

REPORT

Iraqi High Tribunal

by Goran Baba Ali, Amsterdam

The execution of Chemical Ali

Many Iraqis have been celebrating this week, following Monday's execution of 68-year-old 'Chemical Ali'. Former defense minister, Ali Hassan Al-Majid, a cousin of deposed Iraqi president Saddam Hussein, received a fourth death sentence on Sunday, January 19th, 2010. This time it was for ordering the gas attack on the Kurdish city of Halabja, during which an estimated 5,000 people were killed.

Kurds and Shiites, who suffered the most at his hands, particularly welcomed his death. But many Sunnis were also happy, says Abdul-Zahra Zaki, editor in chief of *Al-Sabah* newspaper in Baghdad. "Not all the Sunnis were against the verdict. Most of them had also suffered the brutality of Ba'ath regime. Even in Tikrit, the birth place of Saddam and Al-Majid."

But the survivors of Halabja were not entirely satisfied. "We are relieved with the fulfilment of the sentence. But the case has not ended yet," says Goran Adham, head lawyer for the Halabja victims. "We tried our best to prove that the gassing of Halabja was part of a chain of crimes the regime committed against the Kurds." According to him, the further persecution of the inhabitants of Halabja after the massacre makes the case a part of the genocidal Anfal campaign for which Al-Majid had already received a death sentence.

Aras Abid Akram, one of the survivors who testified against Al-Majid, was disappointed with the verdict. "We hoped that he and his henchmen would be convicted of genocide. At the end of his verdict, I asked the judge: 'Is this all that you have for the people of Halabja who lived through all this misery?' But he hadn't any idea what the essence

of the case was, what the Kurds have gone through."

Aras lost his parents, seven sisters, three brothers, two nephews, his grandmother, two uncles, an aunt and six cousins. "But when I saw Al-Majid up close, I couldn't hate him. He sat there so powerless and tired that I found him pathetic. They didn't let me talk to him but I would have said: 'Look at me, you killed all my family. But you are now sitting in this cage and waiting for your sentence.' But his death isn't so important. For me the rehabilitation of justice was much more important."

Anfal Campaign

"I will kill them all with chemical weapons! Who is going to say anything? The international community? F*** them! I will not attack [the Kurds] with chemicals just one day, but I will continue to attack them with chemicals for fifteen days [...] Then you will see that all the vehicles of God himself will not suffice to carry them all," Al-Majid said in 1987, in the run up to the Anfal campaign which he had planned to put a conclusive end to the Iraqi Kurdish resistance.

The campaign, headed by Al-Majid himself, took place between February 23rd and September 6th 1988. More than 2,000 villages were destroyed and an estimated 100,000 Kurds were killed - the majority of whom were non-combatant civilians, including women, children and the elderly. The Kurds themselves estimate that there were up to 188,000 victims.

In 2006, a Hague court recognised the Anfal campaign as a crime of genocide and convicted Dutch businessman Frans van Anraat of complicity in genocide. In the 1980s,

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Germany seeks arrest of General Videla

Germany has issued an arrest warrant for Argentina's former dictator General Jorge Videla on suspicion of murdering a German man.

The Nuremberg prosecutor's office opened a probe into the junta's former leaders, including Videla, at the end of the 1990s over the killing and disappearance of Germans during Argentina's so-called 'dirty war'. But the initial investigations were stopped in 2008 after an Argentine court rejected an extradition request submitted by the German government.

Prosecutors in Nuremberg reopened the case last year when, remains of Rolf Stawowiok, who had been missing for decades, were found in Argentina last year. The autopsy revealed he had been shot dead.

Videla ruled Argentina between 1976 and 1981. During that time, up to 30,000 people, most of them left-wing political opponents, were kidnapped or killed.

The 84-year-old former general was sentenced to life in prison in 1985 for the murders of 66 people and the torture of 93 others. He was pardoned five years later under former president Carlos Menem. But in 1998 he was re-arrested for kidnapping children and other charges not included in the pardon. He was returned to prison again last year after a court cancelled the 1990 amnesty, ruling that it had been unconstitutional.

Russian parliament ratifies European Court reform

The upper house of Russia's parliament voted Wednesday to ratify a key protocol on reforming the European Court of Human Rights (ECHR), allowing the reform to proceed after years of resistance from Moscow.

The 137 member Federation Council agreed unanimously to ratify Protocol 14 of the European Convention on Human Rights, aimed at streamlining the work of the Strasbourg-based court and reducing its backlog of cases. The lower house of Russia's parliament, the Duma, voted to approve the protocol earlier this month.

Russian President Dmitry Medvedev's signature is still needed for the ratification process to be complete.

Russia was the last member of the 47-nation Council of Europe not to have ratified the protocol.

The Duma had rejected the protocol in 2006 amid complaints from some lawmakers that the Strasbourg court was anti-Russian.

Russia is the biggest source of pending cases at the court. Some 27,000 cases out of the 112,000 cases awaiting review by the court originated from Russia, according to the Russian foreign ministry.

Many of those cases have focused on conditions in Russian prisons and abuses committed by government forces in war-torn Chechnya.

In recent weeks the protocol's ratification had seemed a certainty after the ruling United Russia party, which is chaired by Prime Minister Vladimir Putin, gave its blessing.

Russian officials said they dropped their opposition after the Council of Europe agreed to a provision stating that a Russian judge would participate in any decisions concerning Russia.

Van Anraat had supplied the Iraqi regime with chemicals which were later used to manufacture the chemical weapons used against the Kurds.

The tribunal

Shortly after the fall of Saddam Hussein following the 2003 Anglo-American invasion, the Coalition Provisional Authority - established by the multinational coalition forces to provide a transitional government of Iraq - created the Supreme Iraqi Criminal Tribunal. In 2005 it was incorporated into domestic Iraqi law as the Iraqi High Tribunal. This tribunal, for a large part financed by the US government, had jurisdiction over residents of Iraq accused of committing genocide, crimes against humanity, and war crimes between July 1968 and May 2003.

On December 13th, 2003 coalition forces captured Saddam. Between October 2005 and November 2006, he and seven other members of the Ba'ath party, including Al-Majid, stood trial on charges of crimes against humanity relating to the killing of 148 Shi'ites in the city of Dujail. The tribunal sentenced Hussein to death by hanging on November 5th, 2006 and, after losing an appeal, he was executed on December 30th of the same year.

Criticism

The execution of Saddam caused international condemnation. Cell phone footage of the execution was posted on the internet and showed Saddam as an elderly man being dragged to the scaffold.

The tribunal has faced further criticism for a lack of international standards; a chaotic situation caused by Saddam's attempts to use the court as a public platform; and the kidnapping and murder of some of the defence lawyers. The role of the US in founding and financing the tribunal has also led to concerns about America having undue influence on the court. Another point of criticism was the use of the death penalty - one reason most human rights organisations have refused to cooperate with the tribunal.

But the court has its proponents, too. Compared to the legal conditions in most Middle Eastern countries

and under the former Iraqi regime, emphasizes *Al-Sabah* journalist Zaki, the court is doing a good job. "There was a high level of transparency in the proceedings and all the legal rights of the defendants were guaranteed."

As for Al-Majid, Zaki is not surprised by his death sentence. "The verdict was not unexpected as the man had committed big crimes according to any human measure. But since the execution of Saddam - the symbol of fear - Iraqis aren't interested in the tribunal anymore. They are busy with their miserable daily life, the security situation and the shortage of water and electricity," says Zaki.

Other cases

Al-Majid received an earlier death sentence in December 2008 for his role in the repression of the Shi'ite uprising after the Gulf War in 1991, and yet another in March 2009 for the mass murder of Shi'ites in the Sadr City district of Baghdad in 1999.

The Iraqi writer Mowaffk Al-Sawad is from Basra and is now living in the Netherlands. He participated in the 1991 uprising and only survived by chance.

He was injured and fled to his uncle's house in a part of Basra which the Republican Guard couldn't reach. "But two of my cousins were captured and executed in front of their house. The guards were raiding houses and taking any young men with them. They gathered most of the people in the yard of Southern Oil Company and brought them to the University of Basra to execute them. Al-Majid led the operation himself."

"Victory of justice"

Al-Sawad managed to flee to Saudi Arabia where he stayed for four years in a refugee camp before he came to the Netherlands. He only followed the broadcasts of Al-Majid's trial occasionally.

"I couldn't stand look at those faces. But I am really delighted with the end of these tyrants. To hell with them. This is a great victory for people who suffered long under their oppression. It is the victory of justice and I hope will be the birth of a new epoch where murdering people is outlawed."

Laurent Nkunda
“illegally detained”

Former Congolese rebel leader Laurent Nkunda is being illegally detained by the Rwandan government, says his lawyer. Nkunda has been living under house arrest in Kigali for over a year without any trial in sight.

“If you believe that the man is a danger or a risk to peace, then you have to make your case in court. But you can’t just do that arbitrarily without making your case,” says Stephane Bourgon who is representing Nkunda. Bourgon adds that Rwandan authorities have even refused to grant him access to his client. “This is a total violation of every international instrument to which Rwanda is a party to, and this is very bad.”

Nkunda led the National Congress for the Defence of the People (CNDP), a group purported to protect minority Tutsis in the east of the Democratic Republic of Congo. His arrest was key to a deal between Kinshasa and Kigali to crush the Democratic Forces for the Liberation of Rwanda (FDLR), a splinter group of Rwanda’s former Hutu militia.

Kinshasa issued an arrest warrant for Nkunda in September 2005, charging him with desertion and war crimes. Bourgon says Nkunda is not scared of being sent to Congo to be tried if there are valid accusations and charges against him. But the indictments “have expired and have not yet been re-validated, nor have any new arrest warrants been issued.”

Rwanda’s Supreme Court again postponed a hearing on Nkunda’s release to March 1st. “They are basically doing everything they can to let the world forget about him. They don’t know what to do with him,” concludes Bourgon.

Human Rights Watch accused Nkunda’s CNDP of massacring more than 150 people in Kiwanja in late 2008.

Goldsmith’s shift on Iraq war

Britain’s former top lawyer admitted today that he “changed his mind” about the legality of the 2003 Iraq war.

As late as March 7th, 2003, former attorney general Peter Goldsmith cautioned then British prime minister Tony Blair that, without a second United Nations resolution, the legality of the war was questionable. But by March 13th, two days after a meeting with Blair and his team, Lord Goldsmith had decided this second resolution was no longer necessary.

Goldsmith was giving evidence at the British Iraq War inquiry, headed by Sir John Chilcot. The public inquiry, which began hearings in July last year, is in the process of reviewing the legal basis for the war.

Earlier this month, a Dutch commission of inquiry into the war found that the 2003 invasion violated international law. The commission also slammed Dutch Prime Minister Jan Peter Balkenende, saying he had allowed Britain to “help” establish a legal pretext for the Netherlands’ support of the war against former Iraqi dictator Saddam Hussein.

The inquiry, known as the Davids Commission after its chairman, Dutch Supreme Court Justice Willibrord Davids, issued its final report on January 12th and concluded that “the decision to support the [Anglo-American] invasion of Iraq was based mainly on international political considerations” and “had no sound mandate in international law.”

“The [UN] Security Council resolutions on Iraq during the 1990s did not constitute a mandate for the intervention in 2003,” the report found. Nor did the 2002 UN resolution 1441 authorize the war: “Despite the existence of certain ambiguities, the wording of resolution 1441 cannot reasonably be interpreted (as the government did) as authorizing individual member states to use military force [against Iraq].”

UN resolution 1441 was passed by the Security Council in November 2002, and offered Saddam Hussein a final opportunity to comply with UN weapons inspectors. Failure to do so would result in “serious consequences”,

the resolution stated.

Balkenende hit back at the report, saying, “the Netherlands, like many other countries, believed that the existing UN resolutions 678 through 1441 provided a legal basis for intervention [in Iraq]. A new resolution would have been preferable, but from a legal point of view not strictly necessary.”

In London, meanwhile, the Chilcot inquiry has been hearing from senior government lawyers this week regarding the same argument as put forward by Lord Goldsmith.

Former legal advisor to the British Foreign Office, Sir Michael Wood, said he disagreed with Goldsmith and had advised Jack Straw, who was foreign secretary at the time of the invasion, that use of force was not authorized. Sir Michael told the inquiry that Straw “took the view that I was being very dogmatic and that international law was pretty vague.” Wood’s version of events appears to contradict Straw’s own testimony to the inquiry last week, where he said that he only supported the war “very reluctantly.”

The Chilcot inquiry is not expected to publish its findings before 2011. According to Philippe Sands, professor of law at the University of London, the British inquiry is “bound to be influenced” by the Davids report. “It is the first independent assessment by anybody, anywhere in the world, of the legality of the war, and so it carries a particular weight,” he said. “It’s very hard to see how the British inquiry could reach a different conclusion,” Sands added, “at least on the issue of legality...because of the identity of its authors.” Several members of the Davids commission are lawyers, unlike the Chilcot inquiry, none of whose five members are legal professionals.

Tony Blair is due to appear before the commission on Friday.

Referring to calls for Blair to be prosecuted should the inquiry find that he violated international law, Sands said “it’s a bit of a stretch, but the possibility cannot be excluded. At the very least Mr Blair may wish to exercise some care in making international travel arrangements.”

'Death flight' pilot extradited to Argentina

Retired pilot Julio Poch will be extradited to Argentina to face charges of running 'death flights' under the country's former military dictatorship. Spain's National Court ruled last week that there are sufficient guarantees to ensure that Poch would receive a fair trial in Argentina.

Julio Alberto Poch, a former pilot with the Dutch Transavia Airlines, is wanted in Argentina for allegedly flying planes used to dump opponents of the military regime into the sea - known as 'death flights'. The 57-year-old, who has dual Dutch and Argentine nationality, is said to have been a military pilot at Argentina's notorious Naval Mechanics School, ESMA - one of the biggest torture and detention centres of the Argentine military regime, which ruled the country from 1976 to 1983.

Between 13,000 and 30,000 people died or disappeared during that time.

Poch, who has been in custody in Madrid since his arrest in September last year, denies all the allegations.

He had accepted his extradition to Argentina saying that he hopes for a "fair trial" in Argentina as there is "no evidence" against him. Poch considers himself a political prisoner, a term generally used in Argentina for victims of the former military regime.

Radio Netherlands Worldwide

Witte Kruislaan 55
1217 AM Hilversum
PO box 222
1200 JG Hilversum
The Netherlands
telephone: + 31 35 6724533
e-mail: internationaljustice@rnw.nl

Managing editor: Arjen van Dijkhuizen

Arjen.vandijkhuizen@rnw.nl

Editor: Hermione Gee

Hermione.gee@rnw.nl

Producer: Thijs Bouwknegt

Thijs.bouwknegt@rnw.nl

Intern: Vessela Evrova

vessela.evrova@rnw.nl

Subscribe at

www.internationaljustice.nl/tribune

Various mechanisms, same principles

David Tolbert, currently serving as Registrar for the Special Tribunal for Lebanon, will take over as president of the International Center for Transitional Justice (ICTJ) on March 2nd. The ICTJ works to redress and prevent severe human rights violations by confronting legacies of mass abuse.

He spoke to the IJT's Thijs Bouwknegt earlier this week.

What will be your first priority when you start at the ICTJ?

I want to build on the work the centre has already done on truth telling on truth commissions, truth and reconciliation commissions, reparations and related issues. I think there are some really important issues to be dealt with, in terms of international justice, the hybrid courts and, in particular in terms of complementarity. But I would like to focus also on the International Criminal Court and the issue of complementarity and on how that can work with domestic courts and prosecutions.

Of course, there are some situations I want to look at in terms of what is happening in real time. We have a situation in Guinea which is very serious and also in Sri Lanka, where they had a conflict and many victims. ICTJ is very concerned about the plight of victims and their role in truth-telling, international courts and receiving reparations.

What is the most suitable transitional justice mechanism?

I don't think there is a cookie-cutter approach whereby you simply say: this works, full stop. I think it depends a lot on the type of conflict that has occurred in that society, or the transition the country is going through. It is the principles which are important. There has to be accountability, victims have to be able to tell the truth. The society has to get to grips with what has happened so that they can move on. So, the mechanisms will differ from place to place, but the principles do not.

How do you see the link between transitional justice and

building sustainability?

That is an academic debate, I would rather focus on what we have seen happening.

South America has done a very good job in addressing the past. Also in parts of eastern Europe, which is a very different situation. I think some good things have happened in the countries to help face the past. Maybe imperfectly, of course, but contrast that to the situation in Armenia, which continues to be a source of tremendous contention after over a century. Even if you think of modern day Spain, the events of the 1930's are an issue of great contention today and exhumations are undergoing and identification of victims, even though more than 80 years have passed.

So if we look at this issue we know that we have to deal with what happened and the truth told. And we have to find transitional justice mechanisms to deal with that, appropriate to those countries, bearing in mind the principles of accountability.

How do you envisage the future of the Lebanon tribunal?

The court is fully functioning and well running in the sense that everything is in place. In terms of the future of the Tribunal, of course it depends on the cases that come before it.

It is a tough investigation, it's much more difficult in many respects than the investigations that I ultimately was in charge of when I was deputy prosecutor at the Yugoslavia tribunal. If you look at Srebrenica, you have the seventy-five hundred bodies on the ground, you know who pulled the trigger.

The case that prosecutors at the STL are investigating is a much more difficult one, it's even what we call in English a 'who dunnit'. There's no smoking gun in anybody's hand. But I am optimistic. We also have to realise that it's very innovative, it's the first international court to deal with an act of terrorism and that's what's groundbreaking. It is also the first international tribunal dealing with the Middle East.