The execution of Saddam Hussein, so shortly after the court of appeals of the Special Tribunal confirmed the sentence of the court of first instance, might have put an end to an affair that has consumed international public opinion. But it is improbable that it will be like that. The end of Saddam Hussein and his trial is in fact likely to remain an object of attention and it will feed new discussions. In particular two issues have attracted attention: the death penalty and the adherence of the trial to legal standards required by international law. The immediate execution reinforces the criticism of the political nature of the case. Rather than by considerations regarding a fair trial, the execution itself seems really inspired by the motivation to subdue Sunnite resistance more quickly, in order to turn a page and to allow for a new strategy in Iraq. Moreover, trial considerations would have advised an adjournment of the execution. This would have permitted the conclusion of a second trial, begun last August.

That trial deals with the campaign during the 1980s against the Kurds (the al-Anfal campaign) which, according to the charge, had led to about 180,000 deaths – many of them women and children. More than 70 testimonies have already been heard in this second trial and written evidence has been presented to the judges. In these circumstances, and in view of the criticism of the first trial, it would have been natural to wait until the end of the second trial before proceeding with the execution. In the event of a second conviction, the sentence would have included responsibility for genocide, a more serious charge than that of al-Dujail. If greater attention would be paid to procedural guarantees, the continuation of the second trial would also have allowed a change in the perception of the case against the dictator. But further trial activity has now ended as a criminal case cannot continue after the death of the person imputed with the crimes.

The Saddam Hussein case will go down in the history of criminal justice as a case conducted in a manner improper in the context of a new Iraq which

* Fausto Pocar is Professor of International Law at the University of Milan and President of the International Criminal Tribunal for the former Yugoslavia. A slightly revised version of the following reflection was published in Italian in Il Sole 24 Ore (31/12/2007) as ‘Dimenticata la giustizia internazionale’.

adheres to principles that govern a constitutional state. The distinction between a civilisation inspired by the rule of law and one that is not, is characterised by the existence of legal rules and judicial guarantees to the extent that each individual is protected when facing the law. That individual has the right, when accused of a crime, to be tried before an independent and impartial judge who decides the case while rigorously respecting the minimum guarantees foreseen in the law. These guarantees are in accordance with international norms laid down in global treaties like the 1966 Covenant on Civil and Political Rights, or in regional treaties like the European Convention of Human Rights. Impartial, non-governmental organisations have observed that these guarantees were not sufficiently respected during the trial of the Iraqi dictator. This is illustrated by the fact that, for reasons of security, most of the judges had to remain anonymous; that the president had to be replaced; and that three defence solicitors were assassinated during the course of the trial. It is of grave concern that this happened in a case that, although conducted purely under Iraqi authority, has largely been guided and sustained by countries which in their own legal orders are inspired by the principles of constitutional states. These countries have thus supported, also at the cultural level, a model that would be totally unacceptable in their own internal orders.

Finally, there is no doubt that the end of the Saddam Hussein case can be of no avail to a nascent international justice system that is inspired by rigorous respect for principles of fair trial and that rejects the death penalty as a sanction for those responsible for war crimes and crimes against humanity. The ‘precedent of Baghdad’ will only induce other countries to follow suit bringing further difficulties for international tribunals. First amongst them will be the International Criminal Court which is currently undertaking its first steps against its first accused. The case against the Iraqi dictator evokes memories of the expeditious treatment and summary execution of the Romanian dictator Ceaucescu. This is an example not to be followed.

Translated from the Italian by Harry Post