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# Human Rights as Rhetoric: The Persian Gulf War and United States Policy toward Iraq

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## HUMAN RIGHTS AS RHETORIC: The Persian Gulf War and United States Policy Toward Iraq

President George Bush cited Iraqi human rights abuses as partial justification for the 1991 war between United States-led coalition forces and Iraq in the Persian Gulf ("the Gulf War") in order to build a domestic and international consensus against Iraq. Throughout the 1980s, the U.S. State Department consistently acknowledged Iraq's human rights violations,<sup>1</sup> yet violations did not significantly influence United States foreign policy toward Iraq prior to the Gulf War. Geopolitical and economic concerns, such as developing Iraq as a market for American exports<sup>2</sup> and securing Iraq as a potentially consistent source of oil<sup>3</sup> motivated the United States to maintain an uneasy alliance with Iraq and support Iraq during the Iran-Iraq War.<sup>4</sup> The only Reagan Administration criticism of Iraqi human rights violations that influenced its foreign policy derived from another concern—controlling proliferation of chemical weapons.<sup>5</sup> Congress was more critical of Iraqi human rights abuses than the Administration but generally bowed to the Administration's pressure to support Iraq.<sup>6</sup> This past United States indifference toward Iraq's human rights violations renders suspect the Bush Administration's claim that such abuses genuinely motivated military action.

The United States provided both direct and indirect political and economic assistance to Iraq throughout the 1980s. The Reagan Administration supported Iraq diplomatically during the Iran-Iraq War,

1. *See, e.g.*, U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1989, at 1411 (1990); U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1988, at 1355 (1989); U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1987, at 1166 (1988). *See also* N.Y. Times, Feb. 2, 1991, at A6, col. 3.

2. *See infra* note 7 and accompanying text.

3. In the late 1980s the U.S. bought approximately eight percent (675,000 barrels per day) of its oil from Iraq. Dumas, *Hill Members Renew Attempts to Impose Trade Sanctions*, 48 CONG. Q. WEEKLY REP. 1281, 1282 (1990). Earlier in the decade, the U.S. was especially concerned that the Iran-Iraq War might threaten oil exports and drive up oil prices. *See* N.Y. Times, Jan. 15, 1987, at D24, col. 5.

4. *See infra* notes 7–12 and accompanying text. The Iran-Iraq War lasted approximately from September 1980 to August 1988. D. HIRO, *THE LONGEST WAR* (1989). This period roughly coincided with the tenure of the Reagan Administration. Saddam Hussein ruled at the time, having assumed power in 1979. *Id.* For information on Saddam Hussein's rise to power, his alleged human rights abuses, and the political climate in Iraq, see generally J. MILLER & L. MYLROIE, *SADDAM HUSSEIN AND THE CRISIS IN THE GULF* (1990); P. MARR, *THE MODERN HISTORY OF IRAQ* (1985); S. KHALIL, *REPUBLIC OF FEAR: THE POLITICS OF MODERN IRAQ* (1990); Korn, *Blood Baath: The way Saddam rewards dissent*, THE NEW REPUBLIC, Oct. 29, 1990, at 13.

5. *See infra* note 21.

6. *See infra* notes 16, 18, 27–29, 32–38 and accompanying text.

even though the United States was officially neutral<sup>7</sup> and did not sell weapons to Iraq.<sup>8</sup> The State Department praised Iraq for its efforts toward a peaceful resolution of its dispute with Iran and for its willingness to comply with United Nations Security Council resolutions.<sup>9</sup> The Reagan Administration also provided the Iraqis with intelligence information on Iran during the war.<sup>10</sup> Furthermore, in 1984 the United States reestablished diplomatic relations with Iraq<sup>11</sup> and expanded bilateral relations "substantially."<sup>12</sup>

The Reagan Administration provided economic support to Iraq by requesting that Congress relax applicable export controls<sup>13</sup> and drop the Export Administration Act requirement that the State Department certify whether Iraq supported terrorism.<sup>14</sup> Congress initially opposed these requests because of its perception that Iraq continued to support terrorism<sup>15</sup> but finally yielded to pressure in 1985.<sup>16</sup> The Reagan Administration also provided Iraq with \$4.5 billion in farm export credit guarantees between 1983 and 1989.<sup>17</sup> Such extensive agricultural aid directly contravened a clear congressional mandate against providing Iraq with any form of assistance.<sup>18</sup> These instances of support for Iraq indicate that human rights violations and dubious credit-worthiness were not of great concern to the Administration.<sup>19</sup>

7. Statement by Deputy Press Secretary Speakes on the War Between Iran and Iraq, 1982 PUB. PAPERS 923 (July 14, 1982). See also President's Message to the Congress Concerning the Continuation of the Iran Emergency, 1982 PUB. PAPERS 1438 (Nov. 8, 1982).

8. See Pipes & Mylroie, *Back Iraq: it's time for a U.S. 'tilt'*, THE NEW REPUBLIC, April 27, 1987, at 14, 15. The U.S. did, however, license the sale of approximately \$60 million worth of controlled items to Iraq in 1989. Dumas, *supra* note 3, at 1282.

9. Doc. No. 263, in U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY, 1987, at 430 (1988) [hereinafter FOREIGN POLICY 1987] (prepared statement by Assistant Secretary of State for Near Eastern and South Asian Affairs Murphy before the Senate Foreign Relations Comm.).

10. See Pipes & Mylroie, *supra* note 8, at 15.

11. Iraq severed diplomatic relations with the U.S. following the 1967 Arab-Israeli War. Wash. Post, Feb. 16, 1983, at A14, col. 2.

12. FOREIGN POLICY 1987, *supra* note 9, at 430, 431.

13. Doc. No. 334, in U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY, 1982, at 784 (1983) (statement by State Department Acting Spokesman Romberg).

14. 1985 CONG. Q. ALMANAC 259 (1986). The Export Administration Act is Pub. L. No. 96-72.

15. See 131 CONG. REC. H4905 (daily ed. June 25, 1985). The State Department again placed Iraq on the list of terrorism-supporting countries in September 1990. U.S. GENERAL ACCOUNTING OFFICE, INTERNATIONAL TRADE: IRAQ'S PARTICIPATION IN U.S. AGRICULTURAL EXPORT PROGRAMS 14 (1990) [hereinafter GAO REPORT].

16. See 1985 CONG. Q. ALMANAC 259 (1986).

17. GAO REPORT, *supra* note 15, at 2. In 1988 Iraq received a full quarter of the Department of Agriculture's Export Credit Guarantee Programs, making it the second largest recipient of guarantees and satisfying approximately 25% of its food needs. Through these farm export credits, the Reagan Administration apparently hoped both to help Iraq in its war against Iran and to develop Iraq as a lucrative market for U.S. agricultural products. *Id.* at 3-6.

18. See 1986 CONG. Q. ALMANAC 165 (1987). In its 1986 Foreign Aid Act (Pub. L. No. 99-591), Congress prohibited indirect U.S. aid to Iraq, "unless the President certified to Congress that such a ban was contrary to the national interests of the United States." *Id.*

19. See GAO REPORT, *supra* note 15, at 6, 21.

Although human rights abuses did not significantly influence the United States' relationship with Iraq during the Reagan years, both Congress<sup>20</sup> and the Reagan Administration<sup>21</sup> protested Iraq's use of chemical weapons on thousands of Iraqi citizens of Kurdish origin<sup>22</sup> in 1988.<sup>23</sup> The Reagan Administration delayed confronting Iraq on the issue,<sup>24</sup> however, because it did not want to threaten bilateral relations with Iraq<sup>25</sup> and because it allegedly wanted to verify the human rights abuses before making the accusation.<sup>26</sup> Congress did condemn Iraq for its use of chemical weapons in 1988 after the Iran-Iraq War had ended. Both the Senate<sup>27</sup> and House of Representatives<sup>28</sup> voted to impose sanctions, but neither bill became law despite a congressional consensus on the egregiousness of the violations.<sup>29</sup> The Reagan Administration opposed both the Senate and House efforts<sup>30</sup> and continued to provide financial support to Iraq through the Department of Agriculture's farm export credit guarantee programs.<sup>31</sup>

This disagreement between the executive and legislative branches continued after President Bush took office in 1988. In 1990 Representative Gus Yatron (D-Pa.) introduced a bill to sanction Iraq for its human rights violations.<sup>32</sup> Despite some support for the bill in Con-

20. *Infra* notes 27, 28 and accompanying text.

21. *Doc. No. 260*, in U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY, 1988, at 458 (1989) (statement by State Department Spokesman Redman). *See also* President Reagan's speech to the 43d General Assembly of the United Nations, reprinted in N.Y. Times, Sept. 27, 1988, at A10, col. 3; 84 DEP'T ST. BULL., June 1984, at 40.

22. The Kurds are an ethnic group which has sought independence from Iraq for decades. *See generally* D. McDOWALL, THE KURDS (1989) (Minority Rights Group Rep. 23).

23. *See generally* Iraq: United States Response to the Alleged Use of Chemical Weapons Against the Kurds, 2 HARV. HUM. RTS. Y.B. 179 (1989). Iraq also used chemical weapons against Iran during the Iran-Iraq War. *See* N.Y. Times, Mar. 24, 1988, at A11, col. 1.

24. N.Y. Times, Sept. 8, 1988, at A16, col. 1.

25. *Id.*

26. N.Y. Times, Sept. 10, 1988, at 4, col. 4.

27. 1988 CONG. Q. ALMANAC 510 (1989). The bill, sponsored by Senate Foreign Relations Committee Chairman Claiborne Pell (D-R.I.), condemned Iraq for practicing "genocide" against the Kurds. *See* S. 2763, 100th Cong., 2d Sess. (1988).

28. 1988 CONG. Q. ALMANAC 511 (1989). The House's version was milder than that of the Senate but would have authorized the President to increase penalties if Iraq did not stop using chemical weapons. *See* H.R. 5337, 100th Cong., 2d Sess. (1988). The bill would have immediately banned the export of military-related equipment, computers, and oil-drilling equipment subject to U.S. export controls. *Id.*

29. *See* 1988 CONG. Q. ALMANAC 511 (1989).

30. *Id.* at 510. Deputy Assistant Secretary of State for Near Eastern and South Asian Affairs Burleigh stated, "[W]e believe that the passage of this legislation now would undercut our efforts with Iraq and damage U.S. exporters without furthering the goal of ending use by Iraq of chemical weapons." *Doc. No. 262*, in U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY, 1988, at 459-60 (1989).

31. Press Conf. with Rep. Charles E. Shumer (D-N.Y.), Nov. 20, 1990 (LEGI-SLATE).

32. H. Con. Res. 298, 101st Cong., 2d Sess., 136 CONG. REC. H1448 (1990). The Yatron Bill called for more U.S. and international attention to Iraq's human rights violations and condemned Iraq's forced resettlements of Kurdish and Assyrian communities in northern Iraq. *Id.*

gress,<sup>33</sup> it was opposed by the Bush Administration,<sup>34</sup> and it never reached the floor of the House for a vote.<sup>35</sup> Other congressional efforts to impose sanctions on Iraq continued into early 1990,<sup>36</sup> including an effort to sanction Iraq and other countries that used chemical weapons.<sup>37</sup> Throughout early 1990, the Bush Administration resisted congressional attempts to sanction Iraq, resulting in marked tension between the two branches.<sup>38</sup>

Iraq's invasion of Kuwait on August 2, 1990,<sup>39</sup> prompted a consensus between the Bush Administration and Congress over the importance to United States foreign policy of Iraqi human rights abuses. The Administration appeared to have shifted its priorities<sup>40</sup> in order to rally public support by appealing to the larger and more abstract moral concerns of the American people. By repeatedly emphasizing Iraq's brutality against foreign nationals,<sup>41</sup> refugees,<sup>42</sup> and prisoners of war ("POWs"),<sup>43</sup> by alluding to Iraq's past human rights record,<sup>44</sup> and by highlighting information likely to inspire patriotism and fear,<sup>45</sup> Bush rallied the general public to a war not just for oil or money, but

33. A bipartisan group cosponsored Yatron's bill. House Foreign Affairs Comm. Press Release, April 2, 1990 (available from House Foreign Affairs Comm.). Other members of Congress proposed even more stringent bills to sanction Iraq during this period between the Iran-Iraq War and the Gulf War. *See, e.g.*, S. 2480, 101st Cong., 2d Sess. (1990); H.R. 4585, 101st Cong., 2d Sess. (1990); H.R. 4404, 101st Cong., 2d Sess. (1990). None of these bills reached the floor of the House for a vote. 1990 States News Service, Aug. 22, 1990 (NEXIS).

34. 1990 States News Service, Aug. 22, 1990 (NEXIS). The State Department reversed an earlier decision to support the bill, arguing that the bill limited executive discretion to impose sanctions. *Iraq Escalates Threat*, 34 NEAR EAST REP., Apr. 30, 1990, at 1.

35. 1990 States News Service, Aug. 22, 1990 (NEXIS).

36. *See* 1989 CONG. Q. ALMANAC 784 (1990).

37. *See, e.g.*, S. 2927, 101st Cong., 2d Sess. (1990); H.R. 3033, 101st Cong., 1st Sess. (1989). *See also* 1989 CONG. Q. ALMANAC 501 (1990).

38. *See generally* *Iraq Escalates Threat*, *supra* note 34, at 1; Dumas, *supra* note 3, at 1281.

39. N.Y. Times, Aug. 2, 1990, at A1, col. 6.

40. *See* Wash. Post, Oct. 30, 1990, at A21, col. 1.

41. *See, e.g.*, President's News Conference on the Persian Gulf Crisis, U.S. Military Buildup, 26 WEEKLY COMP. PRES. DOC. 1789 (Nov. 8, 1990).

42. *See, e.g.*, President's Proclamation 6219—Refugee Day, 1990, 26 WEEKLY COMP. PRES. DOC. 1701 (Oct. 30, 1990). *See also* Wash. Post, Sept. 18, 1990, at A21, col. 1.

43. *See, e.g.*, N.Y. Times, Jan. 26, 1991, § 1, at 5, col. 1. *See also* Wash. Post, Jan. 27, 1991, at C1, col. 1.

44. *See, e.g.*, President's Address Before the 45th Session of the United Nations General Assembly in New York City, 26 WEEKLY COMP. PRES. DOC. 1496 (Oct. 1, 1990). Bush pointed to Iraq's disregard for human rights, especially Saddam Hussein's use of poison gas on the Kurdish people in Iraq, in order to muster support from the U.N. General Assembly. *Id.* at 1497. Bush also admitted that Iraq's human rights abuses were not surprising in light of Saddam Hussein's human rights history. *Id.*

45. *See, e.g.*, President's News Conference in Orlando, Persian Gulf Crisis, 26 WEEKLY COMP. PRES. DOC. 1719 (Nov. 1, 1990) [hereinafter November 1 News Conference]. In one of numerous comparisons of Saddam Hussein to Adolph Hitler, Bush pointed to the similarity between the Nazi "Death's Head regiments" that invaded Poland and Iraq's troops in Kuwait. *Id.* at 1724. *See also* President's Remarks and a Question-and-Answer Session with Reporters, 26 WEEKLY COMP. PRES. DOC. 2034 (Dec. 14, 1990) [hereinafter December 14 Remarks].

for humanity. This approach proved to be extremely effective in engendering public revulsion of Saddam Hussein.<sup>46</sup>

The United States government, in cooperation with the United Nations, imposed strict economic sanctions<sup>47</sup> and instituted military action<sup>48</sup> against Iraq, justifying these actions in part by pointing to Iraq's violations of international human rights norms.<sup>49</sup> Central to the United States' "Iraq against the world"<sup>50</sup> policy were the various United Nations Security Council resolutions passed after Iraq's invasion of Kuwait,<sup>51</sup> one of which authorized the use of force against Iraq after January 15, 1991.<sup>52</sup>

46. One poll estimated that 75% of the U.S. public supported President Bush's decision to launch a ground war against Iraq. N.Y. Times, Feb. 26, 1991, at A17, col. 3 (reporting results of a N.Y. Times/C.B.S. poll). See also N.Y. Times, Feb. 6, 1991, at A9, col. 1. Opposition groups were also vocal and analogized U.S. involvement in the Middle East to its prior involvement in Vietnam. See N.Y. Times, Jan. 27, 1991, § 21, at 17, col. 1; N.Y. Times, Jan. 20, 1991, § 1, at 18A, col. 3.

47. For example, President Bush froze all Iraqi assets in the U.S. and banned all trade with Iraq on August 2, 1990, in immediate response to the invasion. Exec. Order 12,722, 55 Fed. Reg. 31,803 (1990). Bush also blocked access to all Iraqi property and interests in the U.S. and prohibited the import into the U.S. of any goods or services of Iraqi origin; the export to Iraq of any goods, technology or services (humanitarian articles excluded); all transactions for transportation between U.S. citizens and Iraq; the purchase of goods exported by Iraq to another country; the performance of any contract in support of an industrial, commercial, or governmental project in Iraq; the grant, extension of credits, or loans by any U.S. citizen to Iraq; and any transaction by a U.S. citizen which avoided or intended to avoid any of the prohibitions set forth above. *Id.* at 31,805. Furthermore, the State Department revoked all Iraqi licenses for importing and exporting munitions to and from the U.S. 55 Fed. Reg. 31,808 (1990). The Department of Transportation prohibited any aircraft carrying cargo other than medicines and approved humanitarian food supplies to Iraq or Kuwait from invading U.S. air space. 14 C.F.R. § 91 (1990).

The United Nations imposed an economic embargo on Iraq and Kuwait and authorized the U.S. and other naval powers to enforce the embargo. U.N. Doc. S/RES/661 (1990), U.N. Doc. S/RES/670 (1990); U.N. Doc. S/RES/665 (1990) (available from the United Nations).

48. Hostilities broke out on January 16, 1991, and continued until President Bush ended the military offensive February 28, 1991. N.Y. Times, Jan. 17, 1991, at A1, col. 2; N.Y. Times, Feb. 28, 1991, at A1, col. 6.

49. See N.Y. Times, Feb. 3, 1991, § 4, at 1, col. 3; President's Remarks on Signing the Human Rights Day, Bill of Rights Day, and Human Rights Week Proclamation, 26 WEEKLY COMP. PRES. DOC. 2015, 2016 (Dec. 10, 1990); December 14 Remarks, *supra* note 45; President's Exchange with Reporters Near Dhahran, Saudi Arabia, 26 WEEKLY COMP. PRES. DOC. 1907 (Nov. 22, 1990); November 1 News Conference, *supra* note 45; Wash. Post, Jan. 11, 1991, at A21, col. 1.

50. President's News Conference on the Persian Gulf Crisis, 26 WEEKLY COMP. PRES. DOC. 1304 (Aug. 30, 1990) [hereinafter August 30 News Conference]. The Bush Administration's persistent lobbying convinced U.S. allies to support the U.N. Security Council resolutions condemning Iraq for its invasion of Kuwait and its treatment of third party citizens. President's Remarks at a White House Briefing for Members of Congress on the Persian Gulf Crisis, 26 WEEKLY COMP. PRES. DOC. 1300 (Aug. 28, 1990) [hereinafter August 28 Remarks].

51. U.N. Doc. S/RES/660 (1990); U.N. Doc. S/RES/661 (1990); U.N. Doc. S/RES/662 (1990); U.N. Doc. S/RES/664 (1990); U.N. Doc. S/RES/665 (1990); U.N. Doc. S/RES/666 (1990); U.N. Doc. S/RES/667 (1990); U.N. Doc. S/RES/669 (1990); U.N. Doc. S/RES/670 (1990); U.N. Doc. S/RES/674 (1990); U.N. Doc. S/RES/677 (1990); U.N. Doc. S/RES/678 (1990) (available from the United Nations).

52. See U.N. Doc. S/RES/678 (available from the United Nations).

The Bush Administration's new emphasis on Iraqi human rights abuses was supported by reports of severe abuses perpetrated by the Iraqis against Kuwaiti citizens, refugees, and United States citizens. Such human rights organizations as Amnesty International detailed horrendous abuses against trapped Kuwaiti citizens, including extrajudicial executions,<sup>53</sup> torture,<sup>54</sup> and the denial of foodstuffs, supplies, and medical treatment.<sup>55</sup> Both the Bush Administration and Congress vehemently condemned the much-publicized abuses of Kuwaiti citizens who remained in Kuwait after the invasion.<sup>56</sup>

The Bush Administration<sup>57</sup> and Congress<sup>58</sup> also condemned Iraq for the refugee crisis generated by the invasion.<sup>59</sup> Approximately one

53. See AMNESTY INTERNATIONAL USA, *IRAQ/OCCUPIED KUWAIT: HUMAN RIGHTS VIOLATIONS SINCE AUGUST 2, 1990* (Dec. 1990) [hereinafter AMNESTY REPORT] at 44–52. Iraqis reportedly would take detainees to the detainees' homes for identification, shoot the detainees in the backs of their heads in front of their families, and then ask the families to pay for the bullets. *Hearing of the House Foreign Affairs Comm., Subcomm. on Human Rights: Human Rights Abuses in Kuwait and Iraq*, 102d Cong., 1st Sess., in Federal News Service, Jan. 9, 1991 (NEXIS) [hereinafter *January 8 hearing*]; see also NEWS FROM MIDDLE EAST WATCH, Nov. 16, 1990, at 6 [hereinafter MIDDLE EAST WATCH REPORT]. Reports from Kuwait revealed numerous accounts of mass executions, torture, rape, beatings, looting and unlawful appropriations. N.Y. Times, Oct. 17, 1990, at A13, col. 4. In the first two or three days after the invasion, Iraqis reportedly killed at least 300 Kuwaitis. *Id.*

54. See AMNESTY REPORT, *supra* note 53, at 27–38. Iraq reportedly used 38 forms of torture in Kuwait, including gouging of the eyes, extinguishing cigarettes on the eyeballs, and pouring an acid-like substance onto the skin. *January 8 hearing, supra* note 53.

55. See AMNESTY REPORT, *supra* note 53, at 55–58; *Kuwait: Human Rights Atrocities in Kuwait: Hearing Before the U.S. Congressional Human Rights Caucus*, 101st Cong., 2d Sess., in Federal News Service, Oct. 10, 1990 (NEXIS) [hereinafter *October 10 hearing*]; MIDDLE EAST WATCH REPORT, *supra* note 53, at 1–2. After Iraqi forces left Kuwait, Kuwaiti citizens allegedly retaliated against Palestinians suspected of assisting Iraq. The U.S. did not intervene to prevent the Kuwaitis from abusing these people. Boston Globe, Mar. 9, 1991, at 5, col. 1.

56. See, e.g., President's News Conference, 26 WEEKLY COMP. PRES. DOC. 1548, 1553–54 (Oct. 9, 1990) [hereinafter *October 9 News Conference*]; November 1 News Conference, *supra* note 45. President Bush and Congress also stressed Amnesty International reports, particularly the December report. See AMNESTY REPORT, *supra* note 53; see also President's Remarks at a Republican Fund-Raising Reception in Omaha, Nebraska, 26 WEEKLY COMP. PRES. DOC. 1595, 1596 (Oct. 15, 1990); *January 8 Hearing, supra* note 53.

57. See, e.g., October 9 News Conference, *supra* note 56.

58. See, e.g., U.S. *Refugee Programs in Kuwait and Elsewhere: Hearing of the Senate Judiciary Comm.*, 101st Cong., 2d Sess., in Federal News Service, Oct. 3, 1990 (NEXIS) [hereinafter *Refugee Programs*]. In response to the crisis, the U.S. provided \$18 million for food and aid and \$10 million for transportation. The international community donated much more—\$200 million for supplies and services ranging from foodstuffs to aircraft and other forms of transportation. *Id.*

59. Iraq's treatment of these refugees violated the International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966), and article 28 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287 (Iraq ratified this agreement in 1956. COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 1556 (Y. Sandoz, C. Swinarski, & B. Zimmermann eds. 1987)). Iraq also violated U.N. Resolution 664 (U.N. Doc. S/RES/664 (1990) (available from the United Nations)).

million people became refugees,<sup>60</sup> including almost half the pre-invasion population of Kuwait.<sup>61</sup> While the refugees who successfully escaped Iraq and Kuwait found some relief in Turkey, Jordan and Saudi Arabia,<sup>62</sup> the refugees who remained within Iraq's control were subject to deplorable conditions.<sup>63</sup> According to news reports, while food supplies were sometimes available to those with money, they did not reach the poorest refugees.<sup>64</sup> Iraq exacerbated the refugee crisis by taking food from displaced nationals,<sup>65</sup> closing its borders with neighboring countries,<sup>66</sup> and refusing to allow relief agencies to enter the militarized area. Moreover, Iraqi government officials made public statements that undermined Iraq's claims of fair play.<sup>67</sup>

The United States was another target of Iraqi human rights abuses. Following its invasion of Kuwait, Iraq held approximately 3000 United States citizens hostage.<sup>68</sup> Iraq threatened to use detained United States nationals as "human shields" in the event of war,<sup>69</sup> but denied that these people were "hostages."<sup>70</sup> As early as August 19, 1990, Iraq conditioned a release of Western nationals on the repeal of the embargo, repeal of United States and U.N. economic sanctions, and removal of U.S. troops from Saudi Arabia.<sup>71</sup> President Bush dismissed the offer,<sup>72</sup> although he repeatedly em-

60. MIDDLE EAST WATCH REPORT, *supra* note 53, at 17. However, of the nearly one million refugees to flee Iraq and Kuwait, most were not Kuwaitis but third-country nationals formerly employed in Iraq and Kuwait. *Refugee Programs*, *supra* note 58.

61. MIDDLE EAST WATCH REPORT, *supra* note 53, at 17.

62. *Refugee Programs*, *supra* note 58.

63. See MIDDLE EAST WATCH REPORT, *supra* note 53, at 11.

64. See *Boston Globe*, Sept. 15, 1990, at 1, col. 1.

65. See MIDDLE EAST WATCH REPORT, *supra* note 53, at 11. Iraqi soldiers reportedly took foodstuffs from Kuwait warehouses and closed Kuwait's shops, making food even more difficult to find. *Id.*; *L.A. Times*, Sept. 12, 1990, at 9, col. 1.

66. See MIDDLE EAST WATCH REPORT, *supra* note 53, at 16. Although Iraq sporadically opened its borders with neighboring countries following the invasion, Iraq barred war refugees from leaving Iraq and Kuwait, blocking the major escape route for hundreds of thousands of foreigners trapped behind the lines. *Id.* See also *N.Y. Times*, Jan. 25, 1991, at A1, col. 5.

67. British Broadcasting Corp., Oct. 5, 1990, at A1. Iraqi Trade Minister Muhammad Mahdi Salih said, "[A]sking the country exposed to an unfair economic embargo to secure food supplies for foreigners lays bare an unjust and imperialist mentality. Those who adopted the unfair economic boycott and embargo decision will bear the consequences." *Id.*

68. NEWS FROM MIDDLE EAST WATCH, Aug. 29, 1990, at 7.

69. *N.Y. Times*, Aug. 21, 1990, at A26, col. 2. By taking hostages, Iraq directly violated article 6, § 1 and article 9, §§ 1-5 of the International Covenant on Civil and Political Rights, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966). Iraq also violated article 28 of the Fourth Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, T.I.A.S. No. 3365, 75 U.N.T.S. 287.

70. *N.Y. Times*, Aug. 24, 1990, at A1, col. 4.

71. *Boston Globe*, Aug. 20, 1990, at 1, col. 6.

72. *Id.* President Bush argued that bargaining for hostages would reward Saddam Hussein for brutality. August 30 News Conference, *supra* note 48. Bush's refusal to bargain for hostages continued President Reagan's policy against negotiating with terrorists. See President's Procla-



phasized release of the hostages as a primary objective of military involvement.<sup>73</sup>

The United States, the United Nations and some Arab states responded to the Iraqi hostage crisis with sudden and dramatic condemnation.<sup>74</sup> Congress denounced the abusive hostage situation<sup>75</sup> and President Bush used the hostage crisis to garner support for economic sanctions and commitment of American troops to defend Saudi Arabia and liberate Kuwait.<sup>76</sup> Iraqi President Saddam Hussein finally ordered the hostages' release on December 6, 1990.<sup>77</sup>

After the outbreak of hostilities on January 16, 1991,<sup>78</sup> the United States further suffered Iraqi human rights abuses with Iraq's reportedly harsh treatment of Allied prisoners of war.<sup>79</sup> Both the Bush Administration and Congress emphatically demanded that Iraq provide protection and fair treatment to Allied forces captured during the war.<sup>80</sup> Specifically, the United States condemned Iraq's practice of parading prisoners through the streets of Baghdad and Iraq's use of prisoners as human shields against future Allied missile attacks and bombing raids.<sup>81</sup> Iraq may also have drugged or tortured the POWs to coerce political statements denouncing the Allied war effort.<sup>82</sup> In response, the Bush Administration, Congress, and Allied governments voiced interest in prosecuting Saddam Hussein for war crimes.<sup>83</sup>

mation 5557—A Time of Remembrance for Victims of Terrorism, 1986 PUB. PAPERS 1416 (Oct. 22, 1986).

73. See, e.g., August 28 Remarks, *supra* note 53; President's Exchange with Reporters Aboard Air Force One, 26 WEEKLY COMP. PRES. DOC. 1272 (Aug. 20, 1990); Statement by Press Secretary Fitzwater on the Treatment of Foreign Nationals in Iraq and Kuwait, 26 WEEKLY COMP. PRES. DOC. 1265 (Aug. 18, 1990).

74. President Bush exercised the International Emergency Economic Powers Act (50 U.S.C. § 1701 (1990)), the National Emergencies Act, 50 U.S.C. § 1601 (1990), and 3 U.S.C. § 301 (1990), to issue two Executive Orders to sanction Iraq. See Exec. Order No. 12,722, 55 Fed. Reg. 31,803 (1990); Exec. Order 12,723, 55 Fed. Reg. 31,805 (1990). The United Nations passed several resolutions voicing concern for the hostages. See, e.g., U.N. Doc. S/RES/664 (1990) (available from the United Nations). Arab nations, including Saudi Arabia, Egypt, Jordan, Yemen, Turkey, and Libya openly denounced the invasion and the taking of hostages. See Wash. Post, Aug. 4, 1990, at A13, col. 1; Wash. Post, Aug. 21, 1990, at A5, col. 1.

75. See *October 10 hearing*, *supra* note 55.

76. See August 30 News Conference, *supra* note 50; August 28 Remarks, *supra* note 53.

77. N.Y. Times, Dec. 7, 1990, at A21, col. 1.

78. *Supra* note 48.

79. See Wash. Post, Jan. 22, 1991, at A1, col. 1; L.A. Times, Jan. 22, 1991, at A1, col. 5; Boston Globe, Jan. 22, 1991, at 1, col. 4.

80. Congress passed a non-binding resolution condemning Iraq for violating the Geneva Convention. S. Con. Res. 5, 102d Cong., 1st Sess., 137 CONG. REC. S1107 (daily ed. Jan. 24, 1991).

81. See S. Con. Res. 5, 102d Cong., 1st Sess., 137 CONG. REC. S1107 (daily ed. Jan. 24, 1991).

82. See Wash. Post, Jan. 22, 1990, at A1, col. 1.

83. See S.J. Res. 53, 102d Cong., 1st Sess., 137 CONG. REC. S1320 (daily ed. Jan. 24, 1991); N.Y. Times, Jan. 22, 1991, at A10, col. 1; N.Y. Times, Oct. 21, 1990, § 1, part 1, at 12, col. 1. Iraq's firing of SCUD missiles at civilian targets in Israel also sparked congressional

Iraq's treatment of the Kuwaitis, the refugees, the hostages, and the POWs reflects its continuing disregard for the basic human rights not only of its own citizens but of foreign nationals as well. Reports suggest, however, that Iraqi human rights abuses were as severe throughout the decade before the invasion<sup>84</sup> as they proved to be in August, 1990.<sup>85</sup> Widespread torture, extrajudicial arrests, summary executions, and the 1988 chemical weapons attack against the Kurds placed Iraq amongst the world's worst human rights offenders<sup>86</sup> well before its invasion of Kuwait.

Human rights nevertheless did not become part of United States foreign policy rhetoric until after Iraq's invasion of Kuwait,<sup>87</sup> when President Bush used reports of abuses to garner national and international support for a military response against Iraq. If such abuses had sincerely motivated the Reagan and Bush Administrations, either Administration would have condemned them well before August 1990 by cooperating with Congress to impose economic sanctions,<sup>88</sup> by attempting to orchestrate international denunciation of Iraq, or at least by refraining from providing Iraq with economic,<sup>89</sup> military,<sup>90</sup> and political<sup>91</sup> support. Specifically, the Reagan and Bush Administrations could have eliminated or reduced substantial United States agricultural subsidies to Iraq.<sup>92</sup> The failure of the Reagan and Bush Administrations to consider human rights abuses in formulating their foreign policy toward Iraq throughout the 1980s suggests either that human rights concerns suddenly became a priority after August 2, 1990, or that they were manipulated to achieve political objectives.

The Reagan and Bush Administrations probably chose not to focus on Iraq's human rights abuses before August 2 in order to preserve good relations with Iraq, which they deemed a critical United States foreign policy objective in the region. After the Organization of

initiatives to indict Saddam Hussein for war crimes. See S.C. Res. 4, 102d Cong., 1st Sess., 137 CONG. REC. S1107 (daily ed. Jan. 24, 1991).

84. See *supra* note 4.

85. A major additional human rights violation was, of course, denial of self-determination to Kuwaiti citizens. Self-determination is guaranteed by the International Covenant on Civil and Political Rights, art. 1(1), U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1967) and the International Covenant on Economic, Social and Cultural Rights, art. 1 (1), U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR, Supp. (No. 16) 49, U.N. Doc. A/6316 (1967).

86. Korn, *supra* note 4, at 14.

87. The only possible exception to the Reagan Administration's conciliatory attitude toward Iraq was its concern with the proliferation of chemical weapons after Iraq used such weapons during the Iran-Iraq War. See *supra* note 21 and accompanying text.

88. See *supra* notes 15, 18, 27-29, 32, 33 and accompanying text.

89. See *supra* notes 13-19 and accompanying text.

90. See *supra* notes 10, 13 and accompanying text.

91. See *supra* notes 9, 11, 12 and accompanying text.

92. See *supra* notes 17, 18 and accompanying text.

Petroleum Exporting Countries ("OPEC") dramatically raised oil prices in the late 1970s,<sup>93</sup> the Reagan Administration attempted to develop stronger ties with oil-producing countries, such as Iraq, to ensure a steady supply of oil to the United States and its allies.<sup>94</sup> Moreover, United States-Iranian relations drastically deteriorated as a result of the Iranian hostage crisis and Iran's exportation of anti-American Islamic fundamentalism.<sup>95</sup> After losing Iran as an ally following the Iranian Revolution,<sup>96</sup> the United States hoped to gain a new foothold in the Persian Gulf region.<sup>97</sup> Given Iraq's increased strategic importance, the United States may have been willing to overlook Iraq's human rights record in order to achieve other important foreign policy objectives.

The Bush Administration's actions following the invasion of Kuwait indicate that its foreign policy toward Iraq continues to be shaped by geopolitical rather than human rights concerns. At the same time as the Bush Administration was citing human rights as a justification for military action, it was allying itself with countries themselves known for serious human rights violations. Among coalition partners with the most deficient human rights records were Afghanistan, Bangladesh, Honduras, Morocco, Niger, Pakistan, Saudi Arabia, Syria, and Turkey.<sup>98</sup> Furthermore, several coalition members appear to have pledged their support for the United States' position in return for military and economic assistance.<sup>99</sup> As a result, the United States effort in the Gulf actually may cause a deterioration of human rights protection in some of these countries because United States assistance may help sustain repressive governments.

United States pre-war policy toward Iraq exposes the hollow and hypocritical nature of its human rights policy. The Reagan and Bush Administrations used human rights ultimately to serve higher priority strategic interests. Although the inconsistency in United States human

93. See generally R. LANDIS & N. KLASS, OPEC: POLICY IMPLICATIONS FOR THE UNITED STATES (1980).

94. See *supra* note 3 and accompanying text. U.S. concern for the oil supply was most evident in its actions to protect Kuwaiti tankers during the Iran-Iraq War. See N.Y. Times, June 12, 1987, at A14, col. 3; *Chronology: Middle East and Persian Gulf*, 66 FOREIGN AFF. 655 (1987/88).

95. See generally A. NORMAN, THE BRITTLE MIDDLE EAST: A POLITICAL AND INTERNATIONAL LEGAL EVALUATION OF IRAN AND THE UNITED STATES OF AMERICA, 1979-1980 (1981); Rubin, *Middle East: Search For Peace*, 64 FOREIGN AFF. 583 (1985/86).

96. See N.Y. Times, Jan. 21, 1981, at A9, col. 3.

97. The U.S. may have hoped to balance Soviet influence on Iraq. See N.Y. Times, May 29, 1982, § 1, at 3, col. 4.

98. See U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1990, at 1360-67, 1387-1400, 665-76, 1547-59, 273-82, 1586-1607, 1615-28, 1646-57, 1286-1303 (respectively) (1991).

99. See 136 CONG. REC. S16,358 (daily ed. Oct. 2, 1990) (regarding forgiveness of Egypt's debt); Haberman, *On Iraq's Other Front*, N.Y. TIMES MAGAZINE, Nov. 18, 1990, at 44, 46.

rights policy toward Iraq did not hinder the Bush Administration's ability to garner support for the Gulf War, it seriously undermines United States credibility within the international human rights arena and can only weaken future efforts to bring regimes like that of Saddam Hussein into compliance with international human rights norms.

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