While interpreting some of the major events the only difficulty that arises is that we do not get enough literature on every single event. Moreover, some of the events (those who have been selected in this research work) have not been presented by the authors and publishers in the world or Indian market. Nevertheless, there is a little try of interpreting some events and henceforth the issues by some recognized authors of world literature. In 2006, there are 4 events among which 2006 Mumbai Blasts, Serial Murder Case, Noida and Trial and Death of Saddam Hussein have been interpreted but the rest is not due to the above mentioned problem.

**2006 MUMBAI BLASTS**

The Mumbai serial train blasts that killed over 200 persons and left more than 700 injured within a span of 11 minutes on July 11, 2006 is the most serious attack on the Indian state and its people since the attack on Parliament on December 13, 2001. Like the Parliament attack, the Mumbai blasts should be treated as an act of war against the nation. These attacks were some of the high points in the continuing proxy-war that Pakistan has launched against India. The terrorist attack on the suburban trains, another link in the chain of attacks on mass transit vehicles by international terrorist organizations in the past few years, was a meticulously planned and well-executed operation masterminded by terrorist groups based in Pakistan and other places. The attack was apparently carried out with the assistance of local recruits, trained and indoctrinated by terrorist groups based in Pakistan, particularly the Lashkar-e-toiba (LeT), one of the vicious terror groups targeting India.¹

Nearly a fortnight before the attack, according to a report of June 29, 2006, in Nawa-e-waqt, an Urdu daily published from Karachi, LeT chief Hafeez Muhammad Saeed told a gathering in Muzaffarabad, where his group has several training camps for jihadis, that “The Hindus have included blasphemous cartoons in their textbooks. We will take revenge. We will intensify jihad against the Hindus.” Two days after the blasts, Saeed is quoted as saying in weekly Ghazwa Times, July 13, that “Nobody could stop us from our mission. We will continue to do what is just according to our mission.” While this indicates a continuum in the mindset of organizations like the LeT, it also shows the indulgence of Pakistani authorities
towards such organizations. It is, of course, more likely that the attacks were planned and trial runs carried out much earlier. Calculated attacks like the Mumbai blasts cause immense damage to the country, its economy and image, besides challenging its pluralist character. As previous attacks in Delhi, Varanasi, Ahmedabad and Ayodhya have shown, one of the primary objectives of terrorists has been to trigger communal riots in communally-sensitive areas of the country. It is a war of attrition and the aim of the terrorists is that the thread will snap one day.²

Investigations have established that LeT has been successful in co-opting extremist groups like Students Islamic Movement of India (SIMI) which, despite being banned in India since 2000, has been quite active underground in Uttar Pradesh, Maharashtra, Gujarat, Haryana and Kerala. In the past few years, SIMI activists have been involved in assisting Pakistan-based terrorist groups like LeT and Jaish-e-Mohammad (JeM) to carry out attacks on pre-selected targets in India. They have, in fact, been functioning as an extended arm of these groups. Besides, this coalition exploits the presence of organized crime syndicates and trans-national arms smuggling networks to procure weapons and explosives. The ISI’s role in creating and controlling such terrorist coalitions and groups has been well documented. In this context, the Law Commission of India noted, in April 2000 in its 173rd Report on the anti-terrorism Bill, that ‘34, 262 lives were lost, property worth Rs 20 billion was reportedly damaged, while 43,700 kg of explosives, mostly RDX, and 61,900 sophisticated weapons were smuggled into India, even as an estimated Rs 640 billion were spent as security-related expenditure to counter the ISI threat’.³

In Mumbai, and several other parts of India, the underworld and crime syndicates have been, and are, the ISI’s instrument of coordinating, arming and assisting terrorists tasked to carry out attacks. These have been allowed to be entrenched in megapolis like Mumbai due to political and commercial reasons. The 1993 serial blasts that killed over 270 persons were carried out by newly recruited terrorists with the active support and help of the syndicate run by Dawood Ibrahim from Karachi. 10 years after the event, on October 16, 2003, the US Department of State designated Dawood Ibrahim as a terrorist for his links to al Qaida, his role in terrorist acts in India and for financing LeT. Despite this, the Dawood Ibrahim syndicate has expanded its network in Mumbai and adjoining areas since then, enabling the ISI and its sponsored terrorist groups like LeT to recruit youngsters, transfer funds and weapons and provide mobile phones, shelter and escape routes for carrying terrorist operations in India.⁴
The crime syndicates like the one run by Dawood Ibrahim are also the conduit for hawala transactions that sustains terror groups and their activities in India. Way back in 1988, the Interpol estimated the size of hawala transactions in India to be over $680 billion. This network of hawala exists across the country with hardly any vigilant, systematic crackdown. The financial network aiding terrorism in Jammu and Kashmir and other parts of India could be traced to West Asian hawala networks and religious charity organizations. It was a chance investigation of a vegetable vendor in 1997 that exposed an alarming transaction of one million rupees that belonged to a senior Hurriyat leader. There is convincing evidence of terrorist groups like Hizb-ul Mujahideen (HuM), JeM and LeT having been funded through hawala networks across an arc that stretches from the Persian Gulf to the Bay of Bengal. There is an urgent need to put an end to this network. Of course, this is not the easiest of tasks in any counter-terrorism campaign.

Besides, various charitable and religious organizations based in West Asia and other parts of the world, too, fund terrorist and extremist groups operating in India. SIMI, for instance, drew substantial funding from World Assembly of Muslim Youth, an organization based in Falls Church, Washington D.C., before the latter was proscribed following the 9/11 attacks. The entity, which also funded the Hamas, was founded by Abdullah bin Laden, brother of Osama bin Laden. There is, therefore, a need for diplomatic action in this regard, to persuade the countries where these charities are located to halt such funding. Despite the Foreign Exchange Management Act (FEMA) and the Prevention of Money Laundering (Amendment) Act of 2005, there has been hardly any consistent and deterrent action on this front. According to available figures, the Enforcement Directorate (ED) has investigated only nine cases of terror fund since 1998 — six involving LeT. A majority of these cases related to Pakistan and Dubai.

The attack on Mumbai trains reconfirms that Islamist terrorism is no longer confined to Jammu and Kashmir, as has been the case since the early 1990s. It is likely to be a major internal security challenge in different parts of the country, particularly west and south India; the north and north-east are already afflicted. In all likelihood, the north-east, especially Assam, will increasingly come under an additional threat from Islamist terrorists operating out of Bangladesh, and aided in considerable measure by the ISI and Bangladesh’s Directorate General of Field Intelligence (DGFI). The West, Maharashtra and Gujarat included, is likely to face the terrorist onslaught from extremist groups and individuals working on behalf of LeT and JeM.
Another important aspect is the profile of the fresh recruits to terrorism. A considerable number of them are well-educated, even doctors and engineers, and adept in exploiting latest communication technologies like the Internet, e-mail and satellite phones. The indoctrination of these recruits relies heavily on hate literature and propaganda material generated from communal incidents in the country. They are sent out for training in the use of weapons and fabricating explosive devices in camps set up by LeT and other terrorist groups in Pakistan — PoK, Punjab and Balochistan, and training infrastructure in Bangladesh — particularly in the Chittagong Hill Tracts (CHT) where Harkat-ul Jihad al Islami (HuJI) and its associate, Jamaatul Mujahideen Bangladesh have set up complexes for training and indoctrination.8

State response to such terrorist incidents has been grossly inadequate. On occasions, there has been a complete breakdown of the law and order machinery. Poor intelligence gathering and lack of will and resources to follow-up on information provided by Central and or State intelligence agencies have often allowed terrorist groups to carry out their operations without much difficulty. Police have often failed to deter terrorists. This malaise is caused by a growing lack of professionalism in intelligence agencies and police forces, phenomenal increase of political interference and government’s indifference to carry out reforms in the police.9

The political response to terrorism has been equally dismal. At the initial stages and even much later, the State governments are reluctant to describe terrorist acts as ‘terrorist acts’ and prefer to deal with them as law and order problems until it is too late. Political parties have often neutralized anti-terrorism laws for narrow political interests. The leader leadership has repeatedly failed to face the challenge of terrorism squarely, capitulating in the face of crises like hijackings and hostage-taking incidents. India is, therefore, increasingly being seen as a soft and indolent state which is bending over backwards for vote bank politics. This impression has to be corrected forthright. If this is not done, ordinary citizens, including minorities, will lose faith in the government and the terrorists will take advantage, as they seem to be doing.10

There is a general lack of public awareness or reluctance to help or volunteer information lest it rebound on the informer. There is a lack of public confidence in the law and order machinery and also a genuine lack of general awareness about what to look for and what to do. There is, at the same time, an over dependence on the state with an unwillingness to help in the normal course.11
Policy Actions

1. Assure People

The government must firmly and solemnly reassure the people that they will be protected. The top leadership of the country should make it clear that those responsible for terrorist attacks and those who assist them will be hunted down and dealt with sternly.\textsuperscript{12}

2. Policy and Mechanism

There is an urgent and imperative need to have in place a National Counter-Terrorism Strategy in dealing with all acts of terrorism, including nuclear, biological and chemical. The policy should lead to the formulation of a well-defined, comprehensive and multidimensional action plan to deal with all types of terrorism.

For the formulation of this plan, its implementation and oversight, the government should constitute a small and compact group of professionals, on the lines of a strategic group, from different professional backgrounds and expertise to deal with terrorism.

This should form the core group for a Counter Terrorism Centre within a separate Ministry for Internal Security with an independent Minister responsible.\textsuperscript{13}

3. Armed and Punitive Action

The government should be pro-active and direct overt and covert actions against terrorists and terrorist groups, within the country and those based in foreign countries, in order to vastly reduce their capabilities.

The government should immediately take all measures to completely root-out the underworld in Mumbai. Fugitive underworld leaders and operatives should be silenced and their operations halted on foreign soils. All criminal linkages should be investigated and those found guilty should be brought to book.

Groups like SIMI that provide a crucial support base for terrorist activities should be hunted down, their networks should be smashed, and support structures and bases destroyed completely. A mere ban is not sufficient. Irrespective of their political affiliation and status, leaders found to be involved with, or linked to, such anti-national groups should be brought to justice.

Concerted effort should be made to tackle terrorist funding. Long-term measures including snapping of financial networks of terrorist groups are required. This would involve curbing charity organizations, both within Indian and outside, from supporting terrorist activities and tracking down hawala transactions, as well as money laundering.\textsuperscript{14}
4. Legislation

Terrorism is an act of war and, during such circumstances, nations suspend their normal laws. Since normal criminal laws are inadequate and cumbersome in dealing with acts of terrorism, we need to introduce a permanent anti-terror law which is not subjected to dilution for political reasons. This should be a comprehensive law enabling intelligence agencies to track down suspected terrorists, block channels of funding and weapons smuggling and help the prosecution of the guilty quickly and severely. It would be useful to recollect that the United States and the United Kingdom have provisions in their anti-terrorism laws that are much tougher than India’s earlier anti-terrorism laws. Adequate care should, of course, be taken to prevent the abuse of such a law.

Amendments should be made to the Indian Evidence Act, the Arms Act, the Telegraph Act, the Prevention of Money Laundering Act, the Criminal Procedure Code, etc to plug possible legal loopholes to prevent acquittal on technical grounds and introduce the concept of imposing cumulative sentences in terrorism cases. A comprehensive witness protection program should be put in place and should be extended to all cases relating to terrorist acts. In the wake of our past experience, it is equally important that a serious inquiry is made into the efficacy of our earlier anti-terrorism laws in bringing to justice those detained for acts of terrorism and necessary corrective measures need to be initiated and, ultimately, ensure that the perpetrators of terrorist acts do not go unpunished.

There is an urgent need to introduce a provision either in the existing laws or in new anti-terrorism laws, to declare a person as terrorist. Provisions relating to declaring an organization as terrorist alone are not sufficient.

Immediately, we need to review the procedures being followed hitherto to secure the extradition of fugitive terrorists.

The government must make suitable amendments to Section 3 of Foreign Exchange Management Act (FEMA) to equate hawala transactions used for terrorism with acts of terror. Similarly, immediate action should be taken to bring in the Unlawful Activities (Prevention) Amendment Act, 2004 into the schedule of the Prevention of Money Laundering (Amendment) Act of 2005.15

5. Intelligence and Security Agencies

The law enforcement agencies across the country, without exception, are in a state of utter disrepair. Immediately, these have to be re-invigorated, energized and revived, failing which our fight against terrorism would not yield the desired results. The government must
immediately implement the recommendations of the National Police Reforms Commission of 1979.

Political parties in government must desist from using the intelligence agencies for narrow, partisan ends and should allow and encourage the intelligence agencies to be professional. At the same time, the government should fix responsibility for intelligence failure leading to terrorist attacks, including in the July 11-Mumbai blasts.

Revive the Joint Taskforce on Intelligence and Multi Agency Centre. These two units provide a platform for Army, Navy, Air Force, R&AW and IB to synergize their capabilities and facilitate sharing of information and assets.

The Joint Intelligence Committee should be strengthened and given the right resources to carry out its task of coordinating intelligence and policy decisions in matters of national security.

The Central government should create a Counter-Terrorism Fund to strengthen the anti-terrorist intelligence and operational capabilities at State level.\(^6\)

6. Prevention, Preparedness and Response

A comprehensive action plan must be prepared to prevent attacks on mass transit systems like trains and metros. This plan should include both law enforcement activities (policing), and physical security. Policing would include beat patrol, positioning of police control room (PCR) vans at strategic locations and coordination with fire services, paramedical and civil-defence organizations.

The physical aspect of the plan should include CCTVs, vehicle barriers, proper lighting at stations and in the trains and under vehicle surveillances.

Random anti-terrorist measures can include routine checking of passengers and luggage and removal of luggage carriers and other potential places for hiding explosives and weapons.

It is extremely important for the state and its agencies to immediately reach out to the people in the aftermath of a terror attack in order that the people would be convinced that they are cared for. They would then come forward as willing partners in future in the counter-terrorism efforts of the government. The response of the state on July 11 was too slow. It is of paramount importance that the state authority should be visible immediately to prevent chaos and to provide succor and assistance, and to keep the people’s morale high.

All agencies of the government should be thoroughly prepared to face recurring, more lethal attacks involving a large number of casualties and the use of lethal forms of attacks
such as chemical weapons. If one does not already exist, we need to immediately put in place a robust Standard Operating Procedure (SOP) to deal with the fallout of a terrorist attack and provide immediate relief to victims — the people — in all our cities and towns.

Quick Response Teams comprising police, medical, civil-defence, fire service and local administration should be created and equipped with state-of-the art dedicated equipment to tackle similar situations that will arise in metropolitan cities. These teams should be tasked to act in accordance with the SOP so that response to such emergencies is quick, effective and visible.

Special programs are needed to create public awareness and confidence in the state machinery.¹⁷

7. Pakistan

The issue of terrorism should become an integral part of the Composite Dialogue. It should be impressed upon Pakistan that, if it failed to root out the problem of terrorism, the peace process is likely to be in jeopardy.

Pakistan must be forced to shut down Lashkar-e-Toiba, Jaish-e-Mohammad and all other terrorist organizations targeting India, besides proscribing jihadi publications and websites.

India has a list of 4000 persons involved with various terrorist groups based in Pakistan. Action Taken Notes on these persons should form part of the progress report on the Composite Dialogue.

A global campaign, both diplomatic and in the media, should be launched to intensify pressure on Pakistan to take action against terrorist groups. Others may or may not help but will certainly be more willing to help if they understand that we are serious in handling this menace. Diplomatic, offensive should be part of this campaign.¹⁸

SERIAL MURDER CASE, NOIDA

On December 26, 2006 a person Moninder Singh Pandher aged 53 years, was arrested along with his servant Surender Koli aged 36 years from Noida adjoining Nithari village in the suburbs of Delhi. The duo carried out serial killings for two years with 38 children done to death and the dead bodies of the unfortunate victims were dismembered and dumped in drains in and around his Bungalow. Investigating agencies collected skeleton from the drains and autopsy was done on more than 40 bags of human remains there as per CBI sources.
“Servant held for sexually abusing and murdering six children” was the headline of a leading national newspaper. Satish alias Surender who was working as a domestic help in the house of a businessman, confessed to having killed five children and a grownup girl after sexually abusing them. Skeleton and clothes were recovered from gunny bag. Police claimed that the accused was mentally ill.\(^{19}\)

Not a day passes without the news of killings, rape, child abuse and similar horrible acts of violence like we have heard a case of recovery of skeletons from Nithari village of Noida, UP, India which had shaken the whole civilization. The alleged killer master – servant duo of this case, who had admitted to the charge of rape and murder of several children, majority were females. The investigations had also stated that the bodies were neatly stored in packets treated with chemicals to prevent accumulation of bacteria and emission of foul odour. Most of the skulls were of young children and 11 of the heads had long hairs, so we are assuming that they must be girls.\(^{20}\)

Around 38 children in the age group of 3 – 11 years had gone missing from Nithari, a semi rural village on the edges of this upscale suburban town, in the past 21 months.\(^{21}\) After interrogating the alleged accused, the investigating agencies had come to the prima facia conclusion that he (servant) is a psychopath who used to carry out the killings.\(^{22}\) Investigating agency seized photographs of nude children from D-5, Noida apart from pornographic literature, a laptop computer and web cam. Some photographs were showing dance performed by nude children while others showing him (master) in the company of some foreigners. The children in the photographs were Indians. Investigating agencies were suspecting that alleged accuse provide pornographic videos made of children to clients abroad and could link him to pedophilia.\(^{23}\) Investigating agencies were left aghast when they learned that one of the accused had even confessed to the consumption of the victim’s livers and other body parts (cannibalism) showing the amount of brutality the duo had allegedly committed on the victims.\(^{24}\)

The Nithari case has put pedophilia, cannibalism, necrophilia and psychopath killer in the national spotlight once again. There have been several high profile cases, which have involved sexual cannibalism, including that of Andrei Chikatilo, Edward Gein, Albert Fish, Armin M and Jeffrey Dahmer.\(^{25}\) During the 1920's Americans were confronted with the horrors of Albert Fish who was said to have raped, murdered and eaten a number of children. Fish was a sexual cannibal in the truest sense of the term and claimed to have experienced enormous sexual pleasure when he imagined eating a person or when he actually indulged his fantasies.\(^{26}\) The Nithari killings have put the spotlight back on the ways and the psychology
of serial killers. Chennai's Auto Shanker, Mumbai's Stone-Man, Jallandhar's Darbara Singh and Charles Sobraj were all men who lived dual lives for a long time. Not many would suspect that each of them was a serial killer, until it was too late. 27 The ranks include serial killers such as Ted Bundy, who charmed and killed dozens of young women in the 1970s, and cannibal-murderer Jeffrey Dahmer, who fatally seduced 17 men and boys before he was caught in 1991. 28 The most common occupations through which necrophiles came across corpses include hospital orderly, morgue attendant, funeral parlor assistant, cleric, cemetery employee, and soldier—although the majority of people thus employed are (not) tempted to violate a corpse. The study of "ambulatory" psychopaths has, however, hardly begun. Very little is known about sub-criminal psychopathy. However, some researchers have begun to seriously consider the idea that it is important to study psychopathy not as an artificial clinical category but as a general personality trait in the community at large. 29

**TRIAL AND DEATH OF SADDAM HUSSEIN**

The Iraqi Higher Criminal Court was established to bring to justice Iraqi nationals and residents of Iraq accused of atrocities and certain other crimes committed during the thirty-five year period of Ba’athist power. The Court was originally set up by the Iraqi Governing Council in late December 2003. At this time, Iraq was still occupied by the United States and its allies, and the Coalition Provisional Authority had to delegate special authority to the Council for this purpose. Iraq’s Transitional National Assembly is in the process of adopting a new Statute for the Court aimed at legitimizing its status as an Iraqi institution. The new Statute changes the name of the Court from the Iraqi Special Tribunal to the Iraqi Higher Criminal Court and makes certain other changes designed to bring the Court more firmly within the framework of the Iraqi criminal justice system. On 13 December 2003, three days after the Tribunal was established, Saddam Hussein was found hiding in a small hole in the ground outside his home town of Tikrit. After he had spent six months in US custody as a ‘prisoner of war,’ legal authority over Saddam was transferred to the Iraqi Interim Government on 30 June 2004. 30

The next day he was led in chains to a Baghdad court to hear preliminary charges lay against him by Iraqi authorities. Finally, in July 2005 the Court announced that formal charges had been laid against Saddam and three others in relation to crimes committed in the village of Dujail in 1982. Although investigations into other more notorious atrocities are ongoing, the Court has confirmed that the Dujail trial will commence on 19 October, just four
days after the planned referendum on Iraq’s new Constitution. On the eve of its historic first trial explains the structure, jurisdiction, and procedure of the Iraqi Higher Criminal Court, exploring its capacity to deliver fair trials to Saddam Hussein and his Ba’athist colleagues and its credibility both within and outside Iraq. It addresses issues including the influence of international law and the role of foreign experts, the independence of the judiciary and the rights of the accused. It concludes that the groundwork for a fair and impartial process has been laid. The Court is equipped with a strong set of institutional protections and its judiciary has received extensive training on the importance of due process. International experts will also be on hand to provide guidance on the trial of complex international crimes. Whether trials are fair and impartial in practice will depend on the strength of the Court’s commitment to these values, and its ability to surmount problems including political pressure and ongoing security threats.31

Charges against the Ba’athists

Saddam Hussein and other Ba’athist leaders stand accused of serious crimes including genocide and crimes against humanity. Preliminary charges laid against Saddam in July 2004 referred to, among other things, the Anfal campaign against the Kurds in 1988, the gassing of Kurdish villagers in Halabja in 1988, the invasion of Kuwait in August 1990, the suppression of the Kurdish and Shia uprisings in the aftermath of the 1991 Gulf War and the killings of thousands of political activists over a thirty-year period. On 17 July 2005, the Court’s chief investigative judge announced at a press conference that formal charges had been laid against Saddam and three other high-ranking Ba’athists including former Vice President Taha Yassin Ramadan and the former head of the intelligence service, Barzan Ibrahim Hassan al-Tikriti (also Saddam’s half-brother). The charges relate to the massacre of 143 civilians in the town of Dujail following an assassination attempt on Saddam in 1982. The chief investigative judge has indicated that further charges relating to events such as the Anfal campaign and the crushing of Kurdish and Shia rebellions will be laid in the coming months.32

A Domestic Court?

Unlike Slobodan Milosevic, whose current trial in The Hague is a thoroughly international process, Saddam Hussein and his colleagues will be tried in their homeland before a court that forms part of Iraq’s domestic legal system. Whereas the International Criminal Tribunal for the former Yugoslavia was established by resolution of the United Nations Security Council, is operated wholly by international judges and prosecutors and
applies international law, the Iraqi Higher Criminal Court was established by Iraqi authorities (although it was initially a product of the foreign occupation), is staffed overwhelmingly by Iraqis and relies heavily on Iraqi criminal law. Despite this strongly local flavor, a number of key international elements have been built into the Court’s structure and practice. For example, the Statute makes provision for international advisers and there is an option (which may not be exercised) for international judges to be appointed to the Court’s judiciary. The definitions of most of the crimes that the Court has power to try are based on settled international definitions and the judges may rely on international case law to assist them in reaching their decisions. A fusion of international elements into an otherwise domestic legal process has come to be known as the ‘hybrid’ approach to criminal justice.33

The model chosen for Iraq has less of an international element. From the moment of Saddam Hussein’s capture by Coalition forces, it became clear that the Iraqi wish was for his trial to be essentially Iraqi. ‘Iraqis should deal with the crimes of Iraqis’ was the call by one member of the Governing Council, and this view was shared by the United States. President George W. Bush said that, after all, ‘They [the Iraqis] were the people who were brutalized by this man.’ And yet, a purely domestic Iraqi process was rejected by the Court’s architects. In part this reflected widespread skepticism about the ability of the Iraqi justice system to conduct the complex trials associated with international crimes. But it also reflected demands for international participation in the trial of a man who is charged with crimes of universal concern.34

In the years prior to the current conflict, human rights organizations had called on the United Nations Security Council to create an international tribunal for Iraq along the lines of those established for the former Yugoslavia and Rwanda. But without the possibility of arresting the key perpetrators, these proposals met with little success. There remained calls for a truly international court to be set up. But now that a permanent International Criminal Court has been established, the ad hoc approach, associated with considerable expense and delays, has largely fallen out of favor. The International Criminal Court itself is unable to try Saddam Hussein and other Ba’athist leaders because Iraq is not a party to its Statute and, although non-parties may by special declaration accept the Court’s jurisdiction, the Court cannot try crimes committed before 1 July 2002, the date on which the Statute entered into force. Thus virtually all of the atrocities committed during the period of Saddam Hussein’s rule lie beyond the reach of the International Criminal Court. One way or another, the Iraqi Higher Criminal Court is undoubtedly more of an Iraqi than an international court. In
practice, however, there has been and will no doubt continue to be a significant international, or at least US, contribution.35

**Political and Legal Context**

While there have been calls for further ‘internationalization’ of the Iraqi Higher Criminal Court, the international elements that it does have carry with them risks. The politics surrounding the establishment of the Court have raised concerns in particular about the level of American influence. The United States decided not to prosecute Saddam as a ‘prisoner of war,’ although it was entitled to do so under the laws of war, thus avoiding the inevitable accusations of victor’s justice that plague trials of deposed leaders conducted by invading powers. Instead it agreed to hand Saddam over to the Iraqi authorities for trial. Behind the scenes, however, lawyers from the United States and the United Kingdom are known to have contributed significantly to the drafting of the original Statute of the Court, and the establishment of the Court under the Coalition Provisional Authority could not have proceeded without Washington’s approval. The US Department of Justice has committed US$75 million towards the Court’s start-up and it is largely with the assistance of the US Justice Department’s Regime Crimes Liaison Office that the investigations and the preparation for the prosecutions are taking place. Irrespective of its veracity, the perception of the Court as a disguised vehicle for US retribution is likely to color Saddam Hussein’s defence. He has already insisted that his trial will be a political show trial. ‘I do not want to make you feel uneasy,’ he told the judge during the proceedings in July 2004, ‘but you know this is all theatre by Bush to help him with his election campaign.’36

In recent months the Iraqi Transitional Government has consolidated its control over internal affairs and American influence appears to have subsided. Concerns about the independence of the Court are now focused on political pressure emanating from the Iraqi leadership. There are rumors that the Court has been pressured to try and convict Saddam as quickly as possible. Political leaders hope that the trial will be interpreted by the Iraqi people as a sign of progress and control in the current climate of chaos. Privately, they also hope it will quell Sunni resistance by undermining the high stature Saddam still enjoys amongst loyalist segments of the Sunni community. It is thought by many that these political considerations explain why the Court has decided to press ahead with the Dujail trial notwithstanding the fact that investigations into other more dramatic crimes are still months away from completion.37
Another challenge leveled at the Court concerns its fundamental legality. Modeling his performance on Milosevic’s virulent rejection of the legitimacy of the International Criminal Tribunal for the former Yugoslavia, Saddam Hussein has already insinuated that the Iraqi Higher Criminal Court was established under dubious legal authority. During his initial court appearance in July 2004, he asserted the continuing existence of his presidency of Iraq and challenged the legitimacy of a judicial process established ‘by order of the invasion forces’. The same themes have dominated media interviews given by Western lawyers claiming to represent Saddam. The theoretical support such claims have attracted reflects ongoing controversy about the legality of the invasion of Iraq in March 2003. Indeed concerns about the legal validity of the Court’s original Statute are said to have motivated the Transitional National Assembly to reconstitute the Court under a new, unequivocally local law. It is hoped this move will forestall arguments raised by the defence that the Court lacks legal authority to conduct the trials.\(^38\)

**Jurisdiction of the Court: Who May Be Prosecuted and For What Crimes?**

1. **People**

The Court may try ‘any Iraqi national or resident of Iraq’. In some respects this jurisdiction is restrictive. For example, members of the ‘coalition of the willing’ have been insulated from prosecution for possible war crimes committed during the course of the conflict. In keeping with the jurisdiction of international criminal tribunals, ‘legal’ (i.e. non-natural) persons, including corporations, have also been placed beyond the Court’s reach. In other respects, the Court’s ‘personal’ jurisdiction is expansive. The International Criminal Tribunals for the former Yugoslavia and Rwanda may try only those ‘persons responsible for serious violations’, while the Special Court for Sierra Leone may try only those bearing ‘the greatest responsibility’ for relevant crimes. No such limitation applies to the Iraqi Higher Criminal Court. So far, fears that the Court will become mired in trials of ‘small fish’ seem unfounded as investigations have concentrated on high-ranking members of the Ba’athist regime. Besides Saddam Hussein other Ba’athist leaders expected to stand trial before the Court include former Ba’ath party regional commander Ali Hassan al-Majid (‘Chemical Ali’), former Deputy Prime Minister Tariq Aziz and former Deputy Prime Minister and Vice President Taha Yasin Ramadan.\(^39\)
2. Crimes

The Court has jurisdiction to try a limited range of international and Iraqi crimes. The relevant international crimes are genocide, crimes against humanity and war crimes, defined in terms that mirror almost exactly the definitions provided in the Rome Statute of the International Criminal Court. Three domestic Iraqi offences relating to the abuse of political power have also been included. Interestingly, among the three Iraqi offences are ‘the abuse of position and the pursuit of policies that may lead to the threat of war or the use of armed forces of Iraq against an Arab country’. This is an Iraqi variant of the crime of aggression, a crime so controversial that no international definition has yet been agreed. The inclusion of this crime within the Court’s Statute raises the possibility that Iraq’s aggressive wars against Iran (1980–88) and Kuwait (1990–91) may come before the Court in some form, setting an important international precedent. Of all the crimes the Ba’athists are accused of, charges of genocide in connection with the Anfal campaign against the Kurds in 1988 are likely to attract the greatest attention. Despite its categorization by some as the ‘crime of crimes’, however, genocide is notoriously difficult to prosecute because of the need to prove a specific intent to destroy, in whole or in part, the persecuted group.\(^{40}\)

Commentators are already predicting evidential problems for Saddam Hussein’s likely genocide trial given his refusal throughout his leadership to sign his name to implicating orders. In addition to its power to prosecute crimes on behalf of the Iraqi state, the Iraqi Higher Criminal Court may also hear civil cases brought by Iraqi individuals and families who suffered as a consequence of crimes committed by the former regime. This power has been added by the Court’s new Statute and is designed to bring direct redress in the form of compensation to the victims of Ba’athist brutality. It is hoped this mechanism will bring the Court closer to the Iraqi people while at the same time enhancing its role as a forum for establishing the historical record of Ba’athist violence. This latter function is likely to prove significant if, as is rumored to be the case, the Court opts for a small number of criminal prosecutions for leading figures in a bid to speed up the process and limit opportunities for political grandstanding by the accused.\(^{41}\)

3. Committed When?

The Court’s jurisdiction is solely retrospective. It may try the crimes described above only if they occurred during the thirty-five year period of the Ba’ath regime, i.e. from 17 July 1968 when the coup took place until 1 May 2003, the day US President Bush declared ‘major hostilities’ at an end following the Coalition invasion of Iraq in March 2003. Compared with
other international and hybrid criminal tribunals, the Court’s temporal jurisdiction is extremely long.42

4. Committed Where?

Accused persons may be tried for crimes committed in Iraq and ‘elsewhere’. The Court has therefore been granted extra-territorial jurisdiction. For example, this permits the Court to try crimes committed in Iran or Kuwait. During his court appearance in July 2004, Saddam challenged the notion that his activities in Kuwait were extra-territorial, claiming defiantly that ‘Every Iraqi knows Kuwait is part of Iraq’.43

The Court’s Judges

The process of appointing judges to the Court’s judiciary has been highly problematic. Because of security concerns, Iraqi authorities have refused to announce the names of appointees. The identity of the judge who handled the preliminary charges against Saddam Hussein was withheld in most Iraqi and international media. Reportedly, a number of senior Iraqi judges declined invitations to sit on the Court after death threats were made against them and, despite tight security, a judge and a lawyer employed by the Court were fatally shot in March 2005. Nevertheless, the secrecy surrounding the appointments process has also fuelled rumors about politicization. Members of the Ba’ath Party are precluded from employment at the Court, although as critics point out, victims of Saddam’s repression were among those considered for appointments to the bench, raising issues of bias in the other direction. Salem Chalabi, speaking publicly about his dismissal as General Director of the Court, accused the Interim Prime Minister Ayad Allawi of attempting to take ‘political control’ of the Court, a process that others claim has extended to the selection of judges. This issue was recently reignited when the Iraqi parliament announced plans to review the ‘credentials’ of the Court’s judges, prosecutors and staff. Despite these threats, the new Statute preserves appointments made under the previous arrangements, thereby providing continuity and a degree of stability for the Court.44

One of the most controversial provisions of the Statute permits, but does not require, the appointment of international judges where another state is party to a complaint. This means that foreign judges could be invited to join the Court in the event that it tries crimes connected with the aggressive wars against Iran or Kuwait. Under the original Statute, the option to appoint international judges was not limited to proceedings involving another state. The narrowing of this arrangement under the new Statute reflects efforts to anchor the
process more firmly in the Iraqi justice system. Allegedly, the original provision dealing with international judges was inserted at the insistence of the Coalition Provisional Authority and met a cool reception in Baghdad. The Minister of Justice at the time remarked publicly: ‘The presence of foreign judges will undermine [Iraqi] sovereignty and would undercut the value of the Iraqi judiciary.’ Human rights organizations and the international justice community, however, argued that international involvement was crucial to alleviate reservations within and outside Iraq about the capacity of the Iraqi judiciary to dispense justice in accordance with international standards.45

Clearly, three decades of Ba’athist power have caused great damage to the once strong Iraqi judiciary. The highest judicial authority in Iraq, the Council of Judges, was abolished in 1979 and the courts were brought firmly under executive control. Corruption was rampant and those judges who dared to defy political orders were dismissed and in some cases imprisoned. Following a legal needs assessment mission in August 2003, the United Nations Office of the High Commissioner for Human Rights concluded that the Iraqi legal system was ‘chronically dysfunctional’ and ‘not capable of rendering fair and effective justice for violations of international humanitarian law and other serious criminal offences involving the prior regime’. A series of reforms initiated by the Coalition Provisional Authority has gone a considerable way towards restoring confidence in the Iraqi judiciary. A Judicial Review Committee established in June 2003 vetted each of Iraq’s 860 judges and prosecutors, removing and replacing a total of 176 personnel. Control of the judiciary has been transferred from the Ministry of Justice to the newly re-established Council of Judges, ensuring that the judiciary once again functions as a separate branch of government. Judicial salaries have been significantly increased to tackle the risk of corruption.46

In addition, a series of training programs has been launched for Iraqi judges and prosecutors in areas including human rights, international law and constitutional law. For example, the UK Department for International Development has provided £2.1 million funding for a ‘Support to Justice Sector’ program administered by the International Legal Assistance Consortium that is providing training in international human rights law to over 800 Iraqi judges, lawyers and prosecutors. In early May 2004, twenty-eight Iraqi judges and Ministry of Justice officials travelled to The Hague to discuss the ‘Rule of Law’ in Iraq with leading jurists including the recently retired Lord Chief Justice of England and Wales, Lord Woolf, and US Supreme Court Justices Anthony Kennedy and Sandra Day O’Connor. Several other training sessions, delivered by the International Bar Association and shrouded in secrecy for security reasons, have been held in the UK and elsewhere throughout 2005.
The Court’s judges have been faced in these sessions with mock trial exercises designed to prepare them for the complex international legal issues that are likely to arise in the forthcoming trials. The Statute also provides for the appointment of international experts tasked with advising the judges on points of international law and the experience of other international and hybrid tribunals. The presence of international advisers has provided some reassurance about the Court’s competence to try complex international crimes. However, their role has been controversial. The original Statute made the appointment of international experts mandatory and guaranteed them a crucial role in monitoring compliance by the judiciary with the Court’s rules of due process. Reportedly, the Iraqi legal profession found this supervision offensive, and under the new Statute the appointment of international advisers is discretionary and their official monitoring role has been removed.\(^\text{47}\)

In practice, however, the advisers are still likely to play an important role. It appears that most of the international experts assisting the Court’s judiciary have been provided by the US government and they are thought to be the only ones to have access to important evidence that has been classified ‘for American eyes only’. In addition to trial and appellate judges, the Court’s judiciary includes investigative judges in charge of conducting pre-trial investigations of persons accused of crimes within the Court’s jurisdiction. Although they may appear unfamiliar to lawyers trained in the common law tradition, investigative judges have long been a feature of the Iraqi legal system and reflect the influence of the ‘inquisitorial’ judicial model evident in France and many other countries. Whereas in common law systems criminal investigations are carried out under the authority of public prosecutors, in ‘inquisitorial’ systems the authority is in the hands of investigative judges. Investigative judges at the Iraqi Higher Criminal Court are appointed on the same terms as their trial and appeals chamber colleagues. They may begin investigations on the basis of evidence received from any source including non-governmental organizations and law enforcement agencies and, when satisfied that a \textit{prima facie} case exists, will issue an indictment. Once they commence, the actual trials will follow the more familiar format of prosecution and defence. Investigative judges may be assisted by international experts appointed by the Chief Investigative Judge. In March 2004, the US Justice Department’s Regime Crimes Liaison Office provided 50 investigators and lawyers to assist with the process of drawing up indictments. Their contributions became visible in mid-October 2004 when US forensics and legal experts revealed to the international media the gruesome mass graves excavated in Hatra, northwestern Iraq. As with the Court’s judiciary, prosecutors may be assisted by international experts appointed by the Chief Prosecutor.\(^\text{48}\)
**Punishment and the Question of the Death Penalty**

The sentences which the Court will be able to award are those specified under domestic Iraqi law. The difficulty here lies in a decision by the Iraqi Interim Government to reinstate capital punishment for certain offences following its suspension by the Coalition Provisional Authority. While there is clearly strong support for the death penalty among the Iraqi population, it cannot be imposed by international tribunals and its availability to the Iraqi Higher Criminal Court has generated criticism from human rights groups and leaders such as the United Nations Secretary-General Kofi Annan and UK Foreign Secretary Jack Straw. Because of the death penalty, European investigators have reportedly refused to contribute to mass grave excavations and a number of states have declined to commit funds to the Court. Lawyers for Saddam Hussein applied to the European Court of Human Rights seeking remedies against the UK for its alleged involvement in Saddam’s transfer to a jurisdiction in which he faces the death penalty, action which is claimed to be in violation of European human rights law. (In June 2004 the European Court refused to grant the interim measures sought by Saddam Hussein, but suggested that he was free to pursue his application on the merits.) Further complications are likely given the opposition of Iraqi President Jalal Talabani to capital punishment. It is suggested he will delegate the task of signing any death warrant to a deputy.  

**Will the Ba’athists Receive Due Process?**

To a large extent, the credibility of the forthcoming trials will hinge on the Court’s commitment to procedural fairness. The Statute includes a number of important guarantees including the presumption of innocence, the right to remain silent, the right to raise defences and the right to be tried without undue delay. Further due process protections are outlined in the Court’s Rules on procedure and evidence gathering. Perhaps the most important protection afforded by the Rules is a Defence Office specifically tasked with ‘ensuring the rights of the accused’. The Office’s responsibilities include ensuring that accused persons in detention have access to assistance, and providing legal advice to those who cannot afford to pay for it. The Office is also in charge of ensuring that defence counsel has access to adequate facilities for preparing the defence. These developments should provide reassurance to critics who, in the early days of the Court, voiced concerns about the scant attention to defence arrangements in the Statute, and reports that Saddam Hussein and others had been prevented from meeting with their legal advisers. However, lawyers who claimed to represent Saddam before their recent dismissal by his family continued to complain of poor access to
their client. During recent questioning at the Court Saddam has been accompanied by his principal Iraqi lawyer.50

There is no specific procedure for assigning professional counsel to an accused person whose attempts to represent him-or herself are proving detrimental to the overall progress of the trial. However, the Court may order an accused person to leave the court room if his or her conduct is persistently disruptive. Tight controls have also been placed on media coverage of proceedings. Recording and photography within the Court is prohibited unless specifically authorized by it. And although the proceedings are open to the media and to the public, they may be closed if publicity will prejudice the interests of justice. To the extent that the Statute and the Rules are silent on procedural matters, proceedings before the Court are governed by the Iraqi Criminal Procedure Code of 1971. Initially this was controversial given inconsistencies between the Code and certain international due process standards. In particular, human rights organizations expressed alarm at provisions of the Code permitting courts to use, in some circumstances, confessions obtained from torture.51

On the day prior to its dissolution, the Coalition Provisional Authority amended the Code and any such confessions will not be usable in a court. The Rules on procedure and evidence gathering build upon this protection by requiring judges to assess whether any confession was given ‘willfully and freely’. The Coalition Provisional Authority also established a series of new rights including the right to counsel and the right against self-incrimination. Together, these amendments and the Rules provide a robust set of institutional due process protections. But the protections are by no means perfect. For example, there are concerns over the absence of any requirement that guilt will have to be proved ‘beyond reasonable doubt’, and it appears that trials may take place in the absence of the accused. Moreover, the existence of rights on paper is no guarantee that they will be available in practice, and there is much speculation over whether the Court will prioritize speedy convictions over due process. There are fears that the Court is already turning a blind eye to breaches of fair trial guarantees. For example, Saddam’s principal Iraqi lawyer claims he was not served with the prosecution’s evidentiary file and witness list 45 days prior to the trial, as required by the Rules. He has asked the Court to set back the trial date on the basis that this has prejudiced the defence. There are concerns also about the adequacy in practice of the witness protection scheme. In a context of deteriorating security in Iraq, this may discourage witnesses for the prosecution from testifying. Whether the Court will check lapses of this sort remains unanswered. However, ongoing judicial training, the immense publicity surrounding the trials, and the advisory role of international experts give some grounds for hope that with
the commencement of trials, the Court’s judges will seize their important role as champions of due process.\textsuperscript{52}

**Conclusion**

The trial of Saddam Hussein before the Iraqi Higher Criminal Court is set to become one of the most significant criminal trials in history. The circumstances of his fall from power and the uncertainty surrounding the commencement of his trial mean that the event is already deeply colored by political debate. The security situation in the country is obviously a big challenge to any trial. A pressing issue is whether the trial process can be elevated sufficiently above politics to guarantee fairness and impartiality. The decision to try Saddam Hussein before an Iraqi court was welcomed by many as a check on ‘victor’s justice’ and a milestone event in the reconstruction of Iraqi society. While doubts persist about certain aspects of the Court, including ongoing American influence and rumored interference by Iraqi politicians, a number of developments should provide some comfort to the Court’s domestic and international critics. Encouraging signs include extensive judicial reforms, robust due process guarantees and the advisory role of foreign experts. The imminent trial of Saddam Hussein will reveal whether optimism is justified, but until then a cautious vote of confidence in the Court could itself contribute to a positive momentum without diluting demands for a process that meets the highest standards of justice. On 5 November 2006, Saddam Hussein was found guilty of crimes against humanity and sentenced to death by hanging. On December 30, 2006, Saddam was hanged.\textsuperscript{53}

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31. Saddam Hussein’s status as a ‘prisoner of war’ was brought to an end by his transfer to Iraqi legal custody. He remains in the physical custody of US forces pursuant to an agreement with the Iraqi authorities.

32. The names of further defendants appear to have been added later.

33. Supra 1.

34. Ibid.

35. Ibid.


37. Supra 1.

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39. Ibid.

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