 2003—the beginning of Hussein's Ba'ath party reign until the U.S.-led invasion of Iraq.⁵⁸ Not only is this period nearly five times the length of Nuremberg's jurisdictional span, it encompasses every act of the Ba'ath party while in power. In contrast, the Nazi party took control of the German political system in 1933, six years before the start of Nuremberg's range of jurisdiction.⁵⁹ Thus, the Nuremberg tribunal focused only on those crimes with a direct relation to acts committed during World War II.⁶⁰ However, the Iraqi tribunal has no direct link between the crimes committed by the Ba'ath party and a delineated armed conflict. The Bush Administration's initial justification for invading Iraq, namely the assertion that Hussein had developed weapons of mass destruction (WMDs) and intended to use them,⁶¹ bears no clear connection to the breadth of crimes under the jurisdiction of the SICT. Furthermore, many of the alleged crimes with which prosecutors plan to charge Hussein did not involve the use of WMDs,⁶² highlighting another discrepancy between the war and the trial. As a result, the SICT may be jeopardizing its legitimacy by overextending the scope of its jurisdiction to encompass crimes that have no connection to the establishment of the SICT.

Regardless of the correlations between the laws applied at the Nuremberg and the Hussein trials, such specially created courts will inevitably lack a certain amount of legitimacy because international criminal law has not yet achieved the same recognized validity that national criminal courts possess.⁶³ In addition, despite the creation of the

57. WOETZEL, *supra* note 45, at 6.

58. Statute of the Iraqi Special Tribunal, art. 1 44 AL-WAQAI AL-IRAQIYA 127 (Mar. 2004) (Iraq); Bâli, *supra* note 9, at 463.

59. BBC.co.uk, World Wars: Genocide Under the Nazis, http://www.bbc.co.uk/history/worldwars/genocide/nazi_genocide_timeline_noflash.shtml (last visited Sept. 4, 2006).

60. In his January 22, 1945, memorandum to President Roosevelt on the trial and punishment of the Nazi war criminals, Justice Jackson noted that "[t]he outstanding offenders are . . . those leaders of the Nazi Party and German Reich who since January 30, 1933, have been in control of formulating and executing Nazi policies." REPORT OF ROBERT H. JACKSON, *supra* note 7, at 5. Although the representatives of the Allied powers were aware of the early rise to power of the Nazi party, they did not seek to criminalize those acts occurring so far outside the scope of the war itself.

61. See *Threats and Responses*, *supra* note 42; KEEGAN, *supra* note 42, at 2.

62. The killing of the residents of al-Dujail is merely one example of the alleged atrocities that did not involve WMDs. See Law Library of Congress Trial of Saddam Hussein: Present Prosecution, *supra* note 22.

63. Allison Marston Danner & Jenny S. Martinez, *Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law*, 93 CAL. L. REV. 75, 96-97 (2005).

ICTY and ICTR, international criminal law enforcement has not attained the accepted status of other more established branches of international law, such as international humanitarian law, most likely due to “its focus on individuals and its enforcement through terms of imprisonment.”⁶⁴ Perhaps this explains the U.S. decision to give Iraq control over the IST even though the United States is a lawful occupying nation.⁶⁵ By establishing the IST under Iraqi authority and subsequently enabling the country to create the SICT as a wholly Iraqi institution, the United States may be attempting to replace international criminal law with the more acceptable national criminal law of a sovereign state. Nonetheless, international legal scholars and policy analysts have continually criticized the makeup of the IST and SICT, claiming that, for the trial to be legitimate, there must be more international involvement.⁶⁶

Undoubtedly, the question of whether to try Hussein in a national or international court was a difficult one for the United States.⁶⁷ However, by placing the control of the trial, at least nominally, in the hands of the Iraqis and adopting several of the same crimes used at Nuremberg as its standard of justice, the United States, through the SICT, established some legitimacy. Yet, it remains to be seen whether the decision to forgo greater international cooperation and create the IST as a purely Iraqi institution will also enable the American and Iraqi people to view the tribunal as a legitimate judicial body.

C. *Behavior of the Defendants*

In both the Nuremberg trials and the Iraqi tribunal, the actions of the defendants helped shape the public's perception of the trial's legitimacy. Among the defendants at Nuremberg was the notorious Reichsmarschall Göring, the designated successor to Hitler. At the start of the first Nuremberg trial, when all of the defendants were required to enter their pleas, Göring twice attempted to read a statement before

64. *Id.*

65. See S.C. Res. 1483, *supra* note 10.

66. Human Rights Watch, Memorandum to the Iraqi Governing Council on ‘The Statute of the Iraqi Special Tribunal’ (Dec. 2003), <http://www.hrw.org/backgrounder/mena/iraq121703.htm>; Peter Slevin, *Iraqi Governing Council Says It Wants To Try Hussein*, WASH. POST, Dec. 15, 2003, at A9.

67. Cherif M. Bassiouni notes that the Bush Administration recognized that a prosecution of Hussein in an international tribunal would “enjoy the greatest amount of international legitimacy.” M. Cherif Bassiouni, *Post-Conflict Justice in Iraq: An Appraisal of the Iraq Special Tribunal*, 38 CORNELL INT’L L. J. 327, 343 (2005). Nonetheless, the Administration decided against that option based upon the costly and time-consuming examples of the ICTR and ICTY trials, the limited role that the United States would allow the United Nations to play in Iraq, and the inability to impose the death penalty in an international trial. *Id.* at 343-44.

stating his plea, but was stopped by the presiding judge each time.⁶⁸ Throughout the trial proceedings, Göring sought to persuade all those around him that because Germany, with Hitler at its helm, was a sovereign state, the Nuremberg tribunal lacked jurisdiction over his actions.⁶⁹ However, Göring recognized that the trial would ultimately end with a death sentence for him, no matter what actually occurred at trial.⁷⁰ With that in mind, he began scripting his words and actions in order to make a lasting connection with the German people, stating that “[i]f I have to die . . . then I’d rather die as a martyr than a traitor.”⁷¹ At the trial, he appeared handsome and noble, and from the moment he took the stand, he successfully dominated the proceedings.⁷² During Justice Jackson’s infamously poor cross-examination, Göring refused to answer any question with a meek “yes” or “no” and managed to turn Justice Jackson’s accusatory questions into satisfactory explanations for his conduct in the Third Reich.⁷³ Those who witnessed the cross-examination generally concluded that Göring had indeed outwitted Justice Jackson.⁷⁴ Furthermore, while on the witness stand, Göring impressed many listeners and he began receiving fan mail with encouraging statements like “[k]eep your chin up, Hermann,” and “[g]ood for you!”⁷⁵ Even in his suicide note to the Allied Control Council he refused to surrender the title of German Reichsmarschall.⁷⁶ He also clung to his original pronouncements that the trial was illegitimate and wrote, “I have always regarded the trial as a purely political act by the victors” and that he had “no moral obligation to submit to the justice of [his] enemies.”⁷⁷

Through his actions and statements at trial, Hussein mirrors the arrogant and defiant image that Göring presented at Nuremberg. From the start of the trial, Hussein, his defense team, and the other codefendants have denounced both the Iraqi tribunal and the American involvement in it. In January of 2006, Barzan Ibrahim, Hussein’s codefendant and half-brother, objected to Chief Judge Abdel-Rahman’s

68. IRVING, *supra* note 2, at 487.

69. *Id.* at 488.

70. *See id.* at 489.

71. *Id.*

72. *Id.* at 493.

73. *Id.* at 495. For example, when Justice Jackson questioned Göring about the Nazis’ extremely secret plans, Göring smiled and answered that he did not remember the United States publicizing its own war plans. *Id.*

74. Johnson & Hinderaker, *supra* note 3, at 22.

75. IRVING, *supra* note 2, at 496.

76. *Id.* at 506.

77. *Id.*

rule against political speeches in the court by claiming that “the court is illegitimate” and that “this court is a bastard.”⁷⁸ In response to the Chief Judge’s statement that “[t]his is an Iraqi court formed by an Iraqi law,” Hussein retorted, “It’s American, the court and its law. . . . You cannot force me to be in the court.”⁷⁹ Furthermore, in a letter explaining his July 2006 boycott of the trial, Hussein stated that the trial was a sham and merely evidence of a “malicious American desire” to convict him.⁸⁰ Hussein also refused to admit that he was a defendant at trial and not the president of Iraq. In response to Judge Abdel-Rahman’s correction that he was the former president, Hussein retaliated, “This is what you say and this is according to you and your conscience.”⁸¹ Even when the court required him to enter a plea at the conclusion of the prosecution’s case on May 15, 2006, Hussein refused to do so, claiming that “[t]his is no way to treat the president of Iraq.”⁸²

There is also evidence that Hussein has used the trial’s media coverage to further his political views on Iraq’s developing sectarian violence. Despite the Chief Judge’s determination to disallow political speeches and insults within the courtroom, he has not prevented Hussein from voicing his opinions. On March 15, 2006, Hussein made comments directed to Iraqi insurgents struggling against the American troops, commending them for “defending your country against the occupation” and condemning the Americans as “criminals who came under the pretext of weapons of mass destruction and the pretext of democracy.”⁸³ He even went so far as to bluntly admit that he was “talking to the Iraqi people.”⁸⁴ After several attempts to silence Hussein, the Chief Judge closed the session, refused to release the rest of Hussein’s speech to the public, and recessed the trial until April 5, 2006.⁸⁵

Just as Göring’s statements at trial frustrated Justice Jackson’s efforts at Nuremberg and threatened to destabilize the Allies’

78. Nelson Hernandez, *Hussein’s Day at Trial: More Rancor and a Fight*, WASH. POST, Jan. 30, 2006, at A13.

79. *Id.*

80. Associated Press, *Saddam Hussein Boycotts Trial, Alleging Bias and Lack of Security*, http://www.courtstv.com/trials/saddam/071006_ap.html (last visited Sept. 18, 2006).

81. Edward Wong, *Hussein Urges Iraqis To Unify in War on U.S.*, N.Y. TIMES, Mar. 16, 2006, at A1.

82. BBC News, *Defiant Saddam Refuses To Plead* (May 15, 2006), http://news.bbc.co.uk/2/hi/middle_east/4771479.stm.

83. Wong, *supra* note 81.

84. Bassem Mroue, *Saddam Urges Iraqis To Unite Against GIs* (Mar. 15, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/15/AR2006031501579.htm?sub=AR>.

85. *Id.*

prosecution, Hussein's courtroom orations threaten to undermine the SICT. Although the trial suffers from an inherent lack of connection to the U.S. invasion of Iraq, Hussein's actions are doing even more to hurt the proceeding's legitimacy. Most detrimental to the Iraqi prosecution is the fact that Hussein is allowed to speak at length in court without mentioning the case at bar. Commentators note that his tirades "threatened to plunge the trial back into the circuslike atmosphere that has dogged it."⁸⁶ By allowing Hussein to use his defense case as his own political forum, Hussein is not only disrupting the procedure of the trial but also establishing himself as a political martyr to his Iraqi supporters and even to those Americans disillusioned with the trial and the U.S. occupation of Iraq.⁸⁷ Once Hussein is seen as a martyr, no trial that imposes any punishment upon him will be accepted by these people, especially if that penalty is death. Overall, if the Iraqi tribunal wishes to gain the full support and acceptance of both Iraqis and Americans, the court should learn from the example of Göring at Nuremberg and not allow Hussein free reign in making speeches and answering questions. Furthermore, the court must be able to silence Hussein when he begins to make political orations, just as the Nuremberg court silenced Göring's attempt to speak at the pleading stage of his trial.

D. Public Attitudes Toward the Trials

At the heart of the question of legitimacy is the public's perception of these trials. Prior to the conclusion of World War II, the U.S. public's rage over the bombing of Pearl Harbor was deepened by the actions of Germany during the Holocaust.⁸⁸ As a result, "[o]nly a fraction of Americans polled favored dealing with the [Nazi] enemy by judicial process" at that time.⁸⁹ Indeed, the popular opinion of the day was simply death for the accused.⁹⁰ However, the decision of the American government to forge ahead with the IMT at Nuremberg was not met with protest, and the public quietly acquiesced to the notion that the tribunal would assuredly hand down the death penalty for those most culpable.⁹¹

86. Wong, *supra* note 81.

87. Bassem Mroue notes that Hussein is seeking to "project the image of a man still in power addressing his people in troubled times." Mroue, *supra* note 84. However, there is an argument that instead of refusing to air all of Hussein's speech of March 16, 2006, the SICT should have released it so that the Iraqi public could see that Hussein is not in control of all the events in the courtroom. *What Every Iraqi Should See*, N.Y. TIMES, Mar. 16, 2006, at A26.

88. BOSCH, *supra* note 1, at 88-89.

89. *Id.* at 91.

90. *Id.*

91. *Id.*

Eventually, the average American came to believe that “the trials had been a beneficial and prudent policy of the United States government, and they hoped that the verdicts would prove a deterrent to potential aggressors.”⁹² This belief had its genesis in the newspapers’ constant portrayal of Nuremberg as moral and in sync with natural law.⁹³ Indeed, terms such as “the conscience of mankind,” “absolute right and justice,” “fundamental law,” and “the law of man and God” were consistently used by newspapers across the nation to describe the Nuremberg trials.⁹⁴ Ultimately, these papers reflected the idealism of the American people and the belief that the United States had “approached the trials with an absolute altruism.”⁹⁵ By the conclusion of the first Nuremberg trial of the major Nazi leaders, a large majority of the American public had fully embraced the proceedings.⁹⁶

Nevertheless, the trials had their detractors. Some periodicals described the trials as “Victors’ Vengeance” and “self righteous hypocrisy,” claiming that “administration officials were using the trials to divert the public’s attention from the wartime failures of the United States political leadership.”⁹⁷ Some even remarked that the trials were simply “the conquerors’ ‘kangaroo court’ butchering the losers.”⁹⁸ Critics derided the public for exhibiting a very naïve and simplistic view of international events, seeing the trials as “stark alternatives: black-white, good-bad, right-wrong,” and unquestioningly “accept[ing] a simple ‘devil’ or ‘conspiracy’ theory.”⁹⁹ However, this public reaction is characteristic of American attitudes towards complex international actions, where the more complex and drawn out the action becomes, the more likely the public is to “switch from support of direct and decisive action to disillusionment, disinterest, and a feeling of hopelessness when the action does not quickly bring the desired results.”¹⁰⁰ Ultimately, the American public considered the Nuremberg trials as “essentially an American show,” despite persistent efforts to characterize them as an international undertaking.¹⁰¹

92. *Id.* at 94 (citing Minnesota Survey No. 38, Q. 14 and Q. 15, Oct. 1946).

93. *Id.* at 110.

94. *Id.*

95. *Id.* (citing GABRIEL A. ALMOND, AMERICAN PEOPLE AND FOREIGN POLICY 57 (1960)).

96. *Id.* at 116.

97. *Id.* at 110-11 (citation omitted).

98. *Id.* at 96 (citation omitted).

99. *Id.* at 111.

100. *Id.* (citing GEORGE F. KENNAN, AMERICAN DIPLOMACY 95-96 (1953); ALMOND, *supra* note 95, at 76).

101. *Id.* at 112.

At the same time, the German public held a very different perception of the Nuremberg trials. From the beginning of the trials, “an influential segment of the German population rejected Nuremberg’s legal validity.”¹⁰² The German defense lawyers for the accused Nazi leaders also presented a petition to the court that challenged the legitimacy of the IMT.¹⁰³ The general public even identified with the defendants by dressing school girls in black on the day of the execution of many Nazi leaders and “whisper[ing] that the British leaders responsible for the bombing of [Hamburg] also deserved to hang.”¹⁰⁴ However, by the trials’ end, a portion of the German population had begun to accept the trials, most notably due to the courtroom presentation of German witnesses testifying to the atrocities they had experienced.¹⁰⁵

In the United States today, the public’s perception of the legitimacy of the Iraqi tribunal is as positive as the perception of the Nuremberg tribunal was sixty years ago. In an Associated Press—Ipsos poll conducted in February 2006, seventy-three percent of American respondents believed that Hussein was getting a fair trial.¹⁰⁶ In addition, fifty-seven percent of Americans felt that if Hussein were convicted at trial, he should receive the death penalty.¹⁰⁷ In the midst of a struggling government, increasing sectarian violence, and the threat of civil war,¹⁰⁸ the public’s view is surprisingly optimistic. Additionally, several academics agree with the public’s perception that Hussein’s trial is ultimately fair. Most notably, Michael Scharf recanted his earlier opinion that the SICT is a “puppet court of the occupying power” and now believes that the tribunal possesses “fair procedures, judges who can make fair decisions and . . . ‘equality of arms,’ meaning that the caliber of the defense team measures up to the ability of the prosecutors.”¹⁰⁹ Yet, other scholars vehemently disagree with the public’s overall approval of

102. *Id.*

103. PETER MAGUIRE, *LAW AND WAR: AN AMERICAN STORY* 113 (2001).

104. *Id.* at 130 (citing Jörg Friedrich, *Nuremberg and the Germans*, in *WAR CRIMES: THE LEGACY OF NUREMBERG* 87 (Belinda Cooper ed., 1999)).

105. Courttv.com, Interview with Drexel Sprecher, Nuremberg Trial Prosecutor, <http://www.court tv.com/archive/cas efiles/nuremberg/sprecher.html> (last visited Sept. 4, 2006).

106. Associated Press, *Results of the AP Poll on Saddam Hussein* (Mar. 8, 2006), <http://www.washingtonpost.com> (on file with the *Tulane Journal of International and Comparative Law*).

107. *Id.*

108. Will Lester, *Americans Urge Death If Saddam Convicted* (Mar. 8, 2006), <http://www.washingtonpost.com> (on file with the *Tulane Journal of International and Comparative Law*).

109. Michael P. Scharf, *Can This Man Get a Fair Trial?*, *WASH. POST*, Dec. 19, 2004, at B1.

the Iraqi tribunal, claiming that the trial of Hussein is simply victor's justice and that there is no fair judiciary established in Iraq.¹¹⁰

The perception of the SICT in Iraq is quite different from that in the United States due to the varying political allegiances of Sunni and Shiite Muslims within Iraq.¹¹¹ Overwhelmingly, the Sunnis support Hussein and consider the trial illegitimate.¹¹² Some Sunni Iraqis call the trial "illegal" and a "comedy," while others fault what they consider to be excessive American participation in the trial.¹¹³ Conversely, the Shiite Muslims have rallied for the execution of Hussein in Baghdad and compliment the new chief judge of the tribunal on his stricter approach to courtroom procedure.¹¹⁴ The chairman of the Supreme Council for the Islamic Revolution in Iraq even commented that he "feel[s] sorry that there are people willing to defend a person who committed crimes against humanity and genocide."¹¹⁵

The public perception of the Iraqi Tribunal is an important factor in determining its overall legitimacy. At present, the United States has replicated its Nuremberg success at home, as nearly three-quarters of the population believe that Hussein's trial is fair,¹¹⁶ with the detractors being largely confined to the academic arena. However, the Iraqi situation is arguably much more complex than Nuremberg and is fraught with intricate details concerning the United States' interest in the region and the varying attitudes of Iraqi minorities toward one another. Yet, whether the public is fully aware of all the facts and charges against Hussein is questionable. Without this information, the public's belief in the legitimacy of the trial may be misplaced. Furthermore, the question remains: How long will the American public's favorable perception last, especially in the face of continued delays in the trial and political outbursts from Hussein?

A much greater difficulty lies in persuading the people of Iraq that the trial of their former president is indeed legitimate. At least among Sunnis, Hussein has been equated with Iraq itself. When Hussein was taken to the city of Baquba, he was greeted with these chants: "We

110. "Will Saddam Hussein Get a Fair Trial?": Debate Between Dr. Curtis F.J. Doebbler and Professor Michael P. Scharf, 37 CASE W. RES. J. INT'L L. 21, 25 (2005).

111. See Jonny Dymond, *Divided Iraqis Judge Saddam Trial* (Jan. 30, 2006), http://newsvotebbc.co.uk/2/hi/middle_east/4663114.stm; Ahmed Janabi, *Saddam's Trial Divides Iraqi Opinion* (July 12, 2004), <http://english.aljazeera.net/NR/exeres/554FAF3A-B267-427A-B9EC-54881BDE0A2E.html> (last visited Sept. 18, 2006).

112. Dymond, *supra* note 111; Janabi, *supra* note 111.

113. Dymond, *supra* note 111.

114. *Id.*; Janabi, *supra* note 111.

115. Janabi, *supra* note 111.

116. Lester, *supra* note 108.

sacrifice our blood, our souls for you, Saddam” and “Saddam your name represents the dignity of our country.”¹¹⁷ Yet, with sectarian violence between Sunnis and Shiites on the rise and the possibility of the death penalty as punishment,¹¹⁸ any decision of the SICT regarding the punishment of Hussein is likely to have a galvanizing effect on the country as a whole. One Iraqi businessman stated that although he considers himself a victim of Hussein’s reign, “[Hussein’s] execution will leave a deep scar in the body of Iraqi national unity.”¹¹⁹ Another noted that if Hussein is executed, “[the Sunnis] will hold their Shia countrymen responsible for wiping out a national symbol. A dilemma will end in a civil war.”¹²⁰

In order to avoid disastrous consequences, the SICT must absolutely ensure the legitimacy of the proceedings against Hussein by following every rule of procedure and disallowing political speeches by the defendants. The SICT should also follow the model set by Nuremberg with regard to the German public’s perception of those trials. As noted above, the testimony of German citizens against the Nazi leaders demonstrated that the Allies were not the only accusers at the trials and persuaded many Germans that the trials were legitimate. In the same manner, the Iraqi prosecutors must attempt to present witnesses against Hussein from all segments of the Iraqi population and emphasize that Hussein’s actions affected the entire nation. Although these witnesses may be considered traitors by their respective sects, this is a necessary step toward establishing the legitimacy, both perceived and real, of this trial.

IV. CONCLUSION

The prosecution of Hussein for the executions at al-Dujail began with the creation of the Supreme Iraqi Criminal Tribunal on October 9, 2005. Originally under the auspices of the Coalition Provisional Authority, this Iraqi tribunal now bears the heavy burden of proving to the Iraqi people that it is independent of the United States and competent to produce a legitimate legal proceeding. Meanwhile, the United States must prove to its own citizens and the international community that it has severed ties with the Iraqi tribunal and is not attempting to impose any type of victors’ justice upon Hussein and his codefendants. However, the

117. Janabi, *supra* note 111.

118. See Statute of the Iraqi Special Tribunal art. 24, 44 AL-WAQAI AL-IRAQIYA 144 (Mar. 2004) (Iraq).

119. Janabi, *supra* note 111.

120. *Id.*

Iraqi tribunal is the first international criminal prosecution in which the United States has been heavily involved since the Nuremberg trials following World War II. Consequently, comparisons must be made between the two sets of trials in order for the Iraqi tribunal to benefit from the lessons learned at Nuremberg.

Like the Nuremberg trials, the Iraqi tribunal is located within the nation where the alleged crimes occurred. However, the conflict in Iraq is ongoing, raising serious questions about the safety of the legal participants¹²¹ and the original motivations behind the institution of the tribunal. By initially placing the tribunal within Iraq and beginning prosecutions before the end of all hostilities, the United States sought not only to create a legitimate tribunal, but also to justify its 2003 invasion of Iraq and bolster the fledgling Iraqi democratic government. Yet, the division of the tribunal's purpose into three disparate parts does nothing to secure the legitimacy of the proceedings and, in fact, detracts from that goal. Thus, the United States has failed in its attempt to emulate Nuremberg's dramatic effect and to make a symbolic connection between the war and the trial by placing the tribunal in the country of conflict.

Similarly, the crimes with which Hussein and his codefendants are charged are the same as two of the enumerated Nuremberg crimes, namely, war crimes and crimes against humanity. Although a clear link to Nuremberg and a boost to the Iraqi tribunal's legitimacy at first glance, the application of these crimes to the trial of Hussein does not create any legitimacy for this court. The jurisdictional timeframe of the SICT spans a period of over thirty-five years, whereas the Nuremberg trials only considered crimes committed during the five years of World War II. Furthermore, the charged crimes have no relation to the actual cause of the U.S. invasion of Iraq—namely the suspicions of the Bush Administration that Hussein was harboring nuclear weapons with the intent to use them. As a result, the impact that the prosecution might have had on the legitimacy of the Iraqi tribunal is diluted by the overextension of the jurisdictional timeframe and the lack of a patent relation to the actual invasion of Iraq that led to the creation of the IST.

Strong parallels may also be drawn between the actions and words of Göring and Hussein. Both men strenuously declared that their trials

121. Indeed, one judge and three of Hussein's defense attorneys have been murdered since the inception of the SICT. Associated Press, *Judge in Saddam Trial Murdered* (Mar. 2, 2005), <http://www.foxnews.com/story/0,2933/149145,00.html>; Ellen Knickmeyer, *Hussein Trial Halts Again, Setting Off Wave of Criticism*, WASH. POST, Jan. 25, 2006, at A14; Joshua Partlow & Bassam Sebt, *Gunmen Kidnap Scores of Iraqis; Hussein Lawyer Slain*, WASH. POST, June 22, 2006, at A20.

were mere exhibitions of victor's justice, and both had strong followings of supporters in their native countries. They also used their trials as platforms for their own agendas by disrupting the courtroom proceedings and essentially taking over the trials. Although Justice Jackson faltered in his cross-examination of Göring, the Iraqi tribunal must prevent Hussein from running roughshod over the judges and establishing himself as a political martyr in the eyes of the Iraqi people. Through strict enforcement of procedural rules and little tolerance for political grandstanding, the Iraqi tribunal will be able to learn from the mistake at Nuremberg and increase the legitimacy of its proceedings.

Finally, and most importantly, there are unmistakable similarities between the public perceptions of both trials. The American perception of the legitimacy of the Iraqi tribunal is extremely high, just as it was at the time of the Nuremberg trials. However, unlike the German public's gradual approval of the Nuremberg trials, the Iraqi population is still divided between the Shiites' acceptance of the trial's legitimacy and the Sunnis' unabashed condemnation of it. A potential result of these diametrically opposed views is the outbreak of more hostilities upon the announcement of any verdict against Hussein. Consequently, the Iraqi tribunal should follow the example of the prosecutors at Nuremberg and call Iraqi witnesses from both sects to testify to the atrocities committed by Hussein. A display of the effects of Hussein's crimes on both populations may increase the legitimacy of the trial in the eyes of the Sunnis and curb further hostility once the inevitable verdict against Hussein is handed down.

Ultimately, the comparison between the SICT and the Nuremberg trials is not perfect. However, the similarities that do exist can enable Iraq to replicate the successes of Nuremberg while avoiding its mistakes. Although it remains to be seen whether this court can produce a valid legal proceeding, the lessons of Nuremberg can prevent it from being remembered simply as an imposition of victor's justice.