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Draft Indictment of Saddam Hussein

Commission for International Due Process of Law

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Draft Indictment of Saddam Hussein*

AD HOC UNITED NATIONS CRIMINAL TRIBUNAL, PLAINTIFFS

v.

SADDAM HUSSEIN AND THE MILITARY, POLITICAL AND
ECONOMIC ADVISORS OF IRAQ, DEFENDANTS.

Under the authority of the United Nations General Assembly/Security Council, through Articles 10, 11, 20 and 29 of the United Nations Charter authorizing creation of subsidiary organs, an Ad Hoc United Nations Criminal Tribunal is hereby created. This tribunal has jurisdiction to hear all claims, render judgment and impose any justified punishment against Saddam Hussein, his political, military and economic advisors, and other unnamed Defendants. These criminal charges stem from the invasion and occupation of Kuwait by the forces of Iraq under the direction of Saddam Hussein and the other Defendants beginning on or around August 2, 1990.

COUNT ONE — CRIMES AGAINST PEACE

That the Defendants, Saddam Hussein and his political, military and economic advisors, and other unnamed Defendants did commit crimes against peace by planning, preparing, initiating and prosecuting a war of aggression that culminated on or about August 2, 1990 with the invasion of Kuwait in violation of international treaties, agreements and assurances, to wit:

CHARGE I:

That in violation of Chapter I, article 2, sections (1) and (4) of the United Nations Charter, of which Iraq is a signatory, Saddam Hussein and the other Iraqi Defendants, through their army, did violate the sovereignty, territorial integrity and political independence of Kuwait, an independent nation state and signatory of said Charter, in contravention of Iraq's international duties and obligations.

CHARGE II:

That in violation of the General Treaty for Renunciation of War as an Instrument of National Policy of August 27, 1928, 46 Stat. 2343, 94 L.N.T.S. 59 (1929), the Defendants resorted to a war of aggression as an instrument of Iraqi national policy to solve an international dispute by invading and occupying the sovereign State of Kuwait.

* This draft indictment was submitted by the Commission for International Due Process of Law to the Secretary-General of the United Nations in October 1990.

CHARGE III:

That in violation of the customary international law principle prohibiting the use of force (*Nicaragua v. United States of America*, [1986] I.C.J. Rep. 14, ¶ 192), Iraq engaged in this war of aggression against Kuwait.

CHARGE IV:

That in violation of Article 25 of the U.N. Charter, the Defendants refused to accept and carry out the twelve specific resolutions adopted by the U.N. Security Council ordering them, *inter alia*, to withdraw Iraqi forces from Kuwait and to permit the restoration of Kuwait's lawful government.

COUNT TWO — WAR CRIMES**CHARGE I:**

That the Defendants, Saddam Hussein and his military, political and economic advisors and other unnamed Defendants, did commit violations, *see Amnesty International, Iraq/Occupied Kuwait — Human Rights Violations Since August 2, 1990*, MDE 14/16/90, December 1990, of the laws of war contained in the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, T.I.A.S. 3365, to which Iraq acceded on February 14, 1956, and of customary laws of war, by carrying out the invasion and subsequent occupation of Kuwait, to wit:

SPECIFICATION 1: In violation of Part III, Section 1, of this Convention, the Defendants did by and through the military forces of Iraq engage in the murder, torture, mutilation and cruel treatment of the people of Kuwait and nationals of other countries in that the forces under the command of the Defendants committed numerous execution-type murders of civilians without previous judgment being pronounced by a legally constituted court, and without affording all the judicial guarantees recognized as indispensable.

The Iraqis also engaged in the use of torture against innocent men, women and children, such as unprovoked severe beatings, including use of fists, belts, hot metal rods, hot skewers, kickings, the application of electric current, burning, pouring acid on them, urinating and defecating upon them.

SPECIFICATION 2: In that, in violation of Article 18 and Article 56 of this Convention, the Defendants failed to respect and protect civilian hospitals organized to give care to the wounded, sick, and infirm and for maternity care. That, in fact, these facilities were ransacked, stripped of their equipment, and the patients of these facilities were left to die for lack of treatment.

SPECIFICATION 3: In that, in violation of Article 20 of this Convention, the Defendants failed to respect and protect persons regularly engaged in

the operation and administration of civilian hospitals, including personnel engaged in the search for, removal, transport and care of wounded and sick civilians, the infirm and maternity cases. A number of female nurses were abducted and raped, and a number of male doctors and assistants were shot for attempting to alleviate the suffering of the sick or injured.

SPECIFICATION 4: In that, in violation of Article 25 of this Convention, the Defendants prohibited correspondence and exchange of news between persons in Kuwait and persons outside of Kuwait.

SPECIFICATION 5: In that, the Defendants, in violation of Article 27 of this Convention, violated the rights of all protected persons with respect to their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. The Defendants failed to protect them from acts of violence or threats thereof. Women were raped and subjected to forms of indecent sexual assault prohibited under this Article. Religious figures were subjected to torture, including having the hair of their beards pulled out.

SPECIFICATION 6: In that, in violation of Article 28 of this Convention, the Defendants used protected persons to shield certain military objectives by holding at least 83 hostages at strategic and military targets.

SPECIFICATION 7: In that, in violation of Article 31 of this Convention, the Defendants exercised physical and moral coercion against protected persons to obtain information from them, by shooting or raping family members before their eyes and engaging in other forms of physical torture.

SPECIFICATION 8: In that, the Defendants, in violation of Article 33 of this Convention, engaged in numerous forms of collective punishment, such as razing homes in neighborhoods where resistance was suspected and generally pillaging the country of almost everything of value.

SPECIFICATION 9: In that, the Defendants, in violation of Article 33 of this Convention, refused to allow thousands of persons to leave Iraq of their own free will, and denied those persons any legal process. This offense includes forbidding Western hostages to leave Iraq, closing the border with Jordan, and forbidding Arabs whose governments sided with the coalition from leaving Iraq.

SPECIFICATION 10: In that, the Defendants, in violation of Article 53 of this Convention, destroyed the real and personal property of protected persons and the State of Kuwait; this destruction was not absolutely necessary to military operations and occurred for the most part after military operations had ceased.

SPECIFICATION 11: In that, the Defendants, in violation of Article 55 of this Convention, failed to ensure that food and medical supplies were available to the population of occupied Kuwait. The defendants requisitioned food and medical supplies without considering the needs of the population of occupied Kuwait or paying fair value for these requisitions.

SPECIFICATION 12: In that, the Defendants, in violation of Article 57

of this Convention, unnecessarily requisitioned the hospitals of occupied Kuwait to care for Iraqi military casualties, without consideration for the needs of the Kuwaiti population.

SPECIFICATION 13: In that, the Defendants, in violation of Article 59 of this Convention, failed to allow relief to the inadequately supplied population of occupied Kuwait, despite offers by the International Committee of the Red Cross and the Red Crescent Societies to send consignments of food and medical supplies. And that these consignments were intercepted at the Kuwait border by Iraqi Armed Forces.

SPECIFICATION 14: In that, the Defendants, in violation of Article 62 of this Convention, failed to allow protected persons in occupied Kuwait to receive any consignments of aid sent to them individually.

SPECIFICATION 15: In that, the Defendants, in violation of Article 63 of this Convention, prohibited internationally recognized Red Cross Societies, such as the Red Crescent, from fulfilling their missions as defined by the International Red Cross Conferences. No other humanitarian organization operating under similar principles was allowed to ensure the living conditions, public services or distribution of relief to the population of occupied Kuwait.

SPECIFICATION 16: In that, the Defendants, in violation of Section V of this Convention in its entirety, refused to establish any information bureau to allow communication with any internees or to report any vital information to the next of kin or protecting party of protected persons in occupied Kuwait.

CHARGE II:

That the Defendants, Saddam Hussein and his military and economic advisors and other unnamed Defendants, did commit violations of the laws of war as contained in the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, T.I.A.S. 3363, which was acceded to by the State of Iraq on February 14, 1956, and of customary laws of war, in carrying out the invasion and occupation of Kuwait, to wit:

SPECIFICATION 1: In that, the Defendants, in violation of Article 17 of this Convention, used physical and mental torture to coerce prisoners of war to reveal information other than as permitted under this Convention. Troops of the coalition taken as prisoners of war by the Defendants were displayed on Iraqi national television with varying degrees of injuries.

SPECIFICATION 2: In that, the Defendants, in violation of Article 19 of this Convention, prohibited prisoners of war from being evacuated to safe camps away from the combat zone, and instead moved them to military sites likely to be targeted by the coalition forces.

SPECIFICATION 3: In that, the Defendants, in violation of Article 23 of this Convention, detained prisoners of war in areas where their presence was intended to render certain points or areas immune. According to the

Iraqi Ministry of Industry, one prisoner of war was killed in one of these areas. The Defendants also failed to provide any information regarding the location of Prisoner of War Camps as required by this Convention.

SPECIFICATION 4: In that, in violation of Part III, Section V, Articles 69 through 77 of this Convention, no contact with the outside world has been allowed to the prisoners of war taken by Iraq. This includes failure to provide the required notice of capture, failure to allow into Iraq any relief shipments for prisoners, and failure to establish any facilities to provide for the transfer of this information.

SPECIFICATION 5: In that, the Defendants, in violation of Part V of this Convention, made no attempt to establish an information bureau to provide information as to the status and health of prisoners of war, nor was any provision made for representatives of relief societies to visit prisoners of war or provide for the relief of these prisoners.

CHARGE III:

That since the invasion and occupation of Kuwait, in violation of Articles 22, 23(e) and (g) and 25 of the Hague Convention (No. IV. of Oct. 18, 1907) Respecting the Laws and Customs of War on Land, 36 Stat. 2277; the Defendants launched surface to surface missiles at populated cities in Israel and Saudi Arabia only for the purpose of instilling terror. The bombardment of these cities served no military purpose and constituted wilful and wanton destruction of civilian populations.

CHARGE IV:

That in violation of customary international law principles dating back to the Hague Convention of 1907, the Defendants, who are subject to the application of customary laws of war, are guilty of war crimes.

CHARGE V:

That in violation of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques of May 18, 1977, 31 U.S.T. 333, T.I.A.S. No 9614, which Iraq signed on August 15, 1977, the Defendants deliberately released millions of gallons of crude oil into the Persian Gulf for the express purpose of gaining military advantage while creating effects extremely harmful to human welfare.

COUNT THREE — CRIMES AGAINST HUMANITY

CHARGE I:

That the Defendants, Saddam Hussein and his military and economic advisors and other unnamed Defendants, did, through the Iraqi armed forces, commit crimes against humanity, *see* Amnesty International, *supra*, namely "deportation and other inhuman acts committed against any civilian population before and during" war, as specified in the

Charter of the International Military Tribunal at Nuremberg, by murdering, deporting, torturing and otherwise inhumanely treating the civilian population of Kuwait as well as other nationals during the invasion of Kuwait and the subsequent war to liberate Kuwait. In addition, these crimes violate other norms of international law to which Iraq is bound, including the 1949 Geneva Convention Relative to the Treatment of Prisoners of War, T.I.A.S. 3364, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, T.I.A.S. 3364, both of which Iraq acceded to in 1956, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of Dec. 10, 1984, *entered into force* June 26, 1987, U.N. Doc. A/Res./39/46 (1984), which has already become an accepted norm under principles of customary international law; and the International Convention Against the Taking of Hostages, U.N. Doc. A/RES/34/146 of Dec. 17, 1979, to wit:

SPECIFICATION 1: In that the Defendants committed the calculated murder, through the use of extrajudicial executions, of hundreds of Kuwaiti civilians and former military personnel as well as other nationals, including Egyptians, Iranians, Pakistanis, British and possibly others. These executions were outside the context of armed conflict, and the victims were unarmed at the time of their deaths. These killings were targeted at specific individuals.

SPECIFICATION 2: In that, the Defendants did commit systematic torture and numerous inhuman acts against the people of Kuwait and other foreign nationals, sometimes during and after weeks of detention. Torture included beatings, the use of fists, belts, hot metal rods, and hot skewers, kickings, burning of the skin with fire and acid, sexual torture, mock execution, electric shocks, falaqua (beatings on the soles of the feet), close range shootings, knife slashes, exposure to extreme hot and cold for extended periods, suspension from electric fans, placing of heavy weights on the body, pulling out fingernails and body hair, and forcing victims to watch relatives being tortured. During torture, the suffering of the detainees was compounded by their deprivation of medical treatment while in custody and, following their release, by the almost total absence of medical facilities.

SPECIFICATION 3: In that, the Defendants placed foreign civilians at and near military installations in Iraq and Kuwait for use as "human shields" against possible attack by the coalition forces.

SPECIFICATION 4: In that during the war launched by coalition forces to secure Iraq's withdrawal from Kuwait, the Defendants caused opposing force's prisoners of war to be subjected to inhuman and illegal treatment, including beatings, placement at or near potential coalition targets, and coercion to extract statements favorable to Iraq.

CHARGE II:

That the Defendants, by and through the Iraqi armed forces, violated international law as specified in the 1945 Charter of the International Military Tribunal, 58 Stat. 1544, the 1946 Judgment of the International

Military Tribunal, Nuremberg, 2 Germany (*see, e.g.*, 22 I.M.T. Trial of the Major War Criminals 411 (1948)), the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, T.I.A.S. 3365, and other recognized legal norms, by committing crimes against humanity under the category "persecutions on political" or other grounds, to wit:

SPECIFICATION 1: In that the Defendants committed numerous murders against the civilian population of Kuwait on political and other grounds.

SPECIFICATION 2: In that the Defendants committed torture against the civilian population of Kuwait and other foreign nationals as enumerated in Charge I, Specification 2 of this Count, on political grounds.

SPECIFICATION 3: In that the Defendants, in violation of Article 22 of the Vienna Convention on Diplomatic Relations of 1961, 500 U.N.T.S. 95, *entered into force* April 24, 1964, violated the premises of numerous diplomatic missions within Kuwait; in violation of Article 26 of this Convention, the Defendants unlawfully restricted the freedom of movement and travel of diplomatic agents within the territory of Kuwait; and in violation of Article 30 of this Convention, the Defendants unlawfully violated the private residences of diplomatic agents within the territory of Kuwait.

Respectfully submitted,

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