



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

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MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL,
DEPARTMENT OF THE ARMY

SUBJECT: Report on Iraqi War Crimes (Desert Shield/Desert Storm)

In reference to the subject report, we have been requested to provide an unclassified version thereof to the Department of State.

Accordingly, we will be grateful if a declassification review can be commenced as soon as possible and the resultant unclassified version provided to our office at the earliest opportunity.

Thank you for your attention to this request.

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I. (U) SUMMARY OF THE REPORT ON IRAQI WAR CRIMES (DESERT SHIELD/DESERT STORM)

A. (U) INTRODUCTION

During Desert Shield and Desert Storm, the Office of The Judge Advocate General of the Army conducted an investigation for the Department of Defense into violations of the law of war committed by Iraqi military forces at the direction or with the approval of Saddam Husayn and officials of the Ba'ath Socialist Party. The following is a report on the methodology and findings of the investigation. The investigation concludes that Iraqi violations of the law of war were widespread and conducted pursuant to the orders or with the approval of the national leadership of Iraq.

1. (U) Relevant Law of War Treaties

The following law of war treaties are relevant to this investigation:

a. Hague Convention IV and its Annex Respecting the Laws and Customs of War on Land of 18 October 1907 (Hague IV).

b. Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines of 18 October 1907 (Hague VIII).

c. Geneva Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925 (1925 Geneva Protocol).

d. The Geneva Conventions for the Protection of War Victims of August 12, 1949:

(1) Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field.

(2) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

(3) Geneva Convention Relative to the Treatment of Prisoners of War (hereinafter Third Geneva Convention or GPW).

(4) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter Fourth Geneva Convention or GC).

e. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 (1954 Hague Convention).

Iraq and Kuwait are parties to the 1925 Geneva Protocol, the 1949 Geneva Conventions, and the 1954 Hague Convention. They are not parties to Hague IV and Hague VIII, but, because those conventions are now customary international law, Iraq and Kuwait are bound by their provisions as well. With the exception of the 1954 Hague Convention, the United States is a party to each of these international agreements.

All states involved in the Persian Gulf War are parties to the four Geneva Conventions of 1949, which were enacted to protect noncombatants, such as civilians living in occupied territory and prisoners of war. Article 1, common to these four conventions, requires that the parties "respect and ensure respect" for all the obligations they impose upon the party states.¹ These obligations include the requirement to take all reasonable and necessary steps to investigate and bring to justice individuals responsible for violations of the conventions. In a separate article common to the four conventions, no nation has the authority to absolve either itself or any other nation party to those treaties of any liability incurred as a result of violating a provision of the conventions.²

2. (U) U.N. Security Council Actions

The following Security Council Resolutions deal with Iraqi responsibility for war crimes:

a. Security Council Resolution 664 (18 August 1990) demanded that Iraq "permit and facilitate the immediate departure from Kuwait and Iraq of the nationals of third countries and grant immediate and continuing access of consular officials to such nationals [and]...that Iraq take no action to jeopardize the safety, security, or health of such nationals."

b. Security Council Resolution 666 (13 September 1990) reaffirmed Iraq's responsibility for the safety and well-being of the hostages "in accordance with international humanitarian law,"³

¹Specifically, Article 1 states, "The High Contracting Parties undertake to respect and ensure respect for the present Convention in all circumstances" (emphasis added).

²The most serious violations of the 1949 Conventions are known as "Grave Breaches." They are basically the equivalent of major felonies. Specific offenses are set forth in each of the treaties.

³"International humanitarian law" or the "law of armed conflict" is referred to by the Department of Defense and the U.S. Army as the law of war, its traditional name. The terms are essentially synonymous. The law of war is that part of international law that regulates the conduct of hostilities and

including...the Geneva Convention Relative to the Protection of Civilian Persons in Time of War."

c. Security Council Resolution 667 (16 September 1990) expressed outrage "at recent violations by Iraq of diplomatic premises in Kuwait and at the abduction of personnel enjoying diplomatic immunity and foreign nationals who were present in...[those] premises," while recalling that Iraq "is fully responsible for any use of violence against foreign nationals or against any diplomatic or consular mission in Kuwait or its personnel."

d. Security Council Resolution 670 (25 September 1990) condemned Iraq for its "holding of third state nationals against their will, in flagrant violation of ... international humanitarian law."

e. Security Council Resolution 674 (29 October 1990) called upon Member States "to collate substantiated information in their possession or submitted to them on the Grave Breaches by Iraq...and to make this information available to the [Security] Council."

3. (U) U.S. Policy

In order to ensure compliance with the law of war by all its armed forces, the United States has one of the most comprehensive law of war programs in existence. Department of Defense Directive 5100.77 is the foundation for the U.S. military law of war program. It contains four policies that relate directly to the obligation to investigate and prosecute alleged violations of the law of war:

- a. "The law of war and the obligations of the U.S. Government under that law...[will be] observed and enforced by the U.S. Armed Forces."
- b. "A program, designed to prevent violations of the law of war...[will be] implemented by the U.S. Armed Forces."
- c. "Alleged violations of the law of war, whether committed by or against U.S. or enemy personnel...[will be] promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action."
- d. "Violations of the law of war alleged to have been committed by or against allied military or civilian personnel shall be reported through appropriate military command channels for ultimate transmission to appropriate agencies of allied governments."

provides protection to noncombatants.

While the United States has the obligation to respect and ensure respect for the law of war, this obligation must be read in a manner that is consistent with international law. For example, while the United States is obligated to investigate law of war violations committed by or against U.S. personnel, it also has an obligation to respect the sovereign rights of other nations. Consequently, the obligation to investigate violations of the law of war committed against allied personnel is subject to the consent of the ally in question, particularly if the alleged violations occurred within the territory of the ally.

DoD Directive 5100.77 appoints the Secretary of the Army as the DoD Executive Agent for the administration of the directive with respect to alleged violations of the law of war committed against U.S. personnel. To further implement the directive's requirements, each service has issued regulations about reporting and investigating suspected violations of the law of war committed by or against its personnel. For example, Army Chief of Staff Regulation 11-2 assigns to The Judge Advocate General of the Army responsibility for investigation, collection, collation, evaluation, and reporting of war crimes alleged to have been committed against U.S. personnel. Also, formal criminal investigation of war crimes committed by or against U.S. Army personnel is assigned to the U.S. Army Criminal Investigation Command by Army Regulation 195-2.

B. (U) U.S. ACTIONS

To carry out the regulatory directives dealing with the investigation and prosecution of war crimes, informal collection of information on Iraqi war crimes began in the Office of The Judge Advocate General of the U.S. Army on 3 August 1990. Media reports indicated that U.S. citizens in Kuwait had been taken hostage by Iraqi forces and forcibly deported to Iraq. These acts constituted grave breaches under the Conventions. Collection of information continued as reports of other potential Iraqi war crimes were received.

An interagency meeting was held on 30 August 1990 to establish a process for informal coordination on war crimes matters and to ensure that policymakers were kept informed of the issues. The participants at the meeting agreed that the Army would be responsible for a preliminary war crimes investigation, with the other agencies and military services providing support and assistance. They understood that any formal war crimes investigation would depend upon authorization by appropriate authority and, depending on the scope of the investigation, might also require the consent of the host nation.

The initial effort to collect information on Iraqi war crimes against U.S. personnel continued. Although U.S. hostages in Iraq were released in December 1990, Iraqi destruction of the national

identity of Kuwait and abuse of civilians in Kuwait did not abate. Iraq's threats to use chemical and biological weapons, coupled with its conduct in Kuwait, prompted U.S. commands in Saudi Arabia to issue detailed instructions for the reporting of any war crimes committed by Iraqi forces against U.S. and other Coalition forces. It became apparent that a greater effort would be necessary with regard to collection of evidence and investigation of war crimes. Accordingly, on 24 December 1990, the Secretary of Defense authorized U.S. Central Command to broaden its role from gathering information to active investigation of alleged Iraqi violations of the law of war. As a result, the Secretary of the Army mobilized two reserve component judge advocate international law detachments. Subsequently, due to the limited scope of DoD Directive 5100.77, the Deputy Secretary of Defense broadened the responsibility of the Secretary of the Army, as Executive Agent for the Department of Defense, to include assistance to Coalition partners, with their consent, in investigating war crimes committed against their nationals. The Secretary of the Army appointed the Army General Counsel to oversee execution of these responsibilities. The General Counsel further delegated execution to The Judge Advocate General of the Army.

Detachments selected for mobilization were the 199th Judge Advocate Detachment (St. Petersburg, Florida) and the 208th Judge Advocate Detachment (Washington, D.C.). The 199th was to deploy to the Kuwaiti Theater of Operations, where it would investigate allegations and collect evidence. The 208th was to serve in Washington, D.C., in support of the 199th, while simultaneously starting and operating the War Crimes Documentation Center (Center). The Center was augmented by two volunteer U.S. Naval Reserve Judge Advocates and an Army National Guard Judge Advocate. The 199th detachment of five officers and two enlisted personnel deployed to SW Asia on 7 February 1991. That detachment was subsequently augmented by fifteen Kuwaiti volunteers.

Based upon reports received up to that time regarding Iraqi conduct during the occupation of Kuwait, the two teams were directed to focus on violations against noncombatants under the four 1949 Geneva Conventions, rather than on violations of the law of war that might occur between combatants during actual hostilities. These violations against noncombatants constitute "people" offenses that require statements from foreign national victims or eyewitnesses. Offenses involving Iraqi violation of other law of war treaties either relating to the military occupation, such as looting and seizing Kuwaiti cultural property, or relating to military operations, such as the destruction of the Kuwaiti oil fields, or launching of Scud missiles against Saudi Arabia and Israel, could be developed by the International Affairs Division of the Office of The Judge Advocate General from information received from United States Central Command (USCENTCOM) and the Joint Chiefs of Staff.

1. (U) Activities and Findings of the 208th Judge Advocate Detachment

The 208th focused its efforts on the treatment by Iraq of the U.S. civilian hostages, "human shields," and the U.S. prisoners of war. The 208th canvassed the relevant Federal agencies to locate available information on Iraqi acts that might be war crimes. The unit ascertained that the Department of State maintained comprehensive records regarding U.S. civilians taken hostage by Iraq, including those used as "human shields" around military objectives in Iraq. They also discovered that excellent information regarding treatment of U.S. military personnel was available through the Defense Intelligence Agency (DIA).⁴

2. (U) Iraqi Treatment of U.S. Prisoners of War

A total of forty-seven U.S. military personnel were initially listed as either prisoners of war or missing in action during the Gulf War. Since then, twenty-six have been officially listed as having been killed in action. Twenty-one individuals were captured and held as prisoners of war by Iraq. They were repatriated between 3-9 March 1991.

All of the prisoners of war were the victims of war crimes committed by Iraq. Although unable to identify the individuals who abused U.S. prisoners of war, the Center has accumulated extensive circumstantial evidence to support a prima facie case that the mistreatment of U.S. prisoners of war occurred with at least the acquiescence, and probably at the direction, of the Iraqi leadership.

3. (U) Iraqi Treatment of U.S. Hostages

Records of the Department of State and Defense Intelligence Agency document Iraq's unlawful taking of U.S. civilians as hostages, the forced removal of U.S. hostages from Kuwait, and the use of U.S. hostages as "human shields" around Iraqi strategic sites. Each of these actions is a violation of the Fourth Geneva Convention. The Center has evidence of over 4,900 U.S. hostages taken by Iraq, 106 of whom were used by Iraq as human shields. The files and documents gathered by the Department of State establish a prima facie case of grave breaches of the Fourth Geneva Convention committed against U.S. citizens by Iraq.

4. (U) Other Documentation

⁴Iraqi treatment of the captured CBS newsmen was not included within the scope of this investigation.

The 208th also established extensive war crimes research files, as well as numerous files related to specific incidents of Iraqi war crimes alleged by refugees, news reports, and the reports of humanitarian organizations. Files were created covering the actions of the "inner circle" of the leadership of Iraq and the Ba'ath Socialist Party. Finally, the 208th worked closely with the 199th and U.S. Joint Combat Camera Center Teams to establish a video/photographic library of Iraqi war crimes.

5. (U) Activities and Findings of the 199th Judge Advocate Detachment

The 199th was tasked to conduct investigations into, and document, Iraqi war crimes. The concept of operations required that the 199th deploy in teams to three locations. The team assigned to Riyadh was responsible for reviewing Individual Intelligence Reports, coordinating with USCENTCOM intelligence, administrators of enemy prisoner of war (EPW) camps, U.S. Combat Camera Teams, and other Coalition force sources. They were also tasked with developing and maintaining the war crimes in-theater computer database.

A second team from the 199th was assigned the task of investigating any Iraqi war crimes that might be perpetrated against U.S. forces in the field during the ground war to liberate Kuwait. This team was also given the mission of deploying into Kuwait as soon as possible to investigate possible war crimes committed against Kuwaiti citizens and third-country nationals residing in Kuwait.

The third aspect of the 199th's operation involved establishing a Judge Advocate presence at the Defense Intelligence Agency's Documentation Examination Center located in Dhahran, Saudi Arabia, where all captured Iraqi documents were sent for intelligence gathering purposes.

Requests for reports of Iraqi war crimes committed against U.S. forces were made to all USCENTCOM commands. None were received, and, in visits to combat units in the USCENTCOM area of operations, the 199th discovered no evidence that Iraqi forces committed law of war violations against U.S. or other Coalition forces during the 100-hour ground campaign.

Elements of the 199th arrived in Kuwait City on 1 March 1991, and upon arrival, reestablished contact with the Kuwaiti Ministry of Justice. Then, with the consent of the Ministry, they contacted members of Kuwaiti resistance groups, the underground press, various medical and hospital staff personnel, and community leaders. With the assistance of seven Kuwaiti volunteers who acted as translators and scouts to ferret out evidence and locate victims of Iraqi war crimes, the team commenced its war crimes investigation and documentation mission concerning atrocities

occurring during Iraq's occupation of Kuwait. The Ministry of Justice was also investigating Iraqi actions during the occupation. To avoid duplication of effort, and in the spirit of cooperation, the mission of the 199th evolved into establishing the nature and extent of Iraqi offenses rather than building cases for prosecution. One of the goals was to accumulate and organize the evidence in a fashion that would facilitate preparation of criminal cases should prosecution of war criminals at a later date become an option.

6. (U) Evidence of Iraqi War Crimes

In accordance with this modified mission, the 199th collected evidence of Iraqi war crimes that confirms the massive scope of the offenses committed against the citizens and residents of Kuwait. The evidence includes written and videotaped accounts from rape and torture victims, photographs of murdered Kuwaitis, and videotapes of burial sites and torture implements. The Defense Intelligence Agency's Document Examination Center in Dhahran, Saudi Arabia, also produced documentary evidence of Iraqi war crimes.

The evidence establishes that there were at least two dozen torture sites in Kuwait City, most of which were located in either police stations or sports facilities. The gruesome evidence confirms torture by amputation of or injury to various body parts, to include limbs, eyes, tongues, ears, noses, lips, and genitalia. Electric shock was applied to sensitive parts of the body (nose, mouth, genitalia); electric drills were used to penetrate the chest, leg(s), or arm(s) of victims. Victims were beaten until bones were broken, skulls were crushed, and faces disfigured. Some victims were killed in acid baths. Women taken hostage were raped repeatedly. Eyewitnesses described the murder of Kuwaitis by Iraqi military personnel who forced family members to watch. Eyewitnesses reported Iraqis torturing a woman by making her eat her own flesh as it was cut from her body. Other eyewitness accounts describe Iraqi execution of Kuwaiti civilians by dismemberment and beatings while victims were suspended from ceilings and with implements such as axes. The accounts also describe psychological terror inflicted by mock executions.

Documents collected by the 199th clearly establish that Iraq intended to use chemical weapons and confirm Iraq's premeditated planning for the destruction of the Kuwaiti oil fields and the Saudi and other desalinization plants. Other documents authorized the "reeducation" of Kuwaitis and the deportation of Kuwaiti civilians to Iraq. Summary executions were authorized for Kuwaiti civilians found praying on their roofs and for other Iraqi-mandated offenses such as failing to display pictures of Saddam Husayn, refusing to serve Iraqi soldiers in stores or markets, possessing pictures of members of the Kuwaiti royal family, and writing "anti-Iraqi" graffiti.

The 199th confirmed through its investigation of Kuwait City medical records that, for the period of the Iraqi occupation of Kuwait (2 August 1990 to 3 March 1991), a total of 1,082 Kuwaiti civilian deaths could be directly attributed to Iraqi criminal conduct. The deaths include 120 babies left to die after being removed from incubators that were taken to Iraq; 153 children between the ages of one and thirteen killed for various reasons; and fifty-seven mentally ill individuals killed simply because of their handicap. All of these deaths constitute grave breaches of the Fourth Geneva Convention.

Throughout the Iraqi occupation of Kuwait, Iraqi citizens were moved into Kuwait as part of Saddam Husayn's intended plan for the dissolution of Kuwait as a sovereign nation and its annexation as Iraq's nineteenth province. Kuwaiti civilians were displaced from their homes by these Iraqi immigrants. This is prohibited by the Fourth Geneva Convention.

The 199th was able to identify, from various sources, a number of Iraqi soldiers suspected of war crimes against Kuwaitis. This is a preliminary list which will require additional investigative efforts before prosecutable cases can be presented against specific Iraqi personnel. For example, some individuals appear on the list simply because they were members of Iraqi units known to have been in Kuwait City at the time the atrocities occurred. Documents containing the Iraqi order of battle provide information which allows certain Iraqi units to be linked with law of war violations contained in incident reports.

The 199th assembled 1,226 war crime files. Of these, 616 relate to information obtained while the 199th was in Kuwait. Fifty-five files were obtained through research at the Document Examination Center, while 555 were created using Individual Intelligence Reports, press accounts of war crimes, and the December 1990 Amnesty International Report, Iraq/Occupied Kuwait: Human Rights Violations Since August 2, 1990.

Although the 199th investigators in Kuwait City uncovered the names of over 500 Iraqis who allegedly committed war crimes, for several reasons none of these leads resulted in the apprehension of any Iraqis from among the 69,822 enemy prisoners of war in Coalition custody.

Perhaps the most significant reason for the lack of apprehensions is that few Iraqi prisoners of war provided their real names, ranks, or other vital information, either for fear of connection to the war crimes committed in Kuwait or for fear of retribution against their families when the Government of Iraq was informed of their capture. In addition, the limited duration of the ground campaign, as well as the large number of prisoners and their rapid repatriation, limited the amount of time available for detailed investigation and for verification of the preliminary information provided by the 199th investigators in Kuwait.

7. (U) Activities and Findings of the International Affairs Division

In addition to providing advice to the War Crimes Documentation Center on technical matters related to its work, the International Affairs Division reviewed Iraqi actions not within the scope of the two reserve teams' missions. The Division monitored the indiscriminate Scud missile attacks by Iraq on Saudi Arabia and Israel, focused on the intentional release of oil by Iraq into the Persian Gulf from ships and from the Mina el-Ahmadi facility in Kuwait, and noted the intentional destruction of hundreds of Kuwaiti oil wells.

The Gulf was fouled when between seven and nine million barrels of oil were discharged into it by Iraq. In the desert, five hundred and ninety oil wellheads were damaged or destroyed: five hundred and eight of them were set on fire, and the remaining eighty-two were damaged in such a manner that twenty-five to fifty million barrels of oil flowed freely from them onto the desert floor. The result was total devastation of the fragile desert ecological system and the pollution of water sources critical to survival.

A member of the Division served as a representative of the United States to an international conference to discuss these acts. From 9 to 12 July 1991, the Government of Canada, in concert with the Secretary General of the United Nations, hosted a conference of international experts in Ottawa, Ontario, to consider the law of war implications of the environmental devastation caused by the Iraqis. There was general agreement that the actions cited constitute violations of the law of war, specifically:

- a. Article 23(g) of the Annex to the 1907 Hague Convention IV Respecting the Customs of War on Land of 18 October 1907, forbids the destruction of "enemy property, unless...imperatively demanded by the necessities of war;" and,
- b. Article 147 of the GC, makes the "extensive destruction...of property, not justified by military necessity and carried out unlawfully and wantonly" a grave breach.

The International Affairs Division's review of the facts regarding the discharge of oil into the Gulf and the destruction of the Kuwaiti oil fields agrees with the conclusions reached by the conferees of the Ottawa conference. Each act was intended by Iraq to wreak indiscriminate destruction in violation of the law of war.

It is unclear why Iraq released oil into the Gulf. Conceivably, Iraq hoped to interfere with Coalition naval operations in the Gulf, perhaps to impede expected amphibious operations. By threatening desalinization plants with oil contamination, Iraq may also have hoped to disrupt Coalition military operations and Saudi civilian life dependent upon a steady flow of fresh water. As it turned out, the cooperative efforts of the Coalition members, including the U.S. Coast Guard and the U.S. National Oceanic & Atmosphere Administration, resulted in the oil slick having a negligible effect on the operations of Coalition naval forces.

Iraq's actions forced Coalition military operations to protect the environment, which resulted in additional damage to Kuwaiti property. Specifically, the flow from the el-Ahmadhi terminal was stopped by the Coalition's aerial destruction of vital equipment in the vicinity of the terminal. This damage is also the responsibility of Iraq.

As Iraqi forces ignited the first Kuwaiti oil wells, there was public speculation that the fire and smoke were intended to impair the ability of Coalition forces to conduct both air and ground operations, primarily by obscuring visual and electro-optical sensing devices. Review of Iraqi actions makes it clear that the oil well destruction had no military purpose; it was designed to wreck Kuwait's future -- a scorched earth policy carried to the extreme.

C. (U) FINDINGS

1. (U) Iraqi War Crimes

The term "war crime" is the technical expression for a violation of the law of war, and every violation of the law of war is a war crime. The Army's investigation makes it clear that Iraqi violations of the law of war were widespread and premeditated. They included taking hostages, torture and murder of civilians, looting civilian property, looting cultural property, indiscriminate attacks on noncombatants by the launching of Scud missiles against cities rather than specific military objectives, illegal employment of sea mines, mistreatment of prisoners of war, and unnecessary destruction of property, as evidenced by the release of oil into the Persian Gulf and the destruction of hundreds of Kuwaiti oil wells.

Specific Iraqi war crimes, which have been extensively documented by the War Crimes Documentation Center include the following:

- a. The taking of Kuwaiti nationals as hostages, and their individual and mass forcible deportation to Iraq, in violation of Articles 34, 49, and 147, GC.

- b. The taking of third country nationals in Kuwait as hostages, and their individual and mass forcible deportation to Iraq, in violation of Articles 34, 49, and 147, GC.
- c. The taking of third country nationals in Iraq as hostages, and their individual and mass forcible transfer within Iraq, in violation of Articles 34, 35, and 147, GC.
- d. Compelling Kuwaiti and other foreign nationals to serve in the armed forces of Iraq, in violation of Articles 51 and 147, GC.
- e. Use of Kuwaiti and third country nationals as human shields in violation of Articles 28, and 38(4), GC.
- f. Inhumane treatment of Kuwaiti and third country civilians, to include rape and wilful killing, in violation of Articles 27, 32, and 147, GC.
- g. The transfer of Iraq's civilian population into occupied Kuwait, in violation of Article 49, GC.
- h. Torture and other inhumane treatment of Coalition and U.S. prisoners of war, in violation of Articles 13, 17, 22, 25, 26, 27, and 130, GPW.
- i. Using Coalition prisoners of war as human shields to render military objectives immune from military operations, in violation of Article 23, GPW.
- j. Unnecessary destruction of Kuwaiti private and public property, in violation of Article 23(g), Annex to Hague IV.
- k. Pillage, in violation of Article 47, Annex to Hague IV.
- l. Illegal confiscation/inadequate safeguarding of Kuwaiti public property, in violation of Article 55, Annex to Hague IV, and Article 147, GC.
- m. Pillage of Kuwaiti civilian hospitals, in violation of Articles 55, 56, 57, and 147, GC.
- n. Indiscriminate Scud missile attacks against the noncombatant civilians of Saudi Arabia and Israel (the latter a neutral to the conflict), unnecessary destruction in violation of Article 23(g), Annex to Hague IV.
- o. Intentional release of oil into the Persian Gulf and its

sabotage of the Al-Burgan and Rumalia oil fields in Kuwait, unnecessary destruction in violation of Articles 23(g) and 55, Annex to Hague IV, and Articles 53 and 147, GC.

- p. Employment of unanchored naval mines and mines lacking devices for their self-neutralization in the event of their breaking loose from their moorings, in violation of Article 1, Hague VIII.

2. (U) Command Responsibility

Article 29, GC, states "[t]he 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." Similarly, Article 12, GPW, declares "[p]risoners 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."

Responsibility for the treatment of civilian detainees and prisoners of war in Iraqi hands clearly lay with the Government of Iraq and its senior officials. Criminal responsibility for violations of the law of war rests with a commander, including the national leadership, who:

- (a) orders or permits the offenses to be committed, or
- (b) knew or should have known of the offenses, had the means to prevent or halt them, and failed to do all which he or she was capable of doing to prevent the offenses or their recurrence.

The evidence collected during this investigation establishes a prima facie case that the violations of the law of war committed against Kuwaiti civilians and property, and against third party nationals, were so widespread and methodical that they could not have occurred without the authority or knowledge of Saddam Husayn. They are war crimes for which Saddam Husayn, officials of the Ba'ath Party, and his subordinates bear responsibility. However, the principal responsibility rests with Saddam Husayn. The command and control of Saddam Husayn over Iraqi military and security forces operating in Kuwait before the air campaign began appeared to be total and unequivocal. There is substantial evidence that the actions alleged either were done as a direct result of his orders, done with his knowledge and approval, or were acts of which he should have been aware.

D. (U) CONCLUSION

The War Crimes Documentation Center has accumulated several linear feet of files containing evidence of Iraqi war crimes to support the statements contained in this Summary. This extensive documentation includes: U.S. documents; captured Iraqi documents; videotaped and written statements of eyewitnesses to war crimes, prisoners of war, "human shields," and Kuwaiti victims; graphic videotape and still photographic evidence of war crimes; and general references dealing with the prosecution of war crimes. The evidence should be an excellent base to start preparing war crimes cases.

The national command authorities of Iraq, as well as individual Iraqi officials, perpetrated numerous war crimes against both military and civilian personnel of the United States and Kuwait. The War Crimes Documentation Center has assembled the evidence to prove it.