

In the name of Allah, Most Gracious, Most Merciful
“And if you rule, do so with fairness.”

Case n° 1/9 First/2005 Al-Dujail Lawsuit (Case)

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Introduction

Prior to considering the great quantity of papers and documents submitted before the tribunal (in a disorderly manner), and since any penalty imposed on any of the defendants should be based on established and proven evidence, this tribunal shall take into consideration the appropriate extent of freedom of action and choice (open to the tribunal) that will allow it to make decisions (judgments), within the context of maintaining a balance between administrating justice and protecting basic human rights, which forms an important and complimentary aspect of the stages of this case.

The trial chamber has analyzed the range of legal penalties set out in the law in comparison with the eligibility (admissibility) of the evidence submitted before the tribunal.

There is no doubt that, according to paragraph one of article (24) of the Iraqi High Tribunal law number (10) for the year 2005 and the rules of procedure and of collecting evidence annexed to the said law; and according to the law of criminal procedure number (23) for the year 1971, that the penalties on the basis of which this tribunal shall make its judgments are the penalties stipulated in criminal law number (111) for the year 1969;

And whereas this court also takes into consideration the decision of the transitional coalition government number (7) for the year 2005, section three thereof, which stipulates suspending the death penalty in each instance where it is the only penalty stipulated for penalizing the perpetrator of a (certain) crime, then the court will have the right to substitute it with sentencing the defendant to life imprisonment or imposing another penalty based on the stipulations of the penal code;

And whereas the basis of the work of the transitional coalition government, in its capacity as an interim government in Iraq (set up) for the purpose of achieving full sovereignty according to article (43) of **the Hague** Laws of 1907, whereby regulatory bill n° (1) of the transitional coalition government shall be the regulatory basis for the period that will follow the previous interim government;

And according to the second part of the said regulatory bill, the laws that were applicable in Iraq as on April 16, 2003 shall remain effective and applicable after that date unless the transitional coalition government decides to suspend, substitute or cancel the said laws and promulgate new legislation to replace them via the democratic institutions of Iraq;

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The said laws shall remain in effect and applied because they do not prevent the Temporary Coalition Government from practicing its rights and fulfilling its obligations, or as long as they do not disagree with this regulatory list or with any other regulatory list issued by the Temporary Coalition Government.

On the other hand, and in reference to order number (7) issued by the Temporary Coalition Government, and section three of said order concerning the penal code, and in item (2) of said order it is "stated" that the execution penalty shall be suspended in those cases where the execution penalty stipulated for penalizing the perpetrator. The court may substitute it by penalizing the accused to life-in-prison or to force upon him another penalty according to the stipulations of the penal code.

And as been clarified to us, the Temporary Coalition Government is considered a transitional authority in Iraq until achieving full sovereignty according to article (43) of The Hague Laws of 1907- the orientation of the occupier is to respect the language, norms and traditions of the occupied country. And whereas the Coalition Government had the legal authority to amend the Iraqi Local Law according to the conditions determined in paragraph (64) of Geneva Convention for protecting the people, and according to the decision of the Security Council number (1483). And whereas the President of the Coalition Government suspended the execution penalty and did not cancel it, and that it is legally stipulated in the Iraqi penal code number 111 for the year 1969 i.e. suspending the execution penalty by the coalition government and not canceling it, and this penalty exists in the Iraqi penal code since the year 1919.

Therefore, the first criminal body in the Iraqi court sees unanimously that it can judge any of the accused in this case by the appropriate penalty due to the seriousness of the felony or the committed crime including the execution penalty in accordance with term (24) of the Iraqi High Court number (10) for the year 2005 and the amended Iraqi penal code number (111) for the year 1969.

According to article (1) second of the Iraqi High Court number (10) for the year 2005, the Court's authority shall be applied to every physical and legal person whether Iraqi or non-Iraqi, residing in Iraq and accused in committing one of the crimes stated in articles (11, 12, 13, 14) of said law committed as of 17/7/1968 until 1/5/2003 in the Republic of Iraq or in any other place, comprising the following crimes:

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- a. Extermination
- b. Crimes against humanity
- c. War crimes
- d. Violation of Iraqi laws stipulated in article 14 of this law.

And in accordance with article (12)

First: of the law effective in this case and according to the charges brought against the accused (Saddam Hussein Majeed, Barazan Ibrahim Hassan, Taha Yassin Ramadan, Awad Hamad El Bandar, Mezher Abdalah Kazem Roueid, Abdalah Kazem Roueid, Ali Dayeh Ali- Mohamad Azawi Ali El Marsoumi).

And according to the item *First* of the accusatory list brought against the accused includes:

- a. Intentional homicide
- b. Extermination.
- c. Slavery.

- d. Displacement and forcing people to move.
- e. Imprisonment and strict prohibition of any physical freedoms, which infringes on the basic regulations of the international law.
- f. Torture
- g. Rape, coercive pregnancy, forcing on prostitution, and any other types of sexual violence of similar seriousness.
- h. Persecution of any specified group of people for political or ethnical or national or cultural or religious reasons or related to the gender or any other reasons not permitted by the international law in connection with any of the above mentioned acts or type of sexual violence of similar seriousness.
- i. Coercive concealment of people
- j. Other non-human acts of similar seriousness, which may intentionally cause severe suffering or dangerous harm to the body or mental or physical health.

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Second: For the purpose of applying the item *First*, the above terms have the following meanings:

- a. Attack against any group of civilians means a way of behavior that includes frequently committing of the acts stated in item *First* of this article against any group of civilians pursuant to the policy of the government or organization that imposes such attack or supports such policy.
- b. Extermination means the willful imposing of deprivation from food or medicine intending to cause the death of some people.
- c. Slavery is the state of being under the control of another person including the practice of such control by trading in people as women and children.
- d. Displacement or coercively moving people means moving people coercively from the region where they legally reside, by repelling or any other coercive act without justifications permitted by the international law.
- e. Torturing means intending to cause severe pain or suffering whether physical or mental on the confined person or under the control of the accuser provided that torturing does not comprise pain or suffer resulting from legal penalties or other relevant thereto.
- f. Persecution means severe and intentional deprivation of the basic rights, which disagrees with the international law because of the identity of the group.
- g. Coercive concealment of people means to capture people or confine them or kidnap them by the government or a political organization or by it permitting or supporting this act then refusing to acknowledge the deprivation of the those people of their freedoms or giving information about their fate or their place in order to deprive them from the legal protection for a long period of time.

Article (17)

First: In the case where no legal text exists in this law or in the regulations constituting it the criminal justice code will apply indict and try those who are accused as per the following cods:

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The period from 17/7/1968 to 14/2/1969 Penal Code of Baghdad for the year 1919.

b. The period from 15/12/1969 till 1/5/2003 penal code number (111) for the year 1969 that took effect in 1985.

c. Military penal code number 13 for the year 1940 and Military procedure law number (44) for the year 1941.

Second: The court and the appeal commission may refer to the precedence in the international criminal courts for interpreting the provisions of articles (11, 12, 13) of the law.

Third: The provisions of the penal code shall be effective in conformity with the provisions of this code and the international legal obligations relating to the crimes included in the court's authority upon applying the special provisions of exemption from criminal responsibility.

Fourth: The crimes stipulated in articles (11, 12, 13, 14) of this law shall not be subject to the prescription that drops the criminal lawsuit and penalty.

And upon carefully examining the aforementioned acts as crimes against humanity in article (12) of the criminal court, the court sees that there are criminal acts identified within the amended penal code number (111) of 1969 that agrees with the fundamental acts of crimes against humanity which is stipulated to take place within a large scale regulatory attack against a group of civilians/civilian society. However, homicide is identified by virtue of articles (406, 405) of the penal code as: the intentional killing of another person. This description agrees with the description of the crimes against humanity stipulated in article (12) first of the High Court code. Also the Iraqi penal code and in articles (325,322,333,393,421) criminalize: displacement, imprisonment, torture, rape, coercive concealment described as crimes against humanity included in article (12) –first- paragraphs (c, e ,f ,h)

Also the Iraqi penal code includes criminal acts having characteristics of the crimes against humanity as stated in articles from (90) to (222) of the law that the criminal acts against the internal security of the government comprises the criminal acts referred to in article (12), referred to by article (194), which punishes by execution any person organizes or manages or hold command of an armed group that attacks

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any group of people or aims, as one of its goals, to prevent the application of the law; also articles (334,335,342) criminalize the seizure or the destruction of the properties of others and articles (412,439) that criminalize assaulting and stealing other's money.

The fundamental components of establishing the court

The beginning of establishing the first penal body presided by judge Mr. Rezkar Mohamad Amine and the membership of four other judges. And after the resignation of the president and excluding one of the criminal body members, the first criminal body was re-established presided by judge Mr. (Raouf Rashid AbdulRahman) who commenced his judicial duties in the session on 23/1/2006 upon the administrative order issued by the presidency of the Iraqi High Court n° (13) dated 22/1/2006. On 17/February, the defense presented a request for the withdraw of the new president of the body (Raouf Rashid AbdulRahman) from a lawsuit for being sided with the accused Saddam Hussein for being born in Halabja city from one side and for participating in the establishing of Human Rights Organization in Kurdistan in 1992 which opposed the government of Iraq and for being previously condemned and Saddam Hussein has forgiven him on the other side.

These presentations of the truth have a basic purpose as to obstruct the acts of the court after the resignation of the former judge. As for the personality of the new judge and as been clarified to the accused Saddam Hussein in the court's hall being from Halabja, and this does not relate to his judicial work for he has taken an oath and if he felt embarrassed in this concern he would ask for withdrawal according to law. Also, he wasn't arrested under the ruling of Saddam Hussein where he was practicing legal profession and owned a legal office in Baghdad. He was arrested under the ruling of AbdulSalam Aref during 1963-1964, where Saddam Hussein and some members of Al Baath party were arrested during that period too. As for working in the Human Rights in Kurdistan, the relationship and contribution in the formation of this organization were by human motives away from the political view of issues. And the formation of the organization in 1991 was within the scope of Kurds Administrations out of the control of the central government.

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In this conclusion, the aspect of the judge's favor towards Saddam Hussein has in fact two directions: First: All Iraqi civilians had relatives and friends and country folks who suffered during the rule of Saddam Hussein and this statistical fact urges the judges in Iraq to relinquish any lawsuit against the previous regime staff. Concerning the procedures, this judge and other judges have customs of independency and impartiality judged to disregard any case brought before them towards which they feel embarrassed especially that they with judge (Raouf Rashid) have taken an oath that shouldn't be neglected for the trial of Saddam Hussein.

Therefore, the first criminal body refuses to appeal the capacity of Judge Raouf Rashid concerning his favoring Saddam Hussein or any of the others accused.

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Introduction to the judgment decision

First: Each of the accused (Saddam Hussein Majeed-Barazan Ibrahim Hassan-Taha Yassin Ramadan- known as Taha El Jerzawi-Awad HaNAD Badr Al Bandar El Saadoun-Ali Dayeh Ali El Zabidi- Abdallah Kazem Roueid El Mashayekhi- Mezher Abdallah Kazem Roueid El Mashayekhi) are referred to this court charged with committing crimes against humanity pursuant to the provisions of article 12 First paragraphs (a, d ,e ,f) of the Iraqi Court of law n° (11) of 2005 and content of article (15) paragraphs First, Second of the Iraqi court of law article (406) of the penal code n° (11) of 1969; the crime attributed to them is murder, arrest of civilians and families of Al Dujail reached as a total (149) victim and devastating the properties as houses, furniture, autos, water pumps, and canals of water drawn from the Tigris river to irritate gardens and then issuing a presidential decision to sweep away gardens and seize arable lands of the town by virtue of the Revolution Command Council decision n°(1283) dated 14/10/1984 by means of an organized and planned general attack in response to the 10 to 12 gunshots (Kalashnikov gunshots) from behind the fence of one of the gardens on the presidential procession in Al Dujail on 7/8/1982, whereas this safe town was rich in fruit gardens irritated from the Tigris river through canals and water pumps, and that its people – before the accident- were enjoying a well standard of living as for their incomes and many were enrolled in educational studies and others in organizational groups, Al Baath party was mixed between Shiites and Sunnites, and before year 1982, the town was related to a district pertaining to Tekrit province; the town of the accused Saddam Hussein Majeed, then it was turned into a district. The tribal connections were strong and tight and it was one of the most cultural towns for it is related to Tekrit province named as Salah Eddine and connected to Baghdad via a paved and modern road.

In addition to the administrative center and the police stations in the city, there are also several governmental departments, and the municipalities services were considered well if compared to other cultural places. The headquarter of the ruling Al Baath party that was managing organization issues and those responsible for managing the office of the said party were from Samara Sunni town and from Mousel.

The town was the concern of Al Baath party and officials visit the town continuously and the last was the visit of the accused Saddam Hussein president of the republic on 8/7/1982 during the month of Ramadan and since the town had religious and rural features, the families were self-restrained, and there were relationships by marriage between the two denominations in the

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town, and it was under the supervision of the head of security who searched for secret organized groups pertaining to the convocation party (Al Daawa) that of Shiite religious feature and during the visit of the mentioned day the accident happened and stories varied about it. The stories told by high authority ranks according to official statements that the gunshots were an attempt to shoot the presidential procession when passing by one of the old streets of the town surrounded by gardens with high

clay walls. Upon the gunshots, maximum alteration was announced in the town and military forces spread across the town and special presidential guard came from Baghdad and the chief of the information system Barazan Ibrahim Hassan(brother of the accused Saddam Hussein president of the republic) was charged with the mission. The town was surrounded with soldiers and special security and investigation squads and public army forces in addition to the party group in the town, and war planes and helicopters started gunfire and shelling the gardens and internal roads. Within minutes of planes bombardments, nine people inside the filed were killed, in addition to other persons inside the town.

The control of the judicial investigating system was raised from the investigation and during the same day, the accused Taha Yassin Ramadan came to the town. The latter was the public army commander and vice-president of the cabinet and the close reliable person to the accused Saddam Hussein who gathered with him in Baghdad before arriving to Al Dujail, meanwhile, he made a short visit to the Minister of the Interior Saadoun Shaker and then he returned without the interference of the Minister of Interior. From the early hours, the accused Barazan Ibrahim (chief of the investigation system) became the actual commander of the operations and specified presidential orders were issued in all sections and forces receiving orders therefrom.

The accused took the location of the party group of Al Baath party as his operation and control center.

Immediately, the investigations system commanders came from Baghdad; the investigation head office undertook the inspection and investigation mission and so he examined the accident's location and submitted his preparatory report which did not reach any result concerning the gunfire towards the procession of the accused Saddam Hussein. He also attested that the gunshots were found deep inside not outside the garden and since the clay wall (2 meters high) therefore it is difficult for the person/s to know what's going on the street

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behind the garden and nobody was hurt. However, the accused Saddam Hussein, and insisted on the revenge and harm as many people of this town as possible, he delegated his brother Barazan Ibrahim- chief of the Intelligence service to punish the people for the anonymous gunshots.

Second: The investigating file in this subject is very complicated and exhausting of the investigator because it is not limited to arresting people accused for the gunfire, instead, it went beyond that to individuals of families and others of the fifth and sixth degree, even individuals who reside in Al Dujail just for being relatives of any of the accused. The detention comprised arrest and execution of individuals of the armed forces who were in the battle front at the time of the accident although they do not know about the accident of Al Dujail or they were employed outside town in (Masfa Biji). These unfamiliar exempting procedures formed obstacles with the investigators and the court as revealed by the lawsuit papers and court's sessions.

Third: The case doesn't have a single file only. Its is a matter of several files and dossiers of papers, decisions and orders that are basically unorganized and unrelated in contents and subjects which forms obstacles before the investigators. Said obstacles affected the procedures at the court, this took some time and additional and exhausting effort, and that the public prosecution, despite its continuous and helpful effort, it was affected in one way or another by the said obstacles while presenting documents and CD's in addition to successive papers between sessions before the court which resulted in the accumulation of papers and documents not in hand to be verified and examined. This results from the prevailing drop of the regime and its systems at the beginning of the war, the thing that did not come to the war planners mind.

Fourth: The variety of security and intelligence forces under the rule of the former regime, the numerous piles of documents at any of these systems tool a long time for verification, examination and classification concerning the proper presentation of these papers before the court; it was even impossible to present some evidences and documents and so the court did not take them into consideration as an evidence and therefore didn't discuss them during the sessions

Fifth: The court noticed during the course of the trial sessions that the defense attempted several times to form a state of confusion and chaos inside the court hall, they even motivated the accused to rebel and disobey and they nominated Judge Raouf Rashid AbdulRahman (seal & signature)
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the accused by titles and presented themselves to them at the beginning of every session. These accused were in high authority positions and are not accused of committing serious crimes in the view of the local and international penal law, even the presentations of these attorneys were all the preface of the accused president Saddam Hussein, although the accused referred to doesn't have any considerable or mastery capacity within the course of this lawsuit on one hand, and on the other hand the Iraqi people have by free and direct voting, elected deputy council and chosen a president of mastery authority for presidency despite the presence of an illegal government recognized constitutionally by the elected parliament by means of free direct election. And whereas the accused Saddam Hussein doesn't have before this court but the capacity of the accused, therefore, the court decided to unsettle the requests submitted to it under this title and capacity, and even not to refer to it in the judgment decision for being unduly. Although, those attorneys should have complied with the provisions of the laws and the regulations and traditions that their profession- as attorneys- obligate them to comply with according to articles (39 and 50) of law n° (173) of 1965, additionally, some foreign attorneys have unduly and illegal powers of attorneys according to the stipulations of article third paragraph A, B of the legal profession law n° 173 of 1965.

Sixth: Unfortunately, the court noticed the false swearing by some of the defense testimonies and the probable collusion in this process which violates the law and procedural rules between some of the defense attorneys and those witnesses in the session of 31/5/2006 of the trial, as those witnesses testified later that they were pushed by the defense attorneys to give untrue attestations against the chief of public prosecution of Mr. Jaafar El Mousawi who met those witnesses in a funeral in Al Dujail during July 2004, moreover, they said that the public prosecutor offered them amounts of money to testify against Saddam Hussein and, in light of these sayings, the defense attorneys requested, by means of a speech protest and harsh accent, to display a special CD of the mentioned funeral in which a person appears and they claimed that he is the public prosecutor Mr. Jaafar El Mousawi.

This latter claimed that he had never visited Al Dujail before, and since it is a public trial displayed on TV, when the concerned person watched this fabrication, he contacted the court and the public prosecution department and expressed concern to appear before the court and reveal the truth.

And so the concerned person Mr. Abdul Aziz Mohamad Al Bandar appeared before the court beside the defendant to nullify this fabrication.

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In another attempt by the defense attorneys to falsify the facts, they forced a person to appear with an important testimony, saying that some of the persons' names mentioned in the official lists issued by the revolution court about those executed before the accused Awad Hamad Al Bandar in 1983 are still alive; the witness claimed that (23) individual are still alive and that he shared food with them. And when this witness was asked to nominate the victims whom he claims are still alive, he started reading some names written on a paper in his hand. But when the court asked him to spell the names without using the paper, he couldn't remember them. Worst of all, it appeared that the handwriting on the paper differs from the handwriting of the witness.

And when the court asked him about it, he confessed that the paper was given to him by an anonymous source.

In light of this, the court decided to refer the witness and the aforementioned other three to the investigation court charged with false testimony according to articles (251, 252) of the penal code n° 111 of 1969. Upon investigating those witnesses by one of judges delegated for this purpose by the court body on 1/6/2006.

Due to the public investigation in this subject and the presence of the attorneys of the defense office and a legal consultant from the court, it appeared the two of the witnesses do not originate from Al Dujail, they have even never visited the town; one from Baghdad and the other from the town named (Taji) close to Baghdad. And they openly attested that the defense attorneys ordered them to say that they are from Baghdad and to testify against the public prosecutor Mr. Jaafar El Mousawi and that the defense have offered them residence in Damsacus, Syria and job vacancies with a contractor from Takrit, and he paid individuals from the defense body kidnapped his son and threatened to kill his son if he didn't testify for the favor of Saddam Hussein and against the public prosecutor. And those ordered his transmission to Syria a former body guard of Saddam Hussein named Assaad Abou Oumar with the head of the defense attorneys board Mr. Khalil El Doulaimi and trained them on the subject of this testimony.

After closing the session, the court decided to establish a committee to investigate with the four witnesses. And after the completion of the investigations they were referred to the investigation court in El Karkh in Baghdad and the four witnesses were released on bail.

All these facts revealed that the defense attorneys are prepared to compromise their honesty by directing their efforts to defame the court instead of directing their efforts to defending their clients.

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The legal course (in response to the gunfire towards the procession of Saddam Hussein on 8/7/1982 by the wide range systematic attack on the people of Al Dujail)

The Iraqi penal code defines the word "attack" as a kind of behavior that results in committing several acts classified among the ten crimes stipulated in the first

provisions of article 12 of the Iraqi High Court referred to(crimes against humanity) against any of the civilians pursuant to the government's policy and its systematic plan to commit such attack. Although the attack may not necessarily agree with the government organizational policy or plan, however, the existence of a practical policy and consecutive acts form a relevant evidence that the attack was prepared and directed against civilians, although, and pursuant to the judicial course of similar trials, there are requirements that the policy that must be adopted officially is an official policy of the government, even the existence of a kind of plan or pre-programmed policy is enough.

Although the term "attack" differs in meaning by virtue of the laws of war, but concerning the crimes against humanity, there's no need for hostile military forces to be attacked.

The acts against any of the civilians including people of the attacked town gives the complete meaning for the definition, where the use of armed forces and violence does not necessarily predict an attack.

For any mistreatment of civilians, may form an attack as long as it is executed on a systematical, wide-ranged basis against a group of people and by such means crimes may take place as murder, rape, compulsory expatriation.

Suppose that the civilians are the main target of the attack and are not the just accidental victims, i.e. the intention of the accused about the purpose of the attack doesn't absolutely relate to his individual liability.

Although the term " civilians" doesn't mean all the people of the geographical scope or town as in Al Dujail, where many people were attacked, despite the small distanced town, it has some special features as the existence of the Shiite denomination, and this exposed the town to an attack without a procedural investigation, all were accused as " ravaging traitors", and as stated in the judgment decision issued by the revolution court in folder n° 944/J/984 the following:" they belong to the convocation party(Al Daawa) and participated in distributing hostile publications that incites religious conflicts and establishing a disordered regime similar to treason regime in Qum and Tehran; the execution of their criminal plan was directed by their Persian masters.

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Confirming the saying of the accused head of the revolutionary court (Awad Hamad Al Bandar) that in the town of Al Dujail resides Arab Iraqi citizens of a majority of Shiites and others of Sunnis and this is noticed among the names of the officials who gathered whole families outside Al Dujail.

Most of those officials of the party, security and government in management were surnamed as " Samurai" or" Machahidi" and those were Sunnites from the outside of Al Dujail, and just identifying the accused as (the convocation party –the traitor) and

traitors of their Persian masters and inciting religious conflicts indicates clearly to a "specified group of people in town".

There is a strong tendency to harm them even before the gunfire accident on the president's procession then, regardless of the intimate relation between the Shiites and Sunnites individuals in the town, and marriage relationships between them.

The important is the view of the authority and the officials of the small city, and the view of the authority party of those who were always accused and they also had to prove the contrary, even the organizers inside Al Baath party organizations under secret supervision, on the other hand the authorities act of taking the whole families including infants to Baghdad for investigation and taking military individuals of those families who were battle fronts or employed outside town by arresting them, and finally, executing 148 persons or killing them under torture according to documents indicating their names among the papers of this lawsuit.

The court noticed during the course of trials and the documents presented and the attestations of complainants and victims that the attack on those family was "systematical" as much as it was organized and planned for, indicated by the pre-planning to arrest families and bringing those living outside Al Dujail for military service or employment or living inside Baghdad in Al Kathimiya city, so the arrest of those individuals was organized and systematic, and it is definitely improbable that it happened randomly. This is from the procedural action side. As for the subjectivity, the command of the investigating with and arresting those individuals accused with gunfire towards the president's procession was undertaken by the head of the highest and most dangerous security system in the country " the investigation system" concerned in the country's foreign security, where the court during the course of complete

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verification of the cases documents didn't find anything indicating the interference of the party's individuals or judicial investigating board or even the interference in the suing order and arresting individuals of these families, instead, the command was of the head of the system personally. It is also noticeable that within an internal document for this system, a harsh criticism is addressed to the directorate general of security; the system specialized in the interior security of the court for this system did not take the necessary steps concerning the accused (Bourhan Yakoub Majee)

Concerning the appeal (the party system in Al Dujail) whereas some partymen in town did not participate in personalizing those killed after the accident by airplanes bombs on gardens. And so, the arrest of the families or investigation even those arrested are under the control of the investigation system without the several other security systems. In light of the facts, revealed by the case's documents and in light of the comments of the accused (Saddam Hussein) and (Barazan Ibrahim) during the

investigation and during the trial sessions, the systematic wide range attack which resulted many victims was organized and planned for and it took the course of continuity since 8/7/1982. And of the systematic indications of this attack, that the attack and the procedures were an execution of a pre-organized policy and plan, and it didn't happen randomly as for arresting family individuals as children and adults, then devastating their homes, plundering their properties, and issuing presidential decisions for seizing and devastating gardens as a claim to rebuild and redevelop the small town.

This court sees that the former governing authority committed wide range crimes against civilians in Al Dujail as a response for the attempt of assassinating the president then accused (Saddam Hussein) on 8/7/1982, and charged the investigation system with the plan command and execution without other security systems.

The head of the investigation system by the command of the accuse (Barazan) held a meeting with his assistants to coordinate the response to the attempt, where it was coordinated with the local security systems and the police and the party in response to the accident and under the supervision of the investigation system where the accused(Barazan) arrived to the town directly after the day of the accident and met the local security official as mentioned, then airplanes and helicopters and war planes were gathered to bombard gardens and public

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places in party individuals started attacking houses and arresting people and soon there was arrangements to transmit the arrested families by cars pertaining to the investigation system came from Baghdad. It is noticed that those orders issued by (Barazan Ibrahim) and an order issued by (Saddam Hussein) to sweep away gardens under the supervision of the accused (Taha Yassin Ramadan).

These continuous procedures and accidents within not more than (24) hours did not happen accidentally or randomly.

The attack, first of all, killed civilians who did not have any relations with any military or civil group, and upon calculating the number of people in the small town at the time of the accident and the families arrested, the number of arrested people post the accident reached more than one thousand person and after releasing others according to the official statistics there remained (399) person and the number of killed reached (143) person.

in light of the facts and the official documents under examination, the first criminal board sees in the Iraqi court that the attack against the inhabitants of Al Dujail was systematic and widely ranged for the town remained under the control of the forces (by the command of the first chief of investigation system) for days and for a limit of two or more months.

In light of the statistics available before the court and according to the official documents that a large sum of its people were arrested and that the expatriation punishment were executed against families and individuals by means of a systematic act that required the gathering of authorities.

Obviously, and according to the facts stated and the official evidence revealed by the archive of the former authority as the investigation system and the decisions of the revolution court, that the attack on Al Dujail killed civilians. Although most of the victims and individuals didn't have any connection with the gunfire attempt on the accused president's procession (Saddam Hussein). On the contrary, the accused claimed that the attack was aimed towards civilians who attacked the procession of (Saddam Hussein). At the end, about (543) person were imprisoned or killed or displaced as a result of the assassination. This large number of arrested people exceeds the limited number of those participated in the attempt from (7) to (8) persons, this was described by a former officer in the investigation system as (crime of the opportunity)

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The final outcome of the trial procedures

In light of the facts and evidence revealed from the former authority documents issued by high ranking decision makers, the office of the presidency of the republic and the sovereign decisions signed by the president and the commander in chief of the armed forces, and in light of the confirmed official evidence issued by the head of the intelligence service, which is the most dangerous and strongest security system in the country, and evidence that is enhanced by the attestations of the victims' families and witnesses on the one hand, and the non-denial of the accused of the horrible facts revealed by the investigation and trial, on the other. Instead, they (the accused) didn't pay attention to these pieces of written evidence which are undoubtedly truthful and factual, as they carry the signatures of the authorities issuing it. And as the contents of the official evidence reinforce the testimonies of the complainants and witnesses, and as the State had dedicated the intelligence service of the country for the purpose of was called "punishing the people of Al Dujail and teaching them a lesson", so that they would be an example for others, and whereas the cost of some bullets shot by a group of young men towards the president's procession inside Al Dujail on 8/7/1982, although unverified by any written or heard evidence that these bullets were indeed directed towards his procession, but it was sheer accident that made it look to the accused Saddam Hussein as the supreme president of the country and the commander in chief of the armed forces and the one who was in control of the security systems in the country, to order such an attack under the command of his accused brother (Barazan Ibrahim Hassan) head of the intelligence service and popular army, which was the pillar of support for the Baath party in power under the leadership of (Taha Yassin). As a final outcome, the punishing of the people and the victims families by executing them, even for the dead and buried which happened as a result of the culture of the ruling authority, and whereas the evidence and proof mentioned and announced before the court in the form of official documents issued with the signature of the first accused Saddam Hussein indicates that the punishment of Al Dujail people was intended to instill terror and fear among the Iraqi people in general. This was a systematic, calculated plan implemented under the rule of (Saddam Hussein) against everybody who would even entertain the idea of doing something like this. And whereas the official count of the victims of the calamity reached (148) persons according to the verdict of the revolutionary court number 982/J/942 dated 14/6/1982 confirmed by presidential decrees issued with the signature of Saddam Hussein number 778, dated 16/6/1994.

This was in addition to the tens of people who died from hunger, fear and terror while either in detention at the intelligence detention center or at Abu Ghraib prison or the prison camp Lea in the desert far away from people's eyes, where these deaths haven't been accounted for. This was in addition to the to the mental and physical torture of hundreds of people, men, women and children, infants and the rape of women and girls in front of the eyes of their parents, which is more serious than murder. And as been verified by the investigation and trial, all of this in addition to plundering and destroying of properties and houses of the imprisoned and exiled families. These practices even went as far as getting to the breath taking nature, as these people destroyed gardens and agricultural lands, and devastated pumps. All these procedures

which were in violation of the Iraqi constitution that was in force, in theory only, during the rule of Saddam Hussein, i.e. the systematic devastating process was named "the Urban and Cultural development"!!! All this was the cost of ten to twelve bullets that were fired from inside the fields and nobody was hurt and no one knew the source or direction of the gunfire according to the view of the investigation directors of the investigation and security services in the town, and by the Minister of Interior and the high command member who was close to Saddam Hussein who carried out the inspection of the accident. He attested that "the gunfire was random and un-targeted, it happened accidentally that the president's procession was passing in town at the time of shooting". And it was not proven before the court during the investigation and trial that any of the armored cars of the president's procession were shot. And whereas the international defense attorneys of the accused Saddam Hussein and the others did not present not even present a weak piece of evidence that the gunshots were directed towards the procession. And whereas the actual facts indicate the "misfortune of those victims" who shot the fire from inside the fields without knowing or thinking that there was a presidential procession passing behind the roughly 2 meters high clay walls, and so "the bad luck" had lead to this deliberate tragedy for the people of Al Dujail on 8/7/1982. What resulted thereafter in the form of disasters afflicting the farms and the people was a long term, systematic and calculated policy that was enforced against the stricken families, with all that they had of children, fields and homes. This went further by targeting the town and targeting Its people for years by devastating its field and irrigation systems and arable lands.

This long term, continuous and systematic effort, as it was applied in the form of issuing presidential decisions having the signature of (Saddam Hussein) had the intent of re ensuring loyalty to the president and his authority by force, and it was an act of revenge even against the party members whom became suspect, as was related by some of the accused themselves in the case during the trial, including Ali Dayeh Ali, Abdalah Kazem Roueid and Mohamad Azawi Ali for having connections with some of families who were security suspect.

In light of all the facts and tragic situations after the gunfire accident on 8/7/1982, the court discussed in detail and objectivity the accusation addressed to (Saddam Hussein) and the others accused by virtue of the indictment read in the session on 15/5/2006 of the trial pursuant to the provision of article (twelve) first and on the basis of the provisions of of article (15) paragraph first, second, third, fourth of the Criminal Iraqi High Tribunal ribunal number 10 of 2005 which includes the issuance of direct orders by him as the president of the republic and the head of the revolutionary command council and the commander in chief of the armed forces to surround the town and directly attack according to a wide ranging, systematic plan, using various weapons including war planes, helicopters and putting the town under a strict security belt on its entrances and exits, that was beginning in mid of 8/7/1982 and the following days. These measure were aimed at collective punishment of the people of the town, some of whose inhabitants were considered "traitors for a foreign neighboring country" with which Iraq had been at a fierce war. The accused (Barazan Ibrahim) undertook this military wide ranging mission as a field and security commander to administer the seige and attack mission on the town. He placed under his command a brigade of Presidential Guard forces, together with the party forces, the popular army and the local police.

Military forces surrounded the town -- "attacking the town by closing the entrances and exits" -- all this for the purpose of revenge and punishment.

The accused (Barazan Ibrahim Hassan) commenced the attack on the instruction of his brother, the accused (Saddam Hussein), who directly arrived at the town and stayed there for three days for the actual supervision on the wide ranging, systematic and continuous attack against anyone he suspected of being disloyal to the government. He used local informers to tell on individuals and families, then arresting of all family members before transporting them directly to the intelligence center in Baghdad. The orders of (Barazan Ibrahim) were oral, and were directly executed without argument. The arrangements concerning the collective transport of arrestees were done directly by drivers from outside the town as an important part of the plan, and so, during his three days of staying in Al Dujail, the part related to the collective transport of arrestees was executed, in addition to pointing to the properties and assets of the said families. The number of people and families arrested was so huge that that they were even placed in schools until the gathering mission was completed and then transferring them by special cars and drivers from outside Al Dujail to Baghdad "Intelligence Building". The number of individuals and families kept in the investigation office reached 399 people among them were children and old people. During the investigation, there was severe torturing and insults against women and children, torturing by passing the electrical wire on sensitive parts of the body, swiping on the head, in addition to the atmosphere of psychological terror by placing the arrested families in red-light rooms which lead to excess psychological torture; each of the following died under torture: (Yakoub Youssef Husein El Abidi), (Jasem Mohamad Latif El Salami), (Saleh Mohamad Jasem), (Kassem Ali Assaad El Haidari) and (Alwan Hassan Hussein El Salami).

Then the families were transported to Abu Ghraib prison- the section belonging to the intelligence service- and there they faced also the torture and the degrading treatment of women and girls, where a number of persons died in Abu Ghouraiab due to the degrading of human dignity. The following died in Abu Ghraib prison: (Majbal Hussein Aziz) (Yassin Hassan El Salami) (Noufa Hassan Agha El Zabidi), and the children (Hisham Fakhri Assaad El Haidari) and (Zeina Mohamad Hassan El Haidari) and (Ali Majeed Yakoub El Kharbatli). The rest were transmitted to a far away area in the dry desert called the Lea camp where the remaining families were detained for about four years where they suffered from hunger, severe hot weather and bitter water. Also the cruel treatment of the guards and the supervisors continued and the following died in the desert (Hamid Mehdi El Khazaali) (Abed El Wahab Jaafar Habib El Abidi) (Sabrieh Abbass Ahmad EL Abidi) (Sabri Assaad Abdala El Haidari) and the children (Mothana Majeed Yakoub) and (Thabet Assaad Ali El Haidari). The bodies of those victims were eaten by hyenas and the predatory animals of the desert. What was even worse was that the authorities and their agents kept visiting those families and requesting that members of these believed families to come forward to do military service, as they were of military service age; where they were used as firewood for the war with Iran. And sometimes they would come to collect contributions from those in order to support the Saddam Qadissiya war with Iran!!!

On 27/5/1984 under the secret letter number 762/6 issued by the secretariate of the presidency and having the signature of the accused (Saddam Hussein), the president

of the republic, (148) persons were referred to the revolutionary court to try them on charges of “sabotage, and the destruction of the regime.” This list of people begins with the name (Taleb Abdul Jawad) and ends with in the name (Ayad Rashid Kazem). The revolutionary court under the leadership of the accused (Awad Hamad AL Bandar) and after a period of only seventeen days, from the referral decision, issued his verdict of execution against all the accused during a single session. The verdict of executing 148 person was issued without verifying their names before the court or the ages of the accused, as twenty two of them were under (18) starting from (Youssef Abed Ali) and ending with (Ahmad Jassem Abdul Mohsen). What is so peculiar to the course of trials and the judicial tradition in Iraq was to write the condemnation evidence with loanwords or expressions which contradict the judicial morals and lawmen of the country. It was said in the condemnation verdict “they have explicitly confessed to the charges attributed to them and attested that they belong to the traitor Dawa party, attended party meetings, paid monthly contributions, participated in distributing hostile publications against the revolution and party which arise denominational conflicts, and mental and financial aid to the elements who escaped and hid in the fields of Al Dujail to commit murder and destruction actions. They also admitted that they defied the commander president procession- May God keep him- in the area of Al Dujail as an attempt on the life of his Excellency- God forbid- intending to overthrow the national and revolutionary governing regime in the country an establishing an anarchist regime similar to the traitor regime in Qum and Tehran; their execution of this criminal scheme was directed by their Persian masters after having the weapons, explosions and aid via the Iranian regime agents.”

With these strange sentences to the course of justice as if it was a delivery of a praise poem by an illiterate person before the authorities, the revolutionary court presided by the accused (Awad Hamad Al Bandar) justified the condemnation verdicts during one session against (148) individuals although (46) of them were already dead, for, according to the official documents issued by the higher system in the authority that they had been murdered during the investigation as proved by the case's papers.

This unfamiliar and abnormal condition is that the accused (Awad Hamad Al Bandar) made himself a tool for collective killing of a group of people he had never met before or verified their identities, instead, by a criminal premeditated intention to kill these victims in a systematic and programmed plan for collective killing of a group of people, and for being the execution tool for the collective killing under the name of "judicial authority and law" and the main contributor in the collective killing process as the Arabic proverb says "the worst intentions" for the most serious type of collective killing which conforms with the concept of crimes against humanity. The accused was part of an organized and planned program for killing groups of civilians with a systematic, wide ranging course. Otherwise, how can we explain that the accused as a judge did not verify the names, identities and ages of those before him, and how did he disregard the number of accused presented before him?

And how much time did it take the court procedures, reading of attestations, attributing the accusations, presenting the findings of the defense attorneys, the personal rights and testimonies, and what is the preamble of the condemnation and judgment?!!! No doubt that the accused knew about the plan to kill those victims under the cover of the law and trial. He was psychologically prepared to disregard the

rules of trials and procedures before trials and he knew previously about the destiny of those afflicted with disasters who were brought before him as he was part of the murder plan. And within a programmed, systematic course and on purpose, he acknowledged that the results of his act of issuing the judgment of collective execution against those victims without reference to the law and without the presence of any evidence of condemnation. And so, the intent of the accused (Awad Hamad Al Bandar) aimed at the collective murder as part of the authority's plan to kill a group of people from Al Dujail, driven by the motives for revenge and collective punishment of a group of safe civilians residing in their small town.

The case dossier:

On 31/7/2005 the president of the investigation board of judges referred to the High Iraqi Tribunal the file of Al Dujail case number 1/J/ First/2005, composed of (1120) pages to carry out the trial of each of the accused:

Saddam Hussein Al Majeed	Born in 1937	Former president
Barazan Ibrahim Hassan	Born in 19951	Former head of the intelligence service
Taha Yassin Ramadan	Born in 1939	Former deputy prime minister and member of Al Baath party
Awad Hamad Badr Al Bandar	Born in 1944	Head of the revolutionary court (dissolved)
Abdallah Kazem Roueid	Born in 1925	Peasant-member in Al Baath party- Al Dujail
Mezher Abdal Kazem	Born in 1952	Employee-member in Al Baath party- Al Dujail
Ali Dayeh Ali	Born in 1940	Employee-member in Al Baath party- Al Dujail
Mohamad Azawi Ali	Born in 1923	Peasant-member in Al Baath party- Al Dujail

Those were tried for the charges of committing crimes against humanity pursuant to article 12-first-paragraphs (a, b, d, e, f) and article (15) paragraphs first, second of the High Iraqi Tribunal code, and article (406) of penal code number 111 of 1969 in force.

The case's papers were attached with a complete annex of confirming papers for the referral decision concerning challenge to what was described as "the malicious plot in Al Dujail" and practicing collective punishment against the folks of the town. The subject court requested, after examining the referral papers, the mediation to bring appeal for cassation in number 6/mediation request/2005, also the attorney (Khalil El Doulaimi) of the accused (Saddam Hussein) brought before the court of cassation the referral decision and registered the request under number 9/B/2005 and the attorney of

the accused (Taha Yassin Ramadan) before the court of cassation the referral decision and registered the cassation under number 9/T/2005 on 9/10/2005. The cassation board in the High court presidency decided to reject the cassation requests concerning the referral decision. As for the cassation submitted by attorney (Khalil El Doulaimi), it decided to reject the cassation appeal for not submitting it during the legal period, also for the cassation submitted by the attorney of (Taha Yassin Ramadan) and a decision was issued to reject the cassation mediation concerning the referral submitted by the subject court by the majority on 5/8/2005.

Upon the court's receipt of the case dossier and following the cassation decision number 6/T/2005, dated 4/8/2005, the court body distributed full copies of the papers to the respected judges for examination as an introduction to determine a date for the trial. And upon the returning of the case dossier, the defense attorney was provided with copies of said folder, but however, some defense attorneys, since they didn't live in Iraq and do not attend but during the trial sessions, failed to receive their copies on the specified date despite the announcement made by those attorneys "to delay the submittal of the file", in fact the file was delivered to their offices sixty days before the beginning of the trial dated 10/8/2005 and 15/8/2005.

At the beginning of the trial sessions, the attorneys of the accused presented a group of power of attorneys to the court, and after examining the content of these powers, it appeared that the majority of the attorneys are non-Iraqis and among them were Arab attorneys.

The court noticed the texts of the law profession number 173 of 1965 amended by article three of the law, organized on how to plead before courts in Iraq by Arab and Foreign attorneys, where article three F1 of the law permitted "for the attorneys affiliated with a bar association in Arab countries may plead in specific cases before courts in Iraq in a degree similar to his, after verifying from his continuity in practicing law profession as long as there is reciprocity and approval by head of the bar association" in the attorney's country. Paragraph (B) provided for the Iraqi attorney to take as partner in a specific case an attorney unaffiliated with any of the bar associations in Arab countries by the permit of the head of the bar association and the approval of the minister of justice after verifying his continuity in practicing law profession in his country and his competence. This court is facing an abnormal case concerning the sum of attorneys presented before the court from different countries without being given the opportunity to verify the legality of their presence, all this under the chaos of offensive speeches and unreasonable accusations not based on the law, and in light of tying all this chaos to a political publicity and national cases and lawsuits for "fighting occupation" and other sayings. This court faced difficulties by the behaviors of some Arab and foreign attorneys, like the Jordanian attorney Mr. (El Armouti) and the Lebanese (Boushra El Khalil) and the American attorneys (Ramzi Clark) and (Curtis Doubler). In the final sessions of the trial, the attorneys boycotted the sessions using false claims the sole purpose of which was nothing but publicity and advertisement. Nonetheless, the court asked for the assistance of a number of trained attorneys from the defense attorney office mandated, and so they performed their role and still did until the presence of those attorneys before the court and visa versa. The court continued applying the law relying on the mandated attorneys in accordance with the provision of article 144 paragraphs (A & B) of the penal code,

number (23) of 1971. This court regrets the assassination of the attorney (Khamis El Oubeidi), and as soon as the news of his death was announced, the head of the court expressed the regret of the court and the members of the body about the accident and declared explicitly its condemnation of any accident that the attorneys or any of the members of the judicial authority may be exposed to.

However, and despite all these infringing behaviors that violate the rules and regulations of the procedures in courts, it doesn't affect neither the transparency of the court procedures nor its credibility in the course of the lawsuit according to the reasonable procedural rules.

And that the court disregards this "anarchist" behavior and as a final outcome, the case shall be judged based on the evidences available in the lawsuit papers only and for sure. And on the other hand, despite the claims of the defense attorneys and their press conferences in "Amman", this court and from the beginning allowed the attorneys of the accused to meet their clients during their travel to Baghdad for an unlimited time, the court also allowed visits face to face without the mediation of the judicial body. It also allowed visits during the "postponements periods". The court also gave the opportunity to the attorneys, at the direction of its president, to meet their clients at the end of every session without the interference of the guards and they used to exchange documents and papers. The court enclose with this decision a complete and complicated file for the various requests submitted to this court by the defense attorneys having the shape of detailed schedules, and another index of the consequent requests from the attorneys of each of them. It also is attaching another file at the requests of the personal right attorneys, while recognizing that among these requests there were phrase and expressions revealing an "organized offensive course" on the court and its body intending to "provoke" the court. These include "degrading statements of the character" of the court body and connecting the matter in all cases to the occupation as if the court with its president and members are propelled by others!!! This forms kind of "indecent attack" on the character of the judges.

Nonetheless, the president and body members of the court exhibited magnanimity, tolerance and an inner feeling of pain and sorrow, however, and pursuant to the independent Iraqi judicial tradition and for the purpose of serving the desired justice, the court disregarded all these fabrications and violations and is attaching all of the papers of the lawsuit file to be a part of the records.

The accused rebelled directly after the judge (Raouf Rashid) presided over the tribunal, as immediately after the new judge took over, the accused (Saddam Hussein) and (Brazan Ibrahim) tried to make problems and create chaos inside the court in a way that effected the discipline inside the court room, and the accused (Saddam Hussein) interrupted the course of the sessions many times with his comments and speeches which were not related to the subject of lawsuit. In the session dated 29/1/2006, he threatened the present witnesses and (Brazan Ibrahim) uttered improper words against the judicial body and compared the court to a "whore house"!! And he spat in the face of one of the people in the court room. His face and movements indicated "a maniac feeling".

To preserve order in the court, the court decided to expel him out of the court room pursuant to the provisions of article (158) of the penal regulations law number (23) of 1971 and rule (52) of the procedures rules and collection of evidences. It also decided to expel the Jordanian attorney (Saleh El Armouti) from the court room for the chaos and speeches and inciting yells he made against the court and the Iraqi people in general, pursuant to rule (52) of article (153) of the penal regulations law.

The court, and from the beginning, provided display screens for the proceedings of the court inside the lateral rooms dedicated for the accused where they can follow the events of the trial via these screens. They were also allowed contact with their attorneys via these screens, but still, in the following session, the court explained to them what happened during the session in which they were taken away from the main hall. And in other incidents, the accused (Saddam Hussein) uttered on 29/7/2006, and without any permission from the court and in a state of excitement and yelling, the phrase, "down with the Americans! Down with the traitors..." and then the defense attorneys started yelling with him which lead to him being taken away from the hall in accordance with the provision of article (158) of the penal regulations law.

The Security Condition of the Defense Attorneys

The defense attorneys asked the accused on December 5 and subsequently requested to stop the trial procedures in light of the security condition. In the beginning of the suit procedures, the court body provided, with the coordination of the concerned, safe accommodation to all attorneys of defense, personal right and attorneys mandated by the court during the trial periods, and during postponement periods also, it also provided safe transport for attorneys attending trials via –Amman-road. However, the defense attorneys, despite their knowledge about the security condition and about their safe transport, they did not comply with the instructions and rules stated in this respect. And the security guards were always in a state of confusion, ready to provide the safe transport for those and housing them in the green region.

These attorneys present individually and several times without informing the security authority responsible about their transfer and safety; which lead the security guards into a state of confusion, and formation of many additional difficulties for waiting and individual transfer which required time, effort, energy and suffer, due to the intentional incomppliance of those attorneys with the security rules. As for accommodation, the court administration offered those attorneys the same facilities offered to judges and defense attorneys' office and the public attendees, offered them a permanent residence in the green region.

But unfortunately, none of those attorneys accepted the offer despite the objection of the court's administration; they finally accepted a less intensive security system.

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The court indicates that the defense attorneys refused to comply with the security procedures in addition to their continuous appearing on TV despite the objection of the court on such act, and that they risked the lives of the attorneys delegated by the court through spreading their names and identities on the internet and addressing accusations to them, where during the trial period three defense attorneys killed two of the attorneys delegated by the court, and the court expressed its regret and sorrow for the families of the three killed. The security departments in Iraq continued the investigation in the murder of each of those attorneys and made sure to bring the murderers before justice. Despite the continuous interruptions of those attorneys for the trials procedures, however, not at any stage of the trial of Al Dujail case there happened any accusations unrepresented by one or more defense attorneys delegated.

The defense attorneys continued their absence from the trial sessions and the final sessions; they have chosen the wrong timing for their clients when they didn't attend before the court to view their final findings.

So the court in applying the law and for preserving the rights of the accused asked the defense attorneys' office to submit comprehensive defense findings according to law. And the- defense attorneys- submitted requests and findings under the title of " his Excellency president of the republic" and " his Excellency chief of the revolution command council" and " Mr. chief of investigation" and " Mr. president of the revolution court" and others, although the legal and judicial fact " before the court there are accused persons" with their names without titles and privileges, and it was explained to the attorneys several times that if those accused had such titles they wouldn't have been brought before this court and there wouldn't have been a need to submit the mentioned findings and statements!!!

And all these findings do not fulfill the judicial aspect in form and content because those attorneys presented before the court as attorneys of the accused , and so if those accused still had their previous titles they wouldn't have assigned those attorneys to defend them and therefore there was no need for their presence before the court. From the legal side, those attorneys as attorneys of defense should have submitted their final findings to the court at least fifteen days before the determined date for submitting findings and that those attorneys did not comply with the point stipulated in term third of rule n°41 of the rules procedures and collection of evidences pertaining to criminal court.

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Requests of Defense Attorneys

The court noted that it received four preliminary petitions from the defense team during the course of trials. The first petition was submitted on December 5, 2005. In it

they requested that the High Iraqi Tribunal take emergency procedures to protect the members of the defense board and their family members and legal assistants and defense witnesses or suspend the trial procedures until such protection is provided which is "a plea to suspend the trial"!!

The second petition was submitted on December 21, 2005 relating to the legality of the High Iraqi Tribunal 'a plea to the legality of the court. The third petition was submitted on January 29, 2006 in which the High Iraqi Tribunal was requested to suspend all its sessions until it fulfils six conditions that is "pleading for emergency suspension of trial"

The fourth petition was submitted on February 17, 2006 asking that the criminal court judge Raouf Rashid is released from the presidency of the criminal court because of his favoritism regarding the petition objecting to the judge's capacity.

Moreover, board defending Saddam Hussein claimed as did Saddam himself "the immunity of Saddam Hussein as the president from being sued for any of the probable acts against the citizens of Al Dujail"

The court also noted the presentations of the attorney defending the accused Awad Hamad Al Bandar and so the attorney defending the accused Abdalah Kazem Roueid on June 7, 2006 where they discussed the crimes included in article 12 of the Iraqi criminal court of law that the crimes stipulated in this article were not included before in the Iraqi criminal law. And the Iraqi criminal court cannot accuse the accused with theses crimes because the crimes against humanity weren't considered a crime according to the local law upon committing the acts referred to "although the court had previously discussed these repeated presentations. However, it doesn't suspect the certainty, legality and validity of the High Iraqi criminal court for judging the accused and issuing the judicial judgment.

In light of the referral articles, it was revealed after the overthrown former authority due to the war between Saddam Hussein as a president of the authority and the coalition forces from a group of countries post the dramatic overthrow of the former authority and the management being undertaken by the ruling council during which the international security council issued several resolutions concerning the condition in Iraq as resolution n° 1483/203 adopted in

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the session of May 22, 2003 under n° 4761 referred to which emphasized the right of the Iraqi people in determining its political future freely and encouraging the efforts exerted by the Iraqi people for a government to represent him pursuant to the principle of the prevalence of law which guarantees equality of rights and continuity of justice for all citizens without considering the racial or religious origin or gender and emphasized the determination that the U.N. shall perform a vital role in providing human aid, reconstructing Iraq, and re-establishing national establishments for the

ruling represented by the people and emphasized the necessity to pay court for the crimes and scandals committed by the former Iraqi regime.

As concerning the authorities and responsibilities of the " occupying party" the council noted the letter dated May 8, 2003 addressed to the head of the security council by the permanent representatives for the United States of America and the United Kingdom-Great Britain and Northern Ireland S/2003/378 and while it acknowledges the responsibilities and obligations determined by virtue of the international law applied on the two countries as two occupying countries under the unified command of the " authority". And while it acts by virtue of chapter seven of the U.N. treaty and appeals to the member countries and the concerned organizations to offer help to the Iraqi people in their efforts aiming to rehabilitate its establishments and rebuilt its country and to contribute in preparing security and stability conditions in Iraq according to this decision.

It is also stated in paragraph (9) of the decision: " It is favored for the Iraqi people to help the authority by cooperating with the special representative in establishing a temporary Iraqi administration described as a transitional administration directed by Iraqis until the Iraqi people are able to form a government internationally recognized and is able to undertake the responsibilities of the authority."

It is also stated in article (22) of the resolution: " It is noticeable the importance of forming an Iraqi government internationally recognized and representing the people." This court also noted the Security Council resolution ° 1546/2004 adopted in session 4987 held on June 8, 2004.

The security council: "while it welcomes the beginning of a new stage on the road of the transformation of Iraq to a democratically elected government, and while it looks forward for this purpose to put an end to the occupation and so an independent interim Iraqi government of complete sovereignty to undertake all the responsibility and authority as of June 30, 2004."

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It is also stated "since it welcomes the undertaking of the interim government of Iraq to work for establishing a democratic unified Iraq and respecting the political and human rights."

And In light of the two resolutions of the security council concerning re-establishing the country's establishments and the entity of rule in Iraq after the complete collapse of the authority's establishments.

The court points out to the regulatory list n° (1) of the Interim Coalition Authority formed by the Security Council resolution referred to. And in part (1) pertaining to the Interim Coalition Authority.

1- The Interim Coalition Authority exercises the powers of the government temporarily for effectively managing the affairs of Iraq during the transitional period for the purpose of regaining stability and security and forming the conditions that may enable the Iraqi people to determine its political future freely, also to assume the development and enhancement of the exerted efforts to rebuild and re-establish the national establishments to represent the denominations of the people and facilitating the exerted efforts to revive the economy, rebuild and secure continual development.

It is also stated in paragraph (9) of the decision: "It is favored for the Iraqi people to help the authority by cooperating with the special representative in establishing a temporary Iraqi administration described as a transitional administration, and where the Interim Coalition Authority was a transitional authority for the purpose of having complete sovereignty and in light of the relevant decisions of the security council and the formation of an authority in coordination with Iraqi personalities dated December 10, 2003, it announced the establishing of a government council in Iraq comprising national Iraqi personalities and the acknowledgment of the security council for the government council according to decision n° 2031511 dated October 16, 2003. And in light of the U.N. resolution eferred to, the government council published on March 8, 2004 a temporary constitution and by virtue of this constitution to" establish a road plan for the establishment or formation of a permanent Iraqi government."

The terms confirmed the establishment of an Iraqi criminal court specialized in crimes against humanity committed during the former government according to the several complaints submitted to the governing council in this respect and upon the issuance of the law for establishing the Iraqi criminal court specialized in crimes against humanity n°1 of 2003 and the rules of the procedures issued in accordance with the provisions of article 16 thereof. In

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light of this law, the judicial and administrative personnel of this court were formed. And on June 28 the occupation of Iraq ended and a "sovereign Iraqi government" undertook the ruling of Iraq pursuant to the powers it was granted by virtue of the temporary constitution.

And on May 3, 2005 a new elected government replaced the temporary government in light of the Security Council relevant decisions referred to in the preamble of this decision. And on October 18, 2005 the law n°10 of 2005 published the law of the High Iraqi criminal court where it is stated that the obligatory reasons of the law" for the demonstrating the crimes committed in Iraq since July 7, 1968 until May 1, 2003 for the purpose of establishing the rules and penalties that condemn the perpetrators of these crimes in a fair court and for the purpose of forming a High National Criminal Iraqi tribunal consisting of competent Iraqi judges for the legislation of this law."

And pursuant to the provisions of article 16 of the law, the rules and procedures were issued and the evidences pertaining to the High Criminal Iraqi tribunal."

In light of the aforementioned, and disregarding any suspicions or further claims in this respect, the court wishes to clarify that on December 10, 2003, the government council acknowledged by the international security council decision n° 1511 that it "embodies the sovereignty of Iraq during the transitional period until a representative government is formed adopted internationally, to undertake the responsibilities of the authority" to publish the Special Iraqi court of law that preceded the High Iraqi Tribunal which owns the judicial power to judge any citizen whether Iraqi or residing in Iraq accused by committing extermination or war crimes or crimes against humanity or other crimes committed between June 17, 1968 till the first of May 2003, which was independent from the remaining courts in Iraq and any other governmental authority.

On March 8, 2004, the government council published a temporary constitution in Iraq nominated TAL. Said constitution formed – among other matters- a road map for the establishment of a permanent Iraqi government. It also emphasized the issuance of the Special Iraqi court of law. And on June 28, 2004, the occupation of Iraq ended and a "sovereign Iraqi government" undertook the ruling of Iraq pursuant to the powers it was granted by virtue of the temporary constitution and international security council resolutions n° 1483 and 1511 and 1546, where the temporary government remained in power until May 3, 2005 and during this period it financed, supported and permitted the Iraqi court to work, and for which it assigned judges and specialized a budget, and provided with resources to continue working.

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And on May 3, 2005 an Interim Government elected by more than 60% of the Iraqi people replaced the first temporary government and also, the powers of the Interim Government were determined. The Iraqi Interim Government was acknowledged as an independent sovereign government of Iraq according to the UN Security Council resolution n° 1546.

The Interim Government continued financing and supporting the special criminal court until a permanent Iraqi government elected on May 20, 2006 assumed power. And on October 18, 2005, it cancelled the special Iraqi court of law and law n° 10 of 2005 was published "High Iraqi criminal court" keeping all the personnel of the court including the judges and public prosecutors, and it was confirmed that every decision or order issued by the "Special Iraqi Court" pursuant to its law is a legal order of obligatory compliance and the High Iraqi Tribunal will put it into effect.

Therefore, in pleading the petition of the attorney of the accused (Awad Hamad Al Bandar) concerning the legality of this court and the law issued by its virtue, the court refuses the pleading legally and definitely for the law n° 10 of 2005 was issued by a legal government elected by 78% of the Iraqis and it ratified the Iraqi law by a national questionnaire three days before issuing this law n° 10 of 2005 by virtue of article 131 of this constitution:

The court "continues its activities as an independent judicial body and considers the crimes of the former regime and its main personalities." Accordingly, and in light of the apparent constitutional and legal facts, the plea of the attorney Badr Awad Al Bandar concerning the legality of the court is a false and refused pleading and is not conforming to the law.

As for the petitions and pleadings of the attorneys of the accused concerning the specialization of the court in considering crimes of international aspect, this Iraqi court by its law n° 10 of 2005, and the rules of procedures issued by virtue of this law and by its management and judges and the judicial procedures therein according to the penal rules n° 23 of 1968 and the judicial custom in Iraq to consider the crimes committed by the members of the former regime on June 7, 1968 until the first of May 2003.

This court takes into consideration: the instructional section titled- The international criminal law- described as a gradual transformation on the level of countries for rules and legal statements valid to carry out the national trials by virtue of " The Iraqi Crimes law" where it discuss the national courts" reasons of criminal behavior" including the laws comprised in the International custom law: where the concept of public courts as described by The international criminal court of law of Rome which clarifies: the national courts have the priority over international courts to judge in such crimes.

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The High Iraqi Tribunal was established on a self-evident truth in force that the countries keep the judicial authority over the crimes determined and adopted in the international criminal law as it is over the crimes published according to the national legislations."

And whereas the Iraqi government that undertook the management and power on May 20, 2006, have chosen to accept the decision of the government council to establish an Iraqi government having judicial power to judge Iraqi citizens and non-Iraqis residing in Iraq accused in committing war crimes or crimes against humanity or extermination or other crimes specified by virtue of the national Iraqi law.

As for pleading to the immunity of the former president the accused Saddam Hussein and the findings presented by each of the attorneys Khalil El Doulaimi and the American Curtis Doubler and the Qatari Najib El Naimi and the Jordanian Ziad Najdawi and the Egyptian Amine El Dib, for the referred to is a president of the country and head of the revolution command council and enjoys an immunity for any questioning about any act done because it is considered an act of sovereignty, although all those attorneys and others who stated the pleading during the oral interposition didn't provide the court body with any written" effective, persuasive and legal argument that fulfills the requirement of supporting the essence of this claim".

And in light of term 4 of the temporary Iraqi constitution of 1970- article 240 thereof, the head of the revolution command council and his deputy and the members of the council enjoy a complete immunity and it is not permitted to adopt any procedure

against any of them before having the permission of the former council, i.e. " the revolution command council" and whereas this saying applies in the past when the person concerned was a man of power and nobody dared to ask him for lifting his immunity, and so this pleading is illogic in all standards and considerations, and the court body refuses this pleading for two reasons:

First: The crimes accused by in this lawsuit are crimes against humanity, and it is impossible for any one of them who committed such crimes to boast or ask for immunity.

Second: Suppose this claim of immunity exists, by the collapse of the regime the present Iraqi government cancelled it and referred the judicial authorities- the mentioned accused (Saddam Hussein) to this court accused with committing said crimes.

Regarding the legal side and the prevailing criminal judicial custom or in the international human law course: this court has precedents as Nuremberg trails where it was described that the "crimes against international law are committed

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by men and not legal bodies" and on the other hand the constitution of the "international military court" refuses to acknowledge the immunity enjoyed once by statesmen - the criminals."

And whereas this court notes the report of the U.N. secretary upon discussing article 7 of the former international criminal court of law of Yugoslavia, where the international organization secretary noted that" the right should not be given to any individual or rely on the immunity of the president of the country upon committing custom crimes or war crimes or crimes against humanity" where the secretary mentioned that" he believes that each of the individuals who participated in the planning or preparation, or execution of serious violations of the former international human law in Yugoslavia or participated in committing violations and among them officials of individual capacity."

The secretary general suggested that" therefore the law should include provisions determining that the immunity pleading of the president of the country or claim that the action committed by the accused who was in his official capacity would neither form pleadings nor commute the punishment."

These statements reflect the general consensus that the international standards are changed especially the immunities enjoyed by former presidents or main governmental officials.

Obviously, since world war II, the general immunities that protected former high rank officials from" the accusation list" upon committing international crimes including crimes against humanity are not applied spontaneously.

As for the High Iraqi criminal court of law n° 10 of 2005 it is stated in article 15

Third: the official capacity enjoyed by the accused is not considered an exemption from punishment or commutation of a punishment whether the accused was a president or an official or a member in the revolution command council or a member in Al Baath command. And it is not permissible to boast the immunity to dispose of the responsibility for the crimes mentioned in articles 11 and 12 and 13 and 14 of this law.

Fourth: The supreme leader is not exempted from the criminal liability for crimes committed by people working under his command if this president knew or had reasons clarifying that his officials committed and or were about to commit these acts and so the president didn't adopt the necessary and proper procedures to prevent the fall of these acts or refer the case to the competent authorities in order to investigate and trial.

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Fifth: In case any accused person committed an act in execution of an order from the government or his president, this will not exempt him from the criminal liability. And it is permissible to consider in this regard the commutation of the punishment if the court sees that the securing of justice requires so.

Sixth: The amnesty decisions issued before the validity of this law do not comprise any of the accused in committing one of the crimes stipulated therein. And so the High Iraqi criminal is a national court that covered international crimes within the scope of its judicial powers in confirmation and application of a fixed base in the criminal law saying: "The crimes committed inside the country lands should be judged in that country in emphasizing the regional sovereignty of countries."

On the first hand there are stable judicial principles which are "the lands in which a crime was committed is generally the best place to find proofs." And on the other hand "the legal system in said land is known by the resident or citizen or accused because he uses a language to understand it, as for the psychological side and due to the seriousness of these crimes which might have serious results on the society in which it happened. Moreover, the trial and judgment procedures are considered under the view of the interior society and under its protection also. It also has the means to control it and that can play a preventive role for future or probable crimes.

As for the subsequent requests by the defense attorneys regarding the transfer of the trials to the outside of Iraq, there is a firm rule in law certifies that "crimes committed inside certain lands should be tried in those lands. This is based on the necessity of re-affirming the regional sovereignty.

And within the context of international criminal law, the former president of the international criminal court of Yugoslavia expresses this principle which is of important and practical characteristics, first: the land in which a crime is committed is generally the best place to find proofs and on the other hand the legal system that is

known by the resident or citizen or accused because he uses a language to understand it. This also applies to the parties concerned in the lawsuit. As for the psychological side and due to the seriousness of these crimes which might have serious results on the society in which it happened. Moreover, the trial and judgment procedures are considered under the view of the interior society and under its protection and also has the means to control thereon. Therefore the trials or any penalty resulting from this trial in the country affected by the crime, shall have a psychological and administrative effect which may help the society to flexibly understand what happened in addition to the understanding of the response element of others and this may play a preventive role for future or probable crimes.

In light of the aforementioned, the court body affirms that article 15 paragraph 3 of the High Iraqi criminal tribunal is clear and conforms with the International customary rule which disclaim that the accused may keep in any way the immunity, whether it is an immunity included in the nature of the case or a capacity of the concerned person upon being accused by any of the war crimes or destruction of Iraq or crimes against humanity. Therefore, the claims of the accused Saddam Hussein that he has the immunity as the president of a country in this lawsuit" Al Dujail case" is in fact rejected. Also, from the legal perspective, since the prevailing or sovereign Iraqi government removed all the immunities of the accused before the Iraqi High tribunal.

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The legality of Crimes and Penalties (Crimes and Penalties according to legal provisions)

The defense attorneys of (Saddam Hussein and Barazan Ibrahim and Taha Yassin and Awad Al Bandar) raised pleadings that include an infringement of the Iraqi Higher Criminal court of law on the main principles that the criminal law relied on in most of the countries of the world as Iraq.

The arguments raised by the defense in this respect are based on the principle of the legality of crimes and penalties (Crimes and Penalties according to legal provisions) also on the principle of the non-retroactive law to the past which is in reality one of the results of considering the first principle.

And by virtue of the principle of legality of crimes and penalties, no person can be questioned about a criminal act unless it is stipulated in law as a crime. It is also impossible to impose a penalty on him unless such penalty is pre-determined for that crime.

As for the principle of the non-retroactive criminal law means that the criminal law does not have a retroactive effect, for its provisions are stipulated for the future. Therefore, it is impossible to punish a person for an act of which penalty or judgments were not stipulated upon committing such an act. It is also impermissible to punish him by a penalty more intensive than the punishment decided at the time of committing the act.

In fact the principle of the legality of Crimes and Penalties (No Crime or Penalty without a legal provision) or what is sometimes called the criminal legality or crime legality. Penalty is one of the most important principles prevailing in the criminal law of different countries and it is acknowledged by most of the legal regulations and included in its constitutions considering it as a guarantee for the freedom of individuals and a restriction on state powers, where we can say that the implementation of the principle of legality of Crimes and Penalties is affixed to the principle of the government's submission to law.

The subsequent Iraqi constitutions, and recently the temporary Iraqi constitution of 2005, stated this principle. It was also stated by the (Iraqi) penal law n° 111 of 1969.

According to this principle, the source of the criminal rule is legislation, i.e. the legislative authority determines actions and abstentions considered as crimes, also the penalties pertaining thereto.

As a result, the written provisions issued by the legislative authority are the source of conviction and penalty.

The defense started by the argument of the Iraqi High criminal court of law which infringes on this main principle (Crimes and Penalties according to legal provisions) also infringes on the principle of the non-retroactive criminal law, considering that the actions attributed to their clients in Al Dujail case mentioned in article 12 of the court

of law were not stipulated as crimes in the Iraqi law, and therefore it is impermissible to prosecute them for these actions and then question them about the crime because the law criminalizing it was issued in 2003 while the actions attributed to the accused who committed the crime refer to 1982, where the articles 11, 12, 13 of the court of law provided for Iraqi extermination and crimes against humanity and war crimes.

The same law stipulated the competence of the court to prosecute the persons accused of committing these crimes (Iraqis, and those residing in Iraq) for the period during July 17, 1968 until May 1, 2003, and so the law of this court has prosecuted and criminalized the actions that were not considered as crimes and preceded its validity, and this do not conform with the main principles of the criminal law.

These objections if true are considered very serious. It is true that maybe some of us, few or many, as individuals have heard and maybe saw who attributed to those accused their disrespect and disregard of the law during the time of their powers and influence. But if the judge was certain that what he saw or heard of actions attributed to those accused are true, then he cannot prosecute according to his personal information and until the condemnation of the innocent accused is confirmed in a legal trial. Moreover, we cannot follow the same method or manner followed by those accused whom we are prosecuting.

Then does the court of law actually include previously unpunished crimes? And does this law infringe on the principle of the non-retroactive law?

The answer to these questions requires from us the answer to another question, which is: Was the actions attributed to those civilians — torturing and imprisoning them without a right, seizing their lands, digging out their gardens and other acts as stipulated in the court of law — permissible before issuing this law?

The answer to this question, that these acts were always considered crimes by virtue of the laws of most, if not all, countries of the world as Iraq. The court of law from this side in particular didn't execute crimes of permissible actions when the murder crimes and torture attributed to the accused took place.

Nevertheless, the other questions remain without answers. Are these actions stipulated in law as international crimes (Iraqi extermination, crimes against humanity and war crimes) or as crimes in the Iraqi law and national regulations in various countries only?

Is the principle of criminal legality (Crimes and Penalties according to legal provisions) applied in the international criminal law as the fact is in the internal law of each country? Is it not permissible in the international law to punish only for actions given the nature of crime by the international law at the time those actions were committed?

The answer to these questions requires more efforts to reach the truth from the legal side. In 1948 and specifically on September 10 of the same year, the international ad of human rights was issued, adopted and published publicly by the U.N. general assembly resolution n° 217 thousand (D-3) stipulated in article February 11 therein

that (any person shall not be condemned by a crime because of any action or refraining from action that was not in due time considered a crime by virtue of the national or international law, also no penalty is imposed thereon more intensive than the penalty in force at the time the criminal action was committed)

This international proclamation is very important in adopting and determining the concept of the principle of the legality of crimes and penalties and the principle of the non-retroactivity in the international criminal law. The concept of these principles by virtue of the proclamation is not limited to what is adopted by the internal laws of the different countries as a necessity that the action should be stipulated as a punishable crime when committed in the national laws of their countries, but instead the concept of this principle in the international criminal law extends to comprise the international crimes.

So the action or prevention should form an international crime punishable by virtue of the international law, also this action or refraining from action shall be considered (an international crime) when committed, and the same if the origin of this crime and penalty exists in international customs or in international conventions and treaties.

Our court believes that what is stated in this international proclamation is at least obligatory for the member countries of the U.N. and Iraq is a constituent member in this international organization and therefore it is obligatory according to the principles stated in this proclamation without the need to stipulate it in the interior law.

This opinion endorses the provisions of article 15 (of the international treaty concerning political and civil rights) which was adopted and presented for signature and ratification and enrollment by the U.N. general assembly resolution (2200) dated December 16, 1966 effective as of March 23, 1976 ratified by Iraq in 1971.

The aforementioned article stipulated that: 1- any person shall not be condemned by a crime because of any action or refraining from action that at the time did not constitute a crime by virtue of the national or international law, also no penalty is imposed thereon more intensive than the penalty in force at the time the criminal action was committed, and if it happened after the committed crime, since the law stipulates a less commuted penalty, then the perpetrator of the crime shall benefit from the commutation.

2- Nothing in this article infringes on the trial and the punishment of any person for any action or refraining from action upon committing a crime according to the general principles of law adopted by the U.N.

It goes without saying, that the international proclamation ad of human rights and the special international treaty of civil and political rights have an international nature and Iraq is committed to the provisions stated therein for the aforementioned reasons.

However, we see in the international criminal law acts considered as international crimes having another aspect differing from what is stated in the interior law, this is because the nature of the international law being a customary law (unwritten), while the principle of the crimes and legal penalties and what results therefrom, did not

develop except under the light of the written law. And the outcome, is that the principle disagrees with the custom law, thus pursuant to this principle, the act may become subject to punishment if the said principle is stipulated in the legislation, for it is based on the written law, and therefore it is impossible to apply this principle on the customary regulations. But this does not mean that this principle cannot be absolutely applied in the international criminal law.

It is true that this law is originally a customary law (based on customs), but nonetheless, it can be applied in this law in a way that differs from the way it is applied in national laws. For it is difficult to imagine that the international law includes previous provisions by which the crimes and penalties are determined similarly as they are determined in the domestic law, i.e. it is difficult to find legal specimen outlined in specified formulas in the international criminal law because it differs from the interior law of the various countries from several aspects.

It is true that the international criminal law and the international human law have developed towards codification and significant efforts were exerted in this direction; especially post Geneva conventions and the convention of preventing genocide, and finally after sanctioning the basic system of the international criminal court (Rome system). However, the fact indicates till now, to a large extent, especially concerning the crimes against humanity, that bestowing the nature of crimes upon acts which are international crimes is done in the same way as the setting rules of the international law are generally formed.

Moreover, the definition of crimes in the international law is not precise as the definition of crimes in the national laws of different countries.

For to know which actions are considered crimes in the international criminal law, we should rely on the international custom which is the fundamental source of the international law, and so in light of this basis we can discover the nature of the action and criminalize it.

On the other hand, it may happen, especially in the recent decades, that the criminal property of the action in the international criminal law is revealed in writing, and this is the case of crimes stipulated in treaties, especially those named the obligatory legislative treaties even to countries which didn't sign or join said treaties, taking into consideration that the terms of these treaties are originally international customary regulations, for the conventions of the Hague and Geneva are but a group of customary regulations known before being finalized in written provisions.

The noticeable matter is that the conventional international law, in respect to the international crimes and others, doesn't decide the rules of the international law, for there are other international rules originating from the obligatory international law.

On the other hand the conventional international law decides only the legal regulations already found and decided by virtue of the international custom.

As a consequence, for the consideration of some actions punished by the international law, it's not enough to refer to international treaties and conventions, but we should rely at first on the international customary law.

For there are many actions deriving its properties directly from the international custom without the interference of the international conventional law, and therefore they are international crimes despite the fact that they are not stipulated in a treaty or convention. Although before year 1958 there didn't exist any treaty deciding its criminal property, the same goes to the violations committed against humanity are considered international crimes before the international conventional law decided this property in London convention of 1945.

Here we may ask if the principle of crime and penalty legality connects firmly to legislation (written law). Does this mean that it is not applied in the international law which is originally a custom law? and does this mean that the results of this principle as the non-retroactive criminal law, and adhering to the limited explanation, do not apply on the crimes of international nature?

This court believes that despite the fact that the international law is originally a customary law and despite the fact that the principle of the Crimes and Penalties according to legal provisions is related firmly to legislation, however, the requirements of justice and prevention of injustice and guarantee of individual freedom all require the applying of said principle in the scope of international crimes.

But can we apply this principle in the international criminal scope the same way as applied in the conviction and punishment scope in the interior criminal law (written)? No doubt that the answer is negative.

The concept and definition of international crime differ in many ways from the crime in the national law. This doesn't mean that they completely differ, but are different in many ways we referred to previously.

Also, there is no legislation side in the international society in the same concept in which it exists inside the country. Additionally, the main source of the international law is the custom. Meanwhile the source of the single criminal law is legislation (written law), except for the Anglo-Saxon system which was and still, is based on the principle of judicial examples.

In other words, the concept of law is not identical in the international and national scopes. In the national scope, the law is action issued by a legislative authority. As for the international scope where there isn't a relevant legislative authority to set obligatory regulations, the general and public conventions between the countries form the legal rules, in addition to the international stable custom rules.

Thus, how can we apply this principle in the scope of international crimes? We can apply it through verifying that the action or prevention forms an international crime not necessarily originating from international conventions and treaties, whereas most of these crimes originate from the international custom. Therefore, we have to assure from the existence of an international legal custom regulation criminalizing this action

or prevention as being considered an international crime, at the time of attributing the committing of a crime to a person, or its existence (legal regulation) in a general international convention (legislative) or a special international convention in which Iraq is a member.

Consequently, the principle of the crimes and penalties legality is also applied in the international criminal law. In the international law it is impermissible to punish but for actions given the nature of a crime by the international law at the time of committing it.

This matter started to become stable especially after the development and progress towards codification of international law, especially post world war II and till now, the remarkable example about this as mentioned is the stipulations of article February 11 of the international ad for human rights, and article 15 of the international convention of political and civil rights ratified in Iraq in 1971.

The larger explanation for the principle of crimes and penalties in the criminal international law permits to say that the one who commits international crimes may be questioned and then punished, even if those crimes are not stated in addition to not publishing them as international crimes in the internal law, which is an interpretation that may be valid for implementation concerning the war crimes and ethnic extermination crimes committed in Iraq, and the punishment for these crimes, especially the crimes against humanity, find its legal source in the international custom which promotes to the commanding rule level, and is applied in various countries of the world without the need to stipulate it in its national laws.

And whereas the accusations attributed to the accused in the case are aimed at their committing of crimes against humanity, thus our court assures that most if not all of the actions or preventions forming crimes against humanity are nothing but crimes from the general law which the law or criminal internal legislation stipulates its conviction and punishment in all countries as Iraq, and in this respect there wasn't any modification except transferring them from the internal scope to the international scope with the necessity of additional elements for establishing them, due to its generality and quality and the protected interest therein is not limited to the life of man or his safety or freedom or dignity or property...etc. in a specific country, however, this (protected) benefit comprises all the mentioned elements of each human individual in all countries forming the international society, also in all the world. These are crimes against human and humanity in every part of this universe.

It is true that before London convention in 1945 there wasn't any provisions discussing this sum of international crimes, there wasn't any convention punishing for the crimes committed against humanity, but the international custom convicted it, and the national laws of countries convicted it for being local crimes (internal) not international, then some of these countries started convicting it in its internal laws for being international crimes (having the same specifications and elements and conditions existing in the international law) additionally, the tendency in the international law started to develop towards codification of these crimes.

The crimes against humanity attributed to the accused in AL Dujail case are crimes defined in the international criminal law, therefore stipulating them in the Iraqi Higher criminal court of law of 2005, and previously in the relevant criminal court of law of 2003, doesn't change the fact that these crimes were and still exist in the international custom, in addition to its existence in the Iraqi law as internal crimes. It existed in the penal code of Baghdad and still exists in the Iraqi penal code n°111 of 1969 and the military penal code n°13 of 1940.

Whoever is convicted with committing an international crime, whether it was an ethnic extermination or against humanity or war crime, as the crime of murder or torture or confinement without any reason or rape or theft or sabotage or ruining of real estates or committing a hostile act against the properties of prisoners, injured, and the dead, or disregarding these crimes and others based on the Iraqi criminal law, but instead, commits a crime stipulated in the Iraqi law, additionally, these acts are convicted according to the conventional or international customary law.

In fact, most of the international crimes are convicted at the same time as internal crimes in the national laws of most of the countries of the world if not all, thus there isn't any country in which the penal code doesn't convict the crime of murder or torture or kidnap or imprisonment of persons without right...etc.

The availability of the additional elements assists in the transformation of these crimes from the internal scope to the international scope and then acquiring the property of international crimes, other than the required by the internal law to be considered as internal crimes.

The actions attributed to the accused in Al Dujail case, if verified are considered international and internal crimes simultaneously, and the committing of such crimes is considered a violation of the international criminal law and international human law, at the same time considered a violation of the Iraqi law (penal code n° 111 of 1969, and military penal code n° 13 of 1940) also a violation of the Iraqi higher criminal court of law.

The trial of the perpetrators of murder and torture and imprisonment without right crimes....etc. being considered as examples of the international crimes, as crimes against humanity for the favor of those accused, for its formation requires additional elements other than those stipulated in the Iraqi penal code.

The peculiar specialization of this court by virtue of article 1/Second and article 14 of its law comprises in addition to its specialization in prosecuting the accused for committing international crimes stipulated in articles 11, 12, 13 of the court of law, its specialization in prosecuting the accused for committing crimes stipulated in the penal code of Baghdad and penal code n°111 of 1969, and the law of punishing conspirators against the safety of the nation and the violators of the government regime n°7 of 1958, and the military penal code n° 13 of 1940, and any other penal law in force at the time of committing the crimes attributed to the accused.

Accordingly, the argument of the defense attorneys defending the accused that the court of law infringes upon the principle of Crimes and Penalties according to legal provisions is not based on valid legal basis.

Our court, and despite the fact that it is national, and not international, has the right to consider the international crimes, not because the court of law, which is an internal law, stipulated so, but also either because Iraq ratified on international treaties included international crimes , as the condition in respect to war crimes stipulated in Geneva convention of 1949 and additional protocols annexed thereto, and the ethnic extermination stipulated in the convention of preventing genocides of 1948, or because the rules of the international criminal law are applied not only in Iraq but in all countries of the world directly., without the need to be stipulated in the national laws of those countries, as it is with respect to crimes against humanity, even with respect to war crimes and ethnic extermination which are already forbidden by virtue of international rules before being convicted by international treaties.

The criminal international law may be applied by either way; via international courts, as it happened in Nuremberg court and Tokyo court , and the previous international criminal court pertaining to Yugoslavia, and the international criminal court pertaining to Rwanda, or via national courts as it is happening now in Iraq and happened before in England, Australia, France, Italy, Canada, also in Belgium when it prosecuted persons accused in committing ethnic extermination in Rwanda.

On the other hand, when we apply the principle of the crimes and penalties legality, we should not think as the specialized in the criminal law on the national level only, but also in conformity with the international criminal rules which are originally international customary rules. These international crimes are included in the international law and that the criminal questionnaire about them became an obligatory international custom i.e. an international law.

This court believes that several crimes against humanity were considered so even before London convention in 1945. For the international custom since the Hague convention in 1907 and perhaps before considered some committed actions during the war as crimes against humanity. Then the nomination of these crimes against humanity started to develop increasingly since the formation of the international military court in Nuremburg, (article 6/J the court covenant) and the formation of the international military court in Tokyo (article 5/J of the court covenant)

The trials, especially the trials of the Nazi German commanders for the atrocities they committed during world war II left a significant and important influence in the legal thought and the international criminal law where the U.N. secretary general requested in his report submitted to the U.N. general assembly in October 1946 the necessity to introduce the principles founded by the trials of the German war criminals and punish them pursuant to the international law. The Unites States also submitted in November of the same year a project to the U.N. general assembly requesting the adoption of the international organization to the principles of Nuremburg and formulating them by codification defining and punishing for the crimes committed against peace and the safety of humans. This project was endorsed unanimously.

In 1948, a convention for preventing and punishing for genocide was concluded, despite the fact that genocide was included in the definition of crimes against humanity before. The conviction of Genocide in this convention of the year 1948 means that this crime became a part of the international law written since then.

And in 1950, the report of the U.N. international law committee stated that the crimes against humanity are crimes according to the international law whether during war or peace, despite the important points of this report, we agree with who believes that it wasn't sufficient to establish an international custom rule to settle the conviction of these crimes which forms crimes against humanity during peace.

This court believes that the crimes against humanity during the time peace became a part of the international custom law post the in effect of the non-prescription convention of war crimes and crimes committed against humanity on November 11, 1970 (see provision of article two of this convention) also the principles of the international law in following, arresting, and punishing guilty persons in committing war crimes and crimes against humanity in 1973.

The convention of non-prescription of war crimes against humanity, also what is stated in the international cooperation principles concerning the following, arresting, and punishing guilty persons in committing war crimes and crimes against humanity, preceded by repetition and emulation of attitudes by arresting, and punishing guilty persons in committing war crimes and crimes against humanity and internal sources, the frequent referring to these rules which indicates compliance thereto and accepting them as obligatory legal rules, and the implicit agreement of the countries in general, but also the explicit agreement of a large number of countries and international organizations embodied as treaties and conventions and adopted legal principles, and the action of the countries which was confronted by the action and accepted it without arguing thereon, and this supports the stability of the government based on the custom rule which in turn is based on implicit and compulsory content...all this leads this court to a state of tranquility to the international custom which stabilized on considering the crimes against humanity during peace became international obligatory custom rules before the seventies of the past decade.

The formation of the international custom for convicting actions resulting in crimes against humanity during peace before 1973 can be noticed through the availability of the physical and mental element of the international custom. The physical element was available from the recurrence of examples representing the repeated attitudes of countries and international jurisprudence and the organization (U.N. board) which was embodied in the trials of Nuremburg and Tokyo and the efforts of the U.N. and the report of the international legal committee in this concern, and the convention of non-prescription of war crimes and crimes against humanity then adopting the principle of international cooperation to follow, arrest, punish persons guilty in committing war crimes and crimes against humanity by the U.N. general assembly.

On the first hand this indicates the recurrence and repetition of international attitudes and therefore the availability of the physical element of the custom. And on the other hand this indicates that countries and international jurisprudence and international organization international law jurists have now the sufficient satisfaction during those

three decades that these rules became obligatory and form obligatory international legal rules in convicting the acts of crimes against humanity; and the evidence for that countries and international courts and organizations, and at each time during that period of time, notices that it is obliged to comply with these rules that convict such acts during peace and the necessity to comply with these rules became stable due to the subsequent examples and facts during these years.

This court also believes that the international custom with respect to crimes against humanity during peace is verified later during the issue of the previous special criminal court of law of Yugoslavia in 1993 and the special international criminal court of law in Rwanda in 1994, and the basic system of the international criminal court (Rome basic system) in 1998 and finally the issue of the Iraqi criminal court of law specialized in crimes against humanity in 2003 then the Iraqi Higher criminal court of law in 2005.

We can say now contently that the crimes against humanity became a part of the international law whether during peace or war. The question arising now is: "Was there an international custom in 1982 that prescribed the conviction of actions and preventions considered as crimes against humanity during peace? The answer in the court's belief is in the affirmative. This international custom existed during that time. However, Article One of the conventions of non-prescription of war crimes and crimes against humanity in 1968 settled this matter as follows: