The Whole Range of Saddam Hussein's War Crimes

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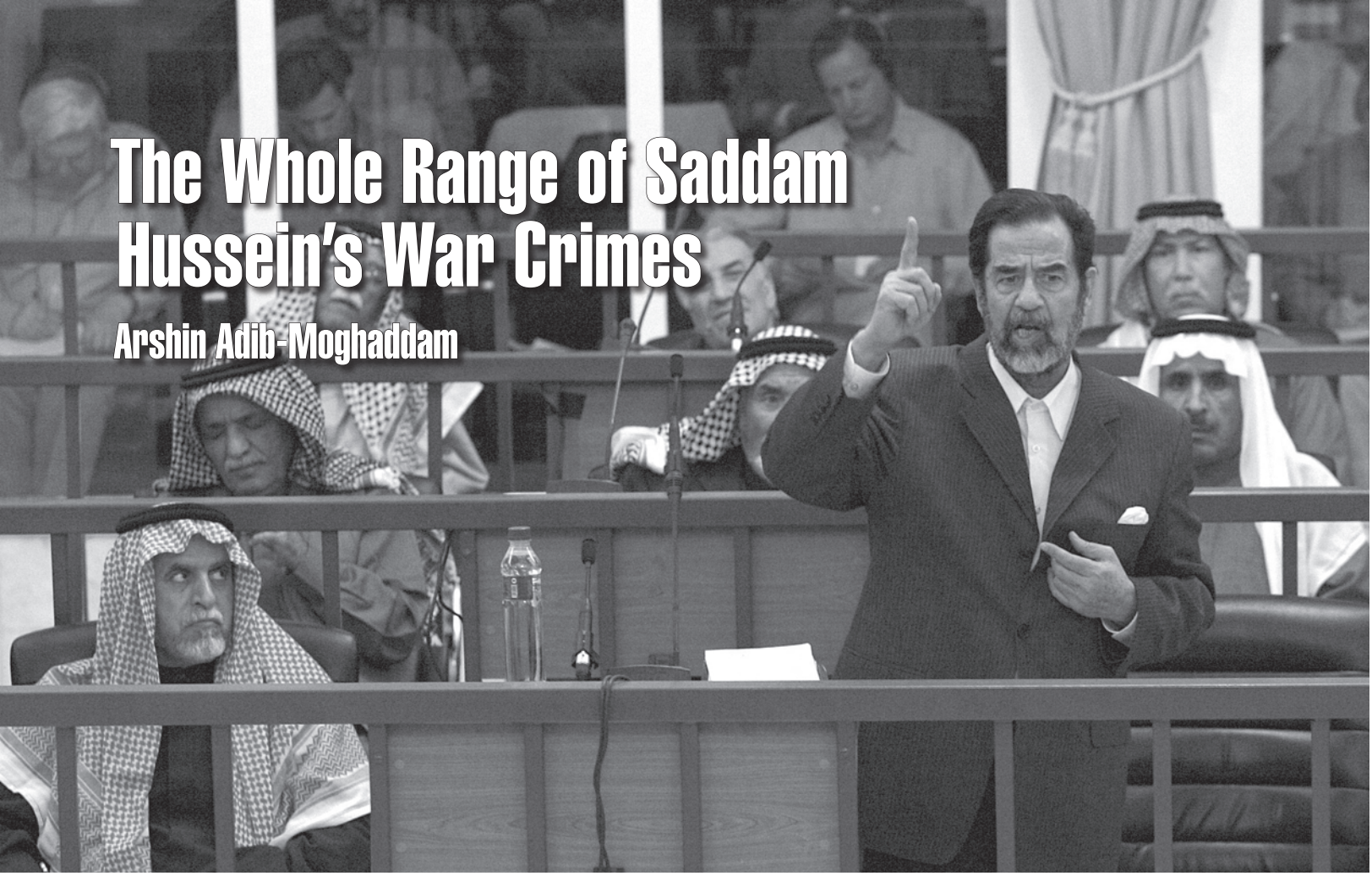

Saddam Hussein addresses the court in Baghdad, December 6, 2005. DAVID FURST/AP/POOL

On October 19, 2005, in a former presidential palace that had been hastily refurbished to resemble a respectable courtroom, Saddam Hussein went on trial.

The case brought against Hussein and his seven co-defendants was based on events in the town of al-Dujayl in 1982, where Hussein's regime countered an assassination attempt on its leader with the execution of 148 people. But these will not be the last charges filed against top figures in the old regime. The Supreme Iraqi Criminal Tribunal has jurisdiction to try crimes of genocide, crimes against humanity and war crimes committed during the period of Ba'thist rule between 1968 and 2003, which include the chemical attack on the Kurdish village of Halabja in 1988, the invasion of Kuwait in 1990 and the repression of the Shi'i uprising in southern Iraq in 1991. It is still unclear how many of the crimes of which the old regime is accused will actually be prosecuted. On April 4, 2006, however, the prosecution team announced that charges related to the Anfal genocide against the Kurds in 1987–1988, a campaign that included the Halabja attack, will be brought after the al-Dujayl verdict, which is expected in August.

The progress of the trial so far has left a pertinent question unanswered. Why is Hussein not standing trial for biological and chemical weapons attacks on Iranian soldiers and civilians during the 1980–1988 Iran-Iraq war? That these gross violations of international norms will probably not be taken up by the tribunal reveals the international and domestic politics involved in the trial. To be more precise: Saddam Hussein's war crimes can only be fully addressed if the court uncovers the collusion of Western firms and governments with Hussein's illicit weapons programs during the 1980s. Let us hope, given that intrusive political context, that at the end of the trial we are not shocked by what we partly suspect: that an opportunity for regional reconciliation in the wider Persian Gulf area has been lost, that the trial has reproduced Iraq as a place of imperial competition, and that history has denied the Iraqi people the opportunity to engage the past to lend speech to those voices which would constitute the new, post-Ba'thist civil society. Let us hope, in short, that the trial does not create yet another discontinuity in the history of the country.

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Saddam's American Alchemists

Although the Scud missile attacks on Israel in 1991 were also serious breaches of the laws of war, Saddam Hussein's violations of established international norms were more profound during the Iran-Iraq war.[1] There is now conclusive evidence for both the

degree of Saddam Hussein's non-conventional warfare against Iran and the international support provided to this end.[2]

In a speech to the House of Representatives on July 27, 1992, Rep. Henry Gonzalez (D-TX) outlined how "between 1983 and the invasion of Kuwait in 1990, Iraq received $5 billion in [Department of Agriculture Commodity Credit Corporation] guarantees that allowed them to purchase United States agricultural products on credit."[3] In October of the same year, the Senate Committee on Banking, Housing and Urban Affairs held hearings, whose findings were later confirmed by a committee report, revealing that the US had exported not only agricultural products, but also "chemical, biological, nuclear and missile-system equipment to Iraq that was converted to military use in Iraq's chemical, biological and nuclear weapons program."[4] Chemical weapons were in turn used against US soldiers in the 1991 war.[5] On May 25, 1994, another investigation showed that the US government approved sales of a wide range of chemical and biological materials to Iraq, including components of mustard gas, anthrax, clostridium botulinum, histoplasma capsulatum, brucella melitensis and clostridium perfringens.[6]

In December 2002, Andreas Zumach, an investigative journalist working for the German *Tageszeitung*, gathered and published classified information excerpted from a report presented to the United Nations by the Ba'thist regime in hopes of averting the ensuing invasion of Iraq in 2003.[7] According to the report, which was not circulated beyond the five permanent members of the Security Council, 14 American corporations, including Hewlett-Packard, Unisys and Dupont, were directly involved in the buildup of Iraq's biological, chemical and atomic industries.[8] Historically valuable if seen in comparison with current US accusations about Iran's nuclear research program, the report also listed the Departments of Defense, Energy, Commerce and Agriculture, and the nuclear research facilities Lawrence Livermore, Los Alamos and Sandia, as suppliers for Saddam Hussein's conventional and/or non-conventional weapons programs.

Saddam's European Alchemists

German and British companies are also implicated. The German involvement in Iraq's chemical weapons industry was initially concentrated on the chemical plant in Samarra', built by Iraq's State Establishment for Pesticides Production. The companies involved in this project were Preussag Heriger, Hammer, Rhein-Bayern, Karl Kolb/Pilot Plant and Water Engineering Trading, a company based in Hamburg. The German weekly magazine *Stern* reported on December 10, 1987 that Kolb/Pilot Plant exported to Baghdad a "gas chamber" suitable for testing chemical weapons on dogs and cats. The same company was involved in the second-largest chemical weapons plant in Falluja.

In 1990, a report submitted to the German parliament by the late German Minister of Trade, Jürgen Möllemann, provided further insight into the involvement of Kolb/Pilot Plant in Iraq's chemical weapons industry. On page 22 it is stated that the German government believed as early as 1982 that German companies were involved in Saddam Hussein's chemical warfare industry and that these allegations were verified in 1984. The German government subsequently pursued "informal" talks with the companies concerned, which did not yield any results.[9] In fact, Kolb/Pilot Plant constructed a new chemical plant in Falluja in 1988, a site which featured in former Secretary of State Colin Powell's case for the invasion of Iraq presented to the UN Security Council in February 2003. It also featured in a September 2002 report by Britain's Joint Intelligence Committee, to the great benefit of Prime Minister Tony Blair when he sought to justify the invasion.

In March 2003, the *Guardian* revealed that the British company Uhde was also involved in the Falluja chemical plant, which was central to Iraq's chemical warfare arsenal during a period when "senior officials recorded in writing that Saddam Hussein was actively gassing his opponents." Uhde received the contract to supply a chlorine plant in December 1984, agreeing to pay its German intermediary a commission of almost one million pounds. Uhde, which is based in Hounslow, west of London, had only a handful of employees, and was run by German executives. It was wholly owned by a German firm of the same name, headquartered in Dortmund. This sister company, in turn, was at the time a subsidiary of the German chemical giant Hoechst.[10]

The documents made available to the *Guardian* also showed that then Trade Minister Paul Channon rejected a strong plea from the foreign minister, Richard Luce, who argued that the deal would ruin Britain's image in the world. "I consider it essential everything possible be done to oppose the proposed sale," Luce pleaded, "and to deny the company concerned [Export Credit Guarantee Department] cover." "A ban," Channon replied, in line with the Thatcher government's support for Saddam Hussein against Iran, "would do our other trade prospects in Iraq no good."[11]

The Alchemy of War Crimes

Complaints from the Iranian side about Iraq's chemical warfare can be traced back to November 1980. Yet it took the international community, including the most prominent NGOs, at least three and a half years to investigate the allegations systematically. A report by the Stockholm International Peace and Research Institute dated May 1984 testifies that:

> Three and a quarter years [after the first Iranian complaints in November 1980], by which time the outside world was listening more seriously to such charges, the Iranian foreign minister told the Conference on Disarmament in Geneva that there had been at least 49 instances of Iraqi chemical warfare attack in 40 border regions, and that the documented dead totaled 109 people, with hundreds more wounded.

Iranian victims of Iraqi gas attacks gather near the German Embassy in Tehran to denounce German supply of chemicals to the Iraqi regime. RAHEB HOMAVANDI/REUTERS/LANDOV

The same report indicated that, after visiting several hospitals in Tehran, the International Committee of the Red Cross confirmed that "substances prohibited by international law" were employed during hostilities. UN confirmation came later in May 1984, in the form of a report from the secretary-general condemning the use of chemical weapons, without, however, naming Iraq as the perpetrating party.[12]

Moreover, a State Department memo to then Secretary of State George Shultz in November 1983 confirms that the US knew "that Iraq has acquired a CW production capability, primarily from Western firms, including possibly a US foreign subsidiary" and that it appeared that Iraq used chemical weapons almost on a daily basis.[13] Further intelligence suggested that "as long ago as July 1982, Iraq used tear gas and skin irritants against invading Iranian forces quite effectively" and that "in October 1982, unspecified foreign officers fired lethal chemical weapons at the orders of Saddam during battles in the Mandali area."[14] In an affidavit to a US District Court in Florida, National Security Council staff member Howard Teicher revealed that the US collusion with Iraq was indeed strategic, going beyond mere economic and diplomatic assistance:

> Pursuant to the secret National Security Decision Directive,[15] the United States actively supported the Iraqi war effort by supplying the Iraqis with billions of dollars of credits, by providing US military intelligence and advice to the Iraqis, and by clearly monitoring third-country arms sales to Iraq to make sure that Iraq had the military weaponry required. The United States also provided strategic operational advice to the Iraqis to better use their forces in combat. For example, in 1986, President Reagan sent a secret message to Saddam Hussein telling him that Iraq should step up its air war and bombing of Iran. This message was delivered by Vice President Bush, who communicated it to Egyptian President Mubarak, who in turn passed the message to Saddam Hussein. Similar strategic operational military advice was passed to Saddam Hussein through various meetings with European and Middle Eastern heads of state where the strategic operational advice was communicated.[16]

Iraq's employment of poison gas found comparable cover at the United Nations. Hence, when the Iranian government submitted a draft resolution asking for UN condemnation of the chemical warfare by Iraq, the US delegate was instructed to lobby for a general motion of "no decision" on the resolution. At a meeting between the Iraqi interest section head, Nizar Hamdoun, and then Deputy Assistant Secretary of State James Placke on March 29, 1984, the former spelled out what the Iraqi government expected from the UN resolution. Hamdoun stressed that his country preferred a Security Council presidential statement to a resolution, and that such a statement

should make reference to former resolutions on the war and progress toward termination of the conflict, while making no allocation of responsibility regarding the employment of chemical weapons. One day after the meeting, the Security Council issued the aforementioned presidential statement, condemning the use of chemical weapons without naming Iraq as the offending party. A State Department memorandum from March 30, 1984 acknowledged the successful diplomatic spin in support of Iraq, noting that the "statement…contains all three elements Hamdoun wanted."[17]

From Saddam Hussein's perspective, the cover provided by the Reagan administration was reason enough to presume that deployment of chemical weapons would not seriously damage Iraq's international reputation—particularly considering that China, France, Japan and other countries, according to the *Tageszeitung* investigation, were also supplying Iraqi non-conventional weapons manufacturers. Hussein's degree of carelessness was in many ways indicative of his degree of comfort. In this spirit, the Ba'thist government, expecting a major offensive by Iranian forces, had issued a public statement that "the invaders should know that for every harmful insect there is an insecticide capable of annihilating it whatever its numbers and that Iraq possesses this annihilation insecticide."[18] Asked in March 1984 whether or not Iraqi use of chemical weapons would affect US-Iraqi diplomatic and economic relations, a State Department press briefer replied: "No. I am not aware of any change in our position. We're interested in being involved in a closer dialogue with Iraq."[19]

US awareness of Iraq's chemical warfare is also confirmed by a former Defense Intelligence Agency officer, Lt. Col. Rick Francona, who served in the US Embassy in Baghdad in 1987 and 1988. According to Francona, the US "believed the Iraqis were using mustard gas all through the war, but that was not as sinister as nerve gas…. They started using tabun [a nerve gas] as early as 1983 or 1984, but in a very limited way. They were probably figuring out how to use it. And in 1988, they developed sarin." Francona also revealed that the Reagan administration provided "planning assistance" for the successful Iraqi offensive on the Faw peninsula in 1988. "When I was walking around," Francona told the *Guardian*, "I saw atropine injectors lying around. We saw decontamination fluid on vehicles," he elaborated, "[but] there were no insects. There was a very quick response from Washington saying, 'Let's stop our cooperation,' but it didn't last long—just weeks."[20]

International collusion with Iraq's war efforts confirmed the impression of the Ba'thist regime that they had been granted a free rider role, creating the paradox that by using "Iraq to wear Iran down," as Raymond Hinnebusch puts it, the cooperative norms and institutions of international society itself were rendered useless, manipulated to function according to the overarching leitmotif of preventing Iranian advances.[21] In turn, this compromised the authority of the international commu-

nity to act as a restraining force during the war and thereafter. Intercepted communications from Saddam Hussein's cousin 'Ali Hasan al-Majid, called "Chemical Ali" for his command role in the Anfal campaign, indicates the level of disregard and arrogance that Ba'thist officials had developed for international norms by the end of the Iran-Iraq war:

> Jalal Talabani [leader of the Patriotic Union of Kurdistan, regarded then as "agents of Iran" by Baghdad] asked me to open a special channel of communication with him. That evening I went to Suleimaniya and hit them with the special ammunition. That was my answer. We continued the deportations [of the Kurds]. I told the *mustashars*[22] that they might say that they like their villages and that they won't leave. I said, I cannot let your village stay because I will attack it with chemical weapons. Then you and your family will die. You must leave right now. Because I cannot tell you the same day that I am going to attack with chemical weapons. I will kill them all with chemical weapons. Who is going to say anything? The international community? Fuck them! The international community and those who listen to them.[23]

It was against that background that Saddam Hussein could organize and implement the genocidal Anfal campaign against Iraq's Kurdish population and Iranian army units operating in the area, culminating in the gassing of the northern Iraqi town of Halabja, which killed at least 4,000 people in March 1988. Not only had the international community failed to intervene previously, it provided the Iraqi regime with the means for pursuing its policies: from the ingredients for the chlorine based mustard gas employed in the Halabja attacks to the diplomatic coverup outlined above.[24]

A Few Antidotes

Let me depart from the empirical facts now in order to close with a review of the wider implications of the aforementioned for international anarchy in West Asia. That Saddam Hussein's war crimes during the Iran-Iraq war have not been comprehensively covered—legally, intellectually and normatively—indicates that the trial against him does not occur in a vacuum.

International law is embedded in "international political culture," a ferociously contested space where ideas, norms and institutions compete and where legitimacy is socially engineered rather than legally constituted.[25] International behavior during the war reveals in what way this international culture made manifest the existence of unrestrained anarchy and how the Iran-Iraq war owed its ferocity to the non-existence of a restraining order, regional or global. Here lies the importance of indicting Saddam Hussein for the whole range of war crimes that he committed: it would trigger a process the aim of which is to rediscover on what basis Halabja became possible; within what international context chemical warfare was legitimated; on the basis of what historical narrative and in the service of what power, Saddam Hussein could appear as somebody with whom "it would be possible to do business"[26] for several decades only to be branded the new Adolf Hitler after his invasion of Kuwait. Such a process, moreover, would bring to light the international context in which Halabjas, Abu Ghraibs, Sabra and Shatilas, and Jenins can happen. It would reveal how states ground their militaristic policies and thereby have fostered an international order that is not moving toward perfection, but rather toward recurrent crisis, especially in the Muslim worlds. In holding states responsible, in short, what should appear are those political configurations that have given rise to anarchy in West Asia. Such an enterprise perhaps is not so much a legal effort, but an intellectual endeavor aimed at finding empathetic antidotes for the existing calamities of international life. ■

Endnotes

1 The next passages are partly based on Arshin Adib-Moghaddam, *The International Politics of the Persian Gulf: A Cultural Genealogy* (London: Routledge, 2006), especially chapter 2.

2 According to Iranian health officials, about 60,000 Iranians were exposed to Iraqi chemical weapon attacks during the war. Agence France Presse, March 13, 2000. In an off-the-record interview with the author in November 2002, an Iranian Foreign Ministry official gave even more alarming numbers: 60,000 dead, 124,000 with over 25 percent exposure, 200,000 under 25 percent, 120,000 with minimal contamination and 600 with 80 percent and higher who are close to death.

3 Henry Gonzalez, "Bush Administration Had Acute Knowledge of Iraq's Military Industrialization Plans," *Congressional Record*, July 27, 1992, pp. H6696-H6704.

4 For detailed treatment of these hearings, see Irene Gendzier, "Democracy, Deception and the Arms Trade: The US, Iraq and Weapons of Mass Destruction," *Middle East Report* 234 (Spring 2005).

5 Senate Committee on Banking, Housing, and Urban Affairs, Staff Report 3, "US Chemical

and Biological Exports to Iraq and Their Possible Impact on the Health Consequences of the Persian Gulf War," October 7, 1994.

6 Senate Committee on Banking, Housing and Urban Affairs, "The Riegle Report: US Chemical and Biological Warfare-Related Dual Use Exports to Iraq and Their Possible Impact on the Health Consequences of the Gulf War," May 25, 1994.

7 *Tageszeitung*, December 19, 2002.

8 Rounding out the 14 were: TI Coating, Tektronix, Leybold Vacuum Systems, Finnigan-MAT-US, American Type Culture Collection, Alcolac International, Consarc, Cerberus, International Computer Systems, Canberra Industries and Axel Electronics. In addition, ten companies were listed as sponsors of Iraq's rocket and/or conventional weapons programs (Bechtel, Honeywell, Spectra Physics, Semetex, Sperry, Rockwell, Eastman Kodak, Carl Zeiss, Electronic Associates and EZ Logic Data Systems). Other reports have implicated Nu Kraft Mercantile (affiliated with United Steel and Strip), Celery, Matrix-Churchill (regarded as a front for the Iraqi government, according to Gonzalez, who quoted US intelligence documents to this effect in his 1992 speech on the House floor), Mouse Master, Lilburn, Sullaire, Pure Aire, Posi Seal, Evapco and Gorman-Rupp. Additionally, several other companies were sued in connection with their activities providing Iraq with chemical or biological supplies: subsidiaries or branches of Fisher Controls International, Rhone-Poulenc, Bechtel and Lummus Crest, which built one chemical plant in Iraq and, before the Iraqi invasion of Kuwait in August 1990, was building an ethylene facility. See also William Blum, "Anthrax for Export: US Companies Sold Iraq the Ingredients for a Witch's Brew," *The Progressive* (April 1998).

9 The Möllemann report also revealed that toxins such as botulinus A und B were exported from Germany, without, however, naming the perpetrating parties. See Hans Branscheid, "Der deutsche Exportweltmeister als Todeshändler: Dokumentation über den deutschen Rüstungs- und Giftgas-Transfer: Die Akte Möllemann," (Medico International), available at http://www.fdj.de/irak/wirtschaft_brd_irak.pdf#search='Hans%20Branscheid%20akte' and Ronald Ofteringer, "Irakische Vernichtungswaffen und industriestaatliche Proliferation: Die UN Kommission für Irak und die Bundesrepublik," available at http://www.nadir.org/nadir/initiativ/kurdi-almani-kassel/aktuell/2001/dez2001/irakwaff.htm.

10 *Guardian*, March 6, 2003.

11 Ibid. The *Tageszeitung* investigation cited above further revealed that ten British companies were directly involved in Iraq's atomic research program and that the International Military Services, owned by the British Ministry of Defense, was a sponsor of the country's rocket program. The companies named in the report are Euromac, C. Plath-Nuclear, Endshire Export Marketing, International Computer Systems, MEED International, International Computer, Matrix Churchill, Ali Ashour Daghir, XYY Options and Inwako.

12 For more, see Adib-Moghaddam, op cit.

13 Department of State, Jonathan Howe to George Shultz, "Iraqi Use of Chemical Weapons," November 1, 1983. p. 1. This memorandum is available in the National Security Archive's Electronic Briefing Book 82, edited by Joyce Battle, and titled "Shaking Hands with Saddam Hussein: The US Tilts Toward Iraq, 1980–1984." The collection of documents is accessible online at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB82/index.htm.

14 Department of State, Jonathan Howe to Lawrence Eagleburger, "Iraqi Use of Chemical Weapons," November 21, 1983. p. 6. Available through the National Security Archive, op. cit.

15 This is a reference to a National Security Decision Directive signed by President Ronald Reagan in June 1983, co-authored by Howard Teicher together with another NSC staff member, Geoffrey Kemp. The content of the NSDD and even its identification number remain classified.

16 *United States v. Carlos Cardoen et al*, January 31, 1995, pp. 3–4. Teicher also stated that the CIA encouraged Iraq to use cluster bombs against the Iranian "human wave" attacks. Available through the National Security Archive, op. cit.

17 Department of State, Allen Overmyer to James Placke, March 30, 1984. p. 1. Available through the National Security Archive, op. cit.

18 Department of State, William L. Eagleton (US Interest Section in Iraq) to Department of State, "Iraqi Warning re: Iranian Offensive," February 22, 1984. p. 1. Available though the National Security Archive, op. cit.

19 Department of State, George Shultz to US Embassy in Lebanon, "Department Press Briefing, March 30, 1984," March 31, 1984. p. 3. Available through the National Security Archive, op. cit.

20 *Guardian,* December 31, 2002. See also Dilip Hiro, "When the US Turned a Blind Eye to Poison Gas," *Observer*, September 1, 2002 and Joost Hiltermann, "Elusive Justice: Trying to Try Saddam," *Middle East Report* 215 (Summer 2000).

21 Raymond Hinnebusch, *The International Politics of the Middle East* (Manchester: Manchester University Press, 2003), p. 200.

22 In Arabic, adviser or consultant. The *mustashars* were Kurdish tribal leaders of paramilitary units officially referred to as National Defense Battalions by the Iraqi regime and derided by other Kurds as *jahsh* or "donkey foals" because of their alliance with the state.

23 The 'Ali Hasan al-Majid tapes obtained by Human Rights Watch after the 1990–1991 Gulf war have been published as Appendix A to Human Rights Watch, *Genocide in Iraq: The Anfal Campaign Against the Kurds* (New York, 1993).

24 Ironically, in 1999, the State Department used the evidence of Iraqi war crimes to legitimate the removal of Saddam Hussein. In one of its major publications, it cited the "use of poison gas and other war crimes against Iran and the Iranian people." It also claimed that "Iraq summarily executed thousands of Iranian prisoners of war as a matter of policy." Department of State, *Saddam Hussein's Iraq* (September 1999).

25 See Adib-Moghaddam, op cit, and Arshin Adib-Moghaddam, "Islamic Utopian Romanticism and the Foreign Policy Culture of Iran," *Critique: Critical Middle Eastern Studies* 14/3 (Fall 2005).

26 British Embassy (Baghdad) to Foreign and Commonwealth Office, "Saddam Hussein," December 20, 1969. p. 4. FCO 17/871, Public Record Office, London. Available through the National Security Archive, op cit.