
WAR CRIMES: THE CASE OF IRAQ

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Introduction

Since the Nuremberg and Far East war crimes trials after the Second World War, advocates of trial-based international sanctions have sought other cases to promote war crimes trials. During the Cold War, the search was made difficult by the fact that even where there were clear-cut examples of unilateral aggression or barbarity, the party or parties involved (whether or not aligned) could be counted on to make an appeal for protection to one bloc or the other. This patron-client relationship made convening and conducting trials virtually impossible, especially under U.N. auspices, where vetoes were assured. Thus, for over 40 years, there were few prospects for widely supported or sanctioned international war crimes tribunals.¹

With the end of the Cold War and the breakdown of the bipolar system, obstacles to war crimes trials seemed to be cleared. The 1990-91 crisis between Iraq and Kuwait, which began with the Iraqi invasion and culminated in Operation Desert Storm, presented unambiguous examples of war crimes in which questions of criminality and culpability were clearly defined. Iraq, a large, militarily strong state, invaded and brutally subjugated the weaker, oil-rich sheikhdom of Kuwait. Iraq annexed Kuwait, and systematically looted the prostrate nation. Tales of Iraqi rapacity (some exaggerated or even fabricated) were given wide exposure. Prior criminal acts, such as the use of chemical weapons against Iraq's Kurdish minority, were unearthed as proof of the nature of Saddam's regime. Calls for war crimes trials on charges such as genocide and mistreatment of prisoners of war (POWs) quickly followed.

After the defeat of Iraq and the liberation of Kuwait, proponents of war crimes trials expected action. The United States, members of the European Community (collectively and individually), Israel, and of course Kuwait had all

1. There were of course domestic trials for crimes committed in war, such as the prosecution for the My Lai massacre. According to Harry Summers, "[f]rom 1965-73, 201 Army personnel and 77 Marines were court-martialed for serious crimes against Vietnamese civilians." See Summers, *Vietnam War Almanac* (New York: Facts on File Publication, 1985), 91. There also were various "show trials" arranged for propaganda purposes, such as the Vietnam-era Bertrand Russell Tribunals.

mentioned the possibility of convening a tribunal. Investigations were undertaken and hearings held; ultimately, however, only Kuwait held trials, and those only against "collaborators" and some Iraqi soldiers. Three years later, Saddam Hussein and his government have yet to face criminal consequences for their actions.² This inaction raises several questions: what can still be done at this late date; what problems must be confronted; and what realistic course might be taken by the United States?

The Case Against Iraq: The Crimes

Before discussing the various options, one should understand exactly which international laws the Iraqi leadership has been charged with violating.³ The charges break down into five categories: crimes against peace (waging aggressive war); mistreatment of war prisoners; mistreatment of civilians and other crimes related to the occupation of Kuwait; crimes against humanity (genocide); and crimes against the environment (ecocide). The relevant treaties include:⁴

The United Nations Charter;

Hague Convention IV and its Annex Respecting the Laws and Customs of War on Land of 18 October 1907 ("Hague IV");⁵

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2. Iraq has faced other consequences: economic embargo, destruction of its program for weapons of mass destruction, continued international criticism, and of course the war destruction itself.
 3. A comprehensive review of the legal issues surrounding the Gulf War can be found in John Norton Moore, *Crisis in the Gulf: Enforcing the Rule of Law* 1, 2d Series, "Terrorism: Documents of International & Local Control" (New York: Oceana Publications, 1992). For other articles dealing with the general question of Iraq and war crimes, see Louis Rene Beres, "Prosecuting Iraqi Gulf War Crimes: Allied and Israeli Rights Under International Law," *Hastings International and Comparative Law Review* 16 (Fall 1992): 41; Louis Rene Beres, "Iraqi Crimes During and After the Gulf War: The Imperative Response of International Law," *Loyola of Los Angeles International and Comparative Law Review* 15 (1 April 1993): 675; Kenneth A. Williams, "The Iraq-Kuwait Crisis: An Analysis of the Unresolved Issue of War Crimes Liability," *Brooklyn Journal of International Law* 18 (1992): 385; Lee E. Haworth and James G. Hergen, "Iraqi War Crimes," *Society* 31 (January 1994): 54; and the "Special Section on Iraqi War Crimes," *Virginia Journal of International Law* 31 (Spring 1991).
 4. The following list is taken from "United States Department of Defense Report to Congress on the Conduct of the Persian Gulf War — Appendix on the Role of the Law of War," reprinted in *I.L.M.*, American Society of International Law, 31 (May 1992): 612; (Hereafter "DoD Report.") Note that other legal scholars developed different lists, depending on their interpretations of the law. See, for example, Moore. Other violations could include the 1961 Vienna Convention on Diplomatic Relations, the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, the 1945 Pact of the League of Arab States, and the 1950 Joint Defence and Economic Co-operation Treaty Between the States of the Arab League. See Robert F. Turner, "Iraqi War Crimes," *The International Lawyer* (Spring 1992): 274. This article comprised the Section Recommendation and Report of the American Bar Association, Standing Committee on Law and National Security, Standing Committee on Environmental Law Section of International Law and Practice, Report to the House of Delegates, adopted in August 1991.
 5. The DoD Report notes: "While Iraq is not a party to Hague IV, the International Military Tribunal (Nuremberg, 1946) stated with regard to it that: The rules of land warfare expressed in . . . [Hague IV] undoubtedly represented an advance over existing International Law at the time of their adoption . . . but by 1939 these rules . . . were recognized by all civilized nations and were regarded

Hague Convention V, Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 18 October 1907 ("Hague V");
 Hague Convention VIII, Relative to the Laying of Automatic Submarine Contact Mines, 18 October 1907 ("Hague VIII");⁶
 Hague Convention IX, Concerning Bombardment by Naval Forces in Time of War, 18 October 1907 ("Hague IX");
 Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 17 June 1925 ("1925 Geneva Protocol");⁷
 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948 ("The Genocide Convention");
 The four Geneva Conventions for the Protection of War Victims, 12 August 1949;⁸
 Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field ("GWS");
 Geneva Convention for the Amelioration of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (hereinafter "GWS [Sea]");
 Geneva Convention Relative to the Treatment of Prisoners of War ("GPW");
 Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("GCC");
 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954 ("1954 Hague");⁹

Some Gulf War actions by the Iraqi government and armed forces violated multiple treaties on more than one occasion.

Waging Aggressive War

Iraq's 2 August 1990 attack on Kuwait was premeditated and unprovoked. Saddam Hussein stated at the outset that his aim was not the resolution of outstanding issues, but rather the "comprehensive and eternal merger" of Iraq

as being declaratory of the laws and customs of war.

As customary international law, its obligations are binding upon all nations. Neither is Iraq a party to Hague V, Hague VIII, or Hague IX. However, the provisions of each cited herein are regarded as a reflection of the customary practice of nations, and therefore binding upon all nations."

6. Iraqi contact mines were deployed against Allied naval forces in the northern Persian Gulf in late 1990. See DoD Report.

7. The DoD Report notes: "The United States also is a party to the Convention on the Prohibition of Development, Production and Stockpiling of Bacteriological [Biological] and Toxin Weapons and on Their Destruction of 10 April 1972; Iraq is not."

8. Entered into force for Iraq on 14 February 1956.

9. The DoD Report notes: "Since Iraq, Kuwait, France, Egypt, Saudi Arabia, and other Coalition members are parties to this treaty, the treaty was binding between Iraq and Kuwait, and between Iraq and those Coalition members in the Persian Gulf War. Canada, Great Britain, and the United States are not parties to this treaty. However, the armed forces of each receive training on its provisions, and the treaty was followed by all Coalition forces in the Persian Gulf War."

with Kuwait.¹⁰ This aggression was unprecedented: It was the first time a U.N. member state attempted to dissolve the sovereignty of another member state by force.¹¹

Such bold action quickly led to charges that Saddam Hussein had committed a "crime against peace," as defined by the Nuremberg Principles established by the London Charter of 8 August 1945 (Article Six):

Planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.¹²

The invasion of Kuwait was, in fact, planned, prepared, initiated, and waged; it temporarily succeeded in meeting Saddam Hussein's expansionist objectives.

Charges of aggressive war may also be levied against Iraq for its indiscriminate Scud missile attacks against Israel, a non-combatant state. Saddam Hussein ordered the Scud attacks (17 January 1991) as part of an offensive to destabilize the anti-Iraq alliance by bringing Israel into the war. Hussein intended to destroy the unity of the U.S.-led coalition by encouraging the Arab members (particularly Syria) to take up an attack against Israel. Syrian support for an Israeli response to Iraqi aggression demonstrated that this strategy had failed.¹³

Treatment of POWs

Iraq displayed a callous disregard for the first soldiers to fall into its hands. Because Iraq considered these Kuwaitis to be post-annexation Iraqi citizens, it denied them the basic rights guaranteed under GPW. The most insidious aspect of Iraqi treatment of Kuwaiti POWs was Iraq's refusal to acknowledge their existence. Troops were not allowed to notify their families of capture or to receive correspondence or relief shipments; they also were denied the protection of the International Committee of the Red Cross (ICRC).¹⁴ These outrages were

10. John Kifner, "Iraq Proclaims Kuwait's Annexation; 'Merger' Declared," *New York Times*, 9 August 1990, 1. This merger was declared void by Security Council Resolution 662. Iraq declared Kuwait to be a province of Iraq, insulting its sovereign status. This declaration led to claims that actions taken against Kuwaiti citizens were not governed by international law but were part of the internal affairs of Iraq.

11. On the history of the territorial dispute between Iraq and Kuwait, see Richard N. Schofield, *Kuwait and Iraq: Historical Claims and Territorial Disputes* (London: Royal Institute of International Affairs, 1991).

12. Quoted in Turner, "Iraqi War Crimes." The Nuremberg principles were unanimously reaffirmed as constituting customary international law by U.N. General Assembly Resolution 95(1) in December 1946, with Iraq concurring.

13. See Juan Carlos Gumucio and Michael Kiupe, "Assad Defies Saddam's Attempts to Break Up American-led Alliance," *The Times* (London), 21 January 1991, 4.

14. See Theodore Meron, "The Gulf Crisis in International and Foreign Relations Law: Prisoners of War, Civilians and Diplomats in the Gulf Crisis," *The American Journal of International Law* 85 (January 1991): 104. These actions violate GPW Articles 10, 12, 70-72, and 122-25. An interesting side-note is contained in the DoD Report concerning the humanitarian agencies which went to

accompanied by physical indignities and abuses.¹⁵

While the Iraqis began their mistreatment of war prisoners immediately after the invasion of Kuwait, POW abuse received international attention only after the onset of the coalition "air war" in January 1991. Allied flyers, their faces deeply bruised, were put on television by the Iraqis to read prepared statements. This publicity constituted a clear violation of international law, which protects prisoners of war from "insults and public curiosity."¹⁶ Public outrage, however, stemmed from the erroneous assumption that the flyers had been tortured, as evidenced by their wounds. In fact, they showed the effects of "buffeting" after bailing out.¹⁷ Pilots who were recovered by Allied rescue teams had sustained similar bruises, but the shock of seeing captive Americans in such condition led to immediate calls for retribution, clearly affecting the administration's ardor for trying Iraqi crimes.¹⁸

As the war progressed, however, some allied POWs were subjected to actual torture. One American soldier was treated to the following: called a war criminal when he refused to divulge home address; pistol whipped; endured mock execution by firing squad during interrogation; beaten severely by a bamboo stick; suffered perforated eardrum; assaulted with cattle prods; beaten with cat-o'-nine-tails; threatened with death if he did not tell "something new."¹⁹

On arrival in Baghdad, most allied POWs were taken to what the POWs referred to as "The Bunker" (at the Directorate of Military Intelligence, according to the DoD Report) for screening and initial interrogation. They then were taken to cells in "The Biltmore," the Iraqi Intelligence Service Regional Headquarters. Since this building was a legitimate military target, the detention of POWs in it was a violation of GPW Article 23, which forbids the use of captives as "human shields" to render targets immune from attack.²⁰ Prisoners also suffered food deprivation and inadequate protection from the cold, in violation of GPW Articles 26 and 25, respectively.

Later in the war Allied prisoners were relocated to the Abu Ghurayb Prison ("Joliet Prison") and the Al-Rashid Military Prison ("The Half-Way House"), both near Baghdad. Detaining prisoners of war in a prison generally is prohibited by GPW Article 22.

extraordinary lengths to be of service:

"While relief agencies undoubtedly were anxious to perform humanitarian missions, their entry onto the battlefield without the advance consent of the parties to the conflict is not consistent with Article 9, GWS (a provision common to all four 1949 Geneva Conventions), Article 125, GPW, and Article 63, GC."

15. Torture and other inhumane treatment of POWs is in violation of GPW Articles 13, 17, 22, 25, 26, 27, and 130.

16. GPW Article 13, P2, 6 U.S.T. at 3328, 75 U.N.T.S. at 146 (protecting).

17. I.e., windburn, bruises, and other skin damage caused by leaving the cockpit at high speed.

18. See, for example, James S. Robbins, "Iraqi War Criminals Face Hanging," *Wall Street Journal*, 27 January 1991, A8. In this editorial, the author mentioned that Allied aviators were only *apparently* tortured.

19. Michael R. Gordon, "Iraqi War Crimes Asserted by U.S.," *New York Times*, 20 March 1993, 3.

20. DoD Report. The facility was bombed on 23 February 1991, though no prisoners were killed or injured.

Treatment of Civilians and Other Crimes Related to the Occupation of Kuwait

Perhaps the greatest number of war crimes occurred against the citizens of Kuwait during the Iraqi occupation. Iraq attempted to circumvent the law by claiming that Kuwaitis became Iraqi citizens after the annexation of Kuwait as Iraq's 19th province, and therefore came under the jurisdiction of Iraqi domestic law. However, the nationals of Kuwait were "protected persons" under the GCC.²¹ Article 47 provides that protected persons "may not be deprived of their benefits under the Convention by any change introduced into the institutions or the government of an occupied country, as a result of its occupation *or annexation*."²² Furthermore, the Security Council rejected the legality of the annexation, and stated that "the Fourth Geneva Convention applies to Kuwait."²³

The list of specific charges against Iraq is imposing:

Taking Kuwaiti nationals as hostages, and their individual and mass forcible deportation to Iraq, in violation of GCC Articles 34, 49 and 147.

Taking third-country nationals in Kuwait as hostages, and their individual and mass forcible deportation to Iraq, in violation of GCC Articles 34, 49, and 147.

Taking third-country nationals in Iraq as hostages, and their individual and mass forcible transfer within Iraq, in violation of GCC Articles 34, 35, and 147.

Compelling Kuwaiti and other foreign nationals to serve in the armed forces of Iraq, in violation of GCC Articles 51 and 147.

Use of Kuwaiti and third-country nationals as human shields in violation of GCC Articles 28 and 38(4).

Collective punishment of families, including destruction of homes and execution, in violation of GCC Article 33.

Inhumane treatment of Kuwaiti and third-country civilians, including torture and murder, in violation of GCC Articles 32 and 147.

Raping women, in violation of GCC Article 27.

Exposing protected children under age 15 to potential harm, in violation of GCC Article 24.

The transfer of its own civilian population into occupied Kuwait, in violation of GCC Article 49.

Denying civilians in Kuwait the necessities for survival, such as food, water, and basic medical care, in violation of GCC Articles 55 and 56.²⁴

21. GCC, Article 4.

22. GCC. Emphasis added.

23. Security Council Resolutions 662 (9 August 1990), 664 (18 August 1990), and 670 (25 September 1990).

24. This list is derived mostly from the DoD Report, though many other sources make the same charges. See also Turner.

Kuwaiti officials claimed that 1,082 Kuwaitis died under the occupation, including 153 children under the age of 13, 57 mentally-ill people and 120 babies whose incubators were turned off. Thirty-three women underwent abortions after rapes by Iraqis. Furthermore, while 11,706 Kuwaitis had been reported missing after the occupation, Iraq only returned 6,676 soldiers and civilians, leaving over 5,000 people unaccounted for.²⁵

Crimes against property were as extensive as crimes against persons. GCC Article 147 states that "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly," constitutes a "grave breach" of the Fourth Geneva Convention. Iraq also violated specific provisions of Hague IV relating to property, including unnecessary destruction of Kuwaiti private and public property (Article 23 [g]), pillage (Article 47), and illegal confiscation and/or inadequate safeguarding of Kuwaiti public property (GCC Article 55 and Article 147). Iraq's indiscriminate Scud missile attacks, which caused unnecessary destruction of Saudi Arabian and Israeli property, also violated Article 23(g), Annex to Hague IV. Furthermore, the pillage of Kuwaiti civilian hospitals violated GCC Articles 55, 56, 57, and 147 (especially relating to the endangerment of public health).²⁶

Crimes Against Humanity (Genocide)

The Nuremberg charter defined crimes against humanity as murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds.²⁷ To qualify, crimes against humanity must also occur as a planned process — random "hate crimes," even if motivated by political, religious or racial hatreds, do not fall under this category. The U.N. Convention on the Prevention or Punishment of the Crime of Genocide defines it to include "killing members of the group," "causing serious bodily or mental harm to members of the group," and "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Thus, for Iraqi leaders to be charged with genocide, it must be shown not only that they committed the crime, but also that they were doing it *for the purpose of genocide*. However, because the crime of genocide is not technically a war crime (i.e., it often takes place during wartime but could also happen in peacetime), evidence of genocide may predate the 2 August 1990 invasion. Furthermore, in a 28 May 1951 advisory opinion, the International Court of Justice stated that the principles underlying the Genocide Convention were "recognized as binding on states even without any conventional obligation."²⁸

25. Adrian Croft, "600 Soldiers, Civilians Face Kuwait War Crimes Trials," Reuter Textline, 8 April 1991. Kuwaiti casualty information cited above was later used by the official Pentagon account of the war.

26. Although the DoD Report repeats the stories of Iraqi soldiers removing infants from incubators, the accounts were apocryphal. The DoD Report equivocates on this issue by stating that "there are reports" that such actions took place.

27. Meron, "The Gulf Crisis."

28. 1951 ICJ Rep. 15, 20 (Advisory Opinion of 28 May 1951).

The most blatant, though perhaps not only, acts of genocide committed by the Iraqis have been against the Kurdish minority in northern Iraq.²⁹ Before the war, reports of attacks on the Kurds were sketchy or of disputed accuracy; mass killings were denied or, when proven, blamed on Iran, which was then at war with Iraq. The March 1988 gassing at Halabja received special attention after photographs of the victims were published and survivors came forward to blame the Iraqi government. An analysis by the Strategic Studies Institute (SSI) at the Army War College concluded that Saddam Hussein (or, more properly, the Iraqi army) was not responsible. The Kurds *were* gassed — the SSI report acknowledges this — but the authors thought it “seemed likely” that the Iranians were at fault. General Adnan Khairallah, Iraqi Minister of Defense, denied Iraqi culpability at Halabja. But he strongly implied that Iraq reserved the right to use such weapons against the Kurds, who, being Iraqi citizens, were not protected by the 1925 Geneva Protocol.³⁰

Since the establishment of the Kurdish zone of autonomy after the cease-fire in 1991, the United States has acquired overwhelming evidence of Iraqi perfidy. Kurdish authorities have given the United States 857 cartons of official Iraqi documents (more than 14 tons, totaling more than four million pages), mostly captured reports from the security organs. The documents provide a detailed account of the workings of Iraqi internal control mechanisms and their geno-

29. For interesting background information on the issue of Kurdish autonomy, see Christopher Hitchens, “Struggle of the Kurds,” *National Geographic* 182 (1 August 1992): 32. Note that the annexation of Kuwait, forced deportations of its people, and general oppression within the country could also be construed as an act of genocide.

30. Note that Article 44 of the 1977 Geneva Protocol I offers legal recognition to non-regular or guerrilla forces and Article 1 extends the rule of international law into some areas of armed conflict that had previously been governed by domestic law or fallen within a state’s jurisdiction. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 December 1977, Arts. 1, 44, 6 *ILM* 16 (1977) 1391-92, 1396, 1410. General Khairallah also stated that he wanted to deal with “a certain segment of my population in the way I want,” and asserted that it was legitimate for a people to defend themselves “with whatever means is available.” In reference to the Kurds, he said, “One who wants to kill you at the heart of your land, will you throw roses on him and flowers?” See Patrick E. Tyler, “Iraq Denies Using Chemical Weapons on Kurds,” *Washington Post Foreign Service*, Baghdad, Iraq, 15 September 1988.

More specific evidence can be found in the June 1990 hearings held before the Senate Foreign Relations Committee on U.S. policy towards Iraq. Dr. Najmaldin Karim of the Kurdish National Congress, while not the most objective source, outlined the various charges of Iraqi anti-Kurdish violence in some detail.

Readers may also wish to consult *Chemical Weapons Use in Kurdistan: Iraq’s Final Offensive*, an October 1988 staff report to the Senate Foreign Relations Committee. It gives the assessment of Peter W. Galbraith and Christopher Van Hollen, Jr., who travelled to Turkey during September 1988. They visited every major Kurdish refugee camp and spoke to several hundred refugees. Eyewitnesses were unanimous in ascribing the chemical attacks to Iraqi forces, not just in Halabja, but in many towns and villages during the Iraqi counter-insurgency campaign of 25-27 August 1988 (which took place during a cease-fire with Iran). The existence of this report raises questions about the credibility of the ISS Report which blamed Iran. However, one should remember that in 1988 the United States was backing Iraq against Iran in their ongoing conflict. For a review of U.S. policy in this region, see Howard Teicher and Gayle Radley Teicher, *Twin Pillars to Desert Storm: America’s Flawed Vision in the Middle East from Nixon to Bush* (New York: William Morrow & Company, 1993).

cidal actions against the Iraqi Kurds.³¹ One document, stamped "Top Secret/Confidential" and dated 3 August 1986, is a memorandum from the commander of military intelligence in Arbil which specifically ordered divisions to count their stocks of "Bio-Chemical Materials" and to report back to headquarters as soon as possible.³² This document seems to confirm that chemical and/or biological weapons were being used against the Kurds, which is at least a war crime and, if intent can be inferred from the 14 tons of other captured documents, part of a strategy of genocide.

The case against Iraq is slightly complicated by the fact that some Kurds have also committed what could be classified as war crimes. On 7 October 1991, Iraqi Kurds massacred 60 Iraqi soldiers being held as war prisoners in Kurdish-held Sulaimaniya.³³ Such events have played into the hands of the Iraqi regime, which has sought to portray the Kurdish rebels as little more than terrorists.³⁴ Whether the acts of Kurdish extremists mitigate the systematic killings carried out as part of an Iraqi government policy against the Kurds may be for the courts to decide.

"Ecocide"

Environmental consciousness led to the novel war crime charge of "ecocide" — crimes against the environment. This new area of war criminality is still under development, but some scholars believe a case can be made against Iraq.³⁵ During the war, Iraq intentionally discharged more than 100 million barrels of oil into the Persian Gulf. During their retreat from Kuwait, Iraqi engineers destroyed Kuwaiti oil facilities at Al-Burqan and Ar-Rumaylah and ignited oil fires which burned for over a year before being extinguished. The American Bar Association (ABA) Report stated that these acts were "clearly inconsistent with the object and purpose of the 1977 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques [the ENMOD Convention] (signed by Iraq on 18 May 1977), other international treaties, and customary international law."³⁶ The DoD Report also made mention of possible violations of the ENMOD Convention; however, it noted that while Iraq did sign the agreement, it was never ratified by the Iraqi parliament, and thus was not legally binding on Iraq during the Gulf War.

31. For a detailed review of the initial findings, see Judith Miller, "Iraq Accused: A Case of Genocide," *New York Times Magazine*, 3 January 1993, 12. The graphic descriptions of Iraqi torture, execution and mass murder will have a familiar ring to students of the Nazi holocaust. Actions taken by Saddam Hussein against the Shi'ite minority in southern Iraq may follow a similar pattern; however, because the Shi'ites do not enjoy the protected autonomy of the northern Kurds, documentary evidence of such a campaign has yet to come to light. See also, "U.S. Groups Charge Iraq with Crimes Against Humanity," *AFP*, 4 January 1993.

32. Miller, "Iraq Accused."

33. "The Horror at Sulaymaniyah," *The Economist* 321 (12 October 1991): 43.

34. Andrew Hill, "Iraqis See Daily Catalogue of Post-War 'Crimes,'" *Reuter Textline*, 5 March 1992.

35. See, for example, Mark J.T. Cuggiano, "The Legitimacy of Environmental Destruction in Modern Warfare: Customary Substance Over Conventional Form," *Boston College Environmental Affairs Law Review* (Spring 1993): 479-506.

36. Turner, "Iraqi War Crimes."

Iraq may be held accountable for "ecocide" by other means. In July 1991, a conference of international experts meeting in Ottawa concurred that Iraq may be held accountable for its acts of destruction under the following provisions:

- Article 23(g) of the Annex to Hague IV, which forbids the destruction of "enemy property, unless . . . imperatively demanded by the necessities of war;" and
- GCC Article 147, which defines "Grave Breach" as the "extensive destruction . . . of property, not justified by military necessity and carried out unlawfully and wantonly."

The Ottawa Conference of Experts also noted U.N. Security Council Resolution 687 (3 April 1991), which reaffirmed that Iraq was liable under international law to compensate for any environmental damage and the depletion of natural resources.³⁷ But financial liability and criminal culpability are two distinct concepts.

Note that Saddam Hussein was not the first national leader to make use of oil as a defensive weapon. In 1940 the British Petroleum Warfare Department experimented with a "Flame Barrage," in which raw oil was pumped into the English Channel and ignited as a means of deterring German invasion forces. The process was never perfected, and in any case was unnecessary after the Germans canceled their invasion plans.³⁸ The primary difference is that Iraqi environmental destruction was arguably wanton and had no clear military purpose, while the British were pursuing military objectives to defend their own territory.

In sum, charges of "ecocide" are the weakest of the four groups of war crimes. The law concerning what constitutes "wanton destruction" and what falls under the rubric of "military necessity" is unclear. Custom or precedent provides little guidance. Charges of "ecocide" probably reflect more the tenor of the times (i.e., "green consciousness") than traditional principles of the laws of war.

Possible Responses

As mentioned above, calls for war crimes trials began soon after knowledge of Iraqi abuses became widespread. President George Bush raised the possibility as early as 15 October 1990, when he characterized Saddam Hussein as "Hitler revisited. But remember, when Hitler's war ended, there were the Nuremberg trials."³⁹ The U.N. Security Council seemed to affirm this judgment on 29 October 1990 by adopting Resolution 674, which invited states to "collate substantiated information in their possession or submitted to them on the grave

37. DoD Report.

38. See Peter Fleming, *Operation Sea Lion* (New York: Ace Books, 1957), 202-03.

39. Elaine Sciolino, "U.S. Is Said to Withhold Evidence of War Crimes Committed by Iraq," *New York Times*, 6 July 1992, 6.

breaches by Iraq . . . and to make this information available to the Security Council."⁴⁰

Interest in war crimes trials intensified in January 1991 with the display of Allied POWs on Iraqi television. In addition to many calls for trials by government officials, the ABA Standing Committee on Law and National Security examined the question of a war crimes tribunal for Saddam Hussein and other Iraqi war criminals following the war. The panel unanimously supported such a tribunal.⁴¹

The third wave of trial interest came in April 1991, shortly after the cease-fire, when Saddam Hussein's regime seemed ready to collapse. On 15 April, foreign ministers of the European Community unanimously called upon the United Nations to consider war crimes trials for Saddam Hussein. On 18 April, the U.S. Senate passed without dissent the Persian Gulf War Criminals Prosecution Act of 1991 (S. 253), which called on the United States to work with the U.N. Security Council for the establishment of an international tribunal to prosecute Iraqi war criminals, or, failing Security Council action, to establish a tribunal with Gulf War allies.⁴²

However, President Bush had begun to back away from the tribunal concept. He had previously used the threat of a trial as a means of deterring further abuses by Iraq, though evidently to little effect. With the war over and Hussein's regime under pressure, the prospect of a war crimes trial would have had the political effect of making the dictator less willing to step down voluntarily. President Bush wanted to remove as many obstacles as possible to the easy removal of Saddam Hussein from power, while ensuring a smooth transition to a new regime.⁴³ While the president acknowledged that he believed there would be "plenty of grounds under which [Saddam Hussein] would be prosecuted for war crimes," he also stated:

I'll tell you what's the most important thing, and that is to get Saddam Hussein out of there. So if you came to me as a broker and you said, 'I can get him out of there, but he'd have to be able to live a happy life forevermore in some third country,' with all kinds of conditions never to go back and brutalize his people again, I might be — I'd have to think about it.⁴⁴

Bush Administration unwillingness to press for trials (a policy reportedly pushed by Secretary of State James A. Baker and Defense Secretary Dick

40. Quoted in Turner, "Iraqi War Crimes."

41. Ibid.

42. Richard L. Berke, "Senate Urges War-Crimes Trials," *New York Times*, 19 April 1991, 8.

43. The model was the United States' facilitating role in helping Ferdinand Marcos and "Baby Doc" Duvalier ease out of their respective countries, forestalling the inevitable and complicating armed uprisings.

44. Berke, "Senate Urges War-Crimes Trials," 8.

Cheney) led eventually to charges that the Defense Department had withheld evidence of Iraqi abuses.⁴⁵

Since the spring of 1991, many government bodies and private groups have called for a war crimes tribunal to address the Gulf War;⁴⁶ however, the political consensus which had existed during the war faded, and international attention turned to other crises, particularly Bosnia.

A more practical application of international law is to deter rather than punish behavior. There are many forms of sanctions which can be applied under the law, and most of them have already been imposed on Iraq. It would be incorrect to say that international law has "not worked." Nonetheless, the laws in question did not deter Iraq in August 1990; there is no reason to expect they will deter future aggressors. International trade and other sanctions punish states and their citizens, but rarely affect their leaders. As demonstrated in Iraq (and Cuba and Haiti as well), rulers such as Saddam Hussein do not suffer the privations of their citizens when faced with embargoes. Though these dictators may not be able to wield the same power outside their borders, which to them may be a form of punishment, they are not ultimately held personally responsible. Their citizens, on the other hand, are victims twice over — first of the regime, then of the international community.

If mechanisms are put in place, or precedents set, for regular war crimes trials and individual punishment, future aggressors may be deterred from crimes. For a potential war criminal to be deterred, however, he must be convinced that his punishment will be something worse than being defeated *and conquered* in war. Not all wars lead to the conquest of an aggressor state *and* the overthrow of its government; the latter is almost certainly necessary for defendants to be available for trial (an issue which will be discussed below). This makes strategies of limited war for limited aims more difficult; by threatening to hold trials the international community would virtually guarantee the need for expansive war aims which would include the removal of the leader of the enemy state, either by friendly forces or internal opponents.⁴⁷ So long as potential aggressors know the United States is willing to expand its war aims based on their criminal behavior, they may be deterred, if not from the use of force, then at least from

45. Elaine Sciolino, "U.S. Is Said to Withhold Evidence of War Crimes Committed By Iraq," *New York Times*, 6 July 1992, 6. These charges arose because the DoD Report was released several months behind schedule—par for the course in Washington, and hardly evidence of a "coverup." Ironically, the administration had earlier faced charges of *exaggerating* Iraqi atrocities, especially in reports derived from testimony of members of the Kuwaiti Royal family.

46. See, for example, "Lawyers Ask Trial of Hussein Before War Crimes Tribunal," *New York Times*, 6 June 1991, 9. The article concerns a seven member group calling itself "Nuremberg 2," which included Irwin Cotler, Alan M. Dershowitz of Harvard University and George P. Fletcher of Columbia University. They drafted a model indictment for use by the United Nations.

47. Internal opposition can take many forms, and lead to complicated questions. For example, suppose a lesser war criminal forces a coup and arrests the leader of a country with which we are at war, makes peace, and hands the major culprit over. Will we then demand that this new leader also give himself up for trial? Would we be willing to reopen the war if he refused to report to the appropriate court?

its criminal use. If they are not deterred, however, the onus will then be on the United States to widen the conflict.

If the Gulf War allies or the United Nations chooses to pursue a trial or trials, they have many options. The Fourth Geneva Convention permits (but does not compel) universal criminal jurisdiction to be exercised by every state party with regard to such violations.⁴⁸ Every party has both the right and the obligation to prosecute or to extradite, for purposes of prosecution, persons who have committed grave breaches or who have ordered them to be committed. The Geneva Conventions do not impel Nuremberg-style international tribunals, but neither do they forbid them.⁴⁹

The most discussed trial option is a tribunal along the lines of the Nuremberg/Far East Tribunals, with limited scope (in this case, events concerning the Gulf War), and duration. Such a tribunal has already been established to try war crimes in the former Yugoslavia,⁵⁰ and is implicit in Security Council Resolution 674, which appears to envisage a collective exercise of criminal jurisdiction. States are invited to collect and supply to the Security Council substantiated information on grave breaches by Iraq of the Fourth Geneva Convention.⁵¹

However, the cease-fire resolution did not address the question of criminal liability outside of direct reparations. This omission was due to the divergent objectives of the coalition allies, and the desire of the Bush Administration to be rid of Saddam Hussein without necessarily pursuing legal sanctions.

Local war crimes trials are also an option, though they face their own problems. Kuwait has already tried over 600 Iraqi soldiers and Kuwaiti and resident alien (mostly Palestinian) "collaborators."⁵² In most cases, however, local trials would not be appropriate, primarily because of jurisdictional problems; for example, which U.S. court would convene to try Iraqi war criminals, and under what statute? Most of the crimes physically took place in Kuwait.⁵³ Furthermore, the Kuwaiti government had custody over the people it was trying, whereas Saddam Hussein and other members of his regime are not available to be arraigned (an issue discussed below). Another inhibiting factor

48. Article 146.

49. The ICRC Commentary on Article 146(2) of Geneva Convention No. IV. See Meron, "The Gulf Crisis," 105-6.

50. Andrew Kelly, "U.N. Convenes Yugoslavia War Crimes Tribunal, Amid Doubts," *The Reuter European Community Report*, 17 November 1993.

51. Security Council Resolution 674, para. 2. Also, compare Geneva Convention No. IV, note 1, Art. 147, with Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (Nuremberg Charter), 8 August 1945, Art. 6(b), 59 Stat. 1544, 82 UNTS 279.S (Meron, "The Gulf Crisis," 106).

52. Adrian Croft, "600 Soldiers, Civilians Face Kuwait War Crimes Trials," *Reuter Textline*, 8 April 1991.

53. Some have suggested that Israel also hold trials. See Louis Rene Beres, "Prosecuting Iraqi Crimes Against Israel During the Gulf War: Jerusalem's Rights Under International Law," *Arizona Journal of International and Comparative Law* 9 (1992): 337. The author argues that Israel has a right to hold independent trials derived from the Scud missile attacks made by Iraq on civilian populations in Israel.

is that local trials bear the taint of partisanship, a charge illustrated by the techniques used by the Kuwaitis in their pursuit of justice.⁵⁴

Some Iraqi abuses may be addressed outside of the domain of "war crimes." The crime of genocide, for example, may be tried separately. Furthermore, a special tribunal need not convene; the case could be argued in front of the ICJ. No genocide case has ever even been argued in that venue, however, primarily because they must be sponsored by one government against another, and few states wish to sponsor such activities. The United States also would have to face the problem that it rejected the jurisdiction of the International Court of Justice (ICJ) when Washington was charged with mining Nicaraguan harbors.⁵⁵ Furthermore, even if the charges were successfully prosecuted, no punishments could realistically be imposed on the principals.

Thus, if a trial is to take place, it would probably be best if conducted following the Nuremberg (and now Bosnian) precedent. Even deciding on the type of trial to pursue, however, does not mean that such a proceeding will be forthcoming. Specific problems would first have to be overcome.

Prominent among these obstacles is the question of ripeness, or in this case, over-ripeness. The Gulf War cease-fire is three years old. By contrast, the Nuremberg/Far East trials took place about one year after the end of the war. Such trials are highly political, and it cannot be discounted that enthusiasm for them may have waned. A coalition for war crimes trials would have to be constructed. This effort would have to be led by the White House; and while the president may be sympathetic to such ends, other issues have dominated the agenda. The Gulf War is, for the most part, something that 'happened' to the previous president. The current administration may not be willing to take the time to bring the trial about.⁵⁶

One challenging question is exactly who would be indicted and why. In the case of the invasion of Kuwait ("crimes against peace"), Saddam Hussein, as well as the Ba'ath Party leadership and military high command, obviously bear direct responsibility. On the other hand, can Saddam Hussein be indicted for genocide without direct evidence against him? Peter Galbraith, a staff member of the Senate Foreign Relations Committee (who helped expose the "Anfal" campaign against the Kurds⁵⁷ and whose committee is now the legal custodian of the Iraqi documents captured in Kurdistan), observed, "I don't think we shall ever find a 'smoking gun document,' a paper signed by Saddam Hussein ordering the murder of three innocent shepherds . . . but neither did we ever find minutes of the meeting at Wannsee at which Hitler ordered the eradication of the Jews."⁵⁸

The operative law is Article Seven of the London Charter, under which Heads

54. See Caryle Murphy, "Kuwait Reported Moving to Curb Rights Abuses," *Washington Post*, 2 October 1991, A30.

55. Miller, "Iraq Accused."

56. Vice-President Gore has been more vocal on this issue. See below.

57. "Anfal," Arabic for "booty," was the code name for a six-stage counterinsurgency campaign, carried out in 1988, in which as many as 180,000 Kurds were killed. See Miller, "Iraq Accused."

58. Ibid.

of State and other government officials may be held accountable for war crimes committed under their orders or guidance. Also applicable is GCC Article 29, which states:

The Party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

GPW Article 12 declares:

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Thus, Saddam Hussein and other members of his regime may be held culpable for the crimes committed by Iraqi forces or security services during the war, even if they did not personally wield the cudgels.⁵⁹ Even lower ranking commanders might be culpable, if he or she: "orders or permits the offense to be committed, or; knew or should have known of the offense(s), had the means to prevent or halt them, and failed to do all which he was capable of doing to prevent the offenses or their recurrence."⁶⁰

Addressing the question of which members of the Iraqi regime to indict, the opposition Iraqi National Congress prepared a 30-page list which could serve as a guide. Included are Saddam Hussein, accused on 37 counts; Foreign Minister Tariq Aziz, accused on seven counts; and Sabawie al-Hassan, Director of General Security, accused on 10 counts, among other Iraqi officials. Many of the defendants are part of Saddam Hussein's Takriti clan; the Iraqi dictatorship is very much a "family affair."⁶¹

A more important issue is the absence of the accused. After all, the trial will not be of "the Iraqi regime," but of specific persons, none of whom are in custody of any of the Allied powers. Barring unforeseen circumstances, none are likely to become available in the near future. This fact has led to calls for trials of the

59. The DoD Report states, "The crimes committed against Kuwaiti civilians and property, and against third party nationals, are offenses for which Saddam Hussein, officials of the Ba'ath Party, and his subordinates bear direct responsibility. However, the principal responsibility rests with Saddam Hussein. Saddam Hussein's C2 [command and control] of Iraqi military and security forces appeared to be total and unequivocal. There is substantial evidence that each act alleged was taken as a result of his orders, or was taken with his knowledge and approval, or was an act of which he should have known."

60. DoD Report.

61. This list was reprinted in Annika Savill, "After the Raid: Shaking the Family Tree of the Takriti Clan," *The Independent*, 29 June 1993, 11. Others on the list include Quasy Hussein, Head of al-Amin Khas, the special security agency controlling Mukhabarat (intelligence), Istar (military intelligence) and General Security; Watban al-Hassan, Interior Minister, half-brother to Saddam Hussein; Barzan Takrit, political advisor to Saddam, former U.N. envoy to Geneva; Ali Hassan al-Majeed, Defence Minister, responsible for the genocidal policy against the Kurds; and Muhammed Hamza al-Zubaidi, Prime Minister.

alleged Iraqi war criminals *in absentia*. Article 12 of the London Charter provided for *in absentia* proceedings in the event an accused individual could not be found or "if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence."⁶² Former Tokyo war crimes prosecutor Robert M. Donihi stated in this regard that "theoretically [Saddam Hussein] might escape judgment, but he should be tried. And judgment should be at least levied against him. I think otherwise you better wipe them all clean."⁶³

In absentia proceedings, however, would contravene Article 14 of the International Covenant on Civil and Political Rights. The current U.N. Yugoslavia war crimes tribunal will not try *in absentia*.⁶⁴ Furthermore, *in absentia* trials are contrary to the spirit of the Sixth Amendment of the U.S. Constitution, which guarantees that the accused may face his accuser. While this provision is not binding internationally, it would be wise for the United States to live up to its own standards, so as not to court charges of hypocrisy.

The question of double standards can be raised even with sterling attention to such details. As one expert in international law noted:

Doesn't the law of war apply also to the Irish Republican Army and the Royal Ulster Constabulary in Northern Ireland? The Palestine Liberation Organization? Or are IRA, RUC, and PLO activities to be judged only by the law promulgated by the governments they oppose? If [a] tribunal is to apply the universal law of war, shouldn't it have Iraqi, Israeli, PLO, Sinn Fein, British and other prosecutors and judges?⁶⁵

Though the answer to this question is not necessarily affirmative, the issue it raises needs to be addressed. If the PLO, Sinn Fein and other non-state actors become parties to the international agreements on which the laws of war are based, perhaps they should also sit in judgment. But choosing the panel which will adjudicate the crimes is a political decision, like any other decision in domestic or international arenas. It can be addressed only after the decision to try has been taken.

A further question — "who are 'we' to judge?"⁶⁶ — can also be answered by appealing to utility. "We" are the states party to the various relevant agreements who did *not* break them and who, according to the agreements themselves, may enforce them.⁶⁷ Perhaps one should ask, why *not* us? Saddam was acting as an aggressor, by any reasonable measurement. If this allows us to take military

62. Turner notes that Martin Bormann was tried at Nuremberg *in absentia*.

63. "War Crimes Lawyer Says These are Trying Times," *Washington Times*, 7 March 1991, E1.

64. Kelly, "U.N. Convenes Yugoslav War Crimes."

65. Alfred P. Rubin, "Nothing's Less Simple Than a War Crimes Court," *New York Times*, 23 October 1992, p. 32.

66. *Ibid.*

67. The question of "victors' justice" was raised at Nuremberg, where some Allied atrocities were brought to light. While this issue was — and is — a legitimate question regarding the conduct of the Second World War, the case of the Gulf War is less ambiguous.

action against him and bombard his country, surely it must also allow us, under terms of treaty, to place him on trial.

Others have asked, why start here? Is not beginning with Iraq somewhat arbitrary? Perhaps, but as the editorial board of *The Washington Post* opined, "you have to start somewhere."⁶⁸

A better piece of advice might be "judge not lest ye be judged." If the United States wishes to pursue the option of trials, it may have to face some unpleasant questions or consequences.

Some of these questions were raised by former U.S. Attorney General Ramsey Clark, who met with Saddam Hussein after the invasion of Kuwait, but before the commencement of Operation Desert Storm. He began to compile a dossier of alleged American and Allied war crimes, which he later published in book form.⁶⁹ He also convened the "International War Crimes Tribunal" in New York City in May 1991, "the first war crimes tribunal in history charging a victorious government leadership with war crimes on its own soil."⁷⁰ President Bush was charged with 19 counts, and convicted. An Iraqi war crimes tribunal has also found George Bush and other members of his administration guilty of war crimes, crimes against peace and crimes against humanity in the war against Iraq.⁷¹

While such kangaroo court proceedings primarily serve propaganda purposes, they also emphasize the current reality of victors' justice as a one-way street. If the United States participated in a tribunal against Iraq, it would have to face more serious questions. For example, the United States supported Saddam Hussein during his (aggressive) war with Iran. Could the United States be held culpable in any of the crimes (especially related to chemical weapons use) committed in that conflict?⁷² When the true extent of Iraqi actions against the Kurds became public, the Bush Administration voiced outrage, and stated that it was unaware of the nature and extent of Iraq's campaign against the Kurds. Yet, a declassified Defense Intelligence Agency report to Washington from the American Embassy in Baghdad, dated 19 April 1988, states that an estimated 1.5 million Kurds had already been resettled in camps and that "an

68. "Against War Crimes," *Washington Post*, 24 February 1993, p. A18.

69. Ramsey Clark, *The Fire This Time: U.S. War Crimes in the Gulf* (New York: Thunder's Mouth Press, 1992). See also "Former American Attorney General Ramsey Clark Compiles Dossier on U.S. 'War Crimes,'" Reuter Textline, 19 February 1992. One reviewer characterized Clark's book as: "... unreadable agitprop — a howling denunciation, biblical in its bitterness, twisted in its logic, and frightening in its conclusions. As history, it is ridiculous. As an indication of the author's current state of mind, it is worrying. The former prosecutor has become Saddam Hussein's mouthpiece." Jonathan S. Shapiro, "Who Bears the Blame for the Gulf War?" *Legal Times*, 22 March 1993, 28. Among the fascinating claims made by Clark is the assertion that "the United States was the real transgressor, provoking Iraq and being supported in minor ways by a few nations that would not have acted except for the United States."

70. *Ibid.*

71. See "Bush and the United States," *Aliran Monthly* 12 (1992): 27. Some of the "crimes" were based on false evidence. For example, on 11 February, a mosque at Al-Basrah was dismantled by Iraqi authorities to feign bomb damage; the dome was removed and the building pulled down. (DoD Report.)

72. Teicher, "Twin Pillars to Desert Storm."

unknown but reportedly large number of Kurds have been placed in 'concentration' [sic] camps located near the Jordanian and Saudi Arabian borders."⁷³ Was U.S. failure to take action a form of complicity? While the United States is not obligated to take action to intervene in or prevent crimes from taking place, attempts to implicate the United States or other Gulf War Allies in some of Saddam Hussein's crimes may prove an unwelcome distraction in the tribunal's proceedings.

Conclusion

If the international community, and particularly the United States, chooses not to pursue legal options against Saddam Hussein, it will undercut the laws which govern behavior in wartime. Customary international law is determined by state behavior, and until governments begin to pursue this form of state sanction, they will not be able to mete out legal punishment to the individuals responsible for the crimes. However, because of the structures (or lack thereof) of the international system, the highly political nature of such proceedings, and the fact that the accused are still in power, it would be unrealistic to believe that actual trials could be undertaken soon.

This situation does not leave the United States or the United Nations without options, however. Mechanisms should be put in place for a trial of the Iraqi war criminals should a political consensus arise and the suspects become available. To that end, the United States should pursue the following course, through the United Nations:

1. The crimes of Saddam Hussein's regime should be catalogued, and evidence collected for eventual use in trial. This process is well underway in several countries, as directed by Resolution 674. Furthermore, since Saddam's crimes are ongoing, the search need not be confined to past abuses. Even if a trial is never realized, "the historical record should be filled in rather than allowed to fade."⁷⁴
2. A tribunal should be established, following the precedents of the Nuremberg/Far East tribunals, and the Yugoslavian War Crimes Tribunal, to serve as the repository for the evidence collected by the United Nations, its member states, and private organizations.
3. Indictments should be handed down after evidence has been weighed by the tribunal, and member states instructed to apprehend and detain the suspects if they ever venture out of Iraq.⁷⁵

73. Miller, "Iraq Accused."

74. Albert Gore, "Defeating Hussein, Once and for All," *New York Times*, 29 September 1991, 27. Senator Gore's three-part strategy for dealing with Iraq involved "blocking his access to international support, building up his opponents and cutting off resources for rebuilding his military machine." Gore reiterated his position shortly before assuming the office of vice president. See "Gore Wants Saddam Tried as War Criminal," *Reuters*, 17 January 1993.

75. If the opportunity presented itself, it might be possible to apprehend the suspects *within* Iraq, and bring them back to justice, in the manner of Manuel Noriega or Adolf Eichmann. However,

4. Pressure should be continued to bring about a change of government in Iraq, so that those charged with crimes might be placed on trial.

In addition, future U.S. war aims should take into account the possibility of war crimes trials. President Bush chose not to pursue Saddam Hussein to bring him to trial, but rather to seek his removal. In the end he achieved neither. If the United States is to pursue this form of international sanction, it should be part of U.S. war planning from the start, not something discussed, demanded, and then forgotten.

such an option would entail significant risk, and should only be considered on the basis of exploiting unusual circumstances, with the approval of the United Nations.



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