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The **Genocide** of the Iraqi Kurds and Trial of **Saddam Hussein**

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The Genocide of the Iraqi Kurds and Trial of SADDAM HUSSEIN

By Michael J. Kelly, Associate Professor of Law

There is a small palm tree in a garden surrounded by walls near the airport in Baghdad. An elderly bearded man who has turned to writing poetry and reading the words of God in recent weeks goes out to the garden for an hour and a half in the morning and an hour and a half in the afternoon.

He tends to the tree, putting stones around the base and making sure it has enough water to survive Iraq's midsummer.

When his hour and a half is over, Saddam Hussein goes back to his cell. Once, he had dominion over all of Iraq. Now, he is stripped of all the riches and delusions; all he has left is a little time each day to cultivate a garden that isn't even his.

— *Chicago Tribune*, July 27, 2004

Iraqi men check a body list as sheets containing the remains of bodies excavated from a mass grave in May 2003 lie in the desert on the outskirts of Al Musayyib, Iraq.

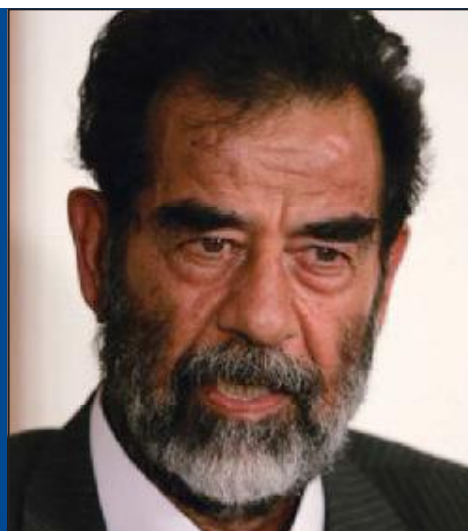


Getty Images/Marco Di Lauro

Genocide

[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- [a] Killing members of the group;
- [b] Causing serious bodily or mental harm to members of the group;
- [c] Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- [d] Imposing measures intended to prevent births within the group;
- [e] Forcibly transferring children of the group to another group.



AP Photo/Karen Ballarín

Saddam Hussein, the former Iraqi dictator, sits in solitary confinement under the care of U.S. military police awaiting trial by the newly minted Iraqi Special Tribunal (IST) for a laundry list of crimes committed during his 33 years in power. He was toppled by an American-led invasion in March 2003, and remained in hiding until discovered by U.S. forces in a six-foot underground “spider hole,” armed only with a pistol that he did not use. He gardens while he waits for his trial. The charges against Hussein include war crimes, crimes against humanity, aggression and genocide. While each of these international crimes requires varying levels of proof and assertion unique to the specific crime or its sub-component, genocide is perhaps the trickiest of the lot, requiring not mere intent, but specific intent to destroy an identifiable group of people. Although it has been called the “crime of crimes” since the experience of the Holocaust, genocide has traditionally been the most difficult crime for prosecutors to prove.

Formally outlawed in 1948, genocide has existed in practice from time immemorial.

Indeed, it was known in the ancient world as a legitimate practice, used most famously by the Romans against Carthage. Throughout the Middle Ages and into the modern era, genocide was regularly practiced until the slaughter of the Armenians by the Ottoman Turks during World War I. International outrage at the atrocity moved world opinion toward condemning genocide, culminating in the adoption of the Genocide Convention in 1948 after World War II and the Holocaust.

The elasticity of the definition is deceptive. While many fact patterns may fit into the two required objective slots, a protected group (e.g., racial) and an act of destruction (e.g., killing), the definition is silent as to just how widespread the acts must be. Is just one killing enough? Furthermore, perpetrators can go free on the prosecution’s inability to prove the subjective element of intent. Judicial and legal authorities have interpreted the intent required for genocide to be specific rather than general. Varying rationales exist for this conclusion, but the higher threshold means more proof — proof that is almost invariably

difficult to come by in the form of intercepted conversations, correspondence or documents that demonstrate the perpetrator’s state of mind at the time the genocide was carried out.

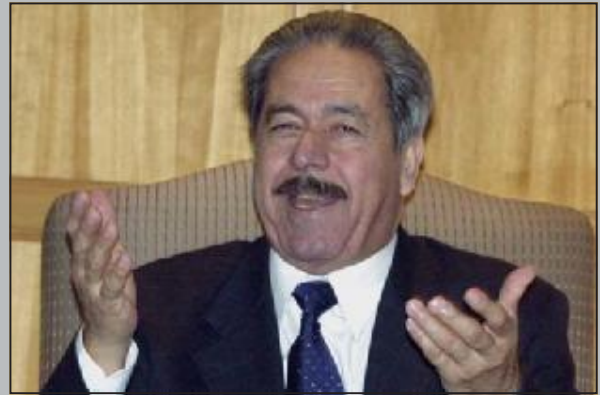
Not all *genocidaires*, as genocide perpetrators are known, meticulously catalogue, index and document their activities in excruciating detail as the Nazis did when carrying out Hitler’s Final Solution. However, the International Criminal Tribunal for Rwanda (ICTR) determined in the 1999 Akayesu case that specific intent to commit genocide can be successfully inferred through context, thereby easing burden for this showing somewhat: “[I]t is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others.”

Nevertheless, the genocide case against General Radislav Krstic at the International Criminal Tribunal for the Former Yugoslavia (ICTY) failed precisely because of the specific intent

Chemical Ali

Known as “Chemical Ali,” Ali Hassan al-Majid has been linked to some of the most brutal acts under Saddam Hussein’s regime. He was the architect of the 1988 genocidal Anfal campaigns against the Iraqi Kurds. As the 1980-1988 Iran-Iraq War was winding down, al-Majid led the Anfal campaigns that resulted in the murder and disappearance of some 50,000 to 100,000 Kurds. The Kurds were accused of aiding Iranian forces during the last years of the Iran-Iraq War.

A cousin of Hussein, al-Majid was widely known in Iraq for his repeated use of outlawed chemical warfare. It is reported that 5,000 Kurds died in a single cyanide attack on the border town of Halabja in March 1988. Documents captured from Iraqi intelligence services demonstrate that the mass killings, disappearances, forced displacement and other crimes were carried out in a coherent and



Ali Hassan al-Majid is seen in this January 2003 photo in Beirut, Lebanon.

highly centralized manner under al-Majid’s direct supervision. Al-Majid was captured in August 2003 by coalition forces.

Source: Human Rights Watch

requirement. Krstic was convicted for the 1995 genocide that killed 8,000 Bosnian Muslims in Srebrenica, on a theory of joint criminal enterprise. However, his conviction was overturned by the Appellate Chamber which concluded that, although the Srebrenica genocide had occurred and others in the joint criminal enterprise shared a specific intent to carry it through, the evidence did not support the inference that Krstic had the required specific intent to destroy, rather than mere knowledge. It is because of this very high hurdle that Slobodan Milosevic is likely to be found guilty of only complicity in genocide as opposed to genocide proper. Complicity only requires a showing of knowledge.

The Kurdish Problem

As for Saddam Hussein, he will likely be found at least complicit in, if not guilty of, the genocide of the Kurds that occurred under his regime. Kurds, as

a people, live in a divided world — some in Iraq, others in Iran, Syria and Turkey. The frontier between Iran and Iraq to a large extent reflects the 16th-century collision of the expanding Persian and

1982, Iran had reversed the Iraqi invasion, restoring the border region. By 1984, Iran had driven into Iraq itself, secured the desert around Basra in the south, and cut Iraq off from the Persian Gulf.

The genocide case against General Radislav Krstic failed precisely because of the specific intent requirement.

Ottoman Empires. A subsequent treaty between Persians and Turks formalized a mountainous border region that indiscriminately split Kurdish populations on either side. By the time of the Iran-Iraq War, Kurds found themselves caught in the middle. In September 1980, Hussein’s army crossed into Iran, advancing to the outskirts of Abadan. Ayatollah Khomeini used the invasion to consolidate his own power and rally Iranians to defend their homeland. By

Desperate to stem the gradual Iranian advance, Hussein employed chemical weapons against Iranian forces. These proved an effective method of offsetting the advantage of Iran’s much larger troop numbers. However, by 1987, Iran was again making significant advances in the north, which Hussein correctly ascribed to assistance from Iraqi Kurds.

To deal with what was referred to in captured Iraqi documents as “the Kurdish

problem,” Hussein tasked his cousin Ali Hassan al-Majid (a.k.a. “Chemical Ali”) with the job of eradicating all resistance, and granted him emergency powers to do so.

Al-Majid then undertook a series of military campaigns against Kurdish “saboteurs” from 1987 to 1989, known as the Anfal. What began as a counterinsurgency during wartime ended in genocide. Al-Majid employed a variety of chemical weapons during the Anfal campaigns, including mustard gas (a blistering agent), and Sarin (a nerve agent). One survivor of al-Majid’s April 1987 chemical attacks on Kurdish villages in the Balisan valley described the effect of the pink, gray and yellow gasses drifting through the towns:

[I]t was like a fog. And then everyone became blind. Some vomited. Faces turned black; people experienced painful swellings under the arm, and women under their breasts. Later, a yellow watery discharge would ooze from the eyes and nose. Many of those who survived suffered severe vision disturbances, or total blindness for up to a month. ... Some villagers ran into the mountains and died there. Others, who had been closer to the place of impact of the bombs, died where they stood.

All told, the Anfal campaigns against the Kurds claimed between 50,000 and 100,000 lives. However, no single action accounts for all the casualties. There were multiple mass murders, multiple mass disappearances, forced displacement of hundreds of thousands of noncombatants, destruction of 2,000 villages that were classified in Iraqi government documents as “burned,”

The Accused



AP Photo/Srdjan

Slobodan Milosevic was arrested in April 2001 and charged with corruption and stealing state funds during his 13-year rule. He was turned over to the United Nations in June 2001 and charged with committing crimes against humanity in Kosovo and Croatia. In November 2001, the U.N. war crimes tribunal charged him with genocide. The

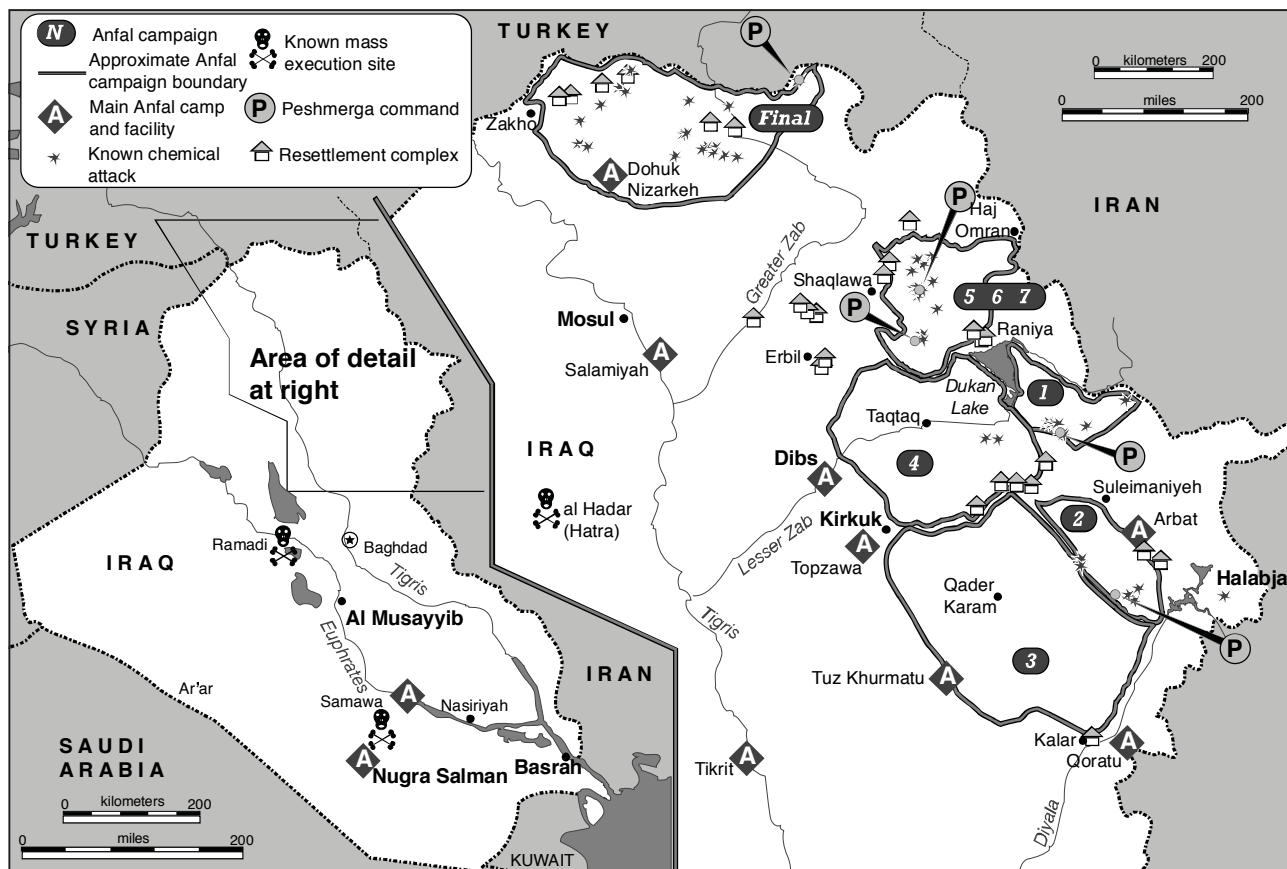
indictment stemmed from his alleged activity during the 1992-1995 Bosnian War. He is the first head of state to face an international war-crimes court. His trial is ongoing.



AP Photo/Sir

Radislav Krstic, former Bosnian Serb general, was found guilty of genocide in August 2001 by the Hague’s international war crimes tribunal and sentenced to 46 years in prison. Krstic was involved in the 1995 massacre in Srebrenica of more than 8,000 unarmed Muslim men and boys and is the first European ever convicted of genocide.

However, the Appellate Chamber overturned the genocide case against Krstic because of the specific intent requirement. His appeals judgment was handed down on April 19, 2004. He was sentenced to 35 years imprisonment for other crimes against humanity. He was transferred to the United Kingdom in December 2004 to serve his sentence.



The Anfal campaigns against the Kurdish minority in northeastern Iraq were undertaken by Saddam Hussein’s cousin, Ali Hassan al-Majid, at Hussein’s direction in 1988. What began as an effort to decimate Kurdish military support of Iranian forces during the Iran-Iraq War, ended in a brutal campaign of mass extermination, village eradication and multiple gassings, resulting in the deaths of tens of thousands of Kurdish men, women and children. Hussein and his henchmen will face charges for the genocide of the Kurds during his trial before the Iraqi Special Tribunal.

“destroyed,” “demolished” or “purified,” and the razing of a dozen larger Kurdish towns and administrative centers.

It is the deadly combination of methods employed against the Kurds during the eight Anfals that intertwine to form the most complete picture of genocide. Although the successive gassings were perhaps the starkest examples, conventional killing by shooting accounted for equal numbers of deaths. For instance, the vast majority of Kurdish “detainees” were sent to the Iraqi army base at Kirkuk known as Topzawa. Here, they were registered and segregated. Adult and teenage males were then loaded onto

closed trucks and taken to the execution grounds where they were lined up next to large pits and shot. Once the trenches were full, they were covered over.

The elderly were mostly bused to a concentration camp at Nugra Salman in the Iraqi desert, where death rates averaged four to five per day from exposure and infection. The women and children went elsewhere. They were usually taken to Dibs, a camp close to the Kirkuk-Mosul highway, where many of the children succumbed to dysentery and malnutrition. About half of the women were taken to death pits like the one at Samawa.

Forced deportation, typically accompanied by the razing of villages, was also a common feature of the Anfals. By the end of the campaigns, 1.5 million Kurds had been forcibly “resettled.” This was part of an overall scheme by Hussein to rearrange Kurdistan in northern Iraq, placing more key areas under Arab control.

However, the gassing of Halabja was the single most horrific incident during this notorious campaign, accounting for about 5,000 of the Anfal deaths. Consequently, Halabja has become emblematic of the Kurdish genocide, much as Srebrenica has become so for

the Bosnian genocide. Halabja had been captured in 1988 by rebel Iraqi Kurds with support from Iranian forces, and crushing the resistance there became an ultimate priority for Hussein.

Al-Majid's coldly diabolical approach can be discerned from his methodology of extermination. Knowing that the gasses he intended to use were heavier than air and would thus sink, he opened the March 16, 1988, attack on Halabja with a conventional artillery bombardment for several hours, setting off the air raid sirens. This drove the local Kurdish population down into tunnels, cellars and basements.

Those underground shelters became gas chambers as al-Majid unleashed his bombardment of poison. Aboveground, animals died and birds dropped out of trees. Below ground, humans met their end, trapped. Those who managed to scramble to the surface emerged into thick clouds of chemical gas. As photos of dead children crumpled on steps or lying contorted and bleached in the streets reached the world, an outcry arose from the human rights community.

But the response from the international community of states was muted silence. None could offer much beyond platitudes, as they all had backed Hussein during the Iran-Iraq War with arms and financing. Indeed, Germany is widely considered to have been the industrial origin of the gas used by al-Majid during the Anfal campaigns, and Kurdish leaders have long accused France, Italy and the Netherlands of providing assistance to Hussein's chemical weapons program. The United States was also implicated, as noted in a 1992 Senate Banking, Housing and Urban Affairs



AP Photo/Alexander Zemlanchenko

An Iraqi man accompanied by his wife carries out found remains of his relative inside a makeshift morgue near Karbala (about 56 miles south of Baghdad) in 2003. Volunteers with shovels excavated a mass grave near the Shi'ite holy city of Karbala, collecting remains of the dead and calling the bodies evidence of crimes committed by Saddam Hussein.

Committee staff report assessing the use of chemical weapons by Hussein against American troops in the first Gulf War:

[A]n inquiry was initiated by the Committee into the contributions that exports from the United States played in the weapons of mass destruction programs that have flourished under the direction of Iraqi President Saddam Hussein. [T]he Committee . . . held hearings that revealed that the United States had exported chemical, biological, nuclear and missile-system equipment to Iraq that was converted to military use in Iraq's chemical, biological and nuclear weapons program.

The Evidence

The physical evidence of genocide against the Kurds is ample. During 2004, U.S. Justice Department personnel began providing support to the new IST

in the form of logistics and evidence collection. A Justice Department Regime Crimes Liaison Office was established in Baghdad to carry out this task. It was given a budget of \$75 million. The chief challenge faced by the staff attempting to marshal incriminating evidence is the security situation. For example, to exhume a mass grave, earth-moving equipment must be transported to the site, locals wishing to search for relatives must be kept at bay, and a significant military contingent must be present around the clock, which draws them away from other patrols and duties.

More than 50 American advisors have trained hundreds of Iraqi investigators to speed this process along. The subsequent division of labor is for the Americans to provide forensic expertise and the Iraqis to move out into the country and collect corroborative witness testimony. For example, in September 2004, U.S. and



Iraq is an artificial creation, dating from the end of World War I. Assembled by the British from three provinces of the former Ottoman Empire (Mosul, Baghdad and Basra), Iraq is a multi-ethnic and multi-religious country. The Kurds in the north are Sunni Muslims, but not Arab. Arabs in the lower two-thirds of Iraq are Shi'ite Muslim in the south and Sunni Muslim in the middle. Saddam Hussein and his predecessors (Sunni Arabs) held the state together through force since its creation.

Iraqi investigators uncovered the mass grave in Hatra, about 200 miles north of Baghdad. It is one of many mass graves in Iraq from the Hussein era, but the first to be secured and systematically excavated for criminal evidence collection. It is also a key to proving the case for genocide by Hussein against the Kurds. The victims are all Kurdish.

The Hatra site is made up of a series of

trenches at least eight feet deep. One contained the bodies of 150 men sprayed with automatic weapons fire. A dozen other trenches contain the remains of approximately 2,000 people. But perhaps the most poignant excavation uncovered the bodies of 300 women and children. An unexpected finding was the discovery of multiple clothing sets, household items and toys — indicating that the victims were told to collect

their belongings for resettlement, only to be shot down at this burial pit.

Almost all of the 300 skulls had a .22 caliber pistol shot behind the ear and were unevenly stacked in multiple layers, indicating that the first to be executed were shot in the trench, while the others were murdered at the lip of the pit and then pushed in with a bulldozer. As Greg Kehoe, the U.S. coordinator, noted in a *New York Times* interview:

[W]hat was found at Hatra shows how the Hussein leadership made a “business of killing people” — the scrape marks from the blade of the bulldozer that shoved victims into the trench, the point-blank shots to the backs of even the babies’ heads, the withered body of a 3- or 4-year-old boy, still clutching a red and white ball.

Proving Specific Intent to Commit Genocide

However, merely uncovering the bodies is not enough to succeed in the prosecution of Hussein. They must be connected to him. As with the Bosnian massacres, the bodies are the starting point, after which they and their immediate killers must be identified and orders to execute or knowledge of the atrocity must be followed back up the chain of command. The first dots in the investigative chain at Hatra are now being connected. Many of the women had identification cards folded in their layers of clothing when they were executed. Some of these cards are for children who escaped the Kurdish villages during the Anfal.

Investigators have tracked those children, who are now adults, up into remote mountainous areas of Kurdish northern

Iraq and were able to corroborate the gassings and mass evacuations.

But proving that Hussein had specific intent to commit genocide against the Kurds remains a difficult task. It depends on the prosecution's ability to marshal its documentary and testimonial evidence. Perhaps such intent can be established if eyewitness testimony like the following can stand up to cross-examination:

[W]e monitored ... radio communications between the political and military leadership ... Saddam Hussein briefed the assembled commanders that there would be a chemical attack on Halabja and that soldiers should wear protective clothing ... I heard a telephone conversation between Saddam Hussein and Ali Hassan al-Majid. Saddam ordered him to form a working group ... After the meeting Ali Hassan al-Majid returned to the area HQ ... Aerial pictures of Halabja after the attack were shown to Saddam Hussein and other members of the Revolutionary Command Council.

One of Hussein's bodyguards brought 30 prisoners out. They were Kurds. The President himself shot them one after another with a Browning pistol. Another 30 prisoners were brought and the process was repeated. Saddam was laughing and obviously enjoying himself. There was blood everywhere — it was like an abattoir ... Those who were still alive were eventually finished off by the security officers.

Saddam's Defense

At the end of June 2004, Hussein was stripped of his POW status, transferred to the new Iraqi government, and accorded the status of Iraqi criminal

Uncovering Atrocities

According to the U.S. State Department, more than one million Iraqis are believed to be missing in Iraq as a result of executions, wars and defections, of which hundreds of thousands are thought to be in mass graves. In 2003, the Coalition Provisional Authority (CPA) and the interim Iraqi Human Rights Ministry began a program to identify the location of graves, excavate them and collect evidence of past atrocities for future prosecutions. The program was developed in consultation with Iraqi specialists, international human rights groups and renowned forensic experts. More than 300 mass gravesites have been reported. Sites are being unearthed in all parts of Iraq and contain members of every major religious and ethnic group in Iraq as well as foreign nationals, including Kuwaitis and Saudis.

Sources: U.S. State Department, *Washington Post*



Greg Kehoe, a U.S. lawyer appointed by the White House to work with the Iraqi Special Tribunal, views a mass gravesite being excavated in the northern Iraqi town of Hatra in October 2004.

AP Photo/Thammasit Cambanis



Air Force Master Sgt. Richard Burch, right, a spectral analyst, and Bruce Gerrick, a U.S. geoscientist, study mass gravesites on an Iraqi map in their office in Baghdad in December 2003.

detainee. As such, he was able to hire counsel before he underwent a formal arraignment hearing, although his counsel was not present for the initial charging proceedings.

Jacques Verges, a 78-year-old French criminal defense lawyer who famously represented Carlos the Jackal 20 years ago is one of several foreign attorneys seeking to help fashion Hussein's defense. Asked as to whether he would base a defense of Hussein on the complicity of western countries, Verges responded:

[D]uring the Reagan administration ... [Donald] Rumsfeld himself was in charge of some key relations with the Iraqi authorities ... Western countries sold weapons to Saddam. Western countries encouraged the war against Iran. Western countries were present in

Iraq through diplomatic delegations. They weren't blind ... Obviously, in the course of a trial, the fundamental element will be: "you treat me like a

instead had alternative multiple intents. They will say that it was never his intent to destroy them. Rather, his primary intent was to impose greater central

What was found at Hatra shows how the Hussein leadership made a "business of killing people."

pariah, but I was your friend. What we did, we did together. I fired the bullet, but you're the one who gave me the gun — you even pointed out the enemy."

Hussein's lawyers may even admit that he is a monster and seek to pin accomplice liability on the West. They will also try to slip through the prosecution's case to show specific intent for the genocide against the Kurds by arguing that Hussein

control over the oilfields underlying traditionally populated Kurdish areas in the north, and his secondary intent was to combat Kurdish forces assisting Iran during the Iran-Iraq War.

For proof of the primary intent, Hussein will point to national security concerns associated with allowing a restive, potentially breakaway population to remain in control of the country's

largest oil reserves. He will argue that his draconian forced-migration policies were geared to this end, and that to the extent that large numbers of Kurds died, it was because they resisted. To break this resistance, harsh methods like use of concentration camps and gas had to be employed — but not to kill them as a group, only to frighten them into compliance. If the defense attorneys can convince the judge that Hussein's intent was to secure Iraq's economic wealth by depopulating the Kurdish areas thereby securing the oilfields, then the prosecution's showing of intent becomes much harder. The prosecutor has to not only show the requisite evil intent, but also demonstrate that the alternative intent is not plausible.

For proof of the secondary intent, namely, the intent to combat Kurdish forces assisting Iran in its war against Iraq, Hussein will produce evidence of collusion between Kurdish and Iranian forces during the Iran-Iraq War. He will argue that fighting the Iranians and fighting the Iraqi Kurds were one and the same thing from Baghdad's perspective. That Kurdish forces took Halabja in 1988 with support from Iranian forces as they crossed into northern Iraq legitimized the attack by Iraqi forces on that city as a military necessity. Hussein will contend that while it was unfortunate that 5,000 Iraqi Kurds died during combat, his intent was not to kill civilians outright but to retake a strategically important area.

The prosecution must blunt these alternative intent theories. Geography helps them to undermine the secondary alternative intent theory for the Anfal campaign — that Hussein was combating Kurds colluding with Iranian forces during wartime. The majority



Donald Rumsfeld meets Saddam Hussein in 1983 (taken from video file).

Getty Images/Staff

of Kurdish villages gassed or destroyed during the Anfal were either on the border with Turkey, not Iran, or some distance inland from the Iranian border where most of the military incursions were taking place. Moreover, those targeted by the Anfal were civilians, not military forces or armed Kurds.

Indeed, one may be the instrument used to consummate the other.”

The economic rationale of the primary alternative intent theory is harder to attack, but with some reverse engineering the prosecution may be able to undermine it as well. For example, in a

“I fired the bullet, but you're the one who gave me the gun — you even pointed out the enemy.”

The prosecution may choose to admit the logic of counterinsurgency as the underlying idea for creation of the Anfal and to argue that the counterinsurgency nonetheless evolved into genocide. As one genocide researcher for Human Rights Watch notes, “the fact that Anfal was, by the narrowest definition, a counterinsurgency, does nothing to diminish the fact that it was also an act of genocide. There is nothing mutually exclusive about counterinsurgency and genocide.

damning quote drawn from one of many audiotapes captured by the United States and translated by the Canadian Broadcasting Corporation, al-Majid discusses the Anfal:

[T]ell him I will strike. I will strike with chemicals and kill them all. What is the international community going to say? The hell with them and the hell with any other country in the world that objects.



Gethy Images/Marco Di Lauro

U.S. officers from the 3rd 52nd Civil Affairs Command and a forensic team from the Centre for Forensic Science, Technology and Law of the Inforce Foundation gather to examine the remains of hundreds of bodies in a school in May 2003 in Al Musayyib, Iraq. The bodies were brought to the school from a mass grave discovered in the desert in the outskirts of Al Musayyib.

If that evident genocidal intent can be imputed back up the chain to Hussein, then Hussein’s alternative explanations may collapse.

The prosecution will be helped considerably by the fact that so many survivors of Hussein’s genocidal policies are volunteering to present evidence against him. In relation to the attack on Halabja, a female student at that time

was rounded up with other students and paraded before Hussein at military headquarters in Suleimaniyah. She saw him on a green telephone and heard him distinctly give the order to bombard the city:

[I] would like to testify that I saw him make that phone call that day. I think the matter has come alive again, and now we will see justice.

An Arab Iraqi from Baghdad who witnessed planes loaded with “unusual” weapons at the Arbil airfield that morning wants to tell his story in court as well.

Lack of knowledge is another defense Hussein will raise — which also goes to the establishment of specific intent. Hussein will claim that he was unaware of the activities of his subordinates. This defense may fail, however, if the

prosecution properly asserts the command responsibility doctrine that imputes knowledge up the chain of command to leaders who reasonably should have known what was happening. The *tu quoque* (“you too”) defense was rejected at the Nuremberg trials of Nazi war leaders. To the extent that this defense is raised to a genocide charge, it will involve the West’s supplying him the

their intention to raise the sovereign immunity defense. Even though it has eroded significantly in international law, it may yet retain some salience in domestic law. To succeed, however, his attorneys acknowledge that they would have to show that the American-led invasion of Iraq was illegal under international law, and therefore, by extension, Hussein is still legally the head of state. This

legal president of Iraq even though the method used to depose him was illegal.

Hussein’s trial is expected to get under way in the winter of 2005 or early spring of 2006. Many more witnesses must be interviewed and evidence analyzed. If convicted, Hussein could face the death penalty, which was temporarily suspended during the U.S.-led occupation. The justice he faces before his own Iraqi countrymen on the Special Tribunal will be more than he offered the thousands who were slaughtered by his hand or on his orders. And while some Iraqi politicians are impatient for quick retributive justice against him, allowing Hussein’s trial to proceed at an even pace to ensure that the full story is told and that the truth emerges is vital. Those who survived such atrocities as the Kurdish genocide deserve no less. As do the memories of those who perished.

Allowing Hussein’s trial to proceed at an even pace to ensure that the full story is told and that the truth emerges is vital.

means and assistance to carry out his actions. It will lose its force on a domestic tribunal, however, and an argument that Iran used chemical weapons first — which is itself disputed — would similarly be lost on an Iraqi court.

Hussein’s attorneys have also indicated

strategy is of course based on political bias and rather murky assertions. Putting the American-led invasion on trial is certainly a clever approach, and could distract the proceedings, but such a politically charged position is an uphill battle and it is unlikely to establish that Hussein is the current



Photo by Mark Romesser

Michael Kelly teaches international criminal law at Creighton. He is a member of the International Association of Genocide Scholars and author of the new book *Nowhere to Hide: Defeat of the Sovereign Immunity Defense for Crimes of Genocide & the Trials of Slobodan Milosevic and Saddam Hussein* (Peter Lang Pub. 2005), with a foreword by Desmond Tutu, and the recent article “The Tricky Nature of Proving Genocide Against Saddam Hussein Before the Iraqi Special Tribunal” in volume 38 of the *Cornell International Law Journal* (2005). He also teaches European Union Law, International Environmental Law, International Law, National Security & Foreign Relations Law and Native American Law. He can be reached at mkelly@creighton.edu.