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Lest We Forget: Discussing Saddam Hussein's Crimes And His Trial In The Light Of Individual Criminal Responsibility Under International Law

Authored By- Yagya Bharadwaj

Abstract

When a leader decides to rule his country according to his whims and wishes, and thinks himself above everyone else, his ideas and motives are bound to be corrupted, however innocent and patriotic they may have been in the beginning. This is what happened in Iraq when Saddam Hussein came to power. The list of his crimes is long, and the extent of his brutality is almost unimaginable.

The development of international criminal law makes it possible for State officials to be held individually liable for the crimes committed by them. Saddam Hussein was tried in the Iraqi High Tribunal for his crimes against humanity and sentenced to death.

This paper discusses his crimes and how he violated the international criminal law during his presidency, and his subsequent trial in Iraq for his crimes where the tribunal did not give him impunity but held him responsible in his individual capacity.

KEYWORDS: *Saddam Hussein, International Criminal Law, Crimes under International Law, Rome Statute, Iraqi High Tribunal, Individual Criminal Responsibility*

Research Methodology

The research done for this paper is secondary in nature and the data for this paper were collected from official documents of treaties and statutes, official websites of the tribunals mentioned in the paper, articles and books written by academicians and journalists, and from certain other sources. This method of research was chosen by me to make content of the paper as credible and impartial as possible.

OBJECT

The object behind writing this paper is to once again bring into light the crimes committed by Saddam Hussein during his presidency in Iraq so that we do not forget his grave crimes, and understand the extent of crimes that the Head of a State can be responsible for. Further, to reiterate that the international criminal law makes it possible to hold individuals, even leaders and State officials, criminally responsible for their crimes, and that they do not enjoy impunity.

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Introduction

“I guess humans like to watch a little destruction. Sand castles, houses of cards, that's where they begin. Their great skill is their capacity to escalate.”

-Markus Zusak, The Book Thief.

If the world history tells us anything, it is that often when a monarchy is overthrown in the wake of a revolution, it is eventually replaced by something worse. The revolutionaries who sought equality and justice end up shedding more blood and oppressing more communities than their predecessors. The French Revolution of 1789, the Russian Revolution of 1917, and the 14 July Revolution in Iraq are some examples where those who came after the monarchs brought more destruction- the Reign of Terror, the Red Terror, and the coming of Ba'ath party into power, with Saddam as its leader.

When a leader decides to rule his country according to his whims and wishes, and thinks himself above everyone else, his ideas and motives are bound to be corrupted, however innocent and patriotic they may have been in the beginning. This is what happened in Iraq when Saddam came into power. The list of his crimes is long, and the extent of his brutality is almost unimaginable.

The development of international criminal law makes it possible for State officials to be held individually liable for the crimes committed by them. While it does not exclude State responsibility, it does make the individual responsible, and liable for punishment for those acts that constitute crime under international law¹.

In the further sections of this paper, I seek to discuss the crimes committed by Saddam Hussein and how he violated the international criminal law, his subsequent trial, and the extent of individual criminal responsibility under international law.

¹ Principle I, Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal.

1. The Succession Of Saddam

“One does not establish a dictatorship in order to safeguard a revolution; one makes a revolution in order to establish a dictatorship.”

-George Orwell, 1984

In 1968, the Ba'ath Party seized power from Abdul Rahman Arif, the President of Iraq, and the Iraqi Prime Minister Tahir Yahya. The government was overthrown during the 17 July coup d'état which was led by Ahmed Hassan al-Bakr², who became the fourth president of Iraq after the coup's success. Saddam participated in the coup and was named al-Bakr's deputy, and the Deputy Chairman of the Ba'athist Revolutionary Command Council (RCC)³. He then worked to strengthen the rule of Ba'ath party and helped in expanding the party's following and influence.

In the years that followed, Saddam built a reputation as a progressive, effective politician⁴ and kept accumulating power and favours. He ordered a mandatory literacy program and also created one of the best public health systems in the Middle East which earned him an award from United Nations Educational, Scientific and Cultural Organization (UNESCO)⁵.

In 1979 he took over as President when al-Bakr stepped down. Saddam Hussein served as the fifth president of Iraq from 16 July 1979 till 9 April 2003. After he became the President, he ordered the execution of hundreds of members of the Ba'ath Party, accusing them of disloyalty and treason.

Through his political activities and authoritarian decisions, he turned the regime into a vehicle for ensuring his personal power and propagating his own personality cult⁶.

² The revolution of 1968, Britannica, <https://www.britannica.com/place/Iraq/The-revolution-of-1968>

³ The RCC was established as the de facto ruling power in Iraq after the 1968 coup.

⁴ Hussein was a symbol of autocracy, cruelty in Iraq, CNN (December 30, 2006), <http://edition.cnn.com/2006/WORLD/meast/12/29/hussein.obit/index.html>.

⁵ Jessica Moore, Online NewsHour, https://web.archive.org/web/20030625145156/http://www.pbs.org/newshour/bb/middle_east/iraq/war/player1.html.

⁶ Edward Mortimer, The Thief of Baghdad, The New York Review of Books Vol. 37, No. 14 (September 27, 1990), <http://www.nybooks.com/articles/3519>.

2. International Criminal Law

International criminal law is the body of public international law that prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment of those categories of conduct, and holds perpetrators individually accountable for their commission. It also includes laws, procedures and principles relating to modes of liability, defences, evidence, court procedure, sentencing, victim participation, witness protection, mutual legal assistance and cooperation issues⁷

Talking about the sources of international criminal law and given the fact that international criminal law is a part of public international law, their sources are somewhat the same:

1. Treaties
2. Customary international law
3. General principles of law
4. Judicial decisions
5. Writings of learned jurists

These sources often overlap and influence each other as reflect each other in some or the other way and the changes or development in one source is bound to reflect in another when new cases or issues come up related to international criminal law.

The International Criminal Court (ICC) and the ad hoc tribunals form the most important institutions of international criminal law. These institutions were established to hear international crimes, which are discussed in the next section.

2.1 Crime under International Law

Following World War II, the International Military Tribunal was created by the Nuremberg Charter to prosecute certain categories of crime that were committed by the military officials of Nazi Germany⁸. Similarly, a tribunal was set up in Japan, the International Military Tribunal for the Far East (IMTFE), commonly known as Tokyo Trial, to try the leaders of Japanese empire for their crimes immediately before, and during World War II⁹.

⁷ International Criminal Law & Practice, ICLS Foundation, Pg. 3.

⁸ International Military Tribunal at Nuremberg, Holocaust Encyclopedia, <https://encyclopedia.ushmm.org/content/en/article/international-military-tribunal-at-nuremberg> .

⁹ International Military Tribunal for the Far East, UN, https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.3_1946%20Tokyo%20Charter.pdf .

In both trials, the officials and leaders were prosecuted for the following three categories of international crime:

1. Crimes against peace
2. War crimes
3. Crimes against humanity

Decades later in the 1990s, two ad hoc tribunals were established by the United Nations (UN) in Yugoslavia and Rwanda: The International Criminal Tribunal for the former Yugoslavia (ICTY) by UN Security Council Resolution 827 in May 1993, and the International Criminal Tribunal for Rwanda (ICTR) by UN Security Council Resolution 955 in November 1994.

The International Criminal Tribunal for the former Yugoslavia (ICTY)

The ICTY, along with being the first international war crimes tribunal since the Nuremberg and Tokyo, was also the first war crimes court created by the UN. This establishment was a response to mass atrocities that were taking place in Croatia and Bosnia and Herzegovina at the time. The tribunal had authority to prosecute and try individuals on four categories of offences¹⁰:

1. Grave breaches of the 1949 Geneva Conventions
2. Violations of the laws of war
3. Genocide
4. Crimes against humanity

The key objective of the tribunal was to hold accountable those individuals who were responsible for horrifying acts like murder, torture, rape, enslavement etc.

ICTY set precedents for decisions on genocide, war crimes, and crimes against humanity and also showed that an individual's senior position could not protect them from prosecution, putting an end to impunity¹¹.

¹⁰ Mandate and Crimes under ICTY Jurisdiction, IRMCT, <https://www.icty.org/en/about/tribunal/mandate-and-crimes-under-icty-jurisdiction>.

¹¹ About the ICTY, IRMCT, <https://www.icty.org/en/about> .

The International Criminal Tribunal for Rwanda (ICTR)

The ICTR was established to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and neighbouring States, between 1 January 1994 and 31 December 1994.¹² Following the trial of Jean-Paul Akayesu, it became the first international tribunal to deliver verdicts against those responsible for genocide, and to define rape in international criminal law and to recognize it as a means of perpetrating genocide.¹³

The tribunal also held members of the media responsible for broadcasts intended to inflame public to commit acts of genocide and confirmed that the legal doctrine of superior responsibility, which makes the superior responsible for failing to prevent or punish crimes committed by their subordinates, applies to civilians in leadership positions¹⁴.

2.2 The Rome Statute of the International Criminal Court (Rome Statute)

The Rome Statute was adopted in 1998 and came into force in 2002. It established the International Criminal Court (ICC), its functions, jurisdiction, structure etc.

It is perhaps the most important document with regard to international crimes as it established the four core international crimes:

1. Genocide (Article 6)

Under this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such¹⁵:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

2. Crimes against humanity (Article 7)

Under the Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack¹⁶:

¹² The ICTR in Brief, UN IRMCT, <https://unictr.irmct.org/en/tribunal>

¹³ Ibid.

¹⁴ The Genocide, UN IRMCT, <https://unictr.irmct.org/en/genocide>

¹⁵ Article 6, Rome Statute of the International Criminal Court

¹⁶ Article 7, Rome Statute of the International Criminal Court

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

3. War crimes (Article 8)

Under the Statute, "war crimes" means¹⁷:

- (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - (i) Wilful killing;
 - (ii) Torture or inhuman treatment, including biological experiments;
 - (iii) Wilfully causing great suffering, or serious injury to body or health;
 - (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

¹⁷ Article 8, Rome Statute of the International Criminal Court

- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - vii) Unlawful deportation or transfer or unlawful confinement;
 - (viii) Taking of hostages
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law¹⁸.

4. Crime of aggression (Article 8 bis)

Under the Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations¹⁹.

Tracing the development of international law in relation to the addition of new categories of crime and the elements of the crime is important to understand how criminal jurisprudence has evolved on an international level and how grave human rights violations by States or State Officials are not above being held responsible for these crimes. Additionally, it would also help us in analyzing the extent and gravity of Saddam Hussein’s crimes.

3. Individual Criminal Responsibility

“It is forbidden to kill; therefore all murderers are punished unless they kill in large numbers and to the sound of trumpets.”

— *Voltaire*

Individual criminal responsibility is a relatively newer concept in international criminal law. As has been discussed in the previous section of this paper, the Nuremberg and Tokyo international tribunals tried German military officials and Japanese leaders respectively for the crimes committed by them that amounted to crime against peace, war crimes, and crime against humanity.

The Judgment of the Nuremberg Tribunal stated, “crimes against international law are committed by men,

¹⁸ Ibid.

¹⁹ Article 8 bis, Rome Statute of the International Criminal Court

not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced”, establishing the principle of individual criminal accountability for all who commit such acts as a cornerstone of international criminal law²⁰.

Article 6 of the Charter of Nuremberg International Military Tribunal established the legal basis for trying individuals accused of the following acts²¹:

- a) Crimes against peace
- b) War crimes
- c) Crimes against humanity

Both the Nuremberg and the Tokyo trials produced a large number of judgments that contributed to expanding the scope of individual criminal responsibility under international law.

Then in 1950, a report on the Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal was adopted by the International Law Commission. According to Principle I, any person who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment, officially recognizing the fact that individuals may be held responsible for committing crimes²². Further, Principle III and IV provide that a person acting in their capacity as head of State or as a government official and those acting on the orders of the government or of a government superior are not relieved of their responsibility.²³ Also, Principle VI codifies the three categories of crimes mentioned above.

The setting up of the two ad hoc tribunals in the 90s i.e. the ICTY and the ICTR, further strengthened the foundation of individual criminal responsibility. Those who had committed crimes that violated the Geneva Conventions, including genocide and crimes against humanity were prosecuted and held liable for punishment. The conviction of Radislav Krstic for the crimes committed by him in Potocari²⁴ and that of Jean Kambanda for genocide and crimes against humanity²⁵ are two instances where State Officials holding high positions were held criminally responsible for their acts.

²⁰ Rome Statute of the International Criminal Court Overview, United Nations, <https://legal.un.org/icc/general/overview.htm#:~:text=The%20Judgment%20of%20the%20N%C3%BCrberg,indiv%20criminal%20accountability%20for%20all>

²¹ Article 6, Charter of Nuremberg International Military Tribunal

²² Edoardo Greppi, The evolution of individual criminal responsibility under international law (September 1999), <https://international-review.icrc.org/sites/default/files/S1560775500059782a.pdf>

²³ Ibid.

²⁴ Prosecutor v. Radislav Krstic, Case No. IT-98-33-A, Appeals Chamber ICTY 2004

²⁵ Prosecutor v. Jean Kambanda, Case No. ICTR 97-23-A, ICTR 2000

The principle is now well expressed in the Preamble of the Rome Statute of 1998, where it affirms that “the most serious crimes of concern to the international community as a whole must not go unpunished” and that the International Criminal Court aims “to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.”²⁶

Thus, it is an integral part of international law to hold individuals criminally responsible for the grave crimes committed by them, no matter their official rank or status.

The next section of the paper discusses the crimes of Saddam Hussein as the head of State of Iraq. Now that we have established the responsibility and accountability of State officials for the crimes of grave concern to the international community, it is easier to categorize Saddam’s crimes and affirm his violations of the international law and of human rights.

4. Saddam Hussein’s Crimes As The President Of Iraq

“Power tends to corrupt, and absolute power corrupts absolutely.”

-Lord Acton

“When religion and politics travel in the same cart, the riders believe nothing can stand in their way. Their movements become headlong - faster and faster and faster. They put aside all thoughts of obstacles and forget the precipice does not show itself to the man in a blind rush until it's too late.”

-Frank Herbert, Dune

Saddam, as a leader, was not someone to look up to. He was a tyrant who abused his power and committed a number of crimes during his presidency.

The deportation of the Fayli Kurds

The Fayli Kurds are an ethnic group of Shia Muslims of Iraq, who were regarded as Iranians by the Ba’ath Party because of their minority and the fact that they lived close to the Iran border.²⁷

The first massive wave of deportations of the Fayli Kurds took place in 1969, and the second in 1971. The estimates of those deported were 200,000 people. The third and most horrendous campaign started in 1980 and involved more than 200,000 people, mostly Fayli Kurds and some Shiite Arabs and Persians, who settled centuries ago in Iraq.²⁸ During the deportation campaign, thousands of Fayli Kurds were persecuted, expelled, to Iran or killed. Fayli women were often

²⁶ Chantal Meloni, Individual Criminal Responsibility, Oxford Bibliographies

²⁷ Dave Johns, The Crimes of Saddam Hussein, Frontline World,

https://www.pbs.org/frontlineworld/stories/iraq501/events_faylee.html

²⁸ Dr. Ismail Kamandar Fattah, The Deportation of the Fayli Kurds, Faylee Kurds Democratic Union (September 6, 2003)

imprisoned or sent to camps.²⁹

This ethnic cleansing of Kurds under Saddam's regime was just one of his brutal crimes against a community. Going by the definition under Article 8 of the Rome Statute, this was a crime against humanity that Saddam committed against the Kurds, as all of this was done on his orders, and he had knowledge of it all.

The Barzani abductions

In 1983, between 5,000 and 8,000 males belonging to the Barzani clan, some as young as 10 years old, were abducted on Saddam's order. This happened after the Kurdish clan leader Masoud Barzani aligned the forces of his rebel Kurdistan Democratic Party (KDP) with the Iranians in the Iran-Iraq war, and this was Saddam's way of punishing him for it. Those who were abducted were never seen again.³⁰ A month after their disappearance, Saddam Hussein admitted publicly at a gathering of Kurdish dignitaries that his regime was involved in their disappearance, strongly hinting the Barzani men were no longer alive.³¹

In 2003, documents were found by agents working for the Kurdistan Region's intelligence services that proved that over 2000 Barzani males were killed by the Iraqi government near Bussia, in the southern deserts of Iraq. In 2005, three mass graves were located close to where the borders of Iraq, Saudi Arabia and Kuwait meet, and the remains of 500 Barzani males were found³². There are other graves yet to be discovered. Evidence of Saddam's direct involvement in this crime was found on the discovery of a letter in Baghdad that from his personal secretary.³³ This involvement also amounted to crime against humanity under Article 7 of the Rome Statute.

Anfal campaign

The Anfal campaign, also called the Anfal genocide³⁴ was a campaign by the Ba'athist party that was aimed at eliminating Kurdish rebels. Gen. Ali Hassan al-Majid, or 'Chemical Ali', who was a cousin of Saddam, led the operation on Saddam's order and deployed military resources to kill Kurds in mass. He ordered the use of chemical weapons (hence the name Chemical Ali) on the Kurdish population, and according to Human Rights Watch estimates, between 50,000 and

²⁹ List of Saddam's Crimes Is Long, ABC News (February 8, 2008)

³⁰ Dave Johns, The Crimes of Saddam Hussein, Frontline World, https://www.pbs.org/frontlineworld/stories/iraq501/events_faylee.html

³¹ The Tragedy of the Missing Barzanis, Kurdistan Memory Programme, <https://kurdistanmemoryprogramme.com/the-tragedy-of-the-missing-barzanis/>

³² Ibid

³³ Dave Johns, The Crimes of Saddam Hussein, Frontline World, https://www.pbs.org/frontlineworld/stories/iraq501/events_faylee.html

³⁴ George Black, Genocide in Iraq: The Anfal Campaign Against the Kurds, Human Rights Watch, Middle East Watch Committee (1993)

100,000 people were killed. During the campaign, he also ordered the Iraqi forces to drop bombs containing mustard and nerve gases on the town of Halabja, killing an estimate of 5000 individuals, including children. The consequences of the poison gas has had a long-term effect on the area³⁵.

This campaign has been recognized as genocide and crime against humanity by some countries, and the mass killing, the use of chemical weapons, and targeting a particular ethnic group make the campaign a genocide and a crime against humanity under Article 6 and 8 of the Rome Statute.

The invasion of Kuwait

In his desperate attempt to acquire its oil reserves and pay off the debts, Saddam Hussein ordered the invasion of Kuwait in 1990. And so, Kuwait was invaded and occupied by the Iraqi troops. During the occupation of Kuwait, a systematic campaign of pillage, torture, rape, murder, and theft of the country's economic assets was carried out by Iraqi troops. It was reported by Amnesty International that the Iraqi soldiers carried out hundreds of extrajudicial killings and took thousands of Kuwaiti civilians prisoners³⁶. Hundreds of oil wells were set on fire and pipelines were opened, which resulted in oil spill into the Gulf.

The invasion was a crime of aggression, going by the definition under Article 8 bis of the Rome Statute, and the acts of Iraqi troops constituted war crimes.

Saddam was not convicted for any of the crimes mentioned above, or for some of the other crimes by him like destruction campaign against the Marsh Arabs, the attack on Kurdish and Shiite rebels. All the people who disappeared and were never seen again, all the children who died without getting a chance to see the world, all the women who lost their husbands and male children, and were raped and tortured, all the males whose bodies were thrown into mass graves and have not been discovered yet- they were all his victims.

5. Trial Of The Tyrant

In 2003, American forces carried out Operation Red Dawn that led to the capture of Saddam Hussein from his hiding place in a hole in the ground somewhere near Tikrit. He was then taken to the American base near Baghdad.

In December 2003, the Iraqi Special Tribunal was created by the Iraqi Interim Government to try Saddam Hussein and those who aided him in his crimes. It was renamed in 2005 as the Iraqi High

³⁵ List of Saddam's Crimes Is Long, ABC News (February 8, 2008)

³⁶ Persian Gulf War, Britannica, <https://www.britannica.com/event/Persian-Gulf-War>

Tribunal (IHT) after the Statute establishing it was revoked and replaced by an amended one.³⁷

The Tribunal had been established to try Iraqi nationals and residents accused of genocide, crimes against humanity, war crimes, and such other serious crimes that had been committed between July 1968 and May 2003. But the primary object was the prosecution of Saddam and his aides.

While Saddam had also been accused of the crimes that are mentioned in the previous section of this paper, he was not tried for them, the main reason being his conviction and execution for the first crime that he was charged with i.e. the massacre of 148 Shiites from Dujail.

This attack in Dujail had come after a failed assassination attempt on Saddam. After the incident, more than a thousand people were rounded up and taken to detention centres. The town of Dujail was destroyed, and houses and orchards were bulldozed.³⁸

On November 5, 2006, Saddam was convicted of crimes against humanity and sentenced to death by hanging for his crimes in Dujail. Other defendants like Barzan Ibrahim al-Tikriti, Taha Yassin Ramadan, and Awad Hamed al-Bandar were also tried and sentenced.

5.1 Why was Saddam not tried in the International Criminal Court?

The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.³⁹

Even though Saddam had been accused of all of these crimes, why was he not tried in ICC but in IHT?

The ICC was established in 2002 and can hear only those crimes which were committed since July 2002, and not the ones before that. It has no retrospective effect. This was a reason why the ICC could not prosecute Saddam Hussein and those who were involved as aides in his crimes. Another reason was that neither Iraq nor the United States was a party to the ICC treaty, and so a special resolution would have had to be passed by the United Nations Security Council to refer the matter to the Court.

Further, a trial in Iraq by a local court was a way of closure for Iraqi people who had suffered so much under his rule with no control over their fate for more than two decades⁴⁰.

³⁷ The Iraqi High Tribunal, Hybrid Justice, <https://hybridjustice.com/iraqi-high-tribunal/>

³⁸ Dave Johns, The Crimes of Saddam Hussein, Frontline World, https://www.pbs.org/frontlineworld/stories/iraq501/events_faylee.html

³⁹ International Criminal Court, <https://www.icc-cpi.int/about>

⁴⁰ Ruth Wedgwood, Trying a Tyrant: Should the Iraqis Alone Sit in Judgment of Saddam? The Washington Institute for Near East Policy (Dec 30, 2003)

Questions were raised about Saddam's trial, asking if it was fair and according to the international standards. Also, his execution was opposed by some, and welcomed by others. Whether his trial was fair and his execution just is an entirely different debate.

Observations And Concluding Remarks

Blot out his name, then, record one lost soul more,
One task more declined, one more footpath untrod,
One more devils'-triumph and sorrow for angels,
One wrong more to man, one more insult to God!

- Robert Browning, The Lost Leader

The history of dictatorship has been violent. Dictators, once they come to power, forget that the rule of law exists, and that human rights do not come from the State but from the virtue of being human. Saddam was one of many who thought themselves above law and accountability. During his lifetime, especially during his presidency, he was responsible for the gravest of crimes and for extreme violations of human rights.

Tyrants like Adolf Hitler and Joseph Stalin could not be tried in a court of law for their crimes. If they had been tried, most likely they would also have been sentenced to death for killing millions. Mass killings, extreme human rights violations, terrorism, and dictatorship are not a thing of the past, but those responsible are not always brought to justice.

The application of international criminal law on criminals who commit crimes like genocide, crimes against humanity, war crimes and genocide (the core crimes under international law as established by the Rome Statute) becomes necessary because such crimes do not affect one person or one nation, but the whole international community, and are often committed by those whose very job was to safeguard the human rights of others and uphold the rule of law.

When human rights violations take place on such large scales, when people are persecuted and killed for belonging to a particular race community, religion, or gender, the trial and conviction of those responsible becomes a necessity.

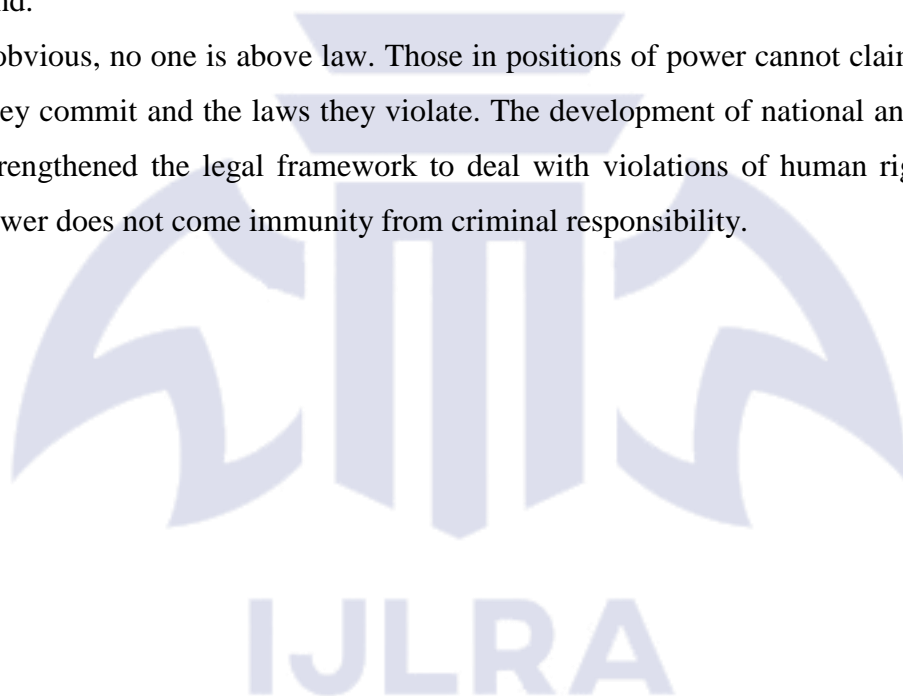
Saddam Hussein, as a Head of State, did not only commit those crimes, but also violated the fundamental principles of humanitarian law. Even though the ICC has jurisdiction to try the crimes he committed, his trial at the court was not possible because of Jurisdiction *ratione*

temporis, meaning that the ICC can try only those crimes that were committed after the Rome Statute came into force⁴¹.

Saddam's trial in the Iraqi High Tribunal ended with his conviction and death sentence for the massacre in Dujail, which was a lesser crime compared to his other heinous ones. He was given death penalty, which is the most severe punishment a modern court or tribunal can give, but whether justice was done remains debatable.

The concept of individual criminal responsibility has expanded the scope of international criminal law. The ICTY, ICTR, and Rome Statute have made it possible to hold not only the State but also individuals responsible for crimes under international law, and impunity of State officials has come to an end.

To state the obvious, no one is above law. Those in positions of power cannot claim impunity for the crimes they commit and the laws they violate. The development of national and international laws have strengthened the legal framework to deal with violations of human rights, and even with great power does not come immunity from criminal responsibility.



⁴¹ Article 11, Rome Statute of the international Criminal Court