

LJN: AX6406, Rechtbank 's-Gravenhage , 09/751003-04 English translation

Datum uitspraak: 23-12-2005
Datum publicatie: 31-05-2006
Rechtsgebied: Straf
Soort procedure: Eerste aanleg - meervoudig
Inhoudsindicatie: [...]It has been established that the accused, consciously and solely acting in pursuit of gain, has made an essential contribution to the chemical warfare program of Iraq during the nineteen eighties. His contribution has enabled, or at least facilitated, a great number of attacks with mustard gas on defenseless civilians. These attacks represent very serious war crimes. [...] [...] the proven facts consist of : - complicity in being a co-perpetrator of a violation of the laws and practices of war, while that fact includes inhuman treatment and while that fact causes the death or severe bodily harm of an other person, and while that fact is the expression of a policy of systematic terror or illegal conduct against an entire population of a certain group thereof, committed several times; - complicity in being a co-perpetrator of a violation of the laws and practices of war, while that fact includes inhuman treatment and while that fact causes the death or severe bodily harm of an other person, committed several times.

Uitspraak

DISTRICT COURT of THE HAGUE
CRIMINAL LAW SECTION

THREE-JUDGE DIVISION
(SENTENCE)

Public Prosecutor's Office number 09/751003-04
The Hague, 23 December 2005

The District Court of The Hague, giving judgment in criminal proceedings, has delivered the following sentence in the criminal case of the public prosecutor against the accused:

[accused],
born in [place of birth] on [date of birth],
with no permanent home or address in the Netherlands,
at present detained at the penal institution [.....].

1. The court hearing.

The hearing took place during the court sessions of 18 March 2005, 10 June 2005, 02 September 2005, 21 November 2005, 22 November 2005, 23 November 2005, 24 November 2005, 25 November 2005, 28 November 2005, 30 November 2005, 01 December 2005, 02 December 2005, 05 December 2005, 07 December 2005, 09 December 2005 and 23 December 2005.

The accused, assisted by his defense counsels Mr. J.P.A. van Schaik, lawyer in Veenendaal, and Mr. R. Gijsen, lawyer in Maastricht, appeared in court and was examined at the hearing, with the exception of 10 June 2005, 02 September 2005 and 23 December 2005.

A total of 15 aggrieved parties joined the action as plaintiffs claiming damages, respectively named [injured party 1], [injured party 2], [injured party 3], [injured party 4], [injured party 5], [injured party 6], [injured party 7], [injured party 8], [injured party 9], [injured party 10], [injured party 11], [injured party 12], [injured party 13], [injured party 14] and [injured party 15].

The public prosecutors Mr. F. Teeven and Mrs. T. Polescuk have demanded that the accused be sentenced to a penalty of 15 years imprisonment, less the period spent in pre-trial detention, based on the amended charges on the writ of summons under count 1, principle charge and count 2 of the indictment.

Furthermore the public prosecutors have demanded that based on the list of seized and not returned items - to be named hereafter seizure list, a photocopy of which, marked as B, has been included in this sentence - the seized items of the accused numbered 4 through 10, 13 through 15, 18 through 20, 23, 24, 27, 28, 29 (with the exception of the magazines) will be returned to the accused and that the seized items based on the seizure list numbered 1 through 3, 11, 12, 16, 17, 21, 22, 25, 26, 30 through 36, will be kept in judicial deposit on behalf of

the entitled parties.

Primarily the public prosecutors have concluded the complete allowance of all claims of the afore named aggrieved parties, being the maximum amount of €680,67 (*f* 1.500,=) that was applicable before the Terwee Act entered into force (Bulletin of Acts and Decrees 1993, 29). Alternatively the public prosecutors have concluded the complete allowance of all claims of the afore named aggrieved parties [injured party 10], [injured party 14] and [injured party 15] and the dismissal of the remaining aggrieved parties mentioned above.

The public prosecutors have announced their intention to commence proceedings to demand for a confiscation order as referred to in Article 36e of the Penal Code.

2. The indictment

After a further description of the indictment was given at the court hearing of 10 June 2005 pursuant to Article 314a of the Code of Criminal Procedure and subsequently after the indictment was amended at the hearing of 21 November 2005 - the accused is accused of the charges as mentioned on the inserted photocopy of the writ of summons, marked A, and of the demand for further description of the indictment, marked A1, and of the demand for amendment of the indictment, marked A2.

[included: text demand amendment to the indictment]

DEMAND FOR AMENDMENT TO THE INDICTMENT

Public Prosecutor's Office number: 09/751003-04

The public prosecutor of the National Office of the Public Prosecution Service in Rotterdam, location Schiphol;

Given the writ of summons in the case against:

name : [name]
first name(s) : [first names]
born on : [date of birth]
born in : [place of birth]
living at : without permanent abode or residence in this country
address :
presently residing : P.I. [Penal Institution]

of the opinion that the charges should now be read as described below (whereby the modified text is printed in italics):

count 1, principally:

that Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an) other person(s) (who so far has/have remained unknown), on or around 5 and/or 6 June 1987 and/or August 1988 in Zewa and/or on or around 16 March 1988 in Halabja and/or on or around 3 May 1988 in Goktapa (Gukk Tapah) and/or on or around 25 August 1988 in Birjinni (Bergin), in any case at one (or more) point(s) in time in the years 1986 and/or 1987 and/or 1988 in Iraq, together and in conjunction with (an) other(s), in any case in conspiracy, (again and again) with the view to completely or partially wipe out a national or ethnic group as such, to intentionally has/have killed members of the group and/or inflicted grievous bodily and/or mental harm by then and there, together and in conjunction, in any case in conspiracy, in Iraq (in Zewa and/or Halabja and/or Goktapa (Gukk Tapah) and/or Birjinni (Bergin) and/or (an) other place(s) intentionally used chemical weapons (mustard gas and/or nerve gas(es)) against persons, belonging to (part of) the Kurdish population group (in the country side and/or in Halabja) in Northern Iraq who were present then and there, as a result of which those persons from (part of) that Kurdish population group (in the country side and/or in Halabja) have died and/or suffered grievous bodily and/or mental harm ((among other things) existing in that those persons from (part of) that Kurdish population group (in the country side and/or in Halabja) have found themselves in a (permanent) situation of (serious) fear)

to commit said crime(s), accused and/or his co-perpetrator(s) together and in conjunction, in any case alone, at (one) (more) point(s) in time in the period between 19 April 1984, through 25 August 1988 in Den Helder and/or Zoetermeer and/or Rotterdam, in any case in The Netherlands and/or in Baghdad and/or in Samara, in any case in Iraq, and/or Lugano, in any case in Switzerland, and/or in Antwerp, or in any case in Belgium and/or in Milan and/or in Trieste, in any case in Italy and/or in Luxemburg-City, in any case in Luxemburg, and/or in Baltimore,

in any case in the United States of America and/or in Tokyo and/or Osaka, in any case in Japan and/or Singapore and/or in Aqaba, in any case in Jordan, intentionally provided opportunity and/or means and/or information to do so

by then and there intentionally supplying thiodiglycol (TDG) and/or phosphorochloride (POCL3) and/or other precursors intended for the production of chemical weapons (mustard gas and/or nerve gas(es)) to (the Republic of) Iraq and/or by supplying materials to (the Republic of) Iraq in order to construct (a) factory(ies) for the production of chemical weapons (Al-Muthanna State Establishment) and/or by giving advise to (the Republic of) Iraq for the production of chemical weapons.

(Article 1 Genocide Convention Implementation Act in conjunction with Article 48 Penal Code)

and/or

count 1. alternatively: if and in so far as the above should or could not lead to a conviction:

that Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an)other person(s) (who so far has/have remained unknown),

on or around 5 and/or 6 June 1987 and/or August 1988 in Zewa and/or

on or around 16 March 1988 in Halabja and/or

on or around 3 May 1988 in Goktapa (Gukk Tapah) and/or

on or around 25 August 1988 in Birjinni (Bergin),

in any case at one (or more) point(s) in time in the years 1986 and/or 1987 and/or 1988 in Iraq, together and in conjunction with (an) other(s), (again and again) has/have violated the laws and practices of war,

while that offense/those offenses (again and again) resulted in the death of (an)other(s) and/or that offense/those offenses (again and again) inflicted grievous bodily harm on (an)other(s) and/or that offense/those offenses (again and again) was/were (an) expression(s) of a policy of systematic terror or wrongful performance against the whole population or a specific group thereof,

by then and there intentionally using chemical weapons (mustard gas and/or nerve gas(es)) against persons who were present then and there and as a result of which those persons have died and/or suffered grievous bodily harm, contrary to international customary law (in particular the prohibition on the use of chemical weapons and/or the prohibition on the use of poison or poison weapons and/or the prohibition on the use of asphyxiate, poison or other gases and/or the prohibition of inflicting unnecessary suffering and/or the prohibition of carrying out attacks which do not distinguish between military and civilians) and/or the stipulations of the Geneva Gas Protocol (1925) and/or the stipulations of Article 147 of the Geneva Convention on the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention", 1949) and/or the stipulations of the "common" Article 3 of the Geneva Conventions of 12 August 1949, (as members of the Government (of the Republic) of Iraq) belonging to one of the fighting parties in a state of war and/or in a (non-international and/or international) armed conflict several times at places in the territory of Iraq and/or by (systematically) terrorizing (part of) that Kurdish population group (while those chemical weapons were (also) used against persons who did not directly participate in the hostilities,

to wit civilians from Zewa and/or Halabja and/or Goktapa (Gukk Tapah) and/or Birjinni (Bergin), in any case civilians in Northern Iraq and/or the use of those chemical weapons involved the cruel and/or inhuman treatment and/or mutilation of these persons and/or purposely caused serious suffering to these persons).

to commit said crime(s), accused and/or his co-perpetrator(s) together and in conjunction, in any case alone, at (one) (more) points() in time in the period between 19 April 1984, through 25 August 1988 in Den Helder and/or Zoetermeer and/or Rotterdam, in any case in The Netherlands and/or in Baghdad and/or in Samara, in any case in Iraq, and/or Lugano, in any case in Switzerland, and/or in Antwerp, or in any case in Belgium and/or in Milan and/or in Trieste, in any case in Italy and/or in Luxemburg-City, in any case in Luxemburg, and/or in Baltimore, in any case in the United States of America and/or in Tokyo and/or Osaka, in any case in Japan and/or Singapore and/or in Aqaba, in any case in Jordan, intentionally provided opportunity and/or means and/or information to do so

by then and there intentionally supplying thiodiglycol (TDG) and/or phosphorochloride (POCL3) and/or other precursors intended for the production of chemical weapons (mustard gas and/or nerve gas(es)) to (the Republic of) Iraq and/or by supplying materials to (the Republic of) Iraq in order to construct (a) factory(ies) for the production of chemical weapons (Al-Muthanna State Establishment) and/or by giving advise to (the Republic of) Iraq for the production of chemical weapons.

(Article 8 Criminal Law in Wartime Act in conjunction with Article 48 Penal Code)

count 2.

that Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an)other person(s) (who so far has/have remained unknown),

on or around 13 and/or 14 February 1986 and/or 27 February 1986 at (approximately) 40 kilometres south of Abadan, in any case in the surroundings of Abadan, and/or

on or around 10 and/or 11 April 1987 in Khorramshar and/or

on or around 16 and/or 21 April 1987, in any case in April 1987, in Alut and/or

on or around 28 June 1987 in Sardasht and/or in Rash Harmeh (in the immediate surroundings of Sardasht) and/or

on or around 22 July 1988 in Zardeh and/or

on or around 2 August 1988 in Oshnaviyeh,

in any case at one (or more) point(s) in time in the years 1986 and/or 1987 and/or 1988 in Iran, together and in conjunction with (an) other(s), (again and again) has/have violated the laws and practices of war, while that offense/those offenses (again and again) resulted in the death of (an)other(s) and/or that offense/those offenses (again and again) inflicted grievous bodily harm on (an)other(s),

by then and there, contrary to international customary law (in particular the prohibition on the use of chemical weapons and/or the prohibition on the use of poison or poison weapons and/or the prohibition on the use of asphyxiate, poison or other gases and/or the prohibition on inflicting unnecessary suffering and/or the prohibition on carrying out attacks which do not distinguish between military and civilians) and/or the stipulations of the Geneva Gas Protocol (1925) and/or the stipulations of Article 147 of the Geneva Convention on the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention", 1949)

(as members of the Government (of the Republic) of Iraq) belonging to one of the fighting parties in a state of war and/or in an (international) armed conflict several times at places in the territory of Iran, (intentionally) using chemical weapons (mustard gas and/or nerve gas(es)) against persons (military and/or civilians) who were present then and there and as a result of which those persons (military and/or civilians) have died and/or suffered grievous bodily harm (,while those chemical weapons were (also) used against persons who did not directly participate in the hostilities, to wit civilians from Khorramshar and/or Alut and/or Sardasht and/or Rash Harmeh and/or Zardeh and/or Oshnaviyeh, in any case civilians in Iran and/or the use of those chemical weapons involved the cruel and/or inhuman treatment and/or or mutilation of these persons (military and/or civilians) and/or purposely caused

serious suffering to these persons (military and/or civilians)).

to commit said crime(s), accused and/or his co-perpetrator(s) together and in conjunction, in any case alone, at (one) (more) points() in time in the period between 19 April 1984, through 25 August 1988 in Den Helder and/or Zoetermeer and/or Rotterdam, in any case in The Netherlands and/or in Baghdad and/or in Samara, in any case in Iraq, and/or Lugano, in any case in Switzerland, and/or in Antwerp, or in any case in Belgium and/or in Milan and/or in Trieste, in any case in Italy and/or in Luxemburg-City, in any case in Luxemburg, and/or in Baltimore, in any case in the United States of America and/or in Tokyo and/or Osaka, in any case in Japan and/or Singapore and/or in Aqaba, in any case in Jordan, intentionally provided opportunity and/or means and/or information to do so

by then and there intentionally supplying thiodiglycol (TDG) and/or phosphoroxchloride (POCL3) and/or other precursors intended for the production of chemical weapons (mustard gas and/or nerve gas(es)) to (the Republic of) Iraq and/or by supplying materials to (the Republic of) Iraq in order to construct (a) factory(ies) for the production of chemical weapons (Al-Muthanna State Establishment) and/or by giving advise to (the Republic of) Iraq for the production of chemical weapons.

(Article 8 Criminal Law in Wartime Act in conjunction with Article 48 Penal Code)

given Article 313 of the Code of Criminal Procedure;

demands, that this amendment be admitted;

done during the court session of the three-judge division of the criminal law section of the District Court in The Hague on 21 November 2005.

The public prosecutor,

Mr. F. Teeven, LL M

3. Pleas contesting the validity of the writ of summons.

3.1. During the court hearing the defense put forward the plea of nullity against the summons concerning the period represented in counts 1 and 2 "in any case at (one) (or more) point(s) in time in the years 1986 and/or 1987 and/or 1988 in Iraq", because this is such a broad description of this period, the defense finds it not possible to understand what the writer of the indictment actually means and for that reason they are not able to defend themselves against that accusation and therefore argue that the right as set out in Article 6 paragraph 3 under a) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

has been violated.

The court considers that this period has been represented in such general terms against the background of the case file, that it does not become sufficiently clear to the accused against what he should defend himself. For that reason the court is of the opinion that the indictment with regard to the above mentioned period in counts 1 and 2 does not satisfy the requirements of Article 261 of the Code of Criminal Procedure and will therefore invalidate the writ of summons on that point.

3.2. Furthermore the defense argued during the hearing that the indictment on count 1-principally, after the insertion of the words "in any case in conspiracy" is hard to understand and self-contradictory, because on the one hand it seems to refer to the main offense, that has been committed together and in conjunction, and on the other hand in count 1-principally the accused is charged with the preparatory offense of conspiracy.

The court does not believe the words "in any case in conspiracy" to be self-contradictory, because it is of the opinion that these words should be understood as an alternative component of the main offense charged primarily in count 1, which - briefly - consists of the (multiple) genocide committed by Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an)other(s) person (s) (who so far has/have remained unknown), which component follows the "committed together and in conjunction with (an)other(s)", in other words the principal element of complicity.

Therefore this plea is rejected.

4. Plea contesting the jurisdiction of the court.

4.1. During the hearing the counsel for the defense pleaded that because of the accessory character of complicity to genocide and war crimes, the court of The Hague has no jurisdiction, if it lacks jurisdiction with regard to the main offense.

The court dismisses this plea, which if it was to be sustained, would result in a bar to the prosecution.

According to Dutch law complicity in a crime, even if it concerns genocide or war crimes, is an independent indictable offense with for instance its own time and place of committing such an offense. With respect to the accused who is staying in the Netherlands and who is a Dutch national, pursuant to Article 5 of the Penal Code the indicted offenses of complicity are considered to be criminal offenses, on account of which he can be prosecuted in the Netherlands, while pursuant to Article 2 of the Code of Criminal Procedure and according to the special regulation of competence set out in the International Crimes Act (WIM) not only the Dutch judge, but also the District Court of The Hague is authorized to take knowledge of these matters. The fact that here we are dealing with international criminal offenses does not change anything stated above. Moreover the argument of the defense does not find any support in international law. Especially within the framework of international crimes, that generally include the involvement of a large number of organizations and individuals, bringing the cases to trial in different jurisdictions is inevitable. Another opinion would result into the impunity of a large number of suspects. This does not relate in any way to the international legal obligation to prosecute international crimes. Considering the seriousness of these crimes, regarding this obligation no distinction should be made between the various participation forms.

4.2. The defense of the accused argues that in the present case the court will be asked to give a judgment on the punishability of the government of another country and that Iraq would be the most competent country for the trial of the present offenses. For those reasons the exercise of jurisdiction would be inadmissible based on international law. As for the first part of this plea the defense adopts the position arguing that the exercise of jurisdiction would be contradictory to the regulations of international law concerning national immunities.

This plea cannot be sustained, because the Netherlands do not have jurisdiction over natural or legal persons who enjoy immunity from prosecution according to international law. Although it is inevitable for the court in this case to give a judgment on the persons that have been included in the indictment as perpetrators concerning the principle offenses, this is not considered to be an exercise of jurisdiction, because this cannot lead to a conviction or the implementation of coercive measures against these persons.

Needless to say the court considers in this respect that the persons that have been mentioned in the indictment as perpetrators regarding the main offenses, at present do not hold any official position and that therefore immunities under international law do not oppose the exercise of jurisdiction on international crimes committed during the performance of their duties in those positions, irrespective of the question whether or not the exercise of jurisdiction would be impossible and/or unwanted for other reasons.

Concerning the argument that Iraq would be the most competent country for trial the court believes that, according to current international law, neither the main offenses nor the complicity of the accused in those offenses, come within the exclusive jurisdiction of any judicial authority.

5. Pleas contesting the entitlement of the public prosecution to proceedings.

5.1. Lapse of time or violation of the principle of legitimate expectations or violation of Article 55 paragraph 2 of the Penal Code.

During the hearing counsel for the defense pleaded immunity from prosecution by reason of lapse of time, because of the limitation of the actions performed by the accused seen the fact that the action performed by the accused consists of a violation of the Import and Export Act, for which it was decided to forgo further prosecution on 5 October 2003.

The court rejects this defense according to the following considerations.

It is the choice of the public prosecutor in what way he composes the indictment regarding a complex of indictable offenses and the Economic Offenses Act cannot be considered as a *lex specialis* regarding the offenses the accused has been charged with. So for that reason it is not contrary to the rules of procedure to present the charges in this way on the indictment.

5.2. Violation of the Sixth Protocol to the European Convention on Human Rights (ECHR)

During the hearing counsel pleaded that the Public Prosecution Service should be dismissed from prosecution, whereas the accused, the persons mentioned by name in the indictment and others run a risk to be sentenced and brought to death, or to be killed in an extrajudicial way. According to the defense this is contrary to the Sixth Protocol ECHR.

The court also rejects this defense and argues that, apart from the question to what extent this human rights issue is valid under these circumstances, the independent exercise of jurisdiction cannot be considered to be a contribution to an international course of justice that includes allegations of human rights violations. Another conclusion is that this does not discharge the Netherlands from its autonomous international duty to bring international crimes to trial.

5.3. Violation of ECHR Articles 2 and 3

During the hearing counsel argued that ECHR Articles 2 and 3 had been violated, considering the fact that the accused, irrespective of the result of the present criminal proceedings, still runs great risks outside the European Union which makes him liable to be prosecuted in Iraq, Iran or in any other country.

After all - this is the way the court understands the defense of the accused - the evidence submitted by the prosecution and/or the court's conclusion that the charges in this case have been proven, could be used against the accused in the event of prosecution in another country.

The court disallows this defense considering that a possible future breach of the "ne bis in idem" principle [Double Jeopardy Clause] by another country does not interfere with the present prosecution of the accused in the Netherlands.

Counsel also argued that this risk also exists with respect to persons that do not stand trial in these proceedings.

The court also rejects this defense, arguing that this does not affect the accused, but could possibly be a plea of those other persons in those other criminal cases.

5.4. Violation of equality of arms principle (Article 6-3b ECHR)

The counsel for the defense of the accused holds the view that in these proceedings the equality of arms principle was allegedly violated, as a result of which they plead the infringement of the right to a fair trial as outlined in ECHR Article 6.

In general, with respect to the "equality of arms" principle the court has the following considerations. The equality between prosecution and defense basically has a procedural character and implies that counsel for the defense should not find itself in an unreasonably unequal position as opposed to the prosecuting authorities. Equality of arms is also protected in international administration of criminal justice (ICTY, Tadic, case number IT-94-1-A, sentence of appeal proceedings, 15 July 1999, paragraph 52). Just like the Tadic case, the court recognizes the problems facing the defense in criminal cases of such complexity and international magnitude. However it should be considered that in comparison with Dutch criminal procedures, international criminal procedures are of a totally different nature.

Just like the legal practice of common law, international criminal lawsuits focus on the collection of evidence by the suit litigants, largely or exclusively in support of their own point of view. The fact that in Dutch criminal proceedings the litigants really occupy different positions in respect of each other and that this positioning by the prosecution as well as by the judicial authorities should lead to the gathering of evidence, also taking into consideration the interest of the defense, undeniably has its consequences for the contents and the meaning of the "equality of arms" principle. In as far as the defense asserts that the efforts of the prosecuting and judicial authorities have not met their own investigation requirements, the Code of Criminal Procedure allows for

sufficient possibilities for additional inquiries (see Article 36a C.C.P.). Moreover the court has demonstrated the willingness, also from a practical point of view, to satisfy reasonable requests made by the defense, like the assignment of more than one lawyer and the allowance of an amount of money to the defense lawyers in order to seek specialist advice.

During the court hearing counsel pleaded a violation of the equality of arms principle, because the defense allegedly has not been able to access certain sources or source collections in the same way as the public prosecution service. The defense has not been able to exert an influence on the selection of documents obtained from Human Rights Watch and the United Nations and therefore counsel has not been able to establish whether disculpatory sources were excluded from the case file.

The court refuses this plea, arguing that it has not become evident that those documents could be of any interest to the decision to be taken by the court.

Finally the defense pleaded a violation of the equality of arms principle, because counsel was allegedly not able to carry out its own investigations abroad, including countries in the Middle East, because the defense counsel assists the accused on an assignment basis and consequently does not have sufficient financial means to order/carry out such an inquiry. Furthermore the defense asserts that it has not been able to carry out its own fact finding nor any investigation into the finding of possible disculpatory witnesses.

The court cannot see why the defense should not have been able to carry out independent investigations. After all the defense itself can make trips to that end and can also request the examining magistrate and the public prosecutor to institute a similar inquiry. Moreover the defense had the opportunity to hire its own expert. For lack of funds, the defense could have applied for an advance payment pursuant to the Tariffs in Criminal Proceedings Act. Furthermore the defense was provided with an advance payment to find its own expertise.

5.5. Violation of the right to interview witnesses for the prosecution and for the defense (ECHR) Article 6-3d

During the hearing the defense argued that the accused has the right to interview witnesses for the prosecution as well as for the defense. The defense also pleaded that the right to request the examination of witnesses also might have been violated, if the defense was not given the opportunity to further examine the witnesses for the prosecution that actually testified for the defense. In that manner the possibility to gather or to clarify exculpatory evidence, or evidence that supports the point of view of the accused was withheld from the defense and for that reason the right to a "fair trial" has been infringed. The defense is of the opinion that a similar situation produced itself with regard to the witnesses X, Y, [witness 112] and other witnesses (being [witness 113], [witness 114] and the employees of the AIVD [General Intelligence and Security Service of the Netherlands]), while the defense observes that during the hearing the court has explicitly and extensively confronted the accused with the statements of the last-named witnesses.

The court rejects this defense regarding witnesses X and Y, because their testimonies form a written part of the criminal file. Furthermore efforts to interview these witnesses more closely or cause such interviews to be carried out were not successful.

Concerning witness [witness 112] the court dismisses this plea because this statement has not been used as evidence by the court. Likewise the court rejects this argument regarding witness [witness 113], because this person was interviewed as a witness during the court hearing.

With respect to the other witnesses this plea is also refused, because the examination of these witnesses was not possible or not relevant. The fact that their statements were read during the hearing is related to the obligation of the court to briefly inform the parties about the contents of the case file.

5.6. Violation of innocence presumption (ECHR Article 6 - paragraph 2)

During the hearing the defense argued that by making the multimedia presentation used for the closing speech available to the press, the public prosecution service has purposefully and contrary to the principle of innocence presumption, publicly portrayed the accused as perpetrator instead of suspect.

The court rejects this argument for the following reasons.

It is not possible to understand why the performance of the public prosecutor should lead to a disallowance of the prosecution. After all the aforesaid presentation forms part of the closing speech delivered in open court, whereby the public prosecutor has the liberty to argue, based on a completed investigation, why he considers the charges against the accused to be proven. Moreover the defense received the same facilities concerning the counsel's plea. The fact that, in spite of the prohibition and previous agreements, the backside of the head of the accused was shown on television after all is to be regretted, but subsequently the court fitted the court room with the necessary facilities to avoid the possibility of repetition.

5.7. Violation of the equality principle

During the hearing the defense argued that the public prosecution service had infringed the equality principle with respect to a number of specific witnesses, as well as the ban on arbitrariness, and reasonable and fair weighing up of interests, by deciding to prosecute the accused and not to prosecute [witness 92] and [witness 36] and by releasing [witness 35] from custody after his apprehension and examination, while knowing that he would immediately leave the country and would therefore not be available for prosecution in person.

The court puts forward that this plea lacks factual basis, as the public prosecutor stated during the session of 21 November 2005 that the witness [witness 35] is still a suspect. For that reason it has not become likely that [witness 35] will not be prosecuted. So at this moment there is no question of an infringement of the equality principle. In so far as it is a matter of violation of the equality principle, the court is of the opinion that this should not

lead to a disallowance of the prosecution or to a remission of the sentence. For that matter, the basis of the argument of the defense is founded upon the international duty to prosecute international crimes. The court accepts that the effect of the principle of discretionary powers is limited by this duty, but wants to stress that this obligation also includes limitations as to contents and essence of the principles of a fair trial, in case the application of these principles would actually result in the failure to comply with the international obligation to bring international crimes to trial.

Moreover the court observes that for reasons of place of residence and nationality, [witness 92] and [witness 36] it is not possible to initiate criminal proceedings against them, while during the hearing, at the explicit request of the defense, they could only be questioned after they had been given a safe-conduct, issued by the public prosecutor.

The defense also pleaded during the hearing that the difference in treatment between the accused and [company 1] and [company 2], and those foreign companies that still supplied substances in 1987 being precursors for the production of mustard or nerve gases, should also lead to a disallowance of the prosecution on account of violation of the equality principle and infringement of the ban on arbitrariness.

The court refuses this plea, because the two cases mentioned by counsel can not be considered as similar to the offenses that the accused has been charged with in the present trial. With regard to the foreign companies, the Netherlands do not have jurisdiction to institute legal action against these companies.

5.8. Violation of the "nemo tenetur" principle

During the hearing the counsel for the defense also pleaded that the government acted contrary to the "nemo tenetur" principle, which is protected by the right to a fair trial pursuant to ECHR Article 6, considering that the contacts, information and advice of the AIVD were false and misleading and caused the accused to expose himself to this prosecution.

The court rejects this plea, taking into consideration the fact that the public prosecutor did not make any statement on the liability to prosecution. Since the statements made by the accused during the interview that was broadcasted on 6 November 2003 were not included in the judgment of the evidence, there is no need to discuss this plea of infringement of the "nemo tenetur" principle. It has not become plausible that the public prosecutor intentionally committed a gross violation of the principles of due process.

5.9. Prosecution contrary to a proper administration of justice

The defense argued during the hearing that, although the prosecution service knew that the criminal offenses that the accused and the persons that have been pointed out by the prosecution as principal perpetrators of the main offenses are being associated with, represent the subject of a criminal investigation in different countries, the public prosecutor has omitted to get in touch with those countries in order to concentrate the criminal proceedings. Because of such an omission, the prosecution has acted contrary to the principle of proper administration of justice.

The court rejects this argument for the following reasons.

In so far as a proper administration of justice should imply that main perpetrators and other participants in the offenses charged on the indictment should be brought to trial by the same court, the assertion that proceedings would be contrary to a proper administration of justice should be dismissed, because nowhere else in the world the present charges are brought to trial as international crimes.

6. Applicable law.

6.1. In the present criminal proceedings the court is confronted with the question of the mutual relationship

between the applicable provisions of international and national law. Concerning the relationship between international criminal law and our own general criminal law, the legal history of the WIM (International Crimes Act) contains a number of relevant considerations:

"For further substantiation of the components of criminal offenses (objective and subjective), and for a demarcation of the limits of liability under criminal law, the Dutch judge needs to explore international law, as it was laid down in the Statute of the International Criminal Court and the directives on "Elements of Crime" drawn up according to Article 9 of the Statute of the ICC, that serve as guidelines for the interpretation of criminal offenses."

(Explanatory Memorandum, Parliamentary Documents II, 2001-2002, 28 337, nr. 3, page 5)

"Apart from some exceptions, the general rules of national criminal law are also applicable to legal action regarding international crimes (also see Article 91 Penal Code). Special reference is made to the rules concerning the principle of legality, attempt and preparation, participation, concurrence, ne bis in idem, limitation of action, etc. The Statute of the ICC also contains rules on these subjects, mainly in part 3 <>. Generally these rules of the Statute have a similar meaning and are intended to protect the same interests and rights as its counterparts in our Penal Code. However some parts have been phrased differently and contain slightly different criteria and limits."

(Explanatory Memorandum, Parliamentary Documents II, 2001-2002, 28 337, nr. 3, page 25)

"As indicated before (...) in order to determine the extent of the description of criminal offenses - and likewise the substantiation of the subjective components -, the Dutch judge needs to explore international law and international case law."

(Explanatory Memorandum, Parliamentary Documents II, 2001-2002, 28 337, nr. 3, page 27)

"The point of departure that the general rules of national criminal law are applicable, except when national criminal law does not provide for certain rules, or in case of rules that clearly deviate from those that apply under the Statute of the ICC."

(Explanatory Memorandum, Parliamentary Documents II, 2001-2002, 28 337, nr. 3, page 29)

6.2. From these considerations the court draws the conclusion that, if international rules on liability under criminal law concerning international crimes essentially deviate from national criminal law, the first mentioned rules should prevail. In addition to the rules provided for in legislation on this issue, the court does not restrict itself to the rules in the Statute of the ICC.

Since certain choices in the Statute of the ICC do not represent a faithful codification of current international law, but exclusively and/or mainly regard the jurisdiction of the Criminal Court. Therefore, establishing liability under international criminal law requires an extensive inquiry, also including the case law of various international criminal courts.

6.3. A proper application of important rules of international criminal law by the national criminal court judge serves two purposes. In the first place he has to meet with the requirements and expectations of international criminal law regarding the penalization and prosecution of international crimes, which entails that liability under Dutch law should not fall short as opposed to liability under international law. Apart from that however, the Dutch judge must also respect the limits of liability according to international law. The court considers both elements to be of importance.

With respect to the second element the public prosecution service holds the view that conventional-law obligations to penalization represent minimum obligations and therefore the Netherlands are always allowed to go beyond those limits and exceed the bounds of international liability. In the opinion of the court the prosecution service does not acknowledge the place of these conventions and crimes within an international system of standards of criminal law. By assuming a larger liability under national law than customary under international law, in some cases based on national law a crime could be considered as an offense pertaining to international law, whereas the international community does not consider it as such. In this respect an important argument for the court concerning international crimes to give preference to the bounds of international liability instead of national liability, refers to universal jurisdiction connected with international crimes.

Exceeding the liability limits of international criminal law, when a case is brought to trial under national law, could cancel the international basis for universal jurisdiction, while the latter can only be applied to practices that are indictable as criminal offenses under international law. In relation to this subject the prosecution argued that in the present proceedings there is no question of excessive jurisdiction from an international law point of view, seen that the accused is prosecuted based on the active nationality principle. The necessary consequence resulting from these considerations that, within the framework of starting proceedings against international crimes committed abroad, different standards of liability can be applied to Dutch nationals and foreign nationals, is considered by the court to be unacceptable, in any event when it concerns the crime of committing genocide.

6.4 Because the actions of the accused will explicitly and exclusively be prosecuted as international crimes, the court will focus on the international boundaries of liability. An important question in this respect is to what extent it is possible to clearly establish these boundaries based on international law and if these should be

considered to be indicative. The court wondered if this would result in a discrepancy between international and national law concerning the requirement of intention of the accomplice and the required contribution to the main offense by the accomplice. As for the components of the descriptions of the criminal offenses a similar discrepancy is less obvious, because in this respect general criminal law hardly knows any independent rules.

6.5. Concerning the requirement of intention for complicity, the court makes a distinction between genocide and war crimes.

6.5.1 Genocide distinguishes itself from other international crimes because of its specific intent, based on certain arguments, to partially or entirely exterminate a population group. The question to what extent the accomplice should have this intent is a substantial issue that has regularly been discussed in the case law of the international criminal tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR). It is important to notice that early case law attached significant value to *dolus specialis* [specific intent] with regard to the perpetrator as well as the participants, because of the special seriousness and specific place of the genocide offense. However the most recent and authoritative case law of the appeal chamber of the ICTY and ICTR shows that a similar approach was dismissed, so now a conviction of the accomplice in/to genocide is possible if the accused knew of the genocidal intention of the perpetrator (ICTY, Krstic, case nr. IT-98-33-A, sentence on appeal, 19 April 2004, paragraph 144; ICTR, E. and G. Ntakirutimana, cases nr. ICTR-96-10-A and ICTR-96-17-A, sentence on appeal, 13 December 2004, paragraphs 500 and 501).

Contrary to the prosecution, the court holds that the case law was sufficiently crystallized out regarding this subject, seen that this matter was regularly discussed and the appeal chamber of the ICTY and the ICTR repeatedly explained and confirmed the state of the law. The court also wishes to stress that the requirement of actual knowledge is justified when it is regarded as the boundary for the liability of the accomplice in relation to the special intent of the perpetrator; apart from that the first case law of the tribunals rather points out in the direction of a requirement of a more far-reaching intention than in the direction of forms of conditional intention.

Finally the limitation of the liability of the accomplice in/to genocide, as indicated by the international criminal tribunals, is founded on the confirmation of genocide as being a unique crime ('crime of crimes'), as distinct from other international crimes like crimes against humanity and war crimes. The extension of the boundaries of liability under criminal law obviously impairs this unique character.

The court considers that the requirement of knowledge of the accomplice in relation to the main offense genocide is an essential component of liability under international criminal law on this subject and that Dutch law, which seems to result in a larger liability, can not be applied in this respect.

6.5.2 This is different with respect to complicity in war crimes, which do not require a special intent of the perpetrator. The required intention of the accomplice in international administration of criminal justice is not essentially different from Dutch law on this subject. In as far as any differences can be pointed out, in the opinion of the court, these lie within the "acceptable margin", as put into words by the legislator in the Explanatory Memorandum to the International Crimes Act (WIM):

"It would not be practical and cause unnecessary uncertainty, if the Dutch judge were to apply participation clauses and grounds for exemption from criminal liability in legal proceedings against international crimes, that are somewhat different from the provisions he is used to work with.
(Explanatory Memorandum, Parliamentary Documents II, 2001-2002, 28 337, nr. 3, page 29)

6.6. Regarding the question of how large the participation of the accomplice should be in relation to the main offense, the court finds no real difference between international and national law.

Although international administration of criminal justice seems to assume a more far-reaching contribution (a substantial contribution to the committed crime; see ICTY, Blaškic, case nr. IT-95-14-A, sentence on appeal, 29 July 2004, paragraph 48; ICTY, Vašiljevic, case nr. IT-98-32-A, sentence on appeal, 25 February 2004, paragraphs 134 and 135) than the Dutch administration of justice (to facilitate the accomplishment of the main offense by the perpetrator), but the court judges that this subject is of a more factual nature, and presently does not form a substantial element of liability under international criminal law, so it is not a matter of a clear deviation from international rules and therefore the court will proceed on the application of Dutch law.

7. Considerations regarding the main charge of genocide under count 1, principally

7.1. The conclusion that it was indeed genocide is not only important for finding an answer to the question whether the principal charge under count 1 has been proven.

This conclusion is also important in case of acquittal of the principal charge under count 1, because if it was indeed genocide, consequently the alternative charge under count 1 has also been established, being the circumstance that those main offenses were committed "while that offense/ those offenses (again and again) was/were (an) expression(s) of a policy of systematic terror or wrongful performance against a specific population group."

7.2. Based on the Genocide Convention Implementation Act and the applicable international law, the court assumes that the following issues need to be proven cumulatively with respect to the main offense, before addressing the issue of the complicity of the accused.

1. The persons referred to as perpetrators in the charges intentionally committed one or more of the acts as defined in Article 1 subsection 1 through 4 and 5 Implementation Act of Genocide Convention, and
2. those acts were committed intentionally against an ethnic or national group, and/or a part thereof by the persons referred to as perpetrators in the charges, and
3. those acts were committed with the intent to destroy that group as such, entirely or partially, by the persons referred to as perpetrators in the charges.

Sub. 1

The court establishes that the conduct of the persons referred to as perpetrators in the charges constitute acts as defined in Article 1 sub 1 and 2 of the Genocide Convention Implementation Act, being the killing of members of the group and inflicting grievous bodily harm to members of the group.

Sub. 2

It can only be a matter of genocide when the overt acts and the intention to entirely or partially destroy are targeted at a specific and protected group. The question remains to what extent the Kurdish population group (in rural areas and in Halabja) in Northern Iraq, referred to in the charges, can be considered as an ethnic and/or national group as defined in the Genocide Convention Implementation Act and the Genocide Convention itself. In the opinion of the court it has not been legally and convincingly proven that the Kurdish population group in Northern Iraq is a national group as defined in the Implementation Act and the Convention.

Regarding the qualification ethnic group as defined in the Genocide Convention the court considers the following alternative requirements:

- the members of the group share a common language and culture, or
- the members of the group consider their own group as an ethnic group, or
- others, amongst them the perpetrator(s) who committed genocide, consider the group to be an ethnic group. (ICTR, Kayishema and Ruzindana, case nr. ICTR-95-1-T, sentence of the court of first instance, 21 May 1999, paragraph 98)

The court finds that it has been legally and convincingly proven that the Kurdish population group meets the above mentioned requirements for ethnicity as defined in the Genocide Convention. In order to come to this judgment, the court used the following evidence.

- a. a written document, being an Iraqi government document, included in a writing, Report on the situation of human rights in Iraq, submitted by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/74 (UN Doc. E/CN.4/1994/58, H 74 - page 83):

In the name of God, the Merciful, the Compassionate

Directorate of Security, Dohuk Governorate/Political Department

Ref: 2241

Date: 10 February 1987

To: Directorate of Public Security / 45 Section M

Subject: Information

With reference to your letter No. 11881 dated 15 January 1987, having conducted a meticulous secret investigation concerning the person mentioned in your above letter, we have found out the following:

1. Full name: [.....]
2. Previous address: [.....]
3. Present address: [.....], out of bounds for security reasons.
4. Place and date of birth: 1978
5. Profession: Child
6. Academic achievements: Illiterate
7. Political orientation: Independent
8. Ethnicity: Kurdish
9. Religion: Muslim
10. Name of mother: [.....]

11. Elements with
whom she meets: Fugitives and subversives
12. Further information: 1. On 13 March 1982, together with her father [.....] she fled and joined the ranks of the subversives, the clique of "scions of treachery".
2. In accordance with Public Security letter No. M 64 Q 2/64735 dated 12 December 1982, it has been decided to confiscate her movable and immovable property.
3. In our opinion, a warrant should be issued for her arrest.

For your information. With regards.

(signed)
Director of Security, Dohuk Governorate
9 February

- b. the testimony given during the court session of 30 November 2005 by the witness [witness 95] that - among other things - includes the following:

The purpose of the Kurds was to obtain the recognition of their ethnic national rights, the recognition of the language and culture. The Kurds wanted to participate in the decision-making process as first-rate citizens. The Kurds distinguished themselves as an ethnic group from the other Iraqi population by their different moral values, the landscape is different, the clothes are different, the eating habits are different. You are a Kurd when you see yourself as such. In my opinion a Kurd is someone born from Kurdish parents, who considers the Kurdish language, the requirements of the Kurdish people, the Kurdish territory and the Kurdish moral values as his own.

(...)

You put it to me that in my statement of 23 August 2005 I speak of identity cards that the Kurds received from the Iraqi authorities and you ask me what criteria were used for recording these data.

My answer is that if someone has Kurdish parents and this person considers himself to be a Kurd.

- c. a document being a certified Dutch translation of a transcription in the English language concerning a witness examination before [.....] examining magistrate in charge of criminal proceedings at the court in The Hague, heard in the offices of the United States public prosecutor in Baltimore, Maryland.

This document contains, among other matters - rendered in a compact way - the statement made by [witness 115] on 30 October 2005 before the aforementioned examining magistrate (RC-file - page 1797):

My ethnic background is Kurdish.

See furthermore in a similar sense the following evidence:

- c.1 the witness examination of [witness 116] (7.3. under k.).

c.2 a document, being a witness examination of [witness 117] dated 29 November 2002, containing, rendered in a compact way (H90a - page 113):

I am an Iraqi citizen and belong to the Kurdish population.

c.3 a document, being a witness examination of [witness 118] dated 20 November 2002, containing, rendered in a compact way (H90a - page 134):

I am an Iraqi and belong to the Kurdish population group.

c.4 the witness examination of [witness 102] (12.66).

c.5 an official report of a witness examination on 21 September 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 14] made on 21 September 2005 (G14.I - page 893 through 899):

I am a Kurd. In 1976 I joined the Iraqi army.

c.6 a witness examination of [witness 5] (see hereafter under e.)

c.7 an official report of the witness examinations of [witness 16], [witness 8], [witness 10] and [witness 9] in the proceedings against [accused] on 14 June 2005, 15 June 2005 and 16 June 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in this court, and [.....], clerk of the court.

This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate on 15 June 2005 by [witness 10] (G10.I - pages 786 through 789):

I am a Kurd who worked in the Iraqi army at the department of supplies and transport.

c.8 an official report of the witness examinations of [witness 16], [witness 8], [witness 10] and [witness 9] in the proceedings against [accused] on 14 June 2005, 15 June 2005 and 16 June 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate on 14 and 16 June 2005 by [witness 9] (G9.I - pages 776 through 781):

I am a Kurd who was employed by the Iraqi army as commander of the medical department.

Sub. 3

The distinctive element of genocide regards the special intent to entirely or partially exterminate a protected group as such. Without direct evidence, for instance in the shape of a confession, this special intent of the perpetrator(s) can be deduced from a number of circumstances. Based on international administration of criminal justice, the following factors play a significant role in the process of establishing that genocidal intent:

- the general framework in which the acts were committed;
 - the circumstance that the protected group systematically became the victim of other wrongful acts;
 - the scale on which the criminal offenses were committed;
 - systematically striking victims because of their membership of a special group;
 - the repetition of destructive and discriminating acts;
 - the number of victims;
 - the way in which the criminal offenses were committed;
 - the territory where the perpetrator was operating;
 - the obvious intent of the perpetrator to take the life of his victims;
 - the seriousness of the committed genocidal acts;
 - the frequency of the genocidal acts in a certain region;
 - the general political framework in which the crimes were committed;
 - comments made by the perpetrator with respect to the position and/or the fate of the protected group.
- (ICTY, Jelusic, case nr. IT-95-10-A, sentence on appeal, 5 July 2001, paragraph 47; ICTY, Jelusic, case nr. IT-95-10-T, sentence of the court of first instance, 14 December 1999, paragraphs 73-77; Karadzic and Mladic, cases nr. IT-95-5-R61 and IT-95-18-R61, decision as defined in Rule 61, 11 July 1996, paragraphs 92, 94 and 95; ICTY, Krstic, case nr. IT-98-33-A, sentence on appeal, 19 April 2004, paragraphs 12-14 and 21; Milošević, case nr. IT-02-52-T, decision as defined in Rule 98bis, 16 June 2004, paragraphs 246-248; ICTR, Kayishema and Ruzindana, case nr. ICTR-95-1-T, sentence of the court of first instance, 21 May 1999, paragraph 93); ICTR, case nr. ICTR-98-44A-T, sentence of the court of first instance, 1 December 2003, paragraph 806; ICTY, Nikolic, case nr. IT-94-R61, decision on account of Rule 61, 20 October 1995, paragraph 34, ICTR, Akayesu, case nr. ICTR-96-4-T, sentence of the court of first instance, 2 September 1998, paragraph 523; ICTR, Simba, case nr. ICTR-01-76-T, sentence of the court of first instance, 13 December 2005, paragraph 413)

For the judicial finding of genocidal intention, the court makes a difference between systematic oppression and discrimination of the Kurdish population, and the continuously intensifying campaign of violence of the Iraqi government against the Kurds in the north of Iraq which, at any time, could be viewed as proof of genocidal intention.

For the general image of oppression and discrimination of the Kurdish population in Iraq, which, in general, plays a role in determining genocidal intention in a later stage, the court takes the following evidence into account:

a. a document, being the Report on the situation of human rights in Iraq of 19 February 1993, submitted by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commission Resolution 1992/71 (UN Doc. E/CN.4/1993/45, H75 - pages 25 through 27):

A history of oppression

85. According to numerous reports, the Kurdish minority has endured severe oppression at the hands of several national administrations since at least the beginning of this century.

Under the present Government of Iraq, i.e. the administration of the Arab Baath Socialist Party which came to power in 1968, the oppression has continued and even escalated, despite the introduction of commendable legislation which portended autonomy for the Kurds. In particular, the period of the Presidency of Saddam Hussein (July 1979 to the present) has seen particularly severe oppression which culminated in Government aggressions which the Special Rapporteur has previously described as "genocidal" in nature (E/CN.4/1992/31, paras. 97 - 103).

86. In the 1970's, the Arabization of the disputed Kirkuk region and the creation of a no-mans-land along the border with Iran and Turkey resulted in the forced relocation of tens of thousands of Kurds in so-called "collective villages"; these villages were often located in barren areas easily accessible to the Iraqi Army. It was reported that only some Kurds received minimal compensation for the loss of their homes and farmland and were forbidden to return to their villages, of which many had been destroyed. Among the displaced Kurds were members of the Barzani clan, who were allegedly internally displaced to desert camps in southern Iraq without compensation for their destroyed property. A few years later, 1980, these Barzanis were reportedly relocated once again from the south to the Qustapha and Diyana camps near Arbil in the north. Their relocation is alleged to have been carried out by the Iraqi authorities in retaliation for the alliance of the Kurdish peshmerga of Massoud Barzani with the Iranian forces at the beginning of the Iran - Iraq war in September 1980. Following the Iranian occupation of Hajj Omran in July 1983 in northern Iraq, 8,000 Kurdish Barzani tribesmen (including more than 300 children) were reportedly taken from the Qustapha and Diyana camps and disappeared in Iraq custody (A/46/647, paras. 16 and 55, together with the Special Rapporteur's later comments at paras 66 - 67). In this connection, the Special Rapporteur notes the curious reference to the "Barzani Group" in Document 3 of Annex I, which seems to imply that the Government of Iraq was still in custody of such persons. However, none seem to appear among the 523 names on the 37 Execution Decrees that form part of the aforementioned document as attachments.

87. Apparently to prevent the peshmerga from hiding themselves in the mountains and villages of Iraqi Kurdistan, an increasing number of Kurdish villages were destroyed in the mid-1980's. Again many Kurds were forcibly relocated to "amalgamized villages" and government complexes. The number of relocated Kurds in this second wave of village destruction has been estimated as 500,000. This process of evacuation and detention of "subversives" and their "relatives" appears to be confirmed by the text of Document 6 of Annex I which refers to instructions, which presumably applied throughout the region, issued by the Director-General. The Special Rapporteur is in possession of other similar documents.

88. In early 1987, when the Kurdish peshmerga were reported to be in control of a great part of northern Iraq, the forces of the Kurdish leaders Massoud Barzani and Jalal Talabani apparently joined together in order to fight the Iraqi Army. According to several informed observers of the situation, this might have been the moment when the Government of Iraq made the determination that effectively all Kurds were potential enemies of the State. This supposition is strengthened by the reference in the first sentence of the attachment in Document 8 of Annex I, dated 7 June 1987, which describes instructions "aimed at ending the long line of traitors from the Barzani and Talabani clans and the Communist Party, who have joined ranks with the Iranian invader enemy". At this point, all Kurds were put at risk by what appears to have been a non-judicially controlled policy aimed against the nebulously defined "subversives", "saboteurs", "Iran's agents", "traitors", "Barzani group", "Talabani group", together with "deserters" and "evaders". So, apparently, came into existence what the Government of Iraq labelled, and what is infamously known to the local population as, the "Anfal operations".

b. a document being a certified Dutch translation of a transcription in the English language concerning a witness examination before [.....] examining magistrate in charge of criminal proceedings at the court in The Hague, heard in the offices of the United States public prosecutor in Baltimore, Maryland.

This document contains, among other matters - rendered in a compact way - the statement made by [witness 119] on 28 October 2005 before the aforementioned examining magistrate (RC-file - page 1487):

I would say that the regime engaged in severe profiling of the Kurdish population in northern Iraq. By that I mean that if you are a Kurd in Iraq, you were suspect, you are proven that you are ... that the suspicion is not needed to be there.

c. a document being a certified Dutch translation of a transcription in the English language concerning a witness examination before [.....] examining magistrate in charge of criminal proceedings at the court in The Hague, heard in the offices of the United States public prosecutor in Baltimore, Maryland.

This document contains, among other matters - rendered in a compact way - the statement made by [witness 41] on 29 October 2005 before the aforementioned examining magistrate (RC-file - page 1637):

I graduated in 1977. You tell me that in my statement before the police I said that this was a difficult period. The Kurds were always persecuted by the regime of Saddam Hussein and I was a student working and studying in Baghdad. In 1974 the war between the Kurds and the Iraqi Government broke out. The ones who came to college after I did had to be Baathists if they wanted to be admitted to that college. That is why it was difficult to live as a non-Baathist and as a Kurd among Baathists. I was allowed to continue my studies. I had to be very careful and keep a low profile.

d. an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200518040808, dated 18 April 2005, legally drawn up by authorized investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made by [witness 41] (G41 - page 535):

You ask me about the situation in Iraq in relation to the Kurds. The Kurds were treated as second-rate citizens by Saddam Hussein. We were discriminated against in many ways. (...) Kurds were executed without reason.

e. the official report of the witness examination on 26 September 2005 that was drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the aforementioned statement of [witness 5] (G5.I - pages 887 through 890 and RC-file - pages 218 through 221) that was made on 26 September 2005:

In the army, Kurds had fewer chances to become promoted. With the passage of time one automatically became a major. Kurds who got to the rank of colonel were sent into retirement or they were banned from sensitive positions. Also the chances of a promotion within the Baath party were slimmer.

f. the official report of the witness examination on 14, 15 and 16 June 2005 that was drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the aforementioned statement of [witness 9] (G9.I - pages 776 through 785 and RC-file - page 128) that was made on 14, 15 and 16 June 2005:

Being a Kurd I was discriminated against in the Iraqi Army compared to non-Kurds. I had finished my studies with distinction, but was not allowed to continue my studies abroad. Non-Kurds who had lesser study results were allowed to do so.

7.3. With respect to the intensifying and ongoing campaign of violence and oppression, including the Arabization of the living area of the Kurds, large scale disappearances, arbitrary executions, the attacks on the Kurdish villages and their destruction, and the use of chemical weapons, which campaign culminated in the Anfal operation, the court takes the following evidence into account:

a. a document, being the Report on the situation of human rights in Iraq of 25 February 1994, submitted by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commission Resolution 1993/74 (UN Doc. E/CN.4/1994/58, H74 - pages 36 through 43):

The Anfal campaign

109. In the context of the present situation of the Kurdish population of Iraq, the Special Rapporteur believes that the events of the Anfal campaign require further consideration because: (a) hundreds of thousands of persons remain personally affected by the continuing violations of disappearance, destruction of property, etc.; (b) there appear significant similarities between events of the Anfal campaign against the Kurds and reports of present events in the southern marsh area of the country; and (c) the same Government remains in power directing policies having current effects and giving rise to considerable concern for policies which may affect the Kurdish population in the future. In addition, the unprecedented volume and wealth of evidentiary material at the disposal of the Special Rapporteur, comprising some 18 metric tons of official Iraqi documents, testimonies, analytical reports, forensic and other scientific reports, etc., equally call out for study in the interest of establishing the facts and responsibilities of human rights violations allegedly committed against the Kurdish population. Moreover, since the events of the Anfal campaign left virtually no Iraqi Kurd untouched, the Special Rapporteur takes note of the argument made to him by Kurdish leaders that genuine national reconciliation will be difficult as long as the issues and effects of the Anfal campaign remain unresolved.

110. The allegations of genocidal practices constituted by the Anfal campaign were described by the Special Rapporteur in his previous reports to the Commission on Human Rights (E/CN.4/1992/31, paras. 97 - 103 and E/CN.4/1993/45, paras. 89-99). The continuing study of evidentiary materials now affords a closer examination of the campaign: in particular, the Special Rapporteur takes note of the work done by the international non-governmental organization Middle East Watch in having now examined approximately 40 percent of the over 4 million official Iraqi documents taken from Government offices (principally security offices) by Kurdish groups in northern Iraq subsequent to the March 1991 uprisings. The Special Rapporteur has described these materials in detail in his last report to the Commission (E/CN.4/1993/45, paras. 89-90).

111. While conflicts between the Kurdish population, or parts thereof, and the central authorities of Iraq have long historical antecedents, the Anfal campaign should be viewed in the specific context of events between 1985 and the present as elaborated below. However, while the general policy against the Kurdish groups appears to date from 1985, the specific operations forming the Anfal campaign may be more clearly delimited as having occurred between 23 February 1988 and 6 September 1988. According to the official Iraqi documents reviewed by the Special Rapporteur, and in agreement with the analysis conducted by Middle East Watch, the Special Rapporteur observes that the Anfal campaign appears to have been composed of eight distinct operations: Tables 1 of 3 of Annex II summarize, respectively, the essential features of each operation, the known uses of chemical

weapons, and the main effects of the operations on the civilian population. The map appended to Annex II also exhibits the geographic location of the various operations. Read together with the Tables and map, the eight Anfal operations are described in the following paragraphs according to information obtained in the documents and corroborated by testimony and scientific studies of physical evidence.

112. The first operation of the Anfal campaign appears to have begun on 23 February 1988 with a series of chemical and conventional attacks by both air and ground forces against the Patriotic Union of Kurdistan (PUK) peshmerga strongholds in the Jafati valley in the Governorate of Suleimaniyeh. Particularly fierce attacks were directed against the villages of Sergalu, Bergalu and Yakhsamar where the main headquarters of the PUK were located. The largest chemical attack was launched on 16 March 1988 against the Kurdish town of Halabja killing between 3,200 and 5,000 of its residents. After almost eight years of war with Iran, these mass killings constituted part of the Government's clearly established practice of indiscriminate attacks against civilian targets. During the first Anfal operation, it appears that very few civilians were captured or deported by Government forces; most were able to flee to Iran. Based on an assessment of the operations and the declarations made

throughout the documents relating to this period, the main objective of the First Anfal was apparently to eliminate the PUK strongholds and to destroy the civilian settlements in the Jafati valley. This aim was achieved on 19 March 1988 with the defeat of the last peshmerga base in the village of Bergalu; most of the remaining PUK peshmerga units fled across the border to Iran.

113. The second stage of the Anfal campaign appears to have begun on 22 March 1988 when Government forces launched chemical attacks against the village of Sayw Senan in the Qara Dagh subdistrict of the Governorate of Suleimaniyeh. Estimates of the number of civilians killed in this attack vary between 70 and 90. This offensive was followed over the next days by similar chemical attacks on the nearby villages of Dukan, Balakajar, Masoyi and Ja'faran. Following the characteristic pattern of the Anfal operations, several hundred young men from the villages in Qara Dagh reportedly disappeared after their arrest and detention in the Suleimaniyeh emergency force base. The chemical attacks also resulted in a mass flight of civilians: the majority headed north and found temporary safety in the housing complexes near Suleimaniyeh, while those who went south and crossed into southern Germian, heading towards Kalar, were captured by advancing Government troops. A large number of these families subsequently disappeared, while others were taken to the camp of Dibs or transported to the prison of Nugrat Salman. From the perspective of military operations, the Second Anfal was accomplished very easily since a large part of the peshmerga units had fled to Iran after their defeat in Sergalu-Bergalu. The Second Anfal operation seems to have come to an end around 1 April 1988.

114. The Third Anfal was concentrated on the Germian plain. On 7 April 1988, the Government forces launched a massive offensive involving assaults of infantry supported by artillery, armored units and the air force. The troops appear to have advanced in a pincer-like movement converging from several different points around the Germian plain. Since only a few peshmerga units appear to have been present in this region, the Government forces record that they met virtually no resistance. In this phase of the campaign, Government forces seem to have employed mainly conventional means: chemical weapons appear to have been used only on a few targets, such as the small village of Tazashar where the peshmerga managed to put up some resistance. Fleeing villagers are recorded as having been channeled to specific collection points and were subsequently sent to prison camps in Dibs, Nugrat Salman and Topzawa. Consistent with all phases of the Anfal campaign, the captured adult men disappeared en masse. However, reports indicate that a large number of women and children also disappeared in the course of the Third Anfal, especially in certain specific areas such as the southern parts of the Daoudi and Jaff-Roghzayi regions: some estimates put the number of disappeared at around 10,000 in this limited area alone. According to several corroborating eye-witness testimonies reported by Middle East Watch, thousands of men, women, children and elderly were transported en masse from the above noted camps to execution sites located at Hadar, Ramadi and Samawah in, respectively, northern, central and southern Iraq. By 20 April 1988, the last pockets of peshmerga resistance together with all civilian settlements are recorded as having been wiped out in the region of the Third Anfal.

115. The fourth stage of the Anfal campaign appears to have begun on 3 May 1988 with a heavy chemical attack by the Iraqi air force on the villages of Askar and Goktapa in the valley of the Lesser Zab river. According to eye-witness accounts reported by Middle East Watch, hundreds of civilians were killed as a result of this offensive while many of the survivors were captured by the advancing Government forces; some fifty families from the village of Askar were reportedly arrested and sent to the complex of Suseh. As during the previous stage of the campaign, Government forces attacked the villages in the area of the Fourth Anfal from several different directions. Upon military occupation of the villages, the buildings were demolished and the villagers were said to have been rounded up and trucked away to camps such as those at Topzawa, Dibs and Nugrat Salman. The adult men, along with a large number of women, children and elderly, disappeared in this process. Specifically, as many as 1,600 people are reported to have disappeared from the villages of Bogird, Kanibi, Kleisa, Qizlou, Gomashin and Kani Hanjir alone. Many of them are believed to have been subsequently killed in mass executions. By 8 May 1988, all villages in the area had been razed to the ground and their residents captured, detained or disappeared.

116. The fifth, sixth and seventh stages of the Anfal campaign appear to have lasted from 15 May to 28 August 1988 and concentrated on the villages situated in the valleys of Shaqlawa and Rawanduz, north of Dukan Lake. In this area, the remaining peshmerga units had gathered in an attempt to offer resistance to the advancing Government forces. On 15 May 1988, the Iraqi air force attacked the village of Wara with chemical weapons, killing many civilians. More chemical attacks followed on 23 May 1988 when the villages of the Balisan, Seran, Hiran and Smaqli valleys were bombed. Since many of the villages had already been abandoned as a result of actions taken against them in 1987, the casualties of May 1988 were said to be relatively few. However, the remaining families were treated according to the established pattern: the men were captured and disappeared, the women and children were trucked away to collection centers with some disappearing. Heavy fighting continued for several months before Government forces finally managed to defeat the PUK; the remaining peshmerga fled across the border to Iran.

117. The Eighth Anfal operation, which is also referred to in official Iraqi documents as the "Final Anfal", appears to have been carried out between 25 August and 6 September 1988 in the Badinan region in northern Iraq, i.e. after the end of the Iran-Iraq War and far from the war-zone, but the stronghold of the Kurdistan Democratic Party's peshmerga forces. On 25 August 1988, chemical attacks were launched against Birjinni, Tuka and several other villages. Following these heavy bombardments, the villagers fled from their homes to the surrounding mountains where hundreds of them reportedly died from the cold weather, hunger or the after-effects of the chemical attacks. Many of the fleeing villagers were later captured by Government troops and sent to collection centers. All the men who were arrested are reported to have disappeared; hundreds of them are believed to have been killed in mass executions. The women, children and elderly were later released and abandoned in the plains north of Arbil. The Final Anfal operation resulted in the defeat of the KDP peshmerga.

118. The Anfal campaign appears to have ended on 6 September 1988 with a general amnesty (promulgated by Revolution Command Council Decree No. 736) which pardoned all Iraqi Kurds who had had "legal" proceedings started against them or who were otherwise being "pursued" for acts committed prior to the amnesty. However, despite the amnesty, official Iraqi documents record that Kurds captured inside vast tracks of land which land had been declared "prohibited areas" before 6 September 1988 continued to be executed. Those Kurdish families who were released from the prison camps under the amnesty were transported to housing complexes or simply abandoned in the open air. Nobody was allowed to return to the demolished villages in the areas which were still defined as "prohibited". Importantly, the amnesty decree (which was applicable for only one month) was not accompanied by abrogation of the laws which threatened the Kurdish population. For example, according to a letter dated 22 November 1988 from Arbil Security, the shoot-to-kill instruction contained in order 24/4008 (see paragraph 121 below) was still being applied "with no exception". Another document, dated 11 April 1989, affirms that the directives contained in order 28/4008 remained in force at that late date. Indeed, it was only being proposed to abrogate order 28/4008 on 22 June 1990 (see Document No. 14 in Annex I).

119. Having described the basic content of the eight operations constituting the Anfal campaign, the Special Rapporteur observes that the evidence to establish more clearly his initial findings, i.e. that the Anfal campaign was, like most actions of the Government of Iraq, very well planned, implemented and documented. The immediate effects of the Anfal campaign were to cause: (a) the death of thousands of men, women and children by arbitrary execution or indiscriminate killing; (b) the disappearance of tens of thousands more men, women and children; (c) the arbitrary arrest, detention and forced relocation of hundreds of thousands of men, women and children; (d) the destruction of thousands of villages including essential economic resources and important cultural properties; and (e) the essential destruction of the rurally based Kurdish way of life. These effects were accomplished in a clearly systematic fashion through the intentional use of obviously excessive force.

120. Evidence relating to the organization and implementation of the Anfal campaign is revealed both explicitly by reference to, and examination of, the official Iraqi documents in the possession of the Special Rapporteur. As noted above, the year 1985 appears to have marked a turning point in the history of oppressive measures affecting the Kurds. While many important elements of what later constituted the Anfal campaign pre-date 1985, e.g. the policy against the Barzani clan and the general policy of extending punishments to members of families, tribes and villages, the ground for a comprehensive policy against the Kurds appears to have been laid in May 1985 when military orders were issued instructing the use of "all types of weapons available" against "subversives" in the northern Kurdish territory. This instruction is seen to be linked with subsequent orders and acts including, notably, the June 1985 instructions from the Office of the President that the "elderly, women and children among subversives' relatives should be deported to the regions where the subversives are" and "that detention remains enforceable against subversives' relatives able to bear arms". Such instructions were implemented with meticulous attention as those deported were stripped of their Iraqi nationality and thrown to their fate (with regard to the care and precision with which the Government administered this program, see E/CN.4/1993/45, Document 6 of Annex I). Under the administration of the then Secretary-General of the Northern Bureau of the Baath Party, Mohammed Hamza al-Zubeidi, an increasingly severe and complex policy of oppression evolved: according to a June 1990 comprehensive proposal to abrogate 13 instructions which, read together, appear to constitute the elements of a single policy, the matrix of decrees, directives and instructions forming that policy date from 4 September 1985 (see Document No. 14 of Annex I).

121. When either Mohammed Hamza al-Zubeidi proved not to be up to the appointed task or, in any event, someone stronger and more reliable seemed to be required, Ali Hassan Al-Majid was appointed Secretary-General of the Northern Bureau of the Baath Party on 18 March 1988 with enormous and exceptional powers over “all civil, military and security organs of the State” (See Document No. 15 of Annex I). Upon taking up this post as the virtual dictator of the region, Ali Hassan Al-Majid issued a series of strict and harsh instructions clearly establishing his personal control over affairs in the north and demonstrating no sympathy for even the slightest of humanitarian principles. Al-Majid defined the scope, strategy and bureaucratic structure of the Anfal campaign through two standing orders he issued in June 1987. The orders included a total prohibition of life (human and animal) in defined areas inhabited almost exclusively by Kurds and including thousands of villages in the Kurdish countryside. The first order, numbered 28/3650 and dated 3 June 1987, is a personal directive signed by Ali Hassan Al-Majid according to which the armed forces in the region were to kill any human being or animal present in the areas which had been designated “prohibited” (See Document No. 16 of Annex I). The order also implemented a strict economic blockade of the area permitting no foodstuffs, persons, cattle or machinery to reach the villages that had been prohibited. The second significant order, numbered 28/4008 and dated 20 June 1987, was issued by the “Command of the Northern Bureau” under the signature of al-Majid (See Document No. 10 of Annex I). Order 28/4008 expanded the directives contained in 28/3650 and specified the strategies to be employed: it repeated the total prohibition of the designated areas and confirmed the policy to intentionally “kill the largest number of persons” using artillery, helicopters and aircraft at any time of the day or night. Furthermore, and more importantly, the directives included an explicit order to the Security services to detain and interrogate all persons captured in the designated villages with those between the ages of 15 and 70 to be executed after any useful information had been obtained from them. These sweeping directives granted license to kill and guaranteed impunity thereafter to the Government forces and officials operating in the prohibited areas. By the end of 1987, official documents indicate that the morgues were under heavy pressure to keep up with the inflow of corpses from the mounting executions.

122. While the ostensible object of taking evidently excessive steps against large parts of the Kurdish population was said to be to rid the area of “saboteurs”, “subversives”, “traitors”, “criminals” and a variety of other undesirables, it is clear from the declarations of Ali Hassan Al-Majid that the instructions were aimed against all Kurds with the object of eliminating real or presumed opposition. As a result, the policy was to suppress those who could be controlled in amalgamized villages, destroy the rural life-style of these mountain people and liquidate those of apparent oppositional sentiments together with their extended families, tribes and communities. The fact that Ali Hassan Al-Majid viewed the situation in such terms is revealed in several of his recorded statements. For example, on 15 April 1988, al-Majid is recorded as having told members of the Baath Party’s Northern Bureau and Governors of the Autonomous Region the following:

“By next summer there will be no more villages remaining spread out here and there, but only complexes. ... I will prohibit large areas; I will prohibit any presence in them. What if we prohibit the whole basin from Qara Dagh to Kifri to Diyala to Darbandikhan to Suleymaniyah? What good is this basin? What did we ever get from them? ... All of this basin, from Koysinjak to here ... I’m going to evacuate it. ... No human being except on the main roads. For five years I won’t allow any existence there ... In the summer nothing will be left.”

It is to be stressed that the locations mentioned by al-Majid are exclusively Kurdish. Another example came after completion of the Anfal operations of 1988 when al-Majid is recorded on 21 January 1989 as relating to his Northern Bureau colleagues the following:

“So we started to show these senior commanders on TV that (the saboteurs) had surrendered. Am I supposed to keep them in good shape? What am I supposed to do with them, these goats ... No, I will bury them with bulldozers. Then they ask me for the names of all the prisoners in order to publish them. I said, “Weren’t you satisfied by what you saw on television and read in the newspaper?” Where am I supposed to put this enormous number of people? I started to distribute them among the governorates. I had to send bulldozers hither and thither...”

Some months later, in a sort of valedictory address upon completion of his term as Secretary-General of the Northern Bureau of the Baath Party, al-Majid was recorded on 15 April 1989 as saying the following:

“I said probably we would find some good ones among them, since they are our people too. But, we didn’t find any. Never. ... Apart from those two, there are no loyal or good ones. ... I would like to speak about two points: one, Arabization, and two, the shared lands between the Arab lands and the Autonomous Region. The point that I am talking about is Kirkuk. When I came, the Arabs and Turkomans were not more than fifty-one percent of the total population of Kirkuk. ... Then we issued directives. I prohibited the Kurds from working in Kirkuk, the neighbourhoods and the villages around it, outside the Autonomous Region.”

123. It is clear from the very words of the all-powerful Secretary-General of the Command of the Northern Bureau that the Kurdish people (“them”, “they”, “these goats”, “the Kurds”) were intentionally targeted as a

group. As al-Majid took power in the north and implemented his policy against the Kurds, it seems equally clear that the historically splintered Kurds also saw themselves more and more as a group: in May of 1988, the "Kurdistan Front" was formed of the eight main Kurdish groups then facing the common enemy of severe Government of Iraq policies.

124. As described above in paragraphs 112 to 117, the Anfal campaign was carried out under the direction of Ali Hassan Al-Majid in the spring and summer of 1988. By that time, documents in the possession of the Special Rapporteur clearly indicate that the Government had equated extended family relations with the terms "subversives" and "saboteurs", as had been done long before in the case of "the Barzanis". The strategy employed by the Government forces during the Anfal campaign followed roughly the same pattern throughout the various stages of the operations: chemical attacks from air directed both against civilians and peshmerga strongholds, combined with assaults by ground forces against the areas; pillaging of all villages left to the mercy of advancing Government forces; mass arrest, detention and internal deportation of civilians; and transport of many detained civilians in convoys of army trucks to holding centers where, as a general rule, the adult men were separated from the women and disappeared. The women, children and elderly were normally sent to prison camps and contained in conditions of extreme deprivation. Others disappeared together with the men. Persons who managed to evade the advancing forces were often tracked down in nearby towns and cities by the Security. Consistent with al-Majid's recorded statement of 21 January 1989, documents further indicate that the number of persons being executed had reached unmanageable proportions by the end of 1988 when, on 15 November 1988, the Revolution Command Council issued Decision No. 840 foregoing the Constitutional need for ratification of death sentences by the President (See Document No. 17 of Annex I); on 14 December 1988, the President's Office instructed relevant Ministries to expedite the execution process (See Document No. 18 of Annex I). At the time of these decisions, followed by al-Majid's recorded statement, it is to be noted that the Iran-Iraq war had long before ended. Survivors and other eye-witnesses (including some who took part in the executions) report that many of those who had "disappeared" during the Anfal operations were executed and, as Ali Hassan Al-Majid almost boasts, were buried in mass graves throughout the country.

125. According to the documents in the possession of the Special Rapporteur, many of the individual decrees, directives and instructions referred to above were in force at the time of the March 1991 uprisings and some may well still be in force. The existence of such powers, orders and personalities in the present Government of Iraq, where Ali Hassan Al-Majid holds the rank of Minister of Defense, portends a precarious future for the Kurds.

b. a written document, being an Iraqi Government document, included in a writing, Reports of the situation of human rights in Iraq, submitted by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1993/74 (UN doc. E/CN.4/1994/58, H74 - pages 79 through 80):

BUREAU FOR THE ORGANIZATION OF THE NORTH - HEADQUARTERS

Reference: 28/4008 Date: 20 June 1987

From: Bureau for the organization of the North - Headquarters
To: The Commanders of the First, Second and Fifth Army Corps

Subject: Procedure to deal with the villages that are out of bounds for security reasons

In view of the fact that the officially announced deadline for the amalgamation of these villages expires on 21 June 1987, we have decided that the following action should be taken with effect from 22 June 1987: (i) All the villages in which subversives, agents of Iran and similar traitors to Iraq are still to be found shall be regarded as out of bounds for security reasons; (ii) They shall be regarded as operational zones that are strictly out of bounds to all persons and animals and in which the troops can open fire at will, without any restrictions, unless otherwise instructed by our Bureau; (iii) Travel to and from those zones, as well as all agricultural, animal husbandry and industrial activities, shall be prohibited and carefully monitored by all the competent agencies within their respective fields of jurisdiction; (iv) The corps commanders shall carry out sporadic bombardments using artillery, helicopters and aircraft, at all times of the day or night in order to kill the largest number of persons present in those prohibited zones, keeping us informed of the results; (v) All persons captured in those villages shall be detained and interrogated by the security services and those between the ages of 15 and 70 shall be executed after any useful information has been obtained from them, of which we should be duly notified; (vi) Those who surrender to the governmental or Party authorities shall be interrogated by the competent agencies for a maximum period of 3 days, which may be extended to 10 days, if necessary, provided that we are notified in such cases. If the interrogation requires a longer period of time, approval must be obtained from us by telephone or telegraph or through comrade Tahir al-Ani; (vii) Everything seized by the advisers and troops of the National Defense Brigades shall be retained by them, with the exception of heavy, mounted and medium weapons. They can keep the light weapons, notifying us only of the number of those weapons. The corps commanders shall promptly bring this to the attention of all the advisers, company commanders and platoon leaders and shall

provide us with detailed information concerning their activities in the National Defense Brigades.
(signed) Comrade Ali Hassan Al-Majeed

Member of the Regional Command and Secretary of the Bureau for the Organization of the North.
[Stamp of the Revolution Command Council, Northern Affairs Committee]

cc: Chairman of the Legislative Council;
Chairman of the Executive Council;
Party Intelligence;
Chief of the Army General Staff;
Governors (Chairmen of the Security Committees) of Nineveh, Ta'mim, Diyala, Salahuddin, Sulaimaniya, Arbil and Dohuk;
Branch secretaries of the above mentioned governorates;
General Directorate of Military Intelligence;
General Directorate of Security;
Director of Security of the Autonomous Region;
Security Services of the Northern Region;
Security Services of the Eastern Region;
Security Directors of the governorates of Nineveh, Ta'mim, Diyala, Salahuddin, Sulaimaniya, Arbil and Dohuk;

For information and action within your respective fields of jurisdiction. Keep us informed.

c. a document, being an Iraqi Government document, included in the Report on the situation of human rights in Iraq of 19 February 1993, submitted by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights, in accordance with Commission Resolution 1992/71 of 19 February 1993 (UN Doc. E/CN.4/1993/45, H75 - pages 82 through 83):

A Single Arab Nation With An Eternal Message

Arab Baath Socialist Party

Iraqi Region

Headquarters of the Bureau for the Organization of the North Office of the Secretariat

(Confidential express cable)

Ref: 4350

Date: 7 September 1987

To: All security committees in the governorates of the northern region, Diyala, Salahuddin

Re: Listing and expulsion of the families of subversives

Comradely greetings:

In the light of the meeting held on 6 September 1987, chaired by Comrade Ali Hassan Al-Majeed, Secretary of the Bureau for the Organization of the North, and attended by the heads and senior officials of the Party branches in the northern region, the following instructions have been issued:

1. The security committees in the northern governorates should submit lists of the families of subversives, to be completed between 6 and 15 September 1987. As soon as the lists are complete, the families in question should be expelled to the regions where their subversive relatives are, with the exception of males aged between 12 and 50 inclusive, who should be detained.

Families which comprise martyrs, missing persons, captives, soldiers or fighters in the National Defence Brigades shall be excluded from such measures.

2. Steps should be taken to hold public seminars and administrative meetings to discuss the importance of the general population census, due to take place on 17 October 1987, and to stress clearly that anyone who fails to take part in the process without a valid excuse shall lose his Iraqi nationality.

3. Subversives who repent shall be permitted to return, having first surrendered their weapons, between 6 September and 17 October 1987, after which they shall not be permitted to do so, even if they surrender their weapons.

Please take note and inform us of whatever necessary action is taken.
Kind regards.

(Signed) [.....]
Secretary Northern Affairs Committee

cc:

All Party branch commands in the northern region, Diyala and salahuddin
First Corps Command
Fifth Corps Command
General Directorate of Military Intelligence
General Directorate of Security
Second Corps Command

Please take note. Regards.

d. a document, being an Iraqi Government document, included in the Report on the situation of human rights in Iraq of 19 February 1993, submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Commission Resolution 1992/71 of 19 February 1993 (UN Doc. E/CN.4/1993/45, H75 - page 84):

In the Name of God the Merciful the Compassionate

Eastern Region Intelligence Organization

Confidential and Personal

Ref: Section 3 / Division 3 / 2127
Date: 28 September 1987

To: All centers other than branch committees

Re: Demolition of Villages

Letter no. 5866 dated 17 September 1987, which was transmitted to us by way of confidential and personal letter no. 5 / 1493 dated 23 September 1987 from the Security Committee in the governorate of Ta'mim, gave instructions that villages which pose no security threat should be demolished only with the consent of valiant Comrade Ali Hassan al-Majeed, Secretary of the Bureau for the Organization of the North. Exceptions are villages from which shots are fired at military convoys or which are used by subversives to attack government installations and defy the State.

Please take note and carry out the instructions with precision.

(signed) Lieutenant Colonel
p.p. The Director
General Directorate of Military Intelligence
Eastern Region Intelligence Organization

e. a document, being an Iraqi Government document, included in the Report on the situation of human rights in Iraq of 19 February 1993, submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on Human Rights, in accordance with Commission Resolution 1992/71 of 19 February 1993 (UN Doc. E/CN.4/1993/45, H75 - page 88):

In the Name of God the Merciful the Compassionate

Bureau of the President of the Republic
The Secretary General
General Directorate of Military Intelligence
Eastern Region Intelligence Organization

Seal: I come to you from Sheba with good tidings
General Directorate of Military Intelligence

Please quote the full reference number
(The martyrs will continue to be the noblest of us all)

Very Confidential and Personal

No.: Section 3 / Division 3 / Saddam's Quadisiya / 522

Date: 18 March 1988

To: Sulaimaniya Security Directorate - Chamchamal - Sayyid Sadiq - Darbandkhan

Re: Detention of families and subversives

Confidential express letter no. 297 dated 15 March 1988 from the Headquarters of the Bureau for the Organization of the North gave instructions that the families of subversives who take refuge with our units should be detained in special guarded camps set up for that purpose under the supervision of intelligence officers from the First and Fifth Corps.

Please take note and inform us of any necessary action taken.

(signed) Lieutenant Colonel
p.p. The Director
Eastern Region Intelligence Organization

f. an official report of a witness examination by the National Police Agency, official report number 200501061400, dated 6 January 2005, legally drawn up by authorized investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made by [witness 25] (G25 - pages 280 through 285):

I know that many Kurds have been taken to the south of Iraq in order to change the composition of the population. This happened while Arabs received money to go and live in cities that had a predominantly Kurdish population. This was commonly known under the population. You ask me how these Kurds were taken to the Arab cities. This didn't happen voluntarily. They were just put onto trucks and taken away under the responsibility of the Baath Party. I also saw this myself; for example I saw Kurdish people walking with all kinds of household goods. They had obviously been expelled from their homes. You ask me whether I was under the impression that these Kurds were being deported. Yes, that is what happened. The government made up the story that the Kurds were going to be used as employees. This story was released to the news papers and television. You ask me when was the first time that I heard about this deportation; that was towards the end of the eighties. I think from 1987 more or less. You ask me whether this deportation was common knowledge. I am certain that everybody knew about it. That was because the media communicated extensively about the Kurds being taken away to the Arab south in view of employment plans. Nobody believed that, the media were in the hands of the Baath Party and every Iraqi was aware of that.

g. a document, being a witness statement [witness 120] dated 28 January 2001, drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 4):

On the morning of the attack on Halabja (16 March 1988) I was asked to assist in the command room. Upon arrival I heard that one hour earlier Saddam Hussein had personally given the order for the counter attack with chemical weapons. It is my opinion that the object of the chemical attack was to punish and frighten the Kurdish population, which was regarded by Saddam Hussein as allies of Iran. We knew right away that the bombardments had resulted in the death of thousands of Kurds.

h. a document, being a witness statement [witness 121] dated 2 May 2001, drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 11):

As commander at the frontlines near Halabja I had total control over the PUK troops that were involved in the operation.

I have counted a total of 14 air raids on the city (...). At the time of the chemical bombings I informed the PUK head quarters that an estimated 5000 victims had been killed.

i. an official report of a witness examination on 17 November 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in the court of The Hague, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the aforementioned statement made to the examining magistrate by [witness 122] (RC-file - pages 2113 through 2119):

In 1991 a Kurdish delegation entered into negotiations with the Iraqi authorities. The Kurdish delegation was headed by Barzani. I was a member of that delegation on behalf of the Socialist Party of Kurdistan. The delegation of the Iraqi government consisted of ten members under the direction of Izzat Duri, the deputy of Saddam Hussein.

You ask me about the meetings that I attended whereby Saddam Hussein was also present. There were several; in 1970, 1979 and also during the negotiations in 1991.

At the time of the Anfal, when chemical weapons were also deployed, Ali Hassan Majid was the director for the northern provinces. I told him personally that Iraq had deployed chemical weapons and that he had done away with 180,000 people. In our delegation I had been charged with this discussion. I also discussed the chemical weapons. After all, the deployment of chemical weapons and the disappearances during the Anfal are connected with each other. Ali Hassan Majid became angry. He shouted that we wanted to accuse him and that we called him Chemical Ali. He said that all he had done was carry out orders. Furthermore he literally said: "the people we collected did not even amount to 100,000".

You ask me what Saddam Hussein has said in my presence about the Anfal. He did not speak about details. He spoke in general terms. He said that many things had happened, that many people had been killed and many people had disappeared. We were told to forget about it and turn the page. The message that was given by the regime was 'let bygones be bygones', those were acts of war. We did not agree on that and said: "what you did was directed towards the civilian population".

j. a document being a certified Dutch translation of a transcription in the English language concerning a witness examination before [.....], examining magistrate in charge of criminal proceedings at the court in The Hague, heard in the offices of the United States public prosecutor in Baltimore, Maryland.

This document contains, among other matters - rendered in a compact way - the statement made by [witness 41] on 29 October 2005 before the aforementioned examining magistrate (RC-file - pages 1628 through 1703):

In 1980 I worked in the Iraqi Army. I deserted in 1982. On 23 May 1987 an Iraqi regiment deserted and came to us, the PUK forces. They were all Kurds.

Two weeks after Ali Hassan Al-Majid started his job, he bombed us with gas. The first attack by chemicals had taken place on 13 or 14 April 1987, three or four days prior to the attack on us.

You ask me if I have any knowledge of the new settlements, the new cities, as they were being mentioned by the Iraqi regime, where the Kurds were taken to. That is correct. Jeznikam was one of the collective towns built around the city of Erbil and it was built for the people from Halabja, the final Anfal. People from Birjinni and Koreme were taken to Jeznikam. In 1991 I was in Jeznikam myself.

All collective towns were horrible places to live in, without electricity, without water, without any facilities at all. I saw the collective towns after Kurdistan was raided. But the life, after I saw them, three years after the people had been deported, was different from the day they were built, so I cannot describe what these people have been through.

k. a document being a certified Dutch translation of a transcription in the English language concerning a witness examination before [.....], examining magistrate in charge of criminal proceedings at the court in The Hague, heard in the offices of the United States public prosecutor in Baltimore, Maryland. This document contains, among other matters - rendered in a compact way - the statement made by [witness 116] on 1 November 2005 before the afore mentioned examining magistrate (RC-file - pages 2022 through 2112):

My ethnic origin is Kurdish.

You put it to me that a human rights report has been produced called: 'Genocide in Iraq' (H76). I have it. You tell me that one of the authors of the report, Mr. [witness 111], stated to the Dutch Police that he interviewed me as one of the survivors of a mass execution. That is correct.

In the beginning of the eighties the attacks started, but after the year '84 those attacks were intensified. '85, '86, '87 were years in which we were attacked intensively. You ask me what sort of attacks they were and by whom those villages were attacked. Saddam's army with tanks and aircraft, helicopters and hunters. A hunter is some sort of aircraft that would fly very fast and had 80 rockets on board. You ask me how I knew these were Iraqi airplanes and helicopters. They came with the army and there was an Iraqi flag on the planes.

Of the 12 villages of our area, three villages were totally destroyed by the army quite early, because they were at the frontlines.

They considered everyone a saboteur, an opponent of the government, and they had plans to extinguish all those people. You ask me if I also heard about those plans on the radio; yes. They made no secret of that because they sent planes to those areas as well. It was bombarded. They said openly that those people were saboteurs and had to be destroyed. You ask me if they said on the radio that the Kurds had to be destroyed or that the saboteurs had to be destroyed. Yes, and finally they published on the radio that all these people were saboteurs, agents of Iran. The inhabitants of Kurdistan. You ask me if they literally said that on the radio, that all inhabitants of Kurdistan were saboteurs and that they had to be destroyed. All of them, yes. We were a lot of people and we were arrested. An attack was launched at our area.

The Iraqi Military did not say anything to us. Cars started to drive. We got to Topez Awa. It was a large space, some sort of patio. Adjacent were large rooms. We saw members of the Military Intelligence Service on the

patio. They were armed, ready to shoot. They shouted while we were taken out of the cars. The cars drove off. You can recognize the Military Intelligence Service by the clothing. The military wear khaki suits. The Intelligence Service wear dark green uniforms. I also saw women and children there. We were all in one room and the room opposite of ours was filled with women and children. We were able to see that. All the rooms were full with between 400 and 500 people.

We were taken there at night and taken away the next morning. I did not get any water or food at Topez Awa. Many people fainted of hunger, thirst, heat. I saw that a soldier threw two loaves of bread to another room, but you cannot consider that as giving food.

There was no such thing as giving food. They tried to bring groups of ten people to the toilet at a time. Twice or three times they tried that, and then they stopped because it was not possible. The people who fainted in the rooms did not get any medical care. Early in the morning, at 07:00 - 08:00 they were taken away. The next day they brought white closed cars. Only men were taken away in those cars. They read out names aloud. There was room for 34 people in such a car. There was a small window towards the driver, and there was a guard seated beside the driver.

The men that were taken away in this manner were 20 or 25, 30 years old, of all ages. There were also elderly men, older than 55 or 60 in the rooms, but they were not taken away with us. Our group consisted of approximately 500 men. They were not told where they were taken to. There was someone in the car with me, he knew the way, he told us: "We are going towards Mosul" and later: "Now we've left Mosul, we are going southwards."

The name of the place where we were shot dead was Rumandi.

Once we got to the place where it all happened, we heard sounds of shootings, shovels. There were 15 or 17 cars. The guard seated beside the driver wore a green suit and had a Kalashnikov in his hands. At some stage they opened the side door. A big man in a green suit took a young boy. He was not armed. They blind-folded him and handed him over to a few men who were armed.

We grabbed the hand of the man in the green suit and gave him a few blows. The armed people outside started to shoot at us while we were all in the car, without unloading us. I was hit by a bullet in my back and in one of my eyes. The shooting had ended. I noticed there were still some people in the car who were alive. A few of them had fled as well. I started to run as well.

I heard shots in that area. When I started to run, I still heard shots and shovel sounds from a distance.

l. an official report of a witness examination on 26 September 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in the court of The Hague, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate by [witness 5] (G5.I - pages 887 through 978 and RC-file - pages 218 through 221):

I only heard of Anfal when Saddam Hussein announced the ending of that campaign. In official messages we heard that the opponents of the Iraqi government had been expelled from the country to Iran and Turkey. They also announced that adversaries had been killed. On account of the Anfal Saddam said that there was no room for those who were against us. He also explicitly mentioned the Kurds. It was said that the villagers offered help to the Kurdish resistance that had been expelled abroad. Through this support, the resistance had been able to carry out attacks on Iraqi territory. It was clear that Saddam was against the Kurds, but not all of them. Some Kurds stood at his side. I do not know if the Anfal was only directed towards the North or also towards other areas. Saddam has always opposed the Kurdish movement, that was started by Mullah Mustafa Barzani. The term "Jash" (small donkey): an insulting first name for the Kurds that supported Saddam.

m. an official report of the witness examinations of [witness 16], [witness 8], [witness 10] and [witness 9] in the proceedings against [accused] on 14 June 2005, 15 June 2005 and 16 June 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate on 14 June 2005 by [witness 16] (G16.I - pages 791 through 797 and RC-file pages 109 through 115):

I worked as regular soldier at the chemical department of the Iraqi Army.

I dealt with high ranked military officers and therefore I was aware that only a select group around Saddam Hussein and his family, among them Chemical Ali (Ali Hassan Al-Majid), knew about the attacks.

The objective of the attacks was to destroy people and not to conquer the town. Furthermore the Iraqi did not only have the intention to hit Iranians, but also the Kurds in Halabja / the Kurdish Peshmerga fighters. How do I know that? That is a matter of military strategy. I know there were Iranian soldiers in Halabja. I heard this on the Iraqi radio and later on through interviews.

I believe it was not Iran that carried out the attacks, because Iranian soldiers were still in that area (and Iraqi military were no longer there) and I understood that Chemical Ali on TV more or less confirmed that Iraq was behind those attacks.

n. a document being a certified Dutch translation of a transcription in the English language concerning a witness

examination before [.....], examining magistrate in charge of criminal proceedings at the court in The Hague, heard in the offices of the United States public prosecutor in Baltimore, Maryland.

This document contains, among other matters - rendered in a compact way - the statement made by [witness 115] on 30 October 2005 before the aforementioned examining magistrate (RC-file - pages 1790 through 1858):

You ask me if I am one of the survivors of mass executions which took place in the north of Iraq by the end of the eighties of the last century. Yes. (...) Before I was arrested I lived in a village by the name of Karahasan.

That was in '87, but in '87 the village was destroyed by the Iraqi authorities.

In the year 1987 the Iraqi Government told us that they were about to declare that area as a prohibited area.

There were approximately 150 villages. We were ordered to leave the area within 15 days. Otherwise, the houses would be destroyed while the people were still in the houses. That is indeed what happened. Some people got killed underneath bricks. (...) Within two weeks, bulldozers arrived and destroyed the village; approximately 150 other villages in the surroundings of Kirkuk as well. The communication of the authorities was such that this area was to be kept a prohibited area, because it was close to Kirkuk.

I have seen it with my own eyes. I was in Karahasan at that certain moment that the army moved in with battalions of the People's Militia. Later they told me that we were given 15 days to leave the village, so that was the order. We left immediately, even at night, because during the day there were all sorts of helicopters in the air shooting at people. After a week's time I returned to the village. I saw that all our houses had been destroyed.

You ask me if you understood it correctly from my story that I was handed over to the Iraqi authorities by the Jash and that I was apprehended there and then. What you say is correct. The next morning at 10:00 o'clock we reported ourselves to Sheikh [.....]. By car we were driven to a valley behind the village by the name of Aliawa, and when we arrived there we saw a group of 3000 to 4000 people, and they were surrounded by the army and the Jash militia. We were added to that group.

The 3000 to 4000 other people were all Kurds. We stayed there for three nights. In the buses were only men, and inside the barracks I also saw women and children. We were taken to Kirkuk, to Topez Awa, a barracks on the edge of the city.

We got there by the end of the day. I saw so many people, women, children, elderly, everyone. They kept questioning people until midnight. After that we went into a huge room where there were between 500 and 600 people present. In this room there were purely men, but in front of us we were able to see another room from where shouts of women and children were audible.

At approximately 02:00 or 03:00 in the morning they entered with lists, and they read out all sorts of names. They never gave any water nor food to anyone. My name was read aloud, together with that of a cousin of mine. We were taken to another room. In the next room I was taken to, I saw other people there. They were hit. There was blood all around on the floor. They had been tortured, assaulted. At 10:00 in the morning that same day, we were taken away.

The car did not stop on the way. When the car was stopped, doors were opened, the two guards that stood in the back took two of us from the car. They blindfolded them with their own head scarf, tied their hands and executed them. They did this every time, two by two. I could hear the shots when again they took two people. There was some sort of grave below us, we were not able to see that.

I think between eight and ten people were shot in such a way before I was due. After I got out of the car I did see a shovel from a distance that was being operated. The soldier caught me and my nephew, we had to lay down somewhere and we were shot at. I realized I was not hit by bullets. At a certain moment we were pulled by our legs to the big hole, to dump us in. I didn't move at all. I heard it again, they took two people out, I heard the shots, these were killed and later dragged to somewhere near myself.

I pulled the blind-fold down. I did see the hole, and it was full of corpses. Then a military came. He shot each person that moved for a moment. He swore at the Kurds. He said: "You belong to the Talibani people".

You ask me if that officer was an Iraqi. Yes. He was wearing a green military uniform. The other soldiers that were conducting executions were Iraqi military. I heard them talking and they were clearly recognizable as members of the Iraqi Intelligence Service. Those suits they wear you can recognize. The one who executed people was wearing a uniform of the Military Intelligence Service. The people that were executed on that day together with me, were just Kurds.

The people that were taken with me, all the people I saw in Topez Awa, were all Kurds.

At the time the soldiers left for two new people, I jumped upwards and started to walk for a long time.

o. an official report of a witness examination by the National Police Agency (KLPD), official report number 20051010, dated 10 October 2005, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 111] (G111.I - pages 1487 through 1500):

At the end of June 1992 I visited Kurdistan concerning the Anfal investigation. During this trip I interviewed many Kurds.

One question I asked them was when the Anfal arrived at their village and what happened. The Anfal campaign had a pattern. The fact that the Anfal had taken place in a number of stages kept returning. An other clear pattern was the role of the Kurdish defectors to the Iraqi army, the Jash. A third pattern was that on the first day of each stage chemical weapons were used. That is a pattern that appeared from all interviews.

A fourth pattern is that the Kurds fled from their villages to the ongoing road. There they were loaded into a

vehicle and taken to a transit camp. In the camp, based on the area where you came from, age and sex, it was determined what would happen to you. A last pattern is that in certain areas only the men would disappear, but in certain other areas also women and children disappeared. Later we heard from [name] that the regime did not want any Kurds in the area around Kirkuk, while Kurds were allowed to live in the remaining parts of Kurdistan, albeit not in the villages, but in housing complexes, outside the villages.

Another distinctive pattern was that certain groups were taken to specific places. There was a transit camp for women and children in Dibbs, elderly men and women were deported to Nugrat Slaman. The men were taken away to the execution sites. From Topzawa they were taken directly to the execution site. The killing of women and children was carried out in Kirkuk as part of the Arabisation in Kirkuk. I still have more information that make the conclusions even stronger. For instance, a mass grave of women and children was discovered at Al-Hatra. Mass graves were found that contained corpses in Kurdish clothing. Colleagues of Human Rights Watch studied those. I also spoke to Kurdish officials that told me these things during my travels in Kurdistan. They said these were mass graves of Kurdish people, which appeared from their clothing, identity documents and from the fact that a bullet had been shot into the back of their heads. Also in Samara a mass grave was discovered that contained women and children.

I found out that chemical weapons were used to convince people to surrender themselves to the army. Therefore it was a tactical weapon to facilitate the mass executions that followed afterwards. That is the reason why the chemical weapons were used on the first day of each stage, to chase people away from their villages, after which they were deported and executed. The attack on Halabja had contributed to the fear for chemical weapons. [Name] told me in 1997 that Halabja had been attacked by Iraq and that Iran never used chemical weapons during the war. Myself I have never seen documents or witness testimonies that say that Iran used chemical weapons.

Question: The report "Genocide in Iraq" concludes that during the Anfal campaign in the period from February to September 1988, between 50,000 and 100,000 persons, many of them women and children, were killed. Could you tell us how you arrived at that estimate?

We never carried out an official count. Kurdish human rights organizations are good at counting. One of those organizations from Sulamanya purely counted people that had disappeared, which came down to approximately 80,000 people that had disappeared in the area where the Kurdish dialect Surani is spoken, roughly the part of Kurdistan around Sulamanya and Arbil and Kirkuk. We talked extensively with the man that had made this count, his name is [name]. The conclusion of this report, which implies that a hundred thousand village people were expelled in the years 1987 - 1989, is mainly based on the number of villages that were destroyed. I cannot say how many died exactly within a year.

p. an official report of an examination of a witness for the defense/prosecution carried out by the National Police Agency, National Criminal Investigation Department, official report number 20051011, dated 11 October 2005, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 111] (G111.2 - page 1503):

From 21 February 1988 to 6 September 1988 I am only aware of one attack that was not part of the Anfal and that is the attack on Halabja. Because Halabja was a city. The people in the rural areas were treated differently from the people that lived in the cities.

During the Anfal, Iraq tried once and for all to end the Kurdish problem. In order to make sure that the Kurds could never separate themselves from Iraq, they did their utmost to destroy the Kurdish national movement, and to expel the Kurds living in and around Kirkuk, so the Kurds would never be able to use the oil fields to become independent.

q. an official report of a witness examination by the National Police Agency (KLPD), official report number G95.1, dated 22 August 2005, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 95] (G95.1 - pages 987 through 1003):

One of the first meetings after the appointment of Ali Hassan Al-Majid took place in Kirkuk, in which he explained what his plans were for the Northern Iraq region. After that meeting, each of the persons present organized a meeting in their own areas, in which they explained what Ali Hassan Al-Majid had told them. Through persons that were present at those meetings I received my information.

They discussed the Kurds and the areas that were out of bounds. According to the regime, everyone that lived outside the cities were considered to be adversaries. That is why those areas needed to be attacked. Except for the Kurds, Assyrian Christians were also living in the forbidden areas. Each area where Kurds lived, was declared out of bounds. The Kurds were treated differently than the Christians, which became obvious in Harmota and in Shilla, two villages that I visited. Shilla, a Kurdish village, was constantly bombarded, but in Harmota, where only Assyrian Christian lived, nothing happened at all.

I hold the opinion that the Baath regime wanted to destroy the Kurds because of their origin. You ask me in what way this genocide was carried out. Ali Hassan Al-Majid prohibited the participation of rural Kurds in the national census. Before that, Saddam Hussein had already ordered that anyone who was not recorded in the national census would be sentenced to death, because those people would not possess the Iraqi nationality. Saddam Hussein authorized Ali Hassan Al-Majid to designate the rural areas of Kurdistan as forbidden areas.

Therefore anyone in those areas could be killed. According to Iraqi legislation the death of those people is justified, for they had lost their Iraqi citizenship because they had not been included in the national census.

7.4. According to the court, the aforesaid evidence does not allow for any other conclusion than that the attacks referred to in the charges were executed with the intention to destroy the Kurdish population group in Iraq. This conclusion is especially based on the following factors:

- a general framework of systematic suppression of the Kurdish population group;
- the large number of deadly victims among the Kurdish population group, which according to the judgment of the court certainly amounts up to tens of thousands, as a result of attacks and mass executions;
- the extensive deployment of chemical weapons against the Kurdish population which, because of their nature and when used against villages, cannot discriminate between civilians and combatants, and not only cause grievous suffering among the population, but also arouse considerable fear and subsequently cause the villages and cities to become uninhabitable for a long time;
- the large-scale destruction of Kurdish villages in Northern Iraq and the subsequent forcible transfer of the civilian population;
- statements made by representatives of the regime, especially Ali Hassan Al-Majid, expressing contempt of the Kurdish population group.

7.5. According to the court's opinion, all proven attacks were committed with a genocidal intent regarding the Kurdish population group. In this respect the court needs to pronounce its judgment concerning the period of the genocidal campaign. In order to pronounce this judgment the court assumes the afore named findings of the UN Rapporteur Van der Stoep, that apparently the foundation for a total policy against the Kurds was laid in May 1985, when military orders were issued that instructed the use of "all kinds of weapons" against "subversive elements" in the Northern Kurdish area and that the Anfal campaign seems to have ended on 6 September 1988, when total amnesty was granted.

Against this background the court finds that all attacks within this period (May 1985 - 6 September 1988) explicitly directed against the Kurdish population group, being one of the wrongful actions as defined in Article 1 sub 1 through 5 Genocide Convention Implementation Act, form part of a genocidal campaign, whether or not these attacks formally occurred within the Anfal campaign.

7.6. In the light of these findings, the court is also of the opinion that a policy of systematic terror was carried out against the Kurdish population group in Northern Iraq during the period referred to in the charges.

7.7. Regarding the intention of destruction, the question arises as to how far this affects the Kurdish population group, or part of that population, as such. The intention of destruction of the group as such implies that the perpetrator targets at individual victims because of their membership of a protected group and that the killing or maltreatment of individuals in fact expresses the intention to destroy the group. (ICTR, Niyitegeka, case nr. ICTR-96-14-A, sentence on appeal, 9 July 2004, paragraph 53; ICTY, Jelacic, case nr. IT-95-10-T, sentence of the court of first instance, 14 December 1999, paragraph 79).

Likewise the court tends to understand the plea of the defense that the attacks mentioned in the charges did not target at the Kurdish population group as such, but had a strategic military purpose, being the fight against rebellious groupings.

For this reason, from the point of view of the defense the genocidal intention cannot be proven. The court puts first that fighting rebellious groupings, also if this would have consequences for the civilian population, could point out the lack of the special genocidal intent (compare the judgment of the UN Commission that in Darfur, Sudan, one cannot speak of genocide (as yet); Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, following the Security resolution 1564 of 18 September 2004, Geneva, 25 January 2005, paragraphs 513 and 514). However the court holds the conviction that the campaign of violence in Iraq, during the period mentioned in the charges, goes far beyond the purpose of military nature when looking at its external manifestation. The eventual circumstance that the attacks -partly- served a military purpose should therefore be considered as a possible motive for (certain) attacks, which according to current law does not alter the already established genocidal intent (ICTR, Nahimana, Barayagwisa and Ngeze, case nr. ICTR-99-52-T, sentence of the court of first instance, 3 December 2003, paragraph 969).

7.8. Regarding the question whether the established genocidal intent targeted at the destruction of the Kurdish population group as a whole or a part thereof, the court considers the following.

Regardless of the answer to the question to what extent the Kurdish population group in Northern Iraq can be considered as an independent ethnic group, the court judges that the intention of destruction was targeted at a part of the Kurdish group, seen that the genocidal campaign within Iraq was not directed towards all Kurds. Regarding the intention to partially destroy the Kurdish population group, the court judges that this requirement has been met more than satisfactorily, which has not only been concluded from the number of victims, but also from the impact of certain elements from the genocidal campaign, like those in and around Kirkuk, for the Kurdish population group in Iraq as a whole; (compare: ICTY, Krstic, case nr. IT-98-33-A, sentence on appeal, 19 April 2004, paragraphs 12 and 13).

7.9. As for the conclusion of the genocidal intention regarding the persons mentioned as perpetrators in the indictment, the court considers the following.

Although under international law the identity of the perpetrators does not need to be established in order to be able to sentence someone for complicity in relation to genocide (ICTY, Krstic, case nr. IT-98-33-A, sentence on appeal, 19 April 2004, paragraphs 35, 134 and 137); Stakic, case nr. IT-97-24-T sentence of the court of first instance, 31 July 2003, paragraph 533), the facts of the charge require the court to state an opinion on the persons mentioned as perpetrators in the indictment: "Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an)other person(s) (who so far has/have remained unknown)".

Regarding the category "persons who so far has/have remained unknown", the court considers that only the conclusion needs to be stated that the nature of the genocide offense itself implies the involvement of a large group of persons.

Regarding the involvement of Saddam Hussein Al-Tikriti, the court takes the view that it is common knowledge that during the period mentioned in the charges, he exercised absolute power in Iraq. In that capacity he was directly involved with the attacks that are considered proven and the general campaign against the Kurds.

As to the role of Ali Hassan Al-Majid Al-Tikriti the court concludes that he was a member of the highest authority in Iraq during the indicted period, being the Revolutionary Command Council, and -with reference to evidence mentioned before- he was in charge of the Anfal campaign. Regarding Hussein Kamal Hassan Al-Majid the court is of the opinion that, as son-in-law of Saddam Hussein, he belonged to the direct confidants and that he formed part of the general army leadership during points in time in the period mentioned in the indictment. The court concludes that all three afore mentioned persons, because of their leading position in Iraq in general and in the Anfal campaign in particular, have carried out the proven attacks together and in conjunction with others with the intention to destroy part of the Kurdish population group.

7.10 The above named conclusion is based on the following evidence, in addition to evidence included in the above.

a. a document, being a witness examination [witness 123], drawn up by Belgian investigating officers. This document includes among other matters (H46a, pages 1 through 3):

Between 1977 and 1984 I was State Secretary of Foreign Affairs. Subsequently I withdrew myself for two years from the government, before becoming the ambassador for Iraq in Switzerland (1986-1989). I have also had the position of Secretary-General of the Revolutionary Command Council (RCC) and in that capacity I was in charge of taking minutes during its meetings. The RCC is the highest authority in Iraq.

Saddam Hussein has full power in the RCC. I can confirm that Saddam Hussein, Tariq Aziz, Mohammed Hamza Al-Zubaydi, Ali Hassan Al-Majid, Ibrahim Izzat Al-Douri and Taha Yasin Ramadan were members of the RCC from March 1987 until April 1988.

b. a document, being a witness examination [witness 120], drawn up by Belgian investigating officers on 28 January 2001. This document includes among other matters (H46a, pages 1 through 5):

In the morning of the attack on Halabja (16 March 1988) I was summoned to assist in the command room. When I arrived in that room I heard that an hour before Saddam Hussein had personally given the order for a counter attack with chemical weapons.

In general the order to use chemical weapons came directly from Saddam Hussein or in some cases from the Defense Minister, Adnan Khairallah Tulfah (who died in the meantime).

Saddam Hussein had transferred the command for the Northern Region to Ali Hassan Al-Majid. He had total control over that region, from a political as well as a military point of view. He had the authority over all military commanders and although the existing chain of command up to Saddam Hussein remained in force, it is inconceivable that a request to deploy chemical weapons would have reached the President, without Ali Hassan Al-Majid knowing about it or giving his permission to carry out such a request. His authority in the Northern Region of Iraq was almost equal to that of Saddam Hussein himself.

c. a document, being a witness examination [witness 124], drawn up by Belgian investigating officers. This document includes among other matters (H46a, pages 1 through 3):

In 1991 I became commander of the Military Intelligence Service for all Iraq. Formally the Revolutionary Command Council is the head of the chain of command of the Iraqi government structure.

In the period from March 1987 until April 1988, the Revolutionary Command Council (RCC) consisted of the following persons: Saddam Hussein (President and Chairman); Ibrahim Izzat Al-Douri (Vice-Chairman); Tariq Aziz; Taha Yasin Ramadan; Mohammed Hamza Al-Zubaydi and Ali Hassan Al-Majid. There is no doubt in my mind that the members of the Revolutionary Command Council had been informed about the large-scale chemical attacks in the North of Iraq in 1987 and 1988 and that within half an hour after these attacks they were informed about the execution of the individual attacks, like the one on Halabja, in March 1988. I am convinced that the members of the Revolutionary Command Council approved of this policy and were able to foresee its consequences, and that they could not have stayed on as members of the RCC if they had not actively shown

their approval. The members of the Revolutionary Command Council were aware of the policy carried out by Ali Hassan Al-Majid in Northern Iraq, especially his actions with respect to the intentional killing of civilians in order to press the power of the Revolutionary Command Council in that area.

Ali Hassan Al-Majid reported his activities during the meetings of the Revolutionary Command Council and its members had a clear view what these activities consisted of.

d. a document, being a witness examination [witness 125], drawn up by Belgian investigating officers. This document includes among other matters (H46a, pages 1 through 4):

Between 1985 and 1988 I was head of the military engineering of the Third Army, that was based in Basra. In 1988 I was promoted to sergeant in the Third Army.

The orders to use chemical weapons would come from the Presidential Palace. It was very common to use gas. In reality, artillery grenades filled with chemical substances were supplied to the commanding officers without our knowledge or consent. Actually our plans for attack did not include chemical weapons. The agents of the Presidential Palace would arrive, present the weapons to the commanding officers and give instructions how they could be used safely.

If the commanding officer did not use the chemical weapon that had been distributed to him, he was punished.

The power structure in Iraq depends on Saddam Hussein and the inner circle consisting of his most dedicated confidants. For 30 years, Ali Hassan Al-Majid and the others in the Revolutionary Command Council have proven their personal loyalty to Saddam Hussein. Based on many years of experience with the power structure in Iraq there is no doubt in my mind that Ali Hassan Al-Majid was personally responsible for the supervision over the attack with chemical weapons on Halabja in March of 1988. Ali Hassan Al-Majid is one of the people who were closest to Saddam Hussein personally. I believe that Ali Hassan

al-Majid was present in the mobile headquarters during the attack on Halabja on 16 March 1988 and that he had total control over the attack, as well as full authority from the Revolutionary Command Council (RCC).

I am convinced that the following persons knew beforehand about the attack on Halabja and that they supported it actively: Saddam Hussein, Izzat Ibrahim Al-Douri, Ali Hassan Al-Majid, Hussein Khamel, Saddam Khamel and Taha Yasin Ramadan.

e. an official report of the examination of witnesses on 19 July 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in the court of The Hague, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate on 19 July 2005 by [witness 39 (G 39.I - pages 804 through 812 and RC-file pages 137 through 146):

At the end of 1985 I became Director of the Research and Development Department at Al-Muthanna. If the frontline commander expected that he would not succeed by using conventional weapons, he would report this to the leader of his army unit. Subsequently the request for chemical weapons was discussed in the general army command. They would decide on the deployment. The general army command among others consisted of Saddam Hussein Al-Tikriti, Ali Hassan Al-Majid Al-Tikriti and Hussein Kamal Hassan Al-Majid.

8. Acquittal of complicity to genocide, principal charge under count 1.

Like it was explained before under item 6, in case of complicity to genocide, the point of departure of the court is the actual knowledge of the genocidal intention of the perpetrators of the main offence. The court is not convinced that it has been legally and convincingly proven that, at the time of delivery of the substances mentioned in the charges, the accused knew that by doing so he was making a contribution to attacks that were aimed at the total or partial destruction of the Kurdish population in Iraq, and therefore decides that the accused should be acquitted of count 1, principal charge. In this respect the court considers that only after the attack on Halabja on 16 March 1988 the fate of the Kurds in Iraq received extensive coverage in the international media and that before that date - for what ever reason - it did not get the attention it deserved.

Furthermore the case file does not show any evidence of knowledge of the accused regarding the treatment of the Kurds by the Iraqi authorities before 16 March 1988. Seen the fact that the deliveries by the accused to Iraq all took place before 16 March 1988, he should be acquitted of the charge of complicity to genocide.

9. Defense plea regarding evidence.

The defense has taken the point of view that the general survey of official records of evidence cannot be used as individual evidence and therefore should be excluded from the evidence.

This plea is rejected, because the court does not see why the so-called general survey of official records could not be used as evidence, for these are representations of documents that have been included in the case file and for that reason the court is able to check the accurateness of these representations.

10. Considerations concerning the evidence in view of the nature of the armed conflict.

Regarding the nature of the armed conflict, the conclusion of the court is founded on the following evidence:

10.1. an official report legally drawn up by a competent investigation officer on 19 May 2005, being an account of a source study carried out by the afore mentioned officer. This official report contains among other matters - rendered in a compact way - as an account of that source study (F58):

[page 6 and following]

Mainly the following sources were used:

- 'A modern history of the Kurds', third revised edition, 2004, by David McDowell (F58 sub 1);
- 'Report on the situation on human rights in Iraq', 19-2-1993, Mr. Max van der Stoel, E/CN.4/1993/45 (H74);
- 'Report on the situation on human rights in Iraq', 25-2-1994, Mr. Max van der Stoel, E/CN.4/1994/58 (H75);
- 'Genocide in Iraq, The Anfal Campaign against the Kurds', New York, 1993, Middle East Watch/Human Rights Watch (H76);
- 'Bureaucracy of Repression; the Iraqi Government in it's own words', New York, 1994, Middle East Watch/Human Rights Watch (H77);
- the decrees, orders, reports, etc. confiscated by the Kurds in 1991 in Northern Iraq and (H75);
- 'Chemical weapons use in Kurdistan', Washington 1988 (H83);
- a written testimony in a Belgian file (H46).

[page 12]

On 22 September 1980 Iraq invades Iran and the Iran-Iraqi war breaks out.

The hostilities between Iran and Iraq end on 20 August 1988.

The armed conflict between the organized Kurdish resistance and the Iraqi government forces starts again in November 1980. Various Iraqi-Kurdish groupings start operating together in order to overthrow the Baath-regime.

In 1986 the Kurdish parties KDP, PUK, KSP and ICP join forces to form an opposition against the Baath-regime of Saddam Hussein.

In Amy 1987 another four parties join the KDP/PUK/KSP/ICP-front and together constitute the 'Kurdish Front' which is directed by joint command. The war in Iraqi Kurdistan, where Kurds were fighting against the Iraqi government forces, is a guerilla-type war. From time to time Kurdish troops fight together with Iran against the Iraqi government forces.

[page 23 and following]

The Anfal-offensive in 1988

According to estimates made by Human Rights Watch / Middle East Watch, during the final-Anfal the Iraqi regime deployed approximately 200,000 soldiers against Kurdish troops of KDP and PUK, that each had a maximum 10,000 men.

10.2. a document, being a report drawn up by [.....] and [.....]. This report contains among other matters - rendered in a compact way - as a result of a source study (F61):

[page 1]

Mainly the following sources were used:

- general review of the Stockholm International Peace Research Institute (SIPRI) and the Harvard Sussex Program, that includes all kinds of resolutions and newspaper articles;
- 'Genocide in Iraq: The Anfal Campaign against the Kurds', New York, 1993, Middle East Watch/Human Rights Watch;
- a report by the American Department of Navy, 10 December 1990, Stephen Pelletière and Douglas Johnson;
- several historical-political studies, especially:
 - 'The longest war: The Iran-Iraq war', Westview Press Boulder Co 1990;
 - 'The lessons of modern war vol II, The Iran-Iraq war', Westview Press Boulder Co 1990;
 - 'A modern history of the Kurds', third revised edition, IB Taurus & Co, New York 2004;
 - 'The Kurds between Iran and Iraq' in Middle East report, Vol 16, no. 4 July-August 1986.

[page 3]

The start of the armed conflict can be placed on 22 September 1980, with the actual large-scale invasion of Iranian territory by Iraqi army units and airplanes. The end of the hostilities within the framework of the armed conflict can formally be placed on 20 August 1988, when an armistice comes into force.

The armistice was agreed by adopting Resolution 598 of the Security Council on 20 July 1987. Iraq agreed on that Resolution that very same date, while Iran followed almost a year later on 18 July 1988.

[page 11 and following]

Iran tried to raise the effectiveness of its own performance by making use of the national (armed) opposition present in Iraq. This mainly involved Iraqi Kurds, but also Arabic (Shiite) fellow believers of the Islamic regime in Iraq, who wanted to fight against the Baath-regime that was dominated by Sunnites. So there were several forms of cooperation by Iran and Kurdish resistance groups in Iraq. [.....] [witness 121], military liaison officer between the leadership of the PUK and the Iranian Army, gives a description of this cooperation, which included logistic support from Iran to Kurdish resistance groups and joint military operations. KDP as well as PUK operated in association with the Iranian armed forces, and coordinated operations with Iranian operational headquarters.

The Kurdish resistance groups acted together with regular Iranian troops to combat against Iraqi posts and positions in Northern Iraq. They also gave instructions for the use of weapon systems distributed by Iran and moreover Iranian headquarters coordinated military operations. Since the sixties the Peshmerga already had experience regarding the execution of relatively large actions, by using light and heavy types of weapons.

10.3. the testimony of a witness [witness 95] given during the court hearing on 30 November 2005, that contains - among other matters - :

I participated in the report drawn up by Human Rights Watch. In that capacity I contributed and studied a lot of material. I myself used to be involved in the conflict in Iraq in the past. In 1979 I became Peshmerga. Peshmerga is a Kurd word, that literally means: 'those who face death'. Those were people who also fought with the Kurds against the Iraqi authorities.

I joined that organization in October 1979. At that time I was not able to join the armed conflict outside of the city immediately. Therefore I first joined the armed conflict inside the city until October 1990, which was between the Peshmerga movement and the armed government, apart from an interruption from December 1983 until February 1985. In this period the PUK did not engage in a war. The other parties, the KDP, Socialist Party and the Communist Party did continue the battle in that period, which consisted of a fight between troops and both sides carried heavy arms. The most heavy arms of the PUK fighters were mortar grenades of 60 mm, 82 mm and 120 mm, 'Katushka' missiles, 'Doshika's', those are middle-range machine-guns, a machine-gun on a stand with cartridges in a belt, to use as defense against helicopters and other airplanes and RPG, the so-called 'Rocket Propelled Grenades'. At the Iraqi side they had tanks, aircraft, cannons of 130 mm, 155 mm and 175 mm and large, so-called 'ground-to-ground' missiles. The other parties had arms that could be compared to those of the PUK, but less in quantity and variety. The Socialist Party did not have 'Katushka' missiles and no 120 mm mortar grenades.

The Peshmerga were an organized militia-movement with a chain of command. The highest authority was the Politburo, followed by a military bureau. Underneath them the regional divisions, followed by the units and finally the subdivisions of the units. The other movements had a similar command structure, but used other names.

You ask me what the control situation was concerning certain areas by the government and those groupings. Did the Iraqi government have total control in Iraq or did one of the groups have control over certain areas. At the time I joined the Peshmerga until the Anfal campaign this was different according to each period. In the period between February 1985 and the end of August 1988, the areas outside the large cities and the areas where the main road ran through had been declared 'out of bounds'. The fighters were in those areas. Sometimes Iraq would carry out attacks on those areas that would last one day. Two areas were excluded, being the Jafayati-valley and the Zewa-region in Duhok province. The headquarters of the PUK were located in Jafayati-valley, which had been secured in such a way that it could not be conquered by Iraq in one day. The KDP had control over the Zewa-region. The areas that had been declared out of bounds by the Iraqi government all formed part of Kurdistan. No other areas of Iraq had been declared prohibited areas.

There was a conflict between Iran and Iraq as well. This war started on 22 September 1980. The conflict was twofold, namely the conflict between the resistance groups and the Iraqi government, and apart from that the conflict between Iran and Iraq. It sometimes occurred that the resistance groups joined Iran in their struggle against the Iraqi government. It also happened that one of the resistance groups together with the Iranian Kurds fought against Iran.

The various armed groups and Iran all had their own objectives, which they wanted to reach in relation to Iraq. The afore named groups were exclusively active in Kurdistan. At that time the Iraqi government consisted of members of the Baath party. They all held the opinion that the Kurds were guests on the territory of the Arabs. The Kurds however were of the opinion that this country belonged to them and therefore they engaged into a battle. They were constantly suppressed by Iraq.

The objective of the Kurds was to obtain a recognition of their national ethnic rights, a recognition of their language and culture. The Kurds wanted to participate in the decision-taking process as first-rate citizens. After the armistice between Iran and Iraq, the Kurdish resistance continued their battle against Iraq. The attacks were indicated by 'Anfal', a campaign that consisted of a total of eight operations. During the 'Anfal' period from 23 February 1988 to 6 September 1988, those areas were only attacked by the army. Other areas were only attacked by helicopters or missiles in that period and not by troops.

10.4. In view of the results from the source study as under 10.1. and 10.2. and the witness testimony under 10.3. the court is of the opinion:

- a. that in the period from 22 September 1980 to 20 August 1988, an international armed conflict took place between Iran and Iraq as defined in armed conflict law;
- b. that a non-international armed conflict took place as defined in armed conflict law on the territory of Iraq between Iraqi government troops on one side and armed (Kurdish) resistance groups on the other side. This non-international armed conflict had already started long before the period mentioned in the charges and lasted even thereafter.

The fact that the resistance groups sometimes acted together with the Iranian troops, does not yet imply their participation in an international armed conflict. It has not been demonstrated that in those circumstances Iran had control over those resistance groups, and the resistance groups kept pursuing their own objectives. Seen the extent of the operations between Iraqi government troops and resistance groups, the weapons that were deployed, the fact that the resistance groups were capable of executing military operations from the areas controlled by them, as well as the way in which these groups were organized, it is no longer a matter of internal irregularities, riots or other acts of sporadic violence, but actually a non-international armed conflict as defined in armed conflict law.

11. Considerations regarding the evidence with respect to the intent of the accused.

Regarding the intent of the accused, the court considers the following.

The court considers it proven that the accused, in any case before the first TDC shipment, at the end of May 1985, was aware of the fact that:

1. the Japanese government had ordered restrictions concerning the export of TDG to countries in the Middle-East, among them Iraq, while the accused was on the supposition that such restrictions also applied to the export of TMP;
2. the final destination of the chemicals that were to be supplied through his intervention, among them TDG, was Iraq while apart from entering an incorrect final destination the accused or someone on his behalf had intentionally written a false end use on the transport documents;
3. all chemicals to be supplied through his intervention, among them TDG, could be used for the production of poison gas, and seen the mutual relationship of the knowledge as stated under 1., 2. and 3., these chemicals would indeed be used for the production of poison gas;
4. the Republic of Iraq deployed poison gas during the Iran-Iraq war.

By supplying large quantities of TDG to SEORGI, in spite of the knowledge as stated under 1. through 4., the accused has knowingly and willfully accepted the reasonable chance that this TDG, as a component of poison gas, would be used for chemical attacks (mentioned in the judicial finding of fact). Needless to say, the court considers that the conditional intent of the accused already results from his knowledge stated under 1., 2. and 3. After all, a person who supplies chemicals of which he knows that they will be used for the production of poison gas by a country that is engaged in a long lasting war that was also started by that same country, justifies the conclusion that he consciously accepted the chance that the poison gas to be produced would also end up on the battle field. In that respect it is important to point out that during the preliminary judicial investigation the accused held the view that he was under the impression that Iraq would only use those chemicals for the development, production and storage of chemical weapons, and that he appealed to his right to remain silent during the hearing.

The chance that TDG, as a component of poison gas, would indeed be used for chemical attacks was not only considerable, but almost a hundred percent. This fact results from the statements made by expert-witness [expert-witness] and witness [witness 18] before the examining magistrate. These statements show that TDG, especially in the quantities that were supplied in this case, did not know any civil application in Iraq, and that the substance TDG was imported for use by the (weapon) factory MSE, which received orders to produce mustard gas that was actually deployed on the battle field shortly after.

The court concludes these established facts (as stated under 1. through 4.) from the following evidence:

- a) On 1 September 1984 [witness 92] sends a telex message to the accused - opening lines: "subj.: TMP. Letter of Credit issuing" - (H10 8586) among other matters: "We also have a duty to report to our Ministry of Industry and Trade Institute [MITI] (Central Government) where the Tri-phosphate will be shipped to. And its end use, like DDT. At least tell me the destination, because the Japanese Government fears that this substance might be used for the production of poison gas or gun powder. Therefore I would like to suggest to you that these materials are going to be used for the production of insecticides, like DDT. Please telex me the name of the end user and the unloading port (I am ok that you tell us a necessary lie).";
- b) On 3 September 1984 the accused sends a telex message from the telex machine of "[company 4]SING" - opening lines: "subj.: TPM. shipment" - (H10 8549) among others to [witness 112], President of Seorgi: "important: Japanese authorities want to know final destination and end use of TMP, therefore manufacturer suggests we indicate that TMP is used as an insecticidal substance like DDT and tell a necessary lie regarding the end user. My personal advice is to indicate "fuel additive" like we discussed before, and final destination Trieste, Italy";

- c) On 11 September 1984 the accused receives on the telex machine of "[company 4] SING" the following telex message -opening lines: "subj. / TMP shipment" - (H10 8585, on top of the page) sent from the same telex number that the accused used on 3 September 1984 to reach [witness 112]. This telex reads among other matters: "Since you suggest final destination Italy, the Letter of Credit will be opened as follows: From Japan to Italy over sea [...] and from Italy to Baghdad [...] per truck via Turkey";
- d) On 26 September 1984 the accused sends a telex message from his "[company 4] SING" telex to [witness 92] - opening lines: "subj.: TMP" - (H10 8551), which among other matters includes: "End user is not my client, name client is [company 22] in Switzerland. They seem to have good connections with French/Italian consortium that supplies HF as a substitute for catalytic converters for straight-line Alkyl-benzene factories that they constructed all over the world. So honestly do not exactly know where it goes to, but there appear to be two possibilities (1) Yugoslavia (2) Egypt";
- e) Furthermore the case file contains a telex message from [witness 92] to the accused that is not dated and was seized from the accused - opening lines: "subj.: Thiodiglycol (H10 8585, at the bottom of the page) that includes among other matters: "We have found four manufacturers in Japan. But only the mill can make you an offer, the others are too small. However it is necessary to obtain an export license from our government. It is very easy to change this material to make poison gas from it. You should disclose the name of the end user (you can tell me and if it is necessary you can lie to me) and the final destination [...]. The official offer will be drawn up after you have given the name and the country of the end user. Middle East is not available". From the statement made to the Police in Osaka by that witness [witness 92], which says that this telex was sent during the negotiations about TMP, as well as the contents of this telex, the court concludes that [witness 92] sent this telex in the middle of 1984 to the accused. The statement made by the witness [witness 92] during the hearing, that this telex would have been sent in 1986 or 1987, must rest on a mistake. After all, in those years [witness 92] and the accused were looking for American suppliers instead of Japanese, because of the unfavorable exchange rate of the Yen;
- f) The Letters of Credit mentioned in the "official report concerning the used barrels", attached to this judgment, all state a final destination in Europe, and furthermore that TMP is used as a "fuel additive" and TDG as a "textile additive";
- g) Among other matters, the accused stated to the criminal investigators, (C1B1, pages 10 and 11): "[...] I needed an off-shore company [...] [witness 31] gave me a list of companies that I could choose from. [...] The company then became [company 5]. [...] The profit from [company 5] was exclusively for me. [...] The consignment note, by which I mean the Bill of Lading, was drawn up by order of [company 5]", (C1B3, page 15): "In 1986/1987 [company 5] became [company 6] [...] The working method of [company 5] was now taken over by [company 6]. The profits I made from [company 6] ended up on an account that had been opened in my name";
- h) About the end use of TDG the accused stated to the criminal investigators (C1B5, page 33): "According to [witness 112] [the TDG was intended] for the textile industry. It is an adhesive agent to fix colors onto fabric. I have to tell you honestly that I don't know if at that time I knew it was an adhesive agent." The accused also stated to the criminal investigators, after having indicated that he never went to visit a (civil) client / user of TDG (C1B7, page 46): "I don't think they would appreciate it if I would come and have a look";
- i) At the court hearing on 2 December 2005, witness [witness 92] testified - just like he stated to the Osaka Police - that during the negotiations regarding TMP, in the middle of 1984, Japanese business partners told the accused that TMP, TDG, PCL3, POCL3 and HF could also be used for the production of poison gas;
- j) To the question of the criminal investigators whether, apart from the chemicals mentioned under i), the accused also supplied other chemicals to Seorgi, he answered that once he also delivered "DMP" to them (C1B7, page 47);
- k) On 15 November 1984 [witness 92] sent a telex, which was seized from the accused, to [initials accused] - Singapore (H10 8606) which, among other matters, [literally] reads as follows: "Otherwise, DMMP is concerned. It is very difficult to find out mill in Japan. But now there is only one producer in north east Japan. However, this producer said, the buyer should be inform the final usages of DMMC, because they are worry about use a row material as to make a poison gas. As soos as you can let me know the usages of DMMP, I will be able to obtain offer from producer";
- l) Among other matters, the accused stated to the criminal investigators (C1B2, page 10): "I then received a telex in my apartment in Singapore with an offer [...] I showed the offer to [witness 112], he thought it was much too high", and (C1B3, page 15): "I was then told by a certain [name], who was the director of [company 7] from Iraq [and of MSE, court], that it would be better to try and get the products from the United States. It had [...] to do with the price" and finally (C1B6, page 37): "So furthermore an offer was made. [...] I added 15% to 20% to that amount";
- m) Among other matters, witness [witness 92] testified to the Osaka Police (G92.1, page 841): "The condition set by the accused, a commission of 15% to 20% of the freight rate, was very nice compared to the commission of 3% for the export of iron and steel";
- n) According to his own statement (C1B1, pages 4 and 5) accused started living in Baghdad in 1978. In 1980 he left Baghdad because of the Iran-Iraq war. In 1984 and 1985 he lived in Italy, Switzerland, as well as in Singapore. At the beginning of 1984, when he worked for [company 4] Rome, he went to Singapore for [company 4]. At the end of 1985 the accused returned from Singapore. The telex correspondence stated under b), c) and d), shows that in any case in 1984 the accused was in Singapore and that he stayed in Singapore in any case until the end of May 1985, which results from a visa (H10 4715) issued in Singapore and included in his

passport;

o) The ex-wife of the accused, who among other times lived together with the accused in 1984/1985, testified to the examining magistrate that in that period the accused had an interest in events that took place in the world, followed what was going on in the world and regularly read newspapers and magazines. During their stay in Italy and Switzerland the accused would read mainly Italian newspapers like the Corriere della Sera. Abroad he would read foreign newspapers. Furthermore she testified that she frequently discussed the events in Iraq with the accused, because Iraq had become part of their lives. Finally she stated that the accused, among others languages, speaks good English and Italian;

p) It results from the case file (H103) that the Corriere della Sera reported on the use of poison gas by Iraq on 6 March 1984, 11 March 1984, 13 March 1984, 14 March 1984, 19 March 1984, 31 March 1984 and 31 July 1984 (as well as on 23 March 1986). The case file (H131 and F96) also shows that English newspapers, that appeared in Singapore and Malaysia, reported on the use of poison gas by Iraq on 5 March 1984, 9 March 1984, 28 March 1984, 1 April 1984, 9 April 1984, 31 July 1984, 4 November 1984, 17 January 1985, 27 March 1985, 12 April 1985, 25 April 1985 and 27 April 1985 (as well as on 19 June 1985).

Sub. 1

The contents of the above mentioned telex messages under a) and e) from [witness 92] to the accused show that [witness 92] informed the accused in writing before the first shipment of TDG that TMP as well as TDG could not be exported (among other countries) to Iraq without the authorization of the Japanese government and that this was related to the fear that these substances would be used for the production of poison gas.

Sub. 2

From the contents of the telex message mentioned under c) it appears that from the very beginning the accused knew that the chemicals would be transported to Baghdad. Nevertheless, the contents of the Bills of Lading regarding the shipments of TMP and TDG mentioned under f) show that Europe was filled out as final destination. From the statements made by the accused quoted under g) it can be concluded that being the only one who was actually involved in [company 5] and [company 6], he must have been the one to fill out the Bills of Lading, at any rate the one who gave instructions to fill them out.

Especially because of the telex message drawn up by the accused and dated 3 September 1984, as referred to under b), where the accused makes a personal suggestion concerning the end use of the chemicals, the court considers it proven that, apart from an incorrect destination, he intentionally indicated an incorrect end use. If the standpoint of the accused - which in brief came down to the fact that he was convinced about the civil end use of the chemicals reported by Seorgi (in relation to TMP "flame retardant" (C1B4, page 20) - would be correct, it cannot be understood why he had to make a personal suggestion concerning the end use. If the accused was indeed convinced about the intended civil end use, then it should not have been any difficulty to inform the Japanese government about that application (be it or not in combination with an incorrect final destination) and to write that down on the Bills of Lading. The court draws the conclusion from the undated telex message from [witness 92] to the accused, as quoted under e), that the same procedure was followed for the TDG shipments. Moreover, the alleged conviction of the accused that the TDG would be used as "textile additive", is subsequently enfeebled by his own statements quoted under h).

Sub. 3

Seen the quoted telex messages under a), e) and k) from [witness 92] to the accused, as well as the testimony of [witness 92] quoted under i), it has been established that from the very beginning the accused knew that all six chemicals which he supplied to SEORGI could be used for the production of poison gas. In combination with the fact that he knew that export restrictions had been issued against Iraq with respect to this possible use, as well as the fact that the accused intentionally stated incorrect final destinations and incorrect end usage, in any case gave instructions to present those incorrect data - sub. 1 and sub. 2 - it has been established that the accused, just like [witness 92], knew that the chemicals would be used for the production of poison gas. This judgment is confirmed by the circumstance that the statements quoted under l) and m) show among other matters that SEORGI seemed to be prepared to pay a very high commission to the accused. Moreover, it must have been completely implausible for the accused to realize that such a high commission would be paid for the import of an adhesive agent to fix colors onto fabric. The fact that SEORGI was aware of the high commission that was paid and that the accused knew that SEORGI was aware of that fact, is concluded by the court from the statements made by the accused and quoted under l), which show that he informed SEORGI about the price that was charged by the supplier and that (on behalf of SEORGI) he was told by Iraq that the prices of TDG in the United States were lower than in Japan.

Sub. 4

From the evidence reproduced under n), o) and p) the court draws the conclusion that the accused must have been aware of the fact that Iraq was using chemical warfare in the war against Iran before the first TDG shipment.

Seen the above, the court considers the (conditional) intent in relation to complicity, as well as the (conditional) intent in relation to the facts found on war crimes, to be legally and convincingly proven.

12. The evidence.

The court's conviction that the accused committed the proven facts is based on the facts and circumstances that are included in the evidence below and which give reason to believe that the charges have been proven.

Concerning the charges under count 1., alternatively and count 2.

12.1 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 6 December 2004, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers (C1B1 - pages 4 through 7):

Around 1978 I left for Iraq, where I lived in Baghdad. The office of [company 3] was established in Baghdad. In 1980 the Iran-Iraq war broke out.

The location of the office was a risk and we received permission from the Ministry of Oil to leave with the entire staff to Amman, and to travel on from there to Zurich. At the beginning of 1984 I joined a company where some ex-employees of [company 3] were working. The name of this company was [company 4], which was established in Rome. These people asked me to go to Singapore, because [company 4] had an office there. They asked me to become Director of their Singapore office. At that time I also lived in Singapore. In 1985 I went back to my house in Bissone.

I speak and write Dutch, French, German, English and Italian. All contacts ran via SEORGI.

12.2 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 7 December 2004, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers on 7 December 2004 (C1B2 - pages 10 through 12):

I needed an off-shore company. [Witness 31] gave me a list of companies that I could choose from. The company then became [company 5]. The profit from [company 5] was exclusively for me. The consignment note, by which I mean the Bill of Lading, was drawn up by order of [company 5]. The itinerary of the shipment was from Japan to Trieste, Italy. That was approximately until 1986 / 1987. I know the containers were shipped from Trieste to Aqaba in Jordan. Later on I understood that they had arrived after all. Even though I was not responsible for the final destination, by asking the people at SEORGI if the products had arrived, I did get their confirmation that they had arrived indeed.

12.3 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 7 December 2004, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers on 7 December 2004 (C1B3 - page 15):

[Company 5] became [company 6]. The working method of [company 5] was now taken over by [company 6]. The profits I made from [company 6] ended up on an account that had been opened in my name. [Name], who was director of [company 7] from Iraq, told me that it would be better to try and get the products from the United States. It had to do with the price. Then I asked [witness 92], in 1986 / 1987, if he had contacts in the United States.

12.4 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 8 December 2004, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers on 8 December 2004 (C1B4 - page 21):

I also experienced bombardments in the beginning of the eighties. At that time I followed the news on TV, there were two state channels then, and we had short-wave receivers ourselves.

12.5 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 8 December 2004, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers on 8 December 2004 (C1B5 - pages 31 through 33):

[Company 8] collected the goods and materials and transported them to Iraq. According to [witness 112] the TDG, that I was supplying to Iraq, was intended for the textile industry. It is an adhesive agent to fix colors onto fabric. I have to tell you honestly that I don't know if at that time I knew it was an adhesive agent.

12.6 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 14 December 2004, legally drawn up by the competent investigating

officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers on 14 December 2004 (C1B6 - page 36):

At the end of 1980 the war broke out. You did not have entire freedom, but a reasonable freedom to do business. Furthermore, when the import of goods were intended for a state company, I never interfered with the handling procedure. The first contact took place in 1984 when [witness 112] telephoned me. He asked me to supply four products. It was clear to me that they were intended for SEORGI.

12.7 an official report of an interrogation of the accused by the National Police Agency (KLPD), National Criminal Investigation Department, dated 7 January 2005, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made by [accused] to the afore named investigating officers on 7 January 2005 (C1B7 - pages 42 through 47):

You ask me in what language the newspapers were published in Baghdad. In the beginning of the eighties there was an English newspaper for some time, like The Observer. I would follow the news like anyone else. You ask me what I can tell you about the war in Iraq. The story of the Kurds would always be part of it. You ask me if I can mention a client/user of Thiodiglycol (TDG) in Iraq. The client was SEORGI. I don't think they would be very happy if I came over and had a look. You ask me if I also supplied other substances, apart from those mentioned above. I believe there was one time that I supplied DMP.

12.8 an official report of a witness examination on 04 May 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in the court of The Hague, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate on 04 May 2005 by [witness 90] (G90.I - pages 822 through 830 and RC-file - pages 40 through 48):

[Accused] was used to follow current world events. [Accused] and I would regularly discuss the events that took place in Iraq, because Iraq had become part of our lives. [Accused] frequently read newspapers and magazines like for example National Geographic. When we lived in Italy and Switzerland he mainly read Italian newspapers, like the Corriere della Sera, and also outside those countries he would read foreign newspapers. We also used to watch the news on TV. [Accused] speaks good English, Dutch, Italian and according to me he also speaks German and French. In Singapore [accused] also used to watch the news on TV. He was interested in what took place in the world.

12.9 eight documents, being articles from the Corriere della Sera, titled as follows:

- 1) "Gli Stati Uniti accusano l'Irak di usare armi chimiche e l'Iran di non volere pace. Gas: soldato iraniano morto a Stoccolma, due gravi a Vienna", published on 6 March 1984 (H103/23);
 - 2) "Si chiama <> ed è stato in combinazione con l'Iprite, Un tossicologo belga ha isolato il gas che ha ferito e ucciso i soldati iraniani" published on 11 March 1984 (H103/22);
 - 3) "I militari ustionati da gas tossici sono deceduti tra la notte di sabato en lunedì mattina, Morti a Vienna altri due soldati iraniani intossicati accuse anche ad un'industria chimica italo-francese" published on 13 March 1984 (H103/21);
 - 4) "Mentre Bagdad smentisce le accuse, Teheran: <>, published on 19 March 1984 (H103/19);
 - 5) "Washington ha le prove sull'uso dei gas tossici dap arte irachena" published on 31 March 1984 (H103/18);
 - 6) <> scrive che tecnici tedeschi lavorano sui due fronti, Gas per l'Irak e maschere per l'Iran sarebbero prodotti entrambi Bonn", published on 31 July 1984 (H103/17);
 - 7) L'Onu condanna l'Irak per l'uso di gas tossici", published on 23 March 1986 (H103/15);
 - 8) "Per fronteggiare le ondate umane iraniane Bagdad produce a pieno ritmo micidiali gas tossici, Dove nasce la morte invisibile irachena", published on 9 August 1987 (H103/14),
- copies of which have been included hereafter, as well as the corresponding Dutch translations thereof (H103a - respectively: 1) pages 857 through 858; 2) pages 855 through 856; 3) pages 852 through 854; 4) pages 850 through 851; 5) pages 848 through 849; 6) pages 846 through 847; 7) page 843; 8) page 842).

[Illustrations 12.9

These copies and translations have not been included here, but will be placed (soon) on the page: Current Affairs at the Court of The Hague, under the headline: 'Illustrations sentence criminal proceedings Van A'.]

12.10 an official report concerning newspapers clippings of Singapore Press Holdings of the National Police Agency (KLPD), dated 8 November 2005, legally drawn up by the competent investigating officer. This report includes, among other matters, - rendered in a compact way - the findings of the afore named investigating officer (F96 - pages 775 through 778):

On 19 October 2005 I visited the library of Singapore Holdings Ltd.Co (SPH) to check how much was published about the use of poison gas in the Iran-Iraq war and the Iraqi battle against the Kurds in Singapore and Malaysia. The largest newspaper in the English language of SPH is the Straits Times. Furthermore SPH is the editor of the following newspapers in English in Singapore: The Sunday Times (the Sunday edition of the Straits Times) and Business Times. In Malaysia SPH is the editor of among others the New Straits Times and the New

Sunday Times (the Sunday edition of the New Straits Times).

In the above mentioned library I was allowed to look at microfilms consisting of newspaper clippings in English with respect to the Iran-Iraq war and individual newspaper clippings regarding this subject. The following articles investigated by me are among others:

Straits Times

- "Poison gas hurt 10 Iranians's claim", 5-3-1984;
- "UN team says poison gas was used; No specific reference to Iraq in report", 28-3-1984;
- "Pesticides for Iraq: Kohl demands inquiry", 31-7-1984;
- "UN slams use of chemical weapons; Security Council appalled at latest incident Iran-Iraq war", 27-4-1985;
- "Iraqi's used chemicals against Iran", 19-6-1985;

Sunday Times

- "The human horror of chemical warfare", 1-4-1984;
- "Iraqi nerve gas stocks up", 4-11-1984;

Business Times

- "Iran accused UK of supplying Iraq with chemical arms", 5-3-1984;
- "More than one culprit", 9-3-1984;
- "Assembly deplores use of chemical weapons", 9-4-1984;

New Straits Times

- "UN Chief: Iraq won't renounce chemical arms use", 17-1-1985;
- "US confirms Iraqi use of mustard gas", 27-3-1985;
- "Iraqi threat to unleash new weapons", 12-4-1985;
- "Better chance to end Gulf war now", 25-4-1985;

New Sunday Times

- "Iraq has big supply of chemical weapons", 4-11-1984.

12.11 16 documents, being newspaper articles from Singapore published on 5 March 1984, 9 March 1984, 28 March 1984, 1 April 1984, 9 April 1984, 31 July 1984, 4 November 1984, 17 January 1985, 27 March 1985, 12 April 1985, 25 April 1985, 27 April 1985 and on 19 June 1985. These documents have been included in a letter from the public prosecutor Mr. F. Teeven to the president of the Criminal Division of the Court in The Hague, Mr. R.A.C. van Rossum, copies of which have been included, as well as the corresponding Dutch translations.

[Illustrations 12.11

These copies and translations have not been included here, but will be placed (soon) on the page: Current Affairs at the Court of The Hague, under the headline: 'Illustrations sentence criminal proceedings Van A'.]

12.12 a document, being a copy of a Visa issued to the accused in Singapore on 22 May 1985 (H10 - page 4715), a copy of which is included hereafter.

12.13 the statement of the accused, inserted in the record of the court session of 18 March 2005, which relates that the accused himself, or by means of one or more of the companies that belonged to him or in which he had actual control, supplied the substance TDG to the former government of the Iraqi Republic, in the period referred to in the charges, being a substance that partly originated from the United States, but had been delivered to Aqaba.

12.14 a document, being the Dutch translation of an official report of a witness examination, drawn up by the Japanese Police authorities on 22 June 2005 in Osaka (Japan), which includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 92] (G92 - pages 839 through 856):

Between 1984 and 1988 [accused] was my business partner in chemicals. Concerning the chemicals business with [accused] I knew that those chemicals would be transported to Iraq. When I started negotiations with [accused] in 1984, he told me that their final destination would be Baghdad, Iraq. [Accused] had also asked me to keep it a secret that the chemicals would be transported to Iraq.

From the negotiations it resulted clearly that the chemicals would be used as precursor for the production of chemical weapons. And I knew these were deployed when in 1988 Kurds were killed in Iraq. Because the business conditions set by [accused] were favorable, I considered this would be beneficial work and therefore I participated actively in this business. For business in the United States, apart from my own name, I would use the nicknames Charles and Charlie.

When I was staying in Portland, Oregon, for negotiations regarding non-ferrous metals for [company 9], [name] advised me to do business with [accused], the general manager of chemical company [company 4], Singapore office. [Accused] wanted to import chemicals from Japan. [Name] gave me [accused] 's telephone and telex numbers at [company 4] in Singapore. As I was involved in the import and export business, I knew that [company 4] was a world famous chemical company and thought this was my chance to expand my business.

After my return to Japan I immediately contacted [accused] by phone and telex. He appeared to know me and approached me directly and said that he wanted to import the chemical substance TMP. This was around May or June 1984.

During the first negotiations [accused] told me: "The chemical will first be shipped to Trieste, Italy. From there on they will be transported by road to Baghdad, Iraq. Observe secrecy about the fact that the chemicals will be exported to Iraq." When I heard this I thought these chemicals would be converted into chemical weapons. As I was involved in exports I was aware that there were stringent restrictions concerning goods that were exported to the Middle East and to Eastern Europe.

Because I thought that the chemicals would be used for the production of chemical weapons, I asked [accused] about their end use. He explained to me that the chemicals would be used for consumer goods like textile and leather. I believed his explanation was a lie. If these are used for consumer goods like textile, as [accused] explained to me, then there was no need to keep secret that Iraq was the final destination. The condition set by [accused], a commission of 15 to 20% of the freight charges, was very nice compared to the commission of 3% for the export of iron and steel.

I believed a dangerous business was behind these conditions that were far too good. I thought it included a reward for the fact that I would observe secrecy regarding the final destination being Iraq and the fact that these chemicals would be used for the production of chemical weapons. The contract I had with [accused] was to export the goods from Japan to Italy. [Accused] would organize the export from Italy to Iraq. I just had to pretend that I had not heard that the chemicals were to be transported to Iraq. So it was not my concern that the chemicals would be transported to Iraq and how they would be used.

After that I did not ask [accused] again, what the chemicals would be used for. Even if [accused] had told me the truth, being that the chemicals would be used for the production of chemical weapons, I would have continued my negotiations with him.

Because I was a layman in the field of chemicals, I submitted a request to [company 10], the company I worked with for the export of steel, to introduce me to a TMP trader. Subsequently I was introduced to [company 11], a chemical company set up in Tokyo. During the negotiations both [company 10] and [company 11] explained that TMP is a precursor for poison gas and that one needed to be alert in case of export.

When I heard this I was certain that the production of poison gas in Iraq was the objective of [accused]. The contact persons at [company 10] and [company 11] asked me for an explanation about the final destination of "TMP" and its end use. The answer that was given was that the final destination was Trieste, Italy, and that it would be used for consumer goods such as textile. In my contract with [accused] it just said that the chemicals were to be shipped to Italy and that I only heard that they would be used for consumer goods. The first time I met [accused] was around July 1984.

I met [accused] at [company 4] in Singapore. Apart from [accused], a female employee worked at the office of [company 4], by the name of [name].

The negotiations about TMP with [accused] that had started in May or June 1984, reached an agreement and in October 1984, 80 metric tons of TMP from [company 11] were exported from the port of Yokohama. This was the first business deal with [accused]. In the first place the chemicals were sold to [company 10] by [company 11] and subsequently these were sold to [company 9] that exported them. For export procedures, the English name of [company 9], [..... Corporation] was used.

The L/C was issued by the Banca del Gottardo Lugano Branch in Switzerland and was made out in the name of [accused] of [company 12]. The L/C listed the details regarding the export goods. I had the impression that [company 12] was a company that had been established by [accused] for dealing in chemicals. I thought this was a fake company. As General Manager of [company 4], [accused] was able to do business in this name. The address of this company was the home address of [accused] in Milan. After July 1984, when I had visited the offices of [company 4] in Singapore, [accused] changed his place of business to Milan, Italy. During the first negotiations with [company 11], [accused] also mentioned other chemicals, among them TDG. TDG was bought from [company 13]. During the negotiations this company explained that these chemicals could be converted into chemical weapons like poison gas.

You show me a telex in English dated 11 September 1984 sent to [accused]. You ask me what is meant by "Transport by truck from Italy to Baghdad via Turkey". In May or June 1984 [accused] told me that TMP would be transported over land to Baghdad in Iraq. [Accused] had a lot of experience in the export field. He asked me about the re-export procedures to Iraq, after the goods had been exported to Italy.

When [accused] told me that the chemicals would be transported to Iraq, I knew these would be used for the production of chemical weapons. So I asked him. He was not very clear about it. He only said these were used for consumer goods like textile, but did not specify any details and therefore he did not sound convincing to me. It was easy to guess that the chemicals were not shipped to Iraq for reasonable reasons. The commission that was too high for this business also confirmed my reasoning. I did not want [accused] to get upset and end my contract by asking questions about the final use.

You tell me that underneath the same telex there is one from me sent to [accused] titled: Thiodiglycol and you ask me what that is. This is a telex about the chemical substance Thiodiglycol. During the negotiations about TMP he also approached me about Thiodiglycol. This is a telex that I sent to [accused]. You tell me that it reads: "For Thiodiglycol you need authorization from the government". At the time I had been told by chemical companies or by [company 10] that MITI had to give an authorization to be able to export Thiodiglycol from Japan to the Middle East, to countries like Iraq.

You ask me what "easy to use for the production of poison gas" means. I had received explanations from

[company 10] and other chemical companies that Thiodiglycol is a precursor for poison gas. You ask me what "for the end users a 'Necessary lie' may be used" means. That means tell a necessary lie. I had heard that the government needed to give their authorization for exports to countries in the Middle East. Therefore we needed a country and an end user for which we did not need government authorization. I had told the chemical companies and [company 10] that the final destination of the chemicals was Trieste, Italy, and that they would be used for consumer goods like textile, but the Japanese companies asked me for a more detailed explanation. I had heard that the chemicals would go to Iraq, but I believed that I did not need to take the responsibility, if [accused] would tell a "Necessary lie". For that reason I had sent a telex to [accused] telling him that, even if it would be a lie, he needed to come up with a country and an end user to convince the Japanese companies and to make export procedures easier. Afterwards the chemical companies and [company 10] requested me to specify the end use and the final destination, but I exported the chemicals without further specifications, stating Italy as final destination. As far as I know, [accused] visited Japan two times. The first time was in October 1984. I accompanied him together with [witness 105] of [company 10]. From the side of [company 11] [accused] got the question: "These chemicals can easily be converted into poison gas, but can we trust the end user?". He answered: "It is impossible that they are converted into poison gas because they will be used for textile and leather in Italy." After [accused] had given his explanation [company 10] seemed to be reasonably convinced and no further questions were asked about the end user in Italy. The second time he visited Japan was one year later, around March 1985. This time he was accompanied by his wife [name]. Together with [accused] I visited [company 14], [company 13] and [company 15] in Osaka. They also asked what the chemicals would be used for, but [accused] answered just like he did to [company 11], that these would be used for the textile industry and that they would definitely not be used for the production of poison gas. These three companies also seemed to be satisfied with the explanation given by [accused] and did not ask any further questions.

During the negotiations the chemical companies and [company 10] told us that, depending on the countries of destination, export restrictions had been established, because some chemicals could easily be converted into chemical weapons. In 1984 I was told by [company 10] and [company 13] restrictions had been established for the export of TDG to the Middle East. You ask me if I told [accused] about these restrictions. I informed [accused] about them by phone or by telex.

He kept telling me that the chemicals would be used for consumer goods and that the final destination would be Italy. You ask me if I believed him. I was told the chemicals would eventually go to Iraq. I was sure the chemicals would be used for the production of poison gas. You ask me if [accused] knew that the chemicals could be converted into chemical weapons like poison gas. From the start of the negotiations the Japanese companies and myself told him so. And from his words it appeared that he was already aware of this. [Accused] had a lot of knowledge in the chemical field. Between October 1984 and May 1986, [accused] and I exported chemicals from Japan, as indicated on the summary: Delivery Details, number 1 through 28. [Accused] kept asking for the export of chemicals, but because of the increase of the Japanese yen we could not agree on a sales price of the chemicals and for that reason it became difficult to realize exports. That is why the last chemicals were exported from Japan in May 1986. But [accused] seemed to want to import the chemicals after all. During the negotiations [accused] asked me if it would be possible to export from the United States. [Accused] asked me if I could look for American chemical companies to export chemicals. [Accused] told me that American chemicals were less expensive to export.

The conditions for trading with [accused] were attractive. That is why I wanted to continue to do business with him. Seen the fact that I did not have any contacts with American chemical companies, in the summer of 1987 I asked [witness 34], President of [company 16], established in New York, with whom I was dealing in steel and iron, if he could introduce me to a chemical company. The contents was the following: There is a business man who wants to import chemicals to Europe. If the negotiations are successful, both you and I will receive an export fee of 3 cents a pound. [Witness 34] was convinced of this story. At the same time I told this story to [name], President of [company 17], export company in non-ferrous metals, established in San Francisco, with whom I also did business. I soon received an answer from

both companies. [Witness 34] suggested [company 18] located in Baltimore, Maryland and [name] suggested [company 19], located in Columbia, North Carolina. In August 1987 I went to the United States for negotiations with chemical companies. And in New York I met [accused] who came from Italy. We went to [company 19] in North Carolina. [Name] president of [company 17] also came along. The three of us, the president [name] and a person who was in charge of the sales department entered into negotiations. [Company 19] was very interested in these negotiations, that were even concluded the same day. It was about the chemical substance Thiodiglycol and the export destination was Belgium. [Company 19] discussed the details with [accused] in a separate room. In October 1987 I traveled to the United States for negotiations with [company 18]. Accompanied by vice-president [name] of [company 16] and [accused] I visited [company 18]. We talked to three representatives of the sales department. Just like when we visited [company 19], [accused] told them that he wanted to import Thiodiglycol into Belgium and the negotiations were quickly over.

You show me pictures that I handed over voluntarily a few days ago. Photograph 1 was taken at the Royal Hotel in Osaka when [accused] visited Japan for the first time in October 1984. On the right is [accused] and next to him, wearing a tie, that's me. Photograph 2 was taken in August 1987 when I visited Columbia, North Carolina, for negotiations with [company 19]. On the right that's me, beside [accused], president [name] of [company 19] and [name] of [company 17]. Photograph 3 dates back to October 1987 when I traveled to New York to conclude a contract with [company 18]. On the right is [name], financial assistant of [company 16], next to him

[accused] and on the far left is [witness 34].

You ask me if the final destination of export from the United States was also Iraq. I never received explanations about this subject from [accused], but I suspect the chemicals were sent to Iraq. For during the first negotiations with [accused] he told me that the chemicals would be sent to Iraq.

You show me a summary: Delivery Details and you ask me to explain the numbers 29 through 36. Number 29 represents the export of Thiodiglycol from [company 19] in September 1987. This was the first export deal from the United States. From Charleston, USA, chemicals were exported via Rotterdam and Antwerp to Aqaba (Jordan). I know [accused] had told the chemical companies at the time that he wanted to import into Belgium. I suspected that the Thiodiglycol would eventually go to Iraq, but I did not know through which countries it would be transported. The export details were discussed between [accused] and the chemical companies.

Number 30 is also the export of Thiodiglycol by [company 19]. The final destination and the transit countries are the same as for number 29. Numbers 31 through 34 refer to Thiodiglycol that was exported by [company 18] and that was eventually exported to Aqaba, Jordan, as well. I received commission for these 6 exports from [accused]. At each occasion [company 12] would electronically transfer money into my account at Ikeda Bank Dojima Branch. In total I must have received between US \$ 30,000.- and US \$ 35,000.- You show me a telex to [first name] dated 21 July 1987. [First name] is [name] of [company 17]. When I requested [him] to suggest a chemical company, he feared that the chemicals would be used for the production of chemical weapons.

You show me a telex with subject Re: [first name accused] dated 22 March. [First name] is the first name of [accused]. This is a telex about [accused] which I sent to [witness 34]. You ask me the 22 March of what year. Probably 1989. You ask me what "the entry of 1988" means, mentioned at the end of the telex. With regard to the use of chemical weapons against the Kurds in 1988, [witness 34] had pointed out to [accused] that the chemicals that were exported from the US, were linked to chemical weapons. I meant by this that a person that was involved in this export should have had a suspicion and wrote that his suspicion was correct. In January or February 1989 I was informed about the arrest of [accused].

I was informed that the reason for his arrest was the illegal export of chemicals to Iraq. I visited [accused] in Italy in 1988. His house was a luxury apartment in Milan.

You show me the invoice of [company 9] dated 31 March 1985. On this invoice it reads:

" non-returnable 20 feet containers". I wrote that down because [accused] had requested me to do so during the negotiations. [Company 12] is [accused]'s company established in Milan. The office was located at his home address.

In 1986 the export of chemicals from Japan became difficult because of the high exchange rate policy of the Yen. That is why I introduced chemical companies to [accused] through the intermediary of my contacts in the United States.

12.15 the testimony given on 02 December 2005 by [witness 92] that - among other matters - includes:

You ask me if it is correct that initially raw materials were exported from Japan and that later on raw materials were exported from the US. That is correct. It was indeed among others about the substances TMP and TDG. You ask me if, apart from Trieste, TDG was also shipped to Antwerp. From Japan TDG was only transported to Trieste. From the US, TDG was shipped to Antwerp. The first contract concluded with Mr. [accused] related to TMP.

Mr. [accused] asked me if he could transport the material from Italy via Turkey to Iraq, so then I told him that he would need a second Letter of Credit and that the goods would have to be reloaded. You ask me if I knew that TMP and TDG could be used for the production of poison gas. That's correct. Japanese manufacturers had explained to me that these chemicals could be used for the production of poison gas. For that reason the Japanese manufacturers wondered if Mr. [accused] was planning to use these chemicals to produce poison gas. I know the Japanese manufacturers told Mr. [accused] that these chemicals could be converted into poison gas. I was aware of this because [accused] himself visited these manufacturers and they told them about it themselves. I myself was present then.

You read to me a telex dated 1 September 1984, in the case file: H10 - page 8586, that I allegedly sent to Mr. [accused] in which I wrote, among other matters: [Literally] "Also, we have a duty to make report to our ministry of industry and trade institute (central government) that where the tri-phosphate is going to be shipped out and the final usages as like as DDT. At least you can tell me the destination. Because Japanese government is worry about these material will be consumed by insect-killing medicine like as DDT and please telex to me the end user's name and unloading port (I am ok that you can tell us a necessary lie)." Yes indeed, I sent this telex to [accused].

You show me page 8585 of H10, which consists of 2 telexes, the telex at the top is dated 11 September 1984, sent by [name] to Mr. [accused/company 4] Singapore. I saw this telex for the first time at the police station in Osaka. You tell me that the telex at the bottom is not dated. Yes, I sent this telex. My nickname is Charlie, indeed. You tell me that this telex ends with "Mid-east in not available" and you ask me if by "available" I mean "acceptable". That's correct. You show me a telex dated 24 September 1984 from Mr. [accused] to [company 9], in file: H10 - page 8551. Yes, I received that telex.

You show me a "technical bulletin" of [company 13], in file: X - page 341, which says that Thiodiglycol should not be stored close to hydro-chloride acid, because consequently mustard gas will be formed. This document is indeed from the head office of [company 13] in Osaka. This document was handed to Mr. [accused] during his visit to the factory of [company 13]. This was before the first shipment took place.

You ask me if, in relation to the shipment from Japan to Trieste, I myself acted as an intermediary in the sale/purchase between Mr. [accused] and the Japanese manufacturers. Yes, I received a commission from [accused] at that occasion. For the chemicals from the US I only received a "finding fee".

My business partner [witness 34] also received commission. [Witness 34] told me that companies in Philadelphia would ship from the East coast of the United States. The chemicals were shipped from two factories, being [company 18] and [company 19].

From the Dutch translation of my testimony of 22 June 2005, you read to me the following paragraph: (11) "All companies had explained during the negotiations that these chemicals could be converted into chemical weapons like poison gas. And they repeatedly asked where the chemicals would be exported to and what they would be used for." I stated that indeed. It was explained to me and [accused] during our joint visit to the factory. That was probably in October 1984. You ask me if it was explained to Mr. [accused] and myself that TDG, PCL3, POCL3 and HF all could be used for the production of poison gas. That's correct.

The negotiations with the factories took place in the Japanese language. You ask me how it was possible for the [accused] to understand what the negotiations were about. Japanese manufacturers often speak English as well. At that time the manufacturer spoke English to Mr. [accused]. I remember that [accused] was handed the technical bulletin of [company 13] during his visit to the factory. However you tell me that I stated to the police: "Probably yes. I did not see that he received it, but [company 13] or [company 10] would undoubtedly have given that to him. For [accused] must have seen this list before he purchased the goods." I am sure it was handed to [accused]. I saw it, of course.

You ask me as of what time I was aware that the goods that had been ordered by [accused] would go to Iraq. I believe that was the moment I got the telex. By that I refer to the telex that is dated 01 September 1984 (H10, page 8586). That is indeed a telex sent by me to [accused]. You ask me if at the time I myself heard from [accused] that the chemicals would be taken to Iraq. Yes, I heard this directly from him, probably in Tokyo, Osaka and Singapore. Mr. [accused] told me this in Singapore, and/or in Tokyo or Osaka, when he was in Japan. You ask me if it is correct, like [witness 105] testified to the police in Osaka, that I visited [company 13] one time with Mr. [accused]. Yes, that is correct. That was not just a courtesy visit, at that occasion we also discussed the raw materials and they handed out guidelines about the production of poison gas. Communications with Mr. [accused] ran by telex. The contracts were written down on paper.

12.16 a document, being a certified Dutch translation of a transcription in the Japanese language drawn up by Japanese police officers on 16, 22 and 27 June 2005 in Tokyo (Japan) concerning a witness examination that contains, among other matters - rendered in a compact way - the statements made by [witness 105] on 16, 22 and 27 June 2005 before the aforementioned officers (G 105 - pages 1379 through 1399):

In the period between 1984 and 1986 [company 10] traded with [company 9] among other materials in Trimethyl phosphate (TMP) and in Thiodiglycol (TDG) to be shipped abroad. We used to order the chemical products at the following manufacturers: [company 11] for TMP and [company 13] for TDG. I would contact the chemical manufacturers, took care of business negotiations and I placed the order for the chemicals that [company 9] had ordered from us. [Company 10] delivered the chemicals to [company 9] as a domestic sale. After that [company 9] had these shipments handled and loaded by a customs forwarding agent, and [company 9] exported the shipments abroad.

I met [accused] in April or May 1985, when I visited [company 13] in Osaka. As of 11 October 1986 I was summoned several times by the Ministry of International Trade and Industry. This Ministry's task was to make inquiries regarding the export of TDG and TMP, because the export of TDG and TMP was related to the export of weapons. I have a list that states all information on written orders made by Mr. [witness 92], as well as the order confirmations made by the manufacturers. TDG was traded 13 times. The first time [witness 92] placed two orders, being 32,120 metric tons and 18,160 m/t on 5 April 1985. [Company 13] confirmed these two orders on 12 April 1985 and 24 April respectively. The TDG of these orders was shipped on 31 May 1985, after which it was exported. The second and third time [company 13] supplied 16,060 m/t of TDG and 32,120 m/t of TDG, that were shipped on 3 July 1985 and 6 August 1985. The 4th up to and including the 7th time a total of 96,360 m/t of TDG were exported. The 8th, 9th and 19th time they supplied three shipments of 32.120 m/t each, that were shipped respectively on 25 December 1985, 23 January 1986 and 25 February 1986. The 11th, 12th and 13th time regarded shipments of 32,120 m/t each that had been ordered by [witness 92] on 3 March 1986.

In July or August 1984, Mr. [name] a colleague of mine, told me that a company, that had already been trading with the Steel department for some time, was interested in exporting chemicals. Mr. [name] introduced me to the man of that company. It was Mr. [witness 92]. At first he asked us if we could buy TMP from a manufacturer and if he could export that material. When it appeared that [company 11] was prepared to accept the order, I telephoned [witness 92], after which he presented us with the exact trading conditions: - the TMP will be used for tanning leather; - the destination is Italy where there is an active tanning industry; - quantity: 80 metric tons. With those conditions I went to [company 11]. During the negotiations [witness 92] made the following comments concerning the TMP business: Mr. [accused] is an employee of [company 4]; the end user is a company related to [company 4]; they will use the chemicals for tanning leather.

The TDG business started in February or March 1985. The question that was put to us was whether we were able to supply TDG. I knew that for exporting TDG to Iran or Iraq, an authorization was required from the Ministry of International Trade and Industry. [Witness 92] had told me that the chemicals would be used by a

company related to [company 4] in Italy. Therefore I always thought these chemicals were going to Italy. The manufacturer of the TDG also asked me who was the end user. [Witness 92] never gave a clear answer with regard to the end user until the conclusion of the business relationship. That is also one of the reasons why we terminated the business with Mr. [witness 92]. We reached an agreement with [company 13] that produced TDG. At the time [accused] was an employee of [company 4] in Italy and was responsible for their Singapore office. [Witness 92] had informed me about the reason why [accused] had come to Japan. That regarded an explanation about the end user. The manufacturers as well as ourselves had asked him about this issue many times and [accused] never gave us a clear answer. Around June or July 1985 I met [accused] in Osaka. [Accused] introduced himself to me: I am an employee of [company 4] and I am responsible for the Sales Promotion and Collection of Information Department (Singapore and the Far East) of their Singapore office. [Company 4] is a chemical plant in Italy.

12.17 an official report of a witness examination by the National Police Agency (KLPD), National Criminal Investigation Department, official report number 200509031833, dated 9 March 2005, legally drawn up by the competent investigating officers. This report includes, among other matters, - rendered in a compact way - the afore mentioned statement made on 9 March 2005 by [witness 33] to the afore named investigating officers (G33, pages 417 through 422):

As of 1983 I was Export Manager of [company 18]. [Company 18] was a company that produced chemicals. I believe the use and export of TDG started in 1986 or 1987. The first consignment was shipped in drums and the second one was shipped in containers. I know the shipments went via Antwerp to Aqaba. I remember they once held a meeting with respect to the large quantities. I believe [accused], [witness 45], [witness 92] and [witness 34] were present in this meeting, which according to me was on the subject of prices and shipments. The people that assisted that meeting for [company 18] were [witness 42], [witness 44] and [witness 43]. According to me [witness 42] also stated at some point that it could be used for the production of mustard gas.

The telex conversations I had with [accused] were about TDG. I know [accused] was involved in [company 20]. I can still remember receiving orders from [witness 45], whom I believe received his instructions from [accused]. After all, the goods were shipped on his behalf. You ask me about the shipments of Thiodiglycol. They said the goods would be transported by their own containers. I believe the idea of using their own containers came from [accused].

The Thiodiglycol that was supplied by [company 18] was referred to by the trade name [.....] or was simply called Thiodiglycol, but they were also referred to as "textile additives". We normally hand out the brochure "[.....Technical Data]" regarding the product [..... Thiodiglycol] to customers, when they request product information. As far as I remember, we also handed out this brochure to [witness 45] and to [accused]. I did not know it contained a warning that it could become a blister agent in combination with hydrochloride. [Witness 34] was [witness 45] 's boss. [Witness 45] was my contact person regarding the Thiodiglycol shipments. I spoke to [witness 92] several times. According to me [company 5] was [accused] 's company and like I testified before, [company 20] was the client. I believe [company 21] was the forwarding company of [accused] to declare the goods to the customs authorities on his side.

12.18 an official report in relation to the deliveries of various chemicals to Iraq, official report number 20051010.0900 of the National Police Agency (KLPD) legally drawn up by the competent investigating officers on 14 October 2005. This official report includes, among other matters, the statements reproduced in the following copy of this report (F90 - pages 762 through 763):

[Illustrations 12.18

These copies have not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague), under the headline: 'Illustrations sentence criminal proceedings Van A'.]

12.19 an official report in relation to the barrels used of the National Police Agency (KLPD) legally drawn up by the competent investigating officers on 5 December 2005. This official report includes, among other matters, the statements reproduced in the following copy of this report (pages 1 through 18):

[Illustrations 12.19

These copies have not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague), under the headline: 'Illustrations sentence criminal proceedings Van A'.]

12.20 a general report, document code B4, of the National Police Agency, dated 14 October 2005, drawn up by the competent investigating officers. This official report includes, among other matters, the statements reproduced in the following copy of this general report (A/B, supplement dated 20 October 2005 - pages 227 through 237 and pages 249 through 252):

[Illustrations 12.20

These copies have not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague), under the headline: 'Illustrations sentence criminal proceedings Van A'.]

12.21 a document, being a certified Dutch translation of a report in the Japanese language drawn up by a Japanese police officer on 10 June 2005 in Tokyo (Japan) concerning the export restrictions regarding the precursors of the chemicals. This report, among other matters, - rendered in a compact way - includes the following statements (H 106b - pages 609 through 612):

I hereby report to you the results of the inquiry into the amendments made in the Japanese national legislation concerning the export restrictions as to the precursors for the production of chemicals: "Partial amendment of the Administrative Policy on Export Trade", issued on 27 July 1984, commencement date 3 August 1984. Our country is against the use of chemical weapons in conflicts between Iran and Iraq. In order to discourage the deployment of chemical weapons various countries have been consulted. Based on the reports drawn up by the United Nations investigation team, the national law has been amended to ban the export of 6 substances that can be used as precursors for the production of chemical weapons, that are allegedly deployed in the armed conflict between Iran and Iraq.

The national law of 1984 provided that in case of export of restricted goods an authorization should be requested from the MITI. The government regulation (Administrative Policy on Export Trade) determined the goods to be restricted. Therefore the person who wanted to export those 6 substances that had been restricted to Iran or Iraq was obliged to request an export license from the Minister of the MITI. Apart from that, by means of an explanatory memorandum to the implementation of the Act relating to the Administrative Policy on Export Trade, they notified that the issuance of such an export license "would be stopped", which actually prohibited the export to those countries.

12.22 a document, being a Dutch translation of a Technical Bulletin written in the English language (H10 - page 8598) issued by [company 13], that - rendered in a compact way - states the following:

Technical Bulletin No. 23 [company 13]
Thiodiglycol (Thiodiethylene Glycol)

Handling precautions

Thiodiglycol must be handled with the usual precaution for chemical products (same as Ethyleneglycol). Never place Thiodiglycol close to Hydrochloric Acid. (Chloroethylsulfid is formed: mustard gas).

Examples of applications:

Wool : Thiodiglycol 20 - 50 gr.
Nylon : Thiodiglycol 20 - 50 gr.
Acrylic cloth : Thiodiglycol 20 - 50 gr.
Silk : Thiodiglycol 20 gr.

12.23 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8586) from [witness 92] to [accused] on 1 September 1984, that - rendered in a compact way - states the following:

Attn: Mr. [accused]
01/09/84
from: [witness 92]

Dear [accused],

subj.: TMP Letter of Credit issuing

[Literally] "Also, we have a duty to make report to our Ministry of Industry and Trade Institute (Central Government) that where the Tri-Phosphite is going to be shipped out. And the final usages as like as DDT. At least you can tell me the destination. Because Japanese government is worry about these material can make a poison gas or gunpowder. So, I like to suggest you that these material will be consumed by insect-killing medicine like as DDT and pls telex to me the end user's name and unloading port (I am ok that you can tell us a necessary lie)".

Best regards,
[witness 92]

12.24 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8549) from [accused] to Mr. [witness 112], President of SEORGI, with a copy to Mr. [witness 36], dated 3 September 1984, that - rendered in a compact way - states the following:

[...] 3 Sep 84
Attn: Mr. [witness 112], President of SEORGI

Copy: Mr. [witness 36]

IMPORTANT: Japanese government needs to know destination and usage of TMP. Therefore the mill suggests that we declare that TMP will be used as insect-killing medicine like DDT and make a necessary lie for the end user. My personal suggestion is to declare "fuel additive" as discussed before and final destination Trieste, Italy.

Pls. advise.

Best rgds.
[accused]
[company 4] SING

12.25 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8585 top of page) from [name] to [accused], dated 11 September 1984, that - rendered in a compact way - states the following:

2229 [...]

No. 3806 11.9.84

Tlx no. 24884 [company 4] Singapore

Yr ref.: Telex [...] 024 DTD 3.9.84
attn. Mr. [accused]

Subj.: TMP shipment

Re your telephone conversation on 11.9.84 we contacted our bank to open Letter of Credit as required and they suggest the following:

Because your suggestion is final destination to be Italy, the L/C will be opened as follows:

From Japan to Italy by sea. In this case the following is needed: invoice and bill of lading.

And from Italy to Baghdad (as new L/C but related directly to the first one) by truck via Turkey. In this case invoice and FCR are needed.

The second L/C is just to cover the transport charges. Your immediate reply is urgently needed before action is taken by Central Bank.

12.26 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8551) from [accused] to [witness 92], dated 26 September 1984, that - rendered in a compact way - states the following:

From: [initials accused] Singapore
To: [company 9]
Subj.: TMP

End user is not my client. Client's name is [company 22] in Switzerland. It seems that they have very good connection with French/Italian consortium who are supplying HF for replacement of catalysts for linear Alkyl Benzene plants they have built all over the world. So honestly do not know exactly where it will go, but it seems there are two likely possibilities: (1) Yugoslavia and (2) Egypt.

12.27 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8585 bottom of page) from [witness 92] to [accused], not dated, that - rendered in a compact way - states the following:

[company 4] SING
attn. Mr. [accused]
[witness 92] in Houston
Subj.: Thiodiglycol

We found 4 manufacturers in Japan. But only one mill can offer to you, the others are too small. However it is necessary to get an export license from our government. This material is very easy to change for the production of poison gas. You have to disclose the name of the end user (you can tell me a necessary lie) and final destination.

Price indication as follows:

Quantity 16 M/T monthly, 220 kg per drum - 73 pieces - 16.060 FOB Kobe/Osaka
Price USD 1,450.00 per M/T

The official offer will be done after you disclose the end user's name and country. Mid-East is not available.

Best regards, [witness 92]

12.28 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8606) from [witness 92] to [company 12] - Singapore, dated 15 November 1984, that - rendered in a compact way - states the following:

Attn: Miss [name]
Nov. 15, 1984
[company 12] - Singapore

Dear [name], [literally]

Please kindly tell your boss my great appreciation and also I am awaiting for his comments next items (caustic soda and PCL3, POCL3). Otherwise DMMP is concerned, it is very difficult to find out mill in Japan. But now there is only one producer in North East Japan.

However, this producer said the buyer should be inform the final usages of DMMC, because they are worry about to use a raw material as to make poison gas. As soos as you can let me know the usages of DMMP, I will be able to obtain offer from producer.

Best regards, [witness 92]

12.29 a document, being a Dutch translation of a telex message written in the English language (H10 - page 8668) from [accused] to [company 4] - Rome, dated 3 May, that - rendered in a compact way - states the following:

03/05 (the court understands: 3 May 1987)

from: [initials accused] Switzerland
to [company 4] Rome
attn: Mr. [name]

Dear sirs,

In answer to your telex dated 29/4/1987, it is our pleasure to herewith inform you as follows:

[Literally] < We can assure you our efforts are continuous and [company 4] 's name is with regular insistence circulating within the oil-ministry's related companies. It is also clear that any business generated or contacts for or on behalf of foreign companies are very much personalized in Iraq and therefore any real opportunity coming up under the present circumstances will let our prospective client immediately think about [company 4]. Mostly because of the fact that notwithstanding Iraq's enormous difficulty, [company 4] has in that period continuously demonstrated to be interested to do business and did not, as many others obviously did, disappeared from the scene. I would like to comment that [initials accused] contacts are at the highest level you can ever reach.>>

12.30 an official report of a witness examination on 30 May 2005, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in the court of The Hague, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate by [expert-witness] (GI.I - pages 753 through 768, RC-file - pages 61 through 76):

(2) I now work for NATO in Brussels. My department is in charge of the defense against mass destruction weapons and gives advice about how to combat the proliferation of those weapons; (3) You ask me about my work at UNSCOM. In 1990 the Gulf war broke out. After that UNSCOM was constituted. In 1992 I worked in Iraq for six months, where I was involved in the destruction of arms in Iraq itself. In 1993 I worked for eight months in Iraq as leader of the team that destroyed weapons. After that I became one of three 'chemical advisors' of the UNSCOM management established in New York. (4) You ask me about the FFCD. Checking the data from the FFCD was done by using various methods. In the first place we received information from intelligence services of NATO countries. In the second place local inspections were carried out, for instance with respect to the accounts.

You ask me how that information was checked, for example regarding the ammunition that had been shot off. That can be checked based on the imported quantities. It is possible to establish quite accurately how much has been delivered. Furthermore we knew how much ammunition was left and then you can subtract that number. Moreover, in 1998 the 'Air Force document' was discovered at the headquarters of the Iraqi Air Force, which contained the total of aircraft bombs that had been deployed per year. With those figures we were able to compare the Iraqi figures. Furthermore the members of the Security Council provided a lot of information as

well.

(5) You ask me about the reliability of the figures from the FFCO. During eight year a total of 2000 inspectors pursued these data. Soon it appeared that Iraq did not disclose all information and that they obstructed the inspections. In their first report they only provided information that we had known already for a long time. They soon admitted the existence of their sarin and mustard gas program, because it was known that these had been used during the Iran-Iraq war. This information had been established on account of soil samples. Iraq tried to hide other programs, like the VX program, the biological weapon program, the nuclear program and parts of the missile program. The tabun program became known rather soon. Iraq did not succeed in producing this chemical in the right way, and subsequently switched over to using sarin. This first report only contained six or seven pages; the final FFCO is a complete book.

(6) UNSCOM especially wanted to know the history of the weapon program. Such a history is a logical story. Once you have that, you are able to discover the gaps. At first Iraq did not want to disclose it. For that reason there are approximately seven versions of the FFCO. The FFCO of 1995 gives a clear picture of their weapon program in relation to mustard gas and tabun. Most doubt remained regarding the VX program.

(7) I am convinced that regarding mustard gas, sarin and tabun, Iraq has tried their best to report in an honest way. Iraq no longer had a reason to remain silent about this program. Iraq wanted to get rid of the UN inspectors as soon as possible, in order to protect other programs, like the VX program.

(9) We made a complete study of the entire chemical industry of Iraq. The inspectors visited literally every factory. You must know that practically all chemical plants in Iraq were imported and assembled by the suppliers. They were not designed independently in Iraq. The factories for the textile industry had been completely imported and assembled by the suppliers as well. This implies that the raw materials for those factories, like printing ink for the textile industry, were purchased at a high level. When I say at a high level, I mean close to the end product. Iraq did produce materials, by which I refer to combining raw materials. Iraq did not carry out synthesis, by which I refer to the production of chemicals. At that time Iraq itself was technically not capable of producing ink by using TDG. I must add that this would not have been useful from an economical point of view. Iraq had a small textile industry. So it was much cheaper to import this product completely. By the way, with 200 liters of TDG you can produce a warehouse full of textile. You ask me if it is completely inconceivable that in the eighties TDG would be used in Iraq as 'textile additive'. Yes, that is completely inconceivable.

(17) You ask me about the applications of TDG on the world market. I made an inquiry on that subject on behalf of the OPCW. In 1988 three to five thousand metric tons were traded in the world on a yearly basis, in relation to a total production of four to six thousand m/t. Approximately 70% of the production is used directly by the manufacturers to produce an end product like printing ink. There are also some other minor application possibilities. TDG is exported, but in quantities less than a hundred metric tons a year.

(18) In 1988 there were an estimated 10 TDG producers in the United States, three in Japan and two in Germany. In those times there were respectively 40, 30 and 25 companies that used TDG. Approximately 100 companies depleted a maximum of one metric ton per year. About 30 companies a total of one up to ten metric tons a year. Only a few companies would use more than 10 m/t a year. Among other applications, TDG is used for the textile industry,

ink, copy machines and some other small applications. Some 10% is used for coatings, lubricants, stabilizers, metal plating and elastomers.

(19) You ask about the benefit margins for TDG. TDG is an organic specialty chemical. It is a rather exotic product. The TDG production is relatively small. This kind of product has a large benefit margin. (22) We did not encounter one factory in Iraq that was equipped for the production of textile dye or printing ink. These substances would always be imported. (23) I can confirm that all factories have been visited. You must understand there was no private initiative in Iraq; everything was arranged at government level. We carried out inspections for eight years. I dare say that we inspected 99% of all factories.

(25) You read to me item 35 of the statement made by [witness 18] on 11 April 2005. You tell me that from this answer you could conclude that there was some industry in Iraq that used TDG. I don't think that is possible. Iraq had a substantial textile industry, but no dye-houses. The public prosecutor asks me whether I think it is not possible that there were industries using TDG, or that I know this for sure. It is impossible that there were industries using TDG. The counsel for the defense asks me how I can be so sure, since not all 100% of the factories were visited. We did not find any indications for the use of TDG in all factories and workshops that we visited, nor in the administrative documents that we inspected.

You ask me about the production process of mustard gas. In Iraq mustard gas was produced in two ways. They started by making a combination of TDG and SOCL₂ (Thionylchloride). Later on SOCL₂ was also used for the production of sarin and VX. This chemical was saved for that purpose and then they switched to PCL₃ (phosphorylchloride). Then it showed that they had better production results with PCL₃. For some time they used the two chemicals together. When they transferred to sarin, only PCL₃ was used.

(27) The mustard gas had a high quality, especially when they started using PCL₃.

(30) The production of mustard gas with PCL₃ started around 1984/1985. The production of mustard gas caused many technical problems. For that reason double production lines had been built at MSE. In this manner, malfunctions in one line could be taken care of by using the other. The other method to avoid deterioration of the precursors was to use them as soon as possible. This appeared not only from the configuration of the factories, but also from the numerous interviews I had with production workers during those eight years. Especially PCL₃ was used as soon as possible. The production of mustard gas with PCL₃ started around 1984/1985. It appeared that the use of TDG in combination with PCL₃ in the production process applied by Iraq, had great results in

fighting contamination. (32) You ask me where they produced mustard gas. From the beginning of the eighties Al-Muthanna State Establishment was the only production plant for mustard gas. MSE was north of Baghdad. When you drive from Baghdad to Faluja, there is a lake north east of Faluja. MSE is located right underneath. It was also close to Samarra; at first it was also referred to as Samarra.

(35) You ask me about the difference in sound between the explosion of a conventional and a chemical grenade. The chemical grenade has 50% less explosives, since it only contains explosives in the buster tube. So therefore the sound of the explosion is much less than the sound of a conventional grenade. This is even more so in the case of aircraft bombs, where the difference between explosives is maybe a factor 500. The aircraft bombs were intended for the use of napalm or white phosphor, and also liquids. For that reason the aircraft bombs were fitted with a refill plug; MSE had what they called the graveyard, where they stored failed poison gas or supplies of poison gas that did not quite meet quality standards. If the supplies of good quality poison gas had run out, they would draw from these stocks. They would sometimes mix up bad quality poison gas with a better quality. The afore mentioned graveyard contained far less mustard gas. (37) You put it to me that witnesses testified about a white/grey smoke or mist. The explosion of the buster tube causes enormous pressure inside the bomb. This pressure makes the skin of the grenade burst open and at the same time it makes the liquid spread like some sort of mist. If a relatively large quantity of explosive material blows up, a green cloud will appear. The better the combination between explosive

material and combat gas, the lighter the color of the cloud. Mustard gas has a dark color, the cloud that appears is grey. The better the quality of mustard gas, the lighter the cloud. (38) You ask me what mustard gas smells like. Mustard gas had a very sharp scent. It is often associated with mustard, garlic or onions. I can confirm that from my own experience. The smell of sweet apples or fruit is more associated with nerve gas, like tabun. This is not from my own experience. Perception of nerve gas immediately causes harm. (44) You ask me about the ammunition that was used for mustard gas. It was used above all in 155 mm artillery grenades. They also used 122 mm katousjka-like ballistic missiles, but very few. These were used more often for nerve gas. The aircraft bombs were mainly of the AB250 and AB500 types. We also found some 750 gauge bombs.

(49) You put it to me that some say that Iraq also used cyanide for its attacks. That is highly unlikely. Since it is almost impossible to achieve such a high concentration of cyanide in open air for it to be lethal. Moreover cyanide is lighter than air, so it is very hard to bring it to the ground. Cyanide operates super-fast, but only in isolated spaces. It is useless to put it into bombs. The victim of cyanide poisoning will suffer immediate and massive lack of oxygen, will turn blue and drop down dead. The defense counsel asks me about the term 'blood gasses'. I don't know that term. The Dutch term 'bloedgassen' is an old fashioned term to indicate cyanide. I do know the term blood agents. That is also an old term for cyanide. The right term is TIC, Toxic Industrial Chemical. The chemical designation for cyanide is HCN gas.

(50) You tell me that two expert-witnesses, brought before the court by the defense, have stated that victims died in Halabja from cyanide. I'm telling you that, based on the symptoms on the victims, it is also possible that they died from tabun of poor quality, because Iraq produced tabun with a high salt percentage. The salt had to be centrifuged from the chemical, but often this centrifuge was out of order; 30% of the bomb would be filled with salt that contained cyanide.

Tabun is a nerve gas, of which the active group is the cyanide group. For sarin this is the fluorine group and for mustard it is chloride or sulphur. After using tabun, salt containing cyanide remained on the ground in the shape of a white powder. If that salt gets into contact with liquid, subsequently hydrogen cyanide will be formed. Therefore, a detector that is held above this salt will register hydrogen cyanide, which will not be the result of the use of cyanide, but of the use of tabun. The symptoms on victims of tabun are red eyes, constriction of the pupils, respiratory problems, convulsions, spasms, foam around the mouth, secretion of saliva, having problems keeping one's bowels closed, running nose, but also cyanide-related problems like turning blue. The similarity with cyanide poisoning is that in case of a high dosage, death will occur in a few seconds. However, tabun is less volatile than cyanide and can therefore be used in open air. Based on literature research, I only know of a few deadly victims in relation to the use of cyanide in open air during the First World War

(51) People who touch or ingest the remaining salt, will show symptoms of cyanide poisoning, but the difference between cyanide and tabun poisoning is hardly noticeable for a layman. If the victim suffered from convulsions, this indicates tabun. A sudden death without foam around the mouth or something like that would indicate cyanide, but not necessarily. When a victim of a nerve gas attack survives the first ten minutes, then he will survive anyway. So when a victim is injected antibodies against cyanide and shows a positive reaction to them, this does not mean anything. He would not die anyway. The immune body atropine itself also causes side effects.

(56) You ask me about the effect of mustard gas on people. Mustard gas affects the tissue, by alkalization. That is a reaction with nucleophile spots in the proteins, DNA and RNA, in other words the spots that are susceptible for this effect. It produces an irreversible change in all tissue types, an irreparable damage. A second effect is that mustard gas destroys the substances that protect the body against free radicals. Visible symptoms are blisters and

burnt skin. In the worst cases this looks like third degree burns. At first the humid parts are affected, like eyes, arm pits and genital areas. Not only tissue is damaged beyond repair, but also the cell nucleuses are affected. This leads to mutations, that potentially can cause cancer. Therefore there are also long-term effects, sometimes even after ten years. In the long run the bone marrow might be affected for example.

(57) Immediately after exposure to mustard gas, the skin can still be disinfected. However mustard gas has a retardant effect, the first effects only show after hours or days. At first there will be eye problems. Also the lungs

are affected. Especially in a warm climate, mustard gas can build up fluid in the lungs, as if you were drowning in your own lungs. Because of the heat, not only drops of mustard gas are formed but also mist, which makes its effect even stronger. In the long run lung problems might still rise, even after twenty years. Alveoli constitute very delicate tissue that are also affected in the nucleus. Through the process of alkalization the alveoli have been permanently damaged and consequently their regenerative capability has deteriorated. The external manifestation is therefore similar to asthma. It is also referred to as broncholitis. I do not know whether the consequences of exposure to mustard gas are also transferred onto the next generation.

(58) You ask me about the effect of the air temperature on the formation of mist from mustard gas. This depends partly on the additives in the mustard gas. Globally speaking, above 20 degrees Centigrade the risk of inhaling mist increases exponentially.

12.31 the statement made by expert-witness [name] during the court session of 28 November 2005 that - among other matters - reads as follows:

FFCD means Full Final and Complete Disclosure and contains a declaration made by Iraq to the United Nations. The first version consisted of one page, the last version of tens of thousands of pages. In the course of time these reports became more refined.

You put it to me that the case file holds a copy of the FFCD of 1995, but that other copies were published in 1996 and 2002. That is correct. The 1995 copy is reliable, because the versions that were published later on did not include any new information. Some documents were inserted to sustain other information. Some data were added regarding VX gas, but those data are not relevant for this case. You tell me that it was always assumed that they used the 'blister agent' mustard gas. You ask me if there are any indications of the use of the 'blister agent' lewisite, that is composed of other precursors. I have not found such indications. I did come across lewisite in an other form. As opposed to mustard gas, lewisite has a direct effect. There is no evidence at all that lewisite was available in Iraq.

You ask me what is known about the involvement of the Iraqi government with respect to the delivery orders and the usage. These operations took place at two levels. The first, lower, level was in charge of the preparation and made use of typed documents. Subsequently these documents would be passed on to the second level, where they would only use handwritten documents, of which only 2 or 3 were discovered. Furthermore at this level a lot of communications were passed on by telephone. So the documents found often are only related to the preparations, but they do show the control of the government over the entire procedure. You tell me that a certain percentage of the chemicals were not converted into mustard gas. Well, either they were wasted or destroyed. In my report I indicated that approximately 5% was wasted through leaking, 10 to 15% remains in the tanks after draining, and the same percentage stays behind in storage. This applies mainly to TDG, resulting in the fact that TDG is mixed with new raw materials.

You ask me if the mustard gas that was stored in 20 to 45 ton tanks was used as basis for the filling of ammunition. That is correct. You ask me to what extent the tanks were empty. It is hard to give an estimate. The annual reports only mention the totals and the stock at the end of that year and they show that in December 1988, 50 metric tons were still in stock. You ask me the same question, but now in relation to annual reports for the years 1985, 1986 and 1987. You tell me that the chemicals supplied by [accused] were used to produce at least 800 tons of mustard gas, which actually ended up on the battle field and you ask me if it is correct that this mustard gas was either supplied to be deployed or has been detonated, but in any case was not returned to MSE. Indeed, that is what happened. If the ammunition filled with mustard gas was not deployed, then it would be returned to MSE. Then the numbers were adjusted. When it had been delivered, then it ended up on the battle field and would not be returned to MSE. You tell me that my conclusions lead to estimates and ask me if the most logical estimate is that half way 1985, the mustard gas that was used on the battle field, had been produced from raw materials supplied by [accused], and that from 1985 TDG was only supplied by [accused]. As far as we know this can indeed be concluded from reliable documents.

Subsequently you put it to me that in my report I presented the most extreme scenario, which refers to the circumstance that all other precursors were depleted. In this scenario ammunition was used on the battle field, in any case as of December 1987, that was exclusively filled with mustard gas produced with TDG supplied by [accused]. You ask me why I did not state a percentage. When we made this report we were pressed for time. I wish to add right away that this does not impair its conclusions. After this report had been published, I still found two relevant documents. These documents, that are not included in the report, show that the stock of TDG that was found after the Iran-Iraq war is not the TDG that had been supplied by [accused], for there are strong indications that stockpiling was common use.

On 20 December 1988 an inventory was made of all warehouses. Special committees were appointed to inspect these warehouses. Because of those documents states the names of the persons that were part of those special committees, I cannot simply hand them over to you. The other document is a stock-taking list. This list shows that all precursors were stored in warehouse 1. The only substance found was TDG, a total of 1900 barrels of 25 kg. each, which implies that after the war approximately 48 m/t of TDG were still available. So now the question is, where did these 25 kg. barrels come from. I think these date back to the time that free trade was still possible. Subsequently I assume that the large barrels were used before the small barrels, and that they were stored in the warehouse. This also argues in favor of the mixed scenario. From this it can be concluded that the TDG that was left had been supplied by others and that the TDG that had been supplied by [accused] had been completely used up. You ask me to give an estimate as to when it is most likely that they started to use ammunition on the battle

field, filled with mustard gas produced with chemicals supplied by [accused]. In all probability that must have been mid 1985. They had many precursors, soccer fields full of them and that is why they were stored in containers. In the case of an air-raid alarm for example, these containers were taken from MSE and were parked somewhere in the dessert. If the threat was no longer present, the containers would be returned again. During this operation the order of the containers must have been changed. When it was deployed, they would use the first at hand. Therefore it is safe to conclude that they applied the 'first in first out' principle. You ask me if the fact that it occurred in some other way is to be excluded. I believe so.

You tell me that the first consignment amounted to 380 m/t. You ask me as well how much TDG supplied by others was still available in Iraq. This can only be calculated by using the most extreme scenario. When you look at chart 5B on page 35, I think not more than 1000 metric tons had been supplied by others up to 1986.

The senior judge tells me that in my sixth main conclusion I outlined a scenario that implies that in any case as of December 1987 ammunition exclusively filled with mustard gas produced with TDG supplied by [accused] would have been used on the battle field, and subsequently asks me whether if the time lapse between July 1987 and December 1987 could have been a period of production and transport. The conclusions stated on page 6 of the report have been calculated based on figures. Next a statistician made his calculations keeping in mind an error margin. The conclusions on page 6 are based on the starting point

that the same quantity of mustard gas was produced each month. We are not sure though, that is a statistical approach. To the question put to me by the presiding judge, at what time, according to the most probable scenario, the precursors supplied by [accused] must have formed a real contribution to the mustard gas that was used on the battle field, I answer that it is not possible to answer that question. In that case you should proceed on the assumption that the quantity that was supplied, 1100 metric tons, was depleted before the war.

Subsequently you should start calculating backwards, which will take you to the extreme scenario. The only thing you know is that everything had been finished. Than you end up in May 1987.

In August 1988 all stocks were exhausted. I myself tend to believe the most likely scenario. To the question of the senior judge as to the difference between the scenario that assumes December 1987 and the scenario that assumes May 1987, I answer that in the first case the TDG of others was finished first and in the second case the TDG supplied by [accused] is finished at the end of the war. That is based on the snapshots.

The senior judge tells me that this was the situation in December 1988 shortly after the war, and that the charges still mention an attack that was carried out after the war had ended, and subsequently asks me if that can be of importance. After August 1988 the P8 factory was no longer operative, but they still had a stock of 50 m/t of mustard gas. So they drew from the stock that was still available. The junior judge puts it to me that the situation in December 1988 was similar to that in August 1988, unless mustard gas was destroyed, and asks me if it is possible that it was used up. I answer this question in the affirmative. To the question of the junior judge if UNSCOM actively looked for other industries that used those raw materials, I answer that they did so indeed, and that this inquiry showed that Iraq was not capable of producing anything else industrially.

You tell me that this chart also shows that in the period between 10 and 16 March 1988 approximately 54 metric tons of mustard gas were used up. This is around the time of the attack on Halabja. You ask me if it is most probable that this ammunition ended up in Halabja. Yes, that is most probable indeed. To the question if the sixth main conclusion changes, which means that the period is shifted forward when you start from the scenario that all TDG that was encountered after the war came from others, I answer that by definition this must be the case. The difference is not very significant, approximately four months.

You show me Chart III on page 6 of the attachments and ask me if it is correct that up to and including the first months of 1986, until the moment that they stopped the production, TDG was mixed with SOCL2. That's correct. The factory was brought to a halt, because they wanted to convert the production process; the mixture of TDG and SOCL2 was changed into TDG with PCL3. The production of mustard gas by mixing TDG and PCL3 started in the fall of 1986, approximately in December. The public prosecutor points out Chart 3 on page 25 and asks if it is possible to conclude from this chart that the produced mustard gas could be used fairly quickly for filling ammunition in the period between 11 February 1988 and 3 August 1988. Yes, that conclusion can indeed be drawn from that chart.

The public prosecutor asks me if at the time of calculating the production losses, they kept in mind the FFCO information that they had problems when emptying the 220 liter tanks. They used a factor 2,5. There are two sorts of losses, being the loss because Iraq used mechanical pumps in the production process and the loss caused by polymerization as a consequence of the production method. It is even a fact that the plant was closed periodically, in order to be able to substitute polymerized barrels. They calculated a factor 5 concerning this loss. They made a separate calculation for the losses that were suffered at one time, such as the loss of 30 tons in 1988. To the question posed by the public prosecutor as to why they sometimes represent the contents as 153 kg of mustard gas and sometimes 174 in relation to a 500 gauge bomb, I answer that this represents the difference in kilograms and liters. You tell me that it is said that at a certain moment TDG was used for the production process, that they had stocks and that they did not operate according to the system 'first in first out'. You also tell me that MSE had a buffer stock of 190 tons, and that this stock was mostly stored in 1 ton containers. You ask me if in the case of 1 ton containers, they did not use a 'first in first out' system after all. That depended on several things. During the production process they often carried out quality controls. They would first check the purity of the products, to which they applied an 88% standard. If it was a good batch, with a purity of more than 88%, and there was a need for it at that moment, in my view, these containers would immediately be used for filling up ammunition. If the batch did not meet the standard, then they would add other substances to mix. In case of good quality mustard, they would immediately put it in a bulk container, the

mustard that had been mixed was put in another container and the mustard that did not meet the standards in a third container. These were either 1 ton containers or they mixed them directly. At some point when the need was high it also occurred that they used inferior mustard. The bombs had to be deployed at once, because otherwise they would polymerize. The defense counsel points out to me that there was no strict 'first in first out' system, and that in the report they looked for a point in time when you could say that the mustard gas was produced with precursors that had exclusively been supplied by [accused]. In the most unfavorable scenario that would be at the beginning of August 1985. The report mentions several storage tanks that were appropriate for bulk storage and counsel asks me if I can preclude the fact that in August 1985 there were tanks that were not available at all for the production of mustard gas. No, I cannot. I cannot preclude either that some tanks were left behind. It is also possible that mustard gas was stored in tanks that were partly or completely empty. It is also possible that there were tanks that did not contain mustard gas produced with precursors from [accused] and even bombs without this mustard gas.

Counsel refers to page 6 of Attachment F and asks me to look at the PCL3 column in the year 1986, which shows that it was not 'processed' and by looking at this information he wonders if my conclusion that PCL3 was used in 1986 is correct. The time span in the FFCD, referring to the use and production of precursors, was handled less precisely than the consumption figures. After reasoning backwards it was concluded that PCL3 was processed in 1986. The defense counsel points out the chart on page 35, which should lead to the conclusion that 800 tons of TDG supplied by [accused] allegedly ended up on the battle field and asks me what this conclusion is based on. These figures are based on the orders placed by the army and have not been drawn from the FFCD. The figures that are mentioned in the chart regarding the use of the products, also originate from the army. There were 1825 tons of TDG from other suppliers; 1550 tons of usable mustard gas is produced, which corresponds to 1550 tons of TDG. Each year a minimum of 40 tons were used. If you make a calculation and go back to the 2364 tons of mustard in 1988, than it comes down to approximately 700 (metric) tons. That is the extreme scenario. Counsel refers to F40 and points out that if 2032 tons of mustard were deployed, minus the 1825 tons from other suppliers, which should actually be 1550 tons, then the difference between the mustard that was deployed and the TDG supplied by others should be 425. F40 and the 1995-FFCD start from a theoretical approach and calculation, without being aware of the exact figures. My report weighs all figures and applies corrections by using payloads and UNSCOM data. All data and figures have been weighed and studied all over again. F40 only looked at the question whether there was still TDG from [accused] left before the war ended. My report takes a better look at this issue, and instead of looking at the theoretical losses, it looks at the actual losses suffered by the Iraqi. The defense counsel points out the second main conclusion on page 6 of the report, which says 'in the most favorable scenario for the accused' and states that this implies an opinion and asks me why these words were used. As a starting point we used the moment that TDG supplied by [accused] ended up in mustard gas production and stocks for the first time. The later this took place, the less attacks could have been executed by using these chemicals. So the reasoning was, the sooner it took place, the less favorable for him, the later it took place, the more favorable for him. Counsel points out page 8, subsection 3.1, second paragraph, which states that 'the great majority of the mustard gas production took place in the P8 and asks me where the rest was produced. The start of the production was in the seventies up to 1982 in Baghdad. That's where the first 35 tons came from that were used during the war. This was produced with TDG from other suppliers. The P8 plant was not yet operational at that time.

Counsel points out the list on page 14 of the report, which is more detailed and it also congruent with the FFCD of 1995. Furthermore counsel points out page 21, subsection 4.4., second full sentence, and asks me what this is based upon. For the sake of completeness I would like to explain that here it says 1116 tons, while witnesses testified that 1400 tons had been supplied. These 1116 tons are based on 'shipping documents'. In 1990 an additional 700 tons were produced. They discovered more mustard than the FFCD had reported, so therefore additional shipments must have been brought in. This can not be precluded, otherwise the total numbers are not correct. I don't know if these extra 700 tons were supplied before or after 1988. We are only aware of 50 tons, which were still delivered after the war. Counsel points out to me that the L/C's described in the report originated from a list that was copied by hand and, when L/C's do not appear on this so-called Faisal-list, wonders if that does not undermine the conclusions of the report. The Faisal-list was used, but we also used data from the microchips of the Iraqi Bank. However this was not made public. I assume that in any case those microchips were complete. Of course it cannot be excluded, but it would be highly unlikely that payments were carried out in a different manner. So the conclusions are not only based on the Faisal-list. Assuming that the Iraqi Bank possesses all information, the data in the FFCD report are complete. Counsel asks if within the framework of the investigation, they also studied the possibility of Iraq having factories abroad to produce warfare. There were two rumors in relation to this option, one of which was investigated. This concerned the rumor about a country in Central Africa that had recently been bombed by the US. This inquiry did not have any results. No concrete information was found, nothing about combat gasses, nor the payment thereof. UNSCOM did not investigate the second rumor, for it had to do with other types of ammunition.

The defense counsel tells me that [witness 39] stated under item 7 of his testimony before the examining magistrate that there were other production facilities where mustard gas was manufactured. Yes, but not at the same time.

Counsel also points out what I stated before the examining magistrate with respect to tabun and the powder, salt, that was released and asks if this could be touched without getting injured. Indeed, this salt would remain behind after an attack with tabun, because Iraq produced very bad quality tabun. It consisted of 30% salt, which is cyanide salt. When this is put into contact with humidity, cyanide will be formed, which is a very toxic

substance. So it depends on the humidity level. The salt is harmful, you can become affected by cyanide poisoning. The afore said supports my conclusion that no cyanide was used during the chemical attack on Halabja.

12.32 the statement made by expert-witness [expert-witness] during the session of 05 December 2005, which - among other matters - reads as follows:

From the first L/C of 1985 it appears that 386 metric tons of TDG were delivered, but we are now talking about the second delivery of 163 metric tons of TDG in 1986. You point out to me that during the last interview we spoke about the fact that the production of mustard was interrupted in 1986, and that I stated that this was in the period between March and December 1986. Others speak of the period between March 1986 and January 1987. You ask me if therefore it can be concluded that the afore mentioned 163 metric tons of TDG, that were delivered in the first half of 1986, could only have been used after restarting the production after 1986. Yes, that conclusion can be drawn indeed.

12.33 an expert-report, being the report produced on 10 November 2005 by [expert-witness] on the amount of TDG supplied by [accused] which, among other matters, - rendered in a compact way - includes the following (RC-file - pages 1215 through 1387):

On 14 September the examining magistrate [.....] presented the expert-witness [name] with the following questions:

"Based on the case-file ("File"), can you establish a date as of which the mustard gas that was later on deployed by Iraq, must have been produced (completely) with TDG that had been supplied to Iraq by the companies [company 5] and [company 6].

If so:

1. Could you give a motivated indication of this date and tell us what extent of certainty is applicable;
2. Could you tell us which factors could still be of influence, causing that date to be placed backwards or forwards in time?"

After a first inventory was made of the "File", it appeared that in the documentation and witness statements that were included, different information sources mentioned different delivery periods for TDG supplied by [accused] to Iraq. The periods mentioned are between 1985 up to 1988.

After further analysis it also appeared that the question like it was put to me cannot be answered for a 100 percent. However according to a realistic scenario, a time table could be given according to the law of logics, as to from what moment in time mustard gas produced with TDG supplied by [accused] ended up on the battle field via ammunition, and from what moment this happened for certain. On both sides of this time table, the extreme but not realistic limits can be indicated that represent the ultimate points in time, when on the one hand ammunition deployed on the battle field that could not have been filled with mustard gas produced with TDG from [accused] and on the other hand when ammunition deployed on the battle field must have been filled with mustard gas produced with TDG from [accused]. These extremes have been pointed out in the summary.

According to the calculations in the file, 207 tons of TDG is theoretically the smallest possible quantity of TDG of the total quantity of 1400 tons of TDG supplied by [accused], which under the most favorable circumstances for the accused must have ended up in chemical ammunition, after this TDG had been processed into mustard gas (H). As working method it was decided to reconsider and judge all information available.

Main conclusions:

- As of September 1985 it is possible and, in a realistic scenario, probable that mustard gas produced with TDG supplied by [accused] was present in ammunition that was used on the battle field. In 1987 and in the first half of 1988, ammunition was filled and practically immediately deployed.
- In the most favorable scenario for the accused, which is also the most extreme scenario, in any case as of mid December 1987 ammunition exclusively filled with mustard gas produced with TDG supplied by [accused] was used on the battle field.
- TDG from [accused] that was produced in Japan, as well as in the USA, end up on the battle field, at least 800 tons of TDG.

The annual production figures for mustard gas, stated in the 1995-FFCD, sometimes (in 1986 - 1988) deviate from the annual production figures approved by UNSCOM and Iraq at a later date. The reason is a fine-tuning of the production time schedules, by which mustard gas appears to have been produced in a slightly different period than assumed earlier. The total mustard gas production in Iraq, as it was mentioned in the 1995-FFCD, largely corresponds to the figures of later dates.

The first method used one ton of TDG and two tons of Thionylchloride to produce one ton of mustard gas. The second method used one ton of TDG and one ton of Phosphortrichloride to produce one ton of mustard gas. From 1981 until mid-1986 Thionylchloride was used as the chloride component, and from the second half of 1986 they used Phosphortrichloride instead. The main reason for this change is that Thionylchloride became short in supply in 1986, partly because this precursor was also needed for the production of sarin and there was no alternative available. At the end of 1986, 2860 tons of Thionylchloride had been used up (including 508 tons for the production of sarin).

Pure mustard gas was often stored in 1 ton chloride gas containers. For mustard gas storage they also disposed of 5 units of 20 tons and 2 units of 45 tons underground storage tanks, that were used to protect mustard gas from bombardments. The tanks of 45 tons were part of the P8 factory. These were also used for bulk storage and for mixing batches of 2 tons, the purity of which had to be improved by adding other mixtures. For that reason they had a bulk storage capacity for mustard gas of a total of 190 tons. As opposed to the chloride tanks of 1 ton, these tanks were equipped with a ventilation system, by which the pressure of eventual polymerization could be reduced. Based on a realistic scenario it is possible that in this bulk storage mustard gas produced with TDG supplied by [accused] was mixed with mustard gas produced with TDG from other suppliers.

The usual procedure implied that the chemical ammunition ordered would be taken to the consuming unit on location a day before it was to be deployed and that the part of the ammunition that had not been deployed or shot was taken back to MSE.

Chart 1A. TDG supplies to Iraq according to the 1995-FFCD

[.....]

[.....]

[For technical reasons this chart has not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague) under the headline: 'Illustrations sentence criminal proceedings Van A'.]

Chart 1B. Partial supplies by [accused] to Iraq under L/C 85/31579 according to ref.F90

[.....]

[.....]

[For technical reasons this chart has not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague) under the headline: 'Illustrations sentence criminal proceedings Van A'.]

According to reference F90, based on the 2 Letters of Credit, from June 1985 until May 1988 the total quantity of TDG supplied in partial shipments by [accused] to Iraq amounted to a minimum of 1116 tons. The annual quantities have been divided as follows: 193 tons of TDG in 1985; 193 tons of TDG in 1986; 267 tons in 1987 and 364 tons in 1988.

In the chart below a comparison is made between the information made available by different sources in relation to the quantities of TDG that were supplied on a yearly basis. The figures printed in bold in the chart relate to possible deliveries made by [accused].

[.....]

[.....]

[For technical reasons this chart has not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague) under the headline: 'Illustrations sentence criminal proceedings Van A'.]

The conclusion is that of the total of 1400 tons of TDG mentioned in the 1995-FFCD as being TDG that had been supplied in or after 1989 by [accused], it has been established in any case that a minimum of 1116 tons of TDG were supplied by [accused] to Iraq between June 1985 and March 1988.

Chart 5B. Presented by year and by annual totals: the numbers and type H ammunition produced, the total of the joint ammunition payloads, the quantities of used up H ammunition with the help of the FFCD / UNSCOM / MSE 88 and F90 figures.

[.....]

[.....]

[For technical reasons this chart has not been included here, but will be placed (soon) on the page: Current Affairs (at the Court of The Hague) under the headline: 'Illustrations sentence criminal proceedings Van A'.]

From these charts it can be concluded that in the extreme model the 1550 tons of usable mustard gas produced with TDG from other suppliers, and filled with usable ammunition, had been depleted at the latest around July 1987 and that after that date only mustard gas is used that was produced with TDG supplied by [accused]. The moment that they started to only use ammunition on the battle field filled with mustard gas produced with TDG supplied by [accused], must have been at the latest somewhere in the first half of December 1987. The other conclusion is that both the TDG produced in Japan as well as part of the TDG produced in the United States, that both formed part of the supplies made by [accused], ended up on the battle field, because a minimum of 800 tons of TDG supplied by [accused] finally ended up on the battle field.

12.34 an expert-report, produced on 03 December 2005 by [expert-witness], being an addition to the report regarding the amount of TDG supplied by [accused] dated 1 November 2005 which, among other matters, - rendered in a compact way - includes the following (RC-file - pages 1 and 2):

Based on two documents, which probably both formed part of an inventory report dated 20 December 1988, the conclusion can be drawn that on that date 1953 barrels containing 25 kg of TDG each were stored in "Warehouse 1" (warehouse no.1), rounded off a total of approximately 49 tons. From the documents it can also

be concluded that the location "Warehouse Number 1" was the only place where TDG was stored in Al-Muthanna State Establishment (MSE).

From all this information it can be concluded that the TDG that was left after the war cannot have been supplied by [accused], because [accused] never made deliveries in 25 kg barrels. Then that leads to the conclusion that the TDG supplied by [accused] must have been used up in the mustard gas production, as far as it concerned the TDG that had arrived before the end of the hostilities in Iraq. In relation to [accused] this means 1117 tons of TDG. An additional conclusion seems to be as well that the "mixture-scenario" is most likely. The "third" scenario assumes that, because of the fact that the TDG supplied by [accused] was depleted at the end of the hostilities, it is possible to calculate when the TDG of [accused] was used at the latest in the production of mustard gas, which is based on the TDG usage calculated by UNSCOM; 506 tons of TDG were processed in 1988. Starting from 1117 tons of [accused] it appears that in 1987 still 611 tons of TDG of [accused] were left based on a total use of 922 tons of TDG. Assuming that an average of 77 tons were used each month in 1987, this implies that TDG supplied by [accused] was processed as of 01 May 1987.

12.35 an official report of a witness examination on 17 November 2004, drawn up and signed by [.....], examining magistrate in charge of criminal proceedings in the court of Arnhem, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement made to the examining magistrate on 17 November 2004 by [witness 18] (G18.I - pages 231 through 241): As a professional service man in 1981, I was in charge of the quality control of, amongst other matters, mustard gas.

12.36 the official report of the witness examinations on 11, 12 and 13 April 2005, that were drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 18] (G18.II, III and IV - page 391 through 404) there were made on 11, 12 and 13 April 2005:

(5) I was head of the team that set up the Full Final and Complete Disclosure (FFCD). I studied chemistry in England from 1985 through August of 1985. During this period I did not get in contact with employees of MSE. You ask me why I still know so much about what happened in Iraq during that period with regard to the chemical weapon program. I tell you that this is because in 1991 I was appointed as head of the Iraqi team that participated in the UNSCOM inspections. I was there from the beginning when the first commissions and inspectors started their work. (31) When I returned in 1988 I became director of quality control. [Name] was general director of MSE at the time. He succeeded [predecessor general director] in 1987. I worked with [predecessor general director] until 1985.

(6) You ask me about the trustworthiness of the figures in the FFCD. I tell you that the information in the FFCD has been examined by the inspection teams. They have also contacted the suppliers of the raw materials. They were especially interested in the amounts of the substances that had been delivered and not particularly the period in which they had been delivered. For the investigation it was not important who had delivered them. The figures of the FFCD are true for at least 80%. You ask me whether they are partly untrue. In my opinion the FFCD is based for 80% on documents and for the rest on people's memories. So the FFCD figures are for at least 80% true. I can add that the FFCD figures have been examined and approved by the ISG headed by [name].

(7) You ask me whether all suppliers cooperated. I was the director of a group of 20 people who set up the FFCD. When we knew that someone was involved with supplies in Iraq, we summoned him. [Accused] has been summoned this way as well.

(8) You ask me whether it was difficult to acquire TDG. That was very difficult. Companies are always alerted. It was very clear that TDG was used for military purposes in 90% of the cases and in 10% at the most for civilian purposes. That became known around the middle of 1984, because the Australians had warned about the 'double use' of TDG.

(13) 1 ton of mustard gas can be produced from 1 ton of TDG and 1 ton of PCI3.

(20) You ask me whether I make a guess of how many persons in total have been heard by the plenary UNSCOM commission in the same way as [accused]. There must have been hundreds. First the executives were heard, after that the people under them. At one point I got a list of 40 people of whom I did not know the names. Those appeared to be drivers. Two of the suppliers were heard, [name] and [accused].

(2) You suggest that I stated yesterday (paragraph 10) that I received a handwritten document from [accused]. You ask me whether I still have that document. No. You ask me whether this is the only handwritten document that I got from [accused]. Yes. You show me p. 116 of the FFCD. You ask me which part [accused] has written. He has written points 1 and 2, from "this information" has been written by me. You ask me whether the handwritten note of [accused] has been added as an attachment to the FFCD. It was not an attachment but it has become a part of the FFCD.

(14) You show me the chart on p. 262 of the FFCD. It shows that in 1990, 280 tons of TDG were used for the production (processed). You ask me if it can be determined from the FFCD when the raw materials were purchased and who supplied them. These 280 tons of mustard gas had been produced with the most recently purchased consignments of TDG.

They were purchased in 1987. All bulk shipments further on in the 80's were supplied via a Letter of Credit. So more than 95% of the shipments can be traced back to a Letter of Credit. You ask me again whether TDG was

supplied without a Letter of Credit. What I told you before about the small amounts of TDG that had been paid for in cash, that is an example of how it may have happened. I don't know that for sure. Now that I look again at the summary of the Letters of Credit on page 119 of the FFCD, I say to you that it looks like all shipments of TDG took place via a Letter of Credit. This is 'to the best of my knowledge'.

(14) You ask me whether it is correct that they never kept large stocks of TDG during the 80's. That is correct. The amounts of TDG were processed very quickly in the 80's. The TDG that was supplied after '88, on a Letter of Credit of 1987, was kept longer because after the war ended in August 1988 the production was ceased. You ask me for how long TDG can be kept. That is at least ten years. You show me my statement at the examining magistrate's office, page 8 at the bottom and page 9 at the top. What is written there is correct in itself. After delivery at Al-Muthanna the TDG was processed in between some weeks and some months, not in between some days and some weeks. The processing took place based on orders.

(17) You ask about the minimum shelf life of mustard gas. We did not just produce mustard gas. It was only made to order. You ask me whether this means that the mustard gas that was produced also was used quickly. That is correct. The production of mustard gas does not take more than 1 day. Filling the ammunition takes a bit longer because it has to be done by hand. The production of mustard gas for let's say 1000 artillery grenades, which means three and a half tons, takes 2 days at the most. Filling the grenades takes about a week. Filling the aerial bombs is quicker because they take larger quantities. Mustard gas can be kept longer in bulk containers than in ammunition. You ask me whether all mustard gas that was produced was used to fill up the ammunition or if a part was also kept in bulk. I say to you that mustard gas was also kept in containers of generally 1 ton. We showed these containers to the inspectors. You ask me whether filling the ammunition also happened to order. Yes, that is correct.

(22) You ask me whether all the mustard gas that was produced with SOCL2 was used to fill the ammunition. I say to you that one can deduce this from the chart on p. 262 and the chart on p. 263 of the FFCD. All mustard gas that was produced with SOCL2 had been used for filling in 1986 at the latest. As I said earlier, the old stock was used first. This means, with respect to the artillery grenades, that these stocks were finished in the course of 1987. This is an example with regard to artillery grenades. This same calculation can be made with respect to aerial bombs. You say that the artillery grenades that were used in 1988 must have been filled with the mustard gas that had been produced with PCL3. That is correct. Mustard gas that had been produced with PCL3 was finished in 1987.

(23) You ask me whether the filled ammunition only went to the special units if they were actually deployed. That is correct. You ask me if in the case of the chemical weapons also the oldest ammunition was used first. I tell you that filling the ammunition happened to order. The ammunition that was not used did not remain with the special units, but it was returned to MSE. For example, if 50 grenades had been returned and the next time there was an order for 200 grenades, then the remaining 50 were used for that order, in as far as they were still suitable to be used. You tell me that I stated that in general a system of 'first in, first out' was used for that. You ask me whether there was a fixed system, or rules. No, there were no rules for that purpose.

(30) You show me page 229 at the bottom and page 230 at the top of my second statement. This is referred to on page 238 of my statement before the examining magistrate in November of 2004. You ask me what is meant by 'bottleneck'. From 1986 onwards there was no more demand for POCL3. So that was not a bottleneck. This was different for TDG. As soon as TDG arrived it was taken in production within a few months.

(3) You tell me that on page 217 (G 18.1) I stated that if there was an order to deploy chemical weapons, the order came first and after that the chemical weapons were taken from the storage places to the units. I have stated before that the chemical weapons were never taken to the units if they were not meant to be deployed. You ask me how I acquired this knowledge, also in view of my function as director of quality control in those days. I tell you that it wasn't me who gave the order for the deployment of chemical weapons. It was the regime that gave the order. Most of the time there were no documents because the orders were mostly given by telephone. (32) The State Organization for Refinery and Gas Industry (SORGI) resorted under the Ministry of Oil. [Accused] already had a business relationship with SORGI since 1982. During the 80's SEPP got the tip from SORGI that if they needed material that wasn't easy to come by, the best they could do was to engage [accused]. You ask me how I know this. I heard this in 1995 from [witness 112], who was head of SORGI at the time. He told me about his contacts with Al-Muthanna. He said that goods would come in as if they were for SORGI. (33) You ask me whether it is correct that I met [accused] in 1991 for the first time. That is correct. Because of the hierarchy he had to go to [general director of MSE] directly. Moreover, Iraqis were not allowed to contact foreigners.

(34) You explain to me why it is important for you to know to what extent [accused] had knowledge about the use of the raw materials that were supplied by him. You ask me whether I have ever discussed this with him. I tell you that this question was of no importance to me. You tell me that I stated earlier that from conversations with [accused] it appeared to me that he was aware of the fact that SORGI was a code-name. Yes, that is correct. From 1987 we even used the code-name SORGI at MSE. It was us who contacted [accused] and who made the payments. You ask me whether [accused] first contacted [predecessor general director of MSE] directly and after that [general director of MSE]. That is correct. You ask me how I know this. [Accused] often visited them. [Accused] had a good business relationship with [general director of MSE]. You ask me how I know this. I conclude this from the fact that in wartime he once asked for 50 liters of gasoline and then he got 100 liters. He must be an important person for that. You tell me that on page 9 at the bottom and page 10 at the top in my statement before the examining magistrate I have stated that [accused] knew [predecessor general director of MSE] personally and that I heard that from [predecessor] himself in 1994 or 1995 in Baghdad. That is correct.

During the conversations that I had with [predecessor general director of MSE] concerning the FFCD he also mentioned a few things about [accused].

(35) You ask me about the applications for TDG. TDG can also be used for civil purposes but only in negligible quantities. When you speak about tons of TDG, then only one application is possible, i.e. mustard gas. The textile industry uses 1 barrel per year at the most, that is 200 kilograms. You mention that Iraq nevertheless used the textile industry as an excuse to the outside world for the importation of TDG. That is correct. You say that you can fool nobody with that. You are right. During the first period we only used small quantities of TDG, but later on so much that this couldn't be for the textile industry. In Iraq there were also many textile companies that did not use TDG.

(8) You tell me that [accused] stated (page 32) that he only supplied to SORGI. [Accused] also stated that in 1986 he knew that TDG could be used for the production of chemical weapons, but that SORGI had always denied that it would be used for that purpose. According to [accused] [witness 112] would have told him that the TDG was to be used for the textile industry. You ask me for a reaction. I say that [witness 112] is absolutely right when he says this. After all he is the director of SORGI, a civil organization. If he would have mentioned the smallest thing about military purposes he would have been hung right away. People like a general director are afraid for their lives of course, and for their function. [Witness 112] was not a chemical expert. He heard from us - by order of our superiors - that he had to say that it was for the textile industry. [Accused] also knew that he could ask much more for the goods because they were hard to come by. It was a profitable business. He could ask threefold the usual price. He didn't pay attention to the purpose for which it was used and when he was asked about it he said that it was for the textile industry.

(10) You read for me page 10, second paragraph, of my statement before the examining magistrate. You tell me that [accused] has stated that he was very surprised about this and that he wouldn't know how and when he told this to me. You ask me for my reaction. I have spoken to [accused] about five or six times. This was about deliveries, contracts, all kinds of things. These were no 15 minute conversations. We had very long discussions, also about live issues, but then we would return to business matters. I cannot exclude that he explained to me then what SORGI actually was. I showed him the lists. It could very well be that he explained it to me then. I had to justify everything to UNSCOM. If they would ask about SORGI I had to know and justify everything. I asked him precise questions. I could not leave questions unanswered. Of course we discussed the double function of SORGI. I point out to you again that the first half of page 116 of the FFCD was written by him.

(13) You tell me that I stated earlier that [accused] was an intermediary between MSE and the supplier. You ask me whether [accused] was in direct contact with MSE up to and during the armistice in 1988. Yes, the activities of [accused] did not stop after 1988. At one point the name SEPP was exposed. After that the name became suspect and subsequently the name SORGI was used. Between 1982 and the end of 1984 the name SEPP was used. From 1985 till the beginning of 1987 the name SORGI was used. Of course we are talking about raw materials for 'double use' here, for chemical weapons. After 1984 the name SEPP was used for other materials like automobile tires. Materials for 'double use' such as TDG were supplied under the name SORGI from 1985 through 1987.

You say that this means that the contact of [accused] was with SORGI and not directly with MSE. That is correct.

(16) You tell me that yesterday I mentioned, in paragraph 33, the incident in which [accused] asked [general director of MSE] for gasoline. You tell me that this afternoon, under point 6, I also mentioned the incident in which he asked for gasoline. You ask me whether this is about the same incident. Yes, in my presence [accused] only asked once for gasoline. I happened to be in the room of [general director of MSE] when [accused] entered the room. That is why [general director of MSE] didn't send me away so that I could hear that [accused] asked for gasoline. I know that he got gasoline in his car that very same day.

(19) I have stated earlier that MSE got a tip from SORGI that [accused] was able to supply materials that were difficult to come by. You ask me whether MSE asked for that or that SORGI mentioned this spontaneously. It was SEPP that took the initiative.

(20) You tell me that I stated earlier that during the years 1982 through 1985 [accused] had a business relationship with SORGI. You ask me how I know this. During the preparations for the FFCD I heard that from members of my team, who earlier worked at MSE.

(22) Because of the second paragraph on page 10 of my statement before the examining magistrate in November of 2004, you ask me whether [accused] confirmed to me that he knew that SORGI was a code-name for MSE. I think so. The examining magistrate tells me that I stated yesterday (paragraph 11): of course we spoke about that 'double function'. That is correct. You ask me whether [accused] told me that also during the period through 1988 he knew that SORGI was a code-name for MSE. There is no doubt that we discussed this. However, for me it was important to know whether these consignments came from him. All the rest was not important to me. Until 1987 SORGI acted as an intermediary, but from 1987 onwards MSE also used that name themselves. I point out page 19 of the FFCD to you where it is mentioned that the companies [company 6] and [company 5] delivered TDG with an L/C from 1987. Once again, there is no doubt that we discussed this, but the only thing that mattered to me was whether he had supplied the products. We discussed the fact that these were his companies. We also discussed his arrest in Italy and how he managed to come to Iraq and about how the Italian police burst into his office.

(23) You ask me once more whether [accused] confirmed to me that he knew in the period through 1988 that SORGI was a code-name for MSE and/or SEPP, or not. I say to you once again that we did discuss this.

(25) You show me page 219, first paragraph, of my first statement. You ask me how I got to that knowledge. I

have been told by an officer of the intelligence agency. This officer brought [accused] to us.

(26) You show me the last paragraph on page 219 of my first statement. You ask me if I can give an example of a misleading answer, or of withholding information. That is not so easy. Still I can give you a small example. Before the commission, [accused] repeated what he had told me in earlier discussions, and what is also mentioned in the FFCD. However, when they asked about the routes that the goods followed, I noticed that he kept on evading the questions. This resulted in a tense atmosphere at the commission session. From this tense atmosphere I concluded that the commission did not believe everything he said.

12.37 a document, being a witness statement [witness 120] drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 5):

On the morning of the attack on Halabja (16 March 1988) I was called to assist in the command room. Upon arrival I heard that one hour before Saddam Hussein had personally given the order for a counter attack with chemical weapons.

In general the order to use chemical weapons came from Saddam Hussein himself, or in some cases from the Minister of Defense, Adnan Khairallah Tulfah (deceased in the meantime). During the entire war the Iraqis used chemical weapons on a large scale. Because of the specific kind of 'special ammunition' as it was called, the decision came from the Directorate Chemical Warfare.

The High Military Command and Saddam Hussein knew that the use of chemical weapons would not be very useful against the Iranian troops. In this later stage of the war the Iranian army had become better prepared and there were less casualties during chemical attacks by the Iraqis. The Iraqi Army knew this and they used it mostly to break the morale of Iran. In my opinion the purpose of the chemical attack was to punish the Kurdish population, who was viewed by Saddam Hussein as the ally of Iran, and to frighten the people. We knew immediately that the bombings had resulted in the death of thousands of Kurds.

Saddam Hussein had passed on the command over the Northern region to Ali Hassan Al-Majid. He had total control over the region, politically as well as military. All military commanders resorted under him and although the existing command chain up to Saddam Hussein remained in force, it is unthinkable that a request for the use of chemical weapons would have reached the President without Ali Hassan Al-Majid knowing about it and having given his permission for it. His power in the Northern region was comparable to Saddam Hussein's.

12.38 a document, being a witness statement [witness 125] drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 4):

Orders to use chemical weapons came from the Presidential Palace. It was very common to use gas. In practice artillery grenades were filled with chemical substances and they were delivered to the commanding officers without us knowing about it or agreeing to it. Our plans for an attack did not include the use of chemical weapons. The agents of the Presidential Palace arrived, presented the weapons to the commanding officers and gave directions how to use them safely.

If the commanding officer did not use the chemical weapon that had been distributed to him, he was punished.

The power structure in Iraq depends on Saddam Hussein and the inner circle existing of his most dedicated confidants. For 30 years, Ali Hassan Al-Majid and the others in the Revolutionary Command Council have proven their personal loyalty to Saddam Hussein. Based on many years of experience with the power structure in Iraq there is no doubt in my mind that Ali Hassan Al-Majid was personally responsible for the supervision over the attack with chemical weapons on Halabja in March of 1988. Ali Hassan Al-Majid is one of the people who were closest to Saddam Hussein personally. I believe that Ali Hassan Al-Majid was present in the mobile headquarters during the attack on Halabja on 16 March 1988 and that he had total control of the attack and got full authority from the Revolutionary Command Council (RCC).

I am convinced that the following persons knew beforehand about the attack on Halabja and that they supported it actively: Saddam Hussein, Izzat Ibrahim Al-Douri, Ali Hassan Al-Majid, Hussein Khamel, Saddam Khamel and Taha Yasin Ramadan.

12.39 an official report of the witness examination on 19 July 2005, drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 39] (G39.I - page 804 through 812):

(22) The Iraqi government indicated that we had to be very open about some parts of the chemical weapon program, such as the production of mustard gas and sarin, about which everything was known already, as long as we didn't mention anything about biological weapons and VX-gas.

(32) I used to be a lieutenant-colonel in the Iraqi army and a member of the Baath party. If the front commander expected that he couldn't fight appropriately using conventional weapons he would mention this to the head of his military unit. Subsequently the request for chemical weapons was discussed by the general army command. There the decision was made about the deployment. The general army command existed of, amongst others, Saddam Hussein Al-Tikrit, Ali Hassan Al-Majid Al-Tikrit and Hussein Kamal Hassan Al-Majid. I know this from my army education and from my experience as an officer in the army.

With respect to count 1 alternatively:

12.40 a document, being the witness statement of [witness 126] dated 22 September 2003, containing - rendered in a compact way - (H90a - pages 44 through 45):

On 5 June 1987 the witness, together with 200 other persons, was in Zewa. Around 19.00 hours he was outside and he wanted to go and have dinner when about 15 airplanes flew over the area in different waves of attack. They threw bombs. The bombs detonated differently from other bombs and grenades, which the witness knew from other attacks.

The bombs developed a yellow-blue smoke and a strange odor. After the attack the witness, together with others, found shells that were much larger than those of other bombs and grenades. The shells contained a yellowish powder. The witness himself felt an irritation in his eyes and his stomach behaved differently than normal. A representative of the PUK came to the site and told them they had been exposed to an attack with poison gas.

12.41 a document, being the witness statement of [witness 127] dated 19 September 2003, containing - rendered in a compact way - (H90a - pages 46 through 59):

The attack with poison gas on Zewa took place on 5 June 1987. At 18.00 hours I participated in a football match. Shortly before the end of the match airplanes arrived and attacked us. The attack lasted for about 10 minutes and around 40 bombs were dropped. The manner of the attack, I mean the way the bombs exploded, was different from preceding attacks. The explosions and the power of the bombs were not very strong. Also the attack lasted much shorter than the usual air raids. When we left our hiding places we saw a cloud hanging over the valley. The cloud was grey and one could see how it slowly dropped into the valley. Apparently the planes had dropped several bombs in some sort of half circle over the army base on the mountain slope. I thought the stench was terrible. I think it smelled like phosphor.

All persons who were present at the attack were diagnosed with the same symptoms; they had to throw up and suffered from breathing problems. Also my wife and I had these problems. I think about 40 people were involved at first. Many of these people started to have burning eyes and they suffered from dizziness. We were blind. My wife had severe problems with her bronchi. We got black spots all over our bodies. Moreover, at humid parts of the body, such as the armpits, around the genitals and between the toes, we got burns and this involved excruciating pains. I am still coughing without a particular cause. My wife has never stopped coughing.

12.42 a document, being the witness statement of [witness 128] dated 19 June 2004, containing - rendered in a compact way - (H90a - pages 78 through 95):

Us Kurds decided to go to Iraq and we moved to the Lolan region. In the course of the next three to four years we moved further West in Iraq, to the Badinan region. There is also the city of Zewa, not too far from Emadia, where we arrived in 1985. In the years to follow the attacks of the Iraqi army against the Kurds in Northern Iraq became more and more severe and in 1987 the attack with poison gas on Zewa took place. At this attack my wife was severely wounded. The attack with poison gas on Zewa took place on 15 Khorad. That is the name of the third month on the Iraqi calendar.

At this point the interpreter explains that 15 Khorad equals 4 or 5 June, depending on when that particular year begins, on 20 May or 21 May. That day there was a football match between Iranian and Iraqi youngsters. It was at about 17.00 or 18.00 hours, I believe shortly before dinner. I remember seeing 5 airplanes flying in a V-formation. One airplane flew low over the valley and dropped two or three bombs. The other planes dropped their bombs at higher regions around Zewa. To your question whether these bombs were different from other bombs I can answer that they had less destructive power. Also, from the bomb craters a white-grey smoke arose right away. I also saw this at the other spots in Zewa that had been hit. This smoke remained for quite a long time and it moved, like a cloud, slowly towards the valley. I think it must have been around midnight when I woke up. My wife had to throw up, and I had to as well. People complained of burning eyes and then someone said that probably some sort of chemical substance had been used at the attack. Our complaints became more and more intense. Soon I could barely see and my wife was doing very badly as well.

12.43 a document, being the witness statement of [witness 129] dated 18 June 2004, containing - rendered in a compact way - (H90a - pages 96 through 110):

You ask me whether I can indicate how many people were staying in the city of Zewa during the summer of 1987. My guess would be around 150 to 200 men and women. As far as I can remember one or two bombs were dropped directly near the houses. The other bombs, I think there were more than 40, were dropped around in the mountains. About those bombs I can tell you that they were not normal bombs. A strange odor emerged from these bombs, like from a gas stove when you turn on the gas but you don't light it.

Furthermore I can remember that the smoke that arose from the area in question had a yellow-grey color. I had the impression that the smoke in the surrounding trees remained in the mountains as some sort of mist and that it moved slowly towards the valley. That is why I thought right away that chemical bombs had been used. Soon my skin began to itch and my eyes and neck became very irritated. I had to throw up. My blindness lasted for almost three weeks. My skin had burst open at several places and large blisters remained for another couple of

weeks. My husband also was blind temporarily. I still suffer from the consequences of the attack with poison gas. I have to cough a lot and my voice becomes horse easily.

12.44 a document, being the witness statement of [witness 130] dated 16 July 2003, containing - rendered in a compact way - (H90a - pages 125 through 128):

The witness was in Zewa during the attack on the area on 5 June 1987. He stated that the attack took place in the evening between 18.00 and 19.00 hours. They were about 150 partisans, men, women and children. The witness established that there were no deaths immediately after the attack, but later in the evening two people died. It was only later that evening that the witness realized that they were dealing with an attack with poison gas, because a number of people started to vomit. Other people said it was poison gas. The witness also vomited. The witness suffered from several wounds on his upper body and under his armpits. The wounds looked like burns, the skin had gone. He was blind for about 10 days.

12.45 a document, being the witness statement of [witness 131] dated 6 August 2003, containing - rendered in a compact way - (H90a - pages 129 through 132):

The witness went to Kurdistan together with his wife. They went to Zewa, in the Northern part of Iraq, in Kurdish territory. The witness remembered a certain attack during which chemical bombs were used. This took place on 5 June 1987 between 18.00 and 19.00 hours. He saw 8 airplanes and the impact of the bombs. At impact a strong smoke materialized. Some people said those were chemical bombs. Later that evening the witness noticed that his body began to glow, his eyes were irritated and red. He couldn't see. He estimated that around 50 people were wounded at the attack. [Name] died during the course of that night. The witness remained blind for about one month. His diaphragm was covered with blisters that were filled with a liquid. He still suffered; on his right shoulder one could see a brownish spot of about 20 to 25 cm. long. He had similar spots in the groin. He continuously had breathing problems. Doctors concluded that he had lost about 60% of his lung capacity. The lung and breathing problems were a direct consequence of the chemical influence. [Name] died 5 to 7 days after the attack.

12.46 a document, being the witness statement of [witness 118] dated 20 November 2002, containing - rendered in a compact way - (H90a - pages 133 through 151):

On 5 June 1987 I was in Zewa. I was up in the mountains and if I looked down I could see the city of Zewa. It was around 18.00 hours in the afternoon when I first saw 4 Russian type "Sichoy"(Sukhoy) fighter planes that dropped bombs on Zewa. Four other fighter planes, flying a bit higher up, dropped their bombs immediately after that. In total 16 to 20 bombs were dropped.

The attack lasted about 7 minutes. In my opinion the explosion of the bombs was less impressive than is the case with other bombs. There was the smell of garlic. We arrived in Zewa and there I saw two burnt bodies. I think they were hit directly by the bombs. After a couple of hours I got this burning feeling in my eyes and I still smelled that strong garlic odor.

Some people couldn't see anything after about three hours. Many people had a dry neck and mouth and swollen testicles. Those who didn't wash themselves ended up being blind.

A chemical expert who was with us said that we probably had been attacked with poison gas bombs. I guess the number of victims was 200 in total, of whom many remained blind. After June of 1988 flyers were distributed by planes which mentioned, in Kurdish and Arabic, that the Kurds were going to be destroyed within a few days. The truce between Iraq and Iran was signed on 8 August 1988. After that a large offensive by Iraq against the Kurds would take place. I couldn't flee to bases in Kurdistan because there were soldiers everywhere. The army went north at that time. After that the offensive in Northern Iraq started and I heard planes and explosions continuously. It seemed like the whole of Kurdistan was on fire.

12.47 a document, being the witness statement of [witness 132] dated 15 June 2004, containing - rendered in a compact way - (H90a - pages 152 through 169):

I especially remember a certain place called Zewa because it was there that the Iraqi army had launched an attack on the Kurdish refugees, in which gas was used. The river that borders on the city of Zewa is called Zab. In was 5 June 1987, the day of the attack on Zewa in which poison gas was used by the Iraqi army. I didn't actually witness the attack myself. The attack took place late in the afternoon. We received the news by radio transmitter. We had to return to our base and we passed Zewa.

We saw bomb craters around Zewa. That is why one can say that the attack didn't hit the center of Zewa directly, but that the bombs had been dropped in a half circle of 100 to 150 meters around Zewa. In total there were about 150 wounded. Most of them suffered from breathing problems and severely burning eyes. Especially those who had walked towards the bombs craters to establish what had happened also had skin burns because they had been in direct contact with the bombs and gas that was released. Two Iraqi Kurdish men had so much difficulty breathing in the course of the next two hours that in the end they suffocated.

12.48 a document, being the witness statement of [witness 133] dated 17 June 2004, containing - rendered in a

compact way - (H90a - pages 170 through 187):

I personally was in Zewa when the attack with poison gas took place in June 1987 and I witnessed this attack. The attack on 5 June 1987 was completely different. I was in base 1 (Asnad) and it was exactly 18.35 hours when the attack took place. During normal attacks it was my duty to operate an anti-aircraft gun in base 1. I am pretty sure 15 bombs were dropped. The number of planes was somewhere between 14 and 18. Those were Russian MIG planes that I had known for years. The entire attack lasted for two or three minutes. The attackers dropped two bombs on base 3 (Hamayeh). The other bombs were divided over a circle at the bottom of the mountains, somewhat over the base. After approximately four minutes the planes flew over once more and after that they disappeared. Usually there are loud explosions. These explosions were much softer, almost without a boom.

I saw a crater and almost immediately a yellow-orange smoke appeared on that spot. I believe this attack was very carefully planned and executed. You ask me why it was support base 3 that was actually attacked and not the other support bases. Support base 3 was situated right in the middle of the valley and was therefore the easiest to be hit. It was where the women and children usually were. Fortunately at the time of the attack there was a football match going on near support base 2 and most people happened to be there. The smoke that arose from the bombs remained there for quite a while. Around 19.30 hours I felt this severely burning sensation in my throat. That is why I suspected that we had been attacked with chemical substances.

12.49 a document, being the witness statement of [witness 134] dated 5 May 2003, containing - rendered in a compact way - (H90a - pages 203 through 209):

The first attack with chemical weapons took place in Zewa. Zewa is right on the border with Turkey, near the river Zab, in an area between two mountain chains and two valleys. Here was the communist base where a party conference had been planned. Before the conference could take place the area was bombed at 19.00 hours with chemical weapons and artillery. At the time of the bombings the witness was at the base. There were 6 planes. Two planes dropped their bombs simultaneously while the other planes flew around. Those were Iraqi planes, MIG's and Sukhoy. The Turks used American planes: Phantom. Those couldn't be Iranian planes. They knew these were Iraqi planes. Those were Russian planes and the Iraqi pilots were very skillful in the mountains, better than the Turks and the Iranians. Besides, people from the Iraqi Security Service in Mosul and Dohuk have declared that they had erased the main base of the communists. The witness knew chemical weapons were involved because of the garlic and sulphur stench. A combatant was hurt at his leg and turned completely black. The witness wanted to help him but he turned black himself. The bomb did explode, but there was no strong detonation. Yellow-red powder emerged from it, which got stuck to the trees and the grass. The witness couldn't see anything anymore and had to throw up. When he breathed he got a burning feeling in the armpits and in the groin. The witness was blind for three weeks.

12.50 a document, being the witness statement of [witness 8] dated 17 December 2002, containing - rendered in a compact way - (H90a - pages 210 through 213):

On 5 June 1987 the witness and his wife and their 50 day old child were in Zewa. On that day they were hit by an attack with chemical weapons. The witness stated that the attack started at 19.00 hours. He saw several airplanes. Other people told him these were planes built in Russia and they were called "Sukhoy". He thought 4 or 5 planes were involved. Soon the planes arrived in the area and threw a number of bombs. The planes flew round and dropped bombs again. After the first attack the witness heard people talk about a yellowish smoke after impact and immediately after that, when the witness went inside, he smelled an odor which the witness described as the smell of garlic. Around 200 people were there. In the course of the night the witness suffered from pain in his eyes and he got breathing problems.

In the morning the witness saw that the trees were covered with a brownish layer. He also saw many dead birds and there was a strange smell in the air. The witness had to close his eyes in daylight and 15 days later he still suffered when he opened his eyes. The witness stated that his child is handicapped because of the poison gas. The child suffered brain damage. Since the attack his wife often has trouble breathing.

12.51 an official report of the witness examinations of [witness 16], [witness 8], [witness 10] and [witness 9] in the proceedings against [accused] on 14 June 2005, 15 June 2005 and 16 June 2005, drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 8] (G8.I - pages 769 through 775):

On 5 June 1987 I was in Zewa. I saw Iraqi airplanes drop bombs in four-airplane formations. I had followed lessons to learn to recognize (Iraqi) airplanes and I recognized Russian Sukhoy 9's. I saw a round-shaped Iraqi flag on the tails of the airplanes. Those were khaki colored planes with black camouflage spots. (24) They flew at low height. (4) I smelled burnt garlic and I saw yellow smoke. (23) The booms that I heard on 5 June 1987 were different from other explosions. These were cracks at which you felt the ground tremble beneath your feet and it seemed like you couldn't hear anymore for a while. (5) I noted that about seven hours after the bombings,

people started to have health problems. I saw victims suffer from white vomit, blisters, running/closed eyes, inflamed feet and change of skin color.

I know that two people died as a result of the attack.

(3) In the end we counted 37 bomb craters and we saw discolored trees. (20) On the remaining bombs shells I saw an Arabian J (according to him the symbol of the Iraqi army). (3) A day after the attack I heard from local farmers that the officers of the (local) security service had said: "yesterday we dealt a blow to the communists which makes that from now on they have to walk hand in hand because they are getting blind". This made me believe that the main target of the attack were the communists. (6) Every day my family and I suffer from the physical consequences of the attacks. Sometimes my wife loses her voice for several days. I can't sleep well and regularly suffer from swollen eyes. My 18 year old son is severely handicapped. He functions at the level of a 4 year old.

12.52 the official report of the witness examination on 2 October 2005, that was drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 81] (G81.I - pages 975 through 978) that was made on 2 October 2005:

(6) Several days after the attack the position of our unit was shot at with gas grenades. Several days after the attack I went to the city. Most dead people had been taken away already. I saw some 20 to 30 wounded people myself. They had blisters on their faces and they had running eyes. They also had large blisters on their arms and the skin came loose. Their faces were dark because of lack of oxygen. (8) There was no more smell of poison gas. During the attack on our unit I did smell garlic.

12.53 the official report of the witness examination on 22 September 2005, that was drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statement of [witness 2] (G2.I - pages 883 through 886) that was made on 22 September 2005:

I still remember the day of the attack on Halabja and the preceding day very well. I was a good four years old then. After the attack we and our family fled Halabja by car. (4) My eyes hurt and were watering and I kept falling asleep and waking up. My skin was burnt. I only woke up on a stretcher in the airplane to Belgium. (6) Over the area just outside of Halabja I had seen one white-grey mushroom-shaped nuclear cloud. One part of the cloud was very dense, another part had probably been blown away by the wind.

(5) In 1988 I was treated by doctor [name] from Belgium. The tissue that was examined in America was said to contain traces of a cocktail of chemical substances. Furthermore, from 1993 onwards I was treated by a pediatrician/lung specialist [name] from Maastricht. He told me we were dealing with mustard gas. (7) The medical prospects are not good. My lung capacity is only 33%. At this moment I do not work or study because as a result of my injuries I often cannot be (physically) present. I will have to take medication for the rest of my life.

12.54 an official report of the witness examinations of [witness 16], [witness 8], [witness 10] and [witness 9] in the proceedings against [accused] on 14 June 2005, 15 June 2005 and 16 June 2005, drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. This official report includes, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 16] on 14 June 2005 (G16.I - pages 791 through 797 and RC (examining magistrate)-file pages 108 through 134):

(3) I was working as a professional soldier in the chemical department of the Iraqi army. (4) I knew that if word got out that the Iranians were preparing for an attack with chemical weapons for which they had to prepare themselves, this really meant that the Iraqi regime was going to do that. (4) I associated with high ranking service men and therefore I know that only a select group of people around Saddam Hussein and his family, amongst whom Chemical Ali (Ali Hassan Al-Majid), knew about the attacks. (6) During the attack on Halabja in March of 1988, I was at a 20 kilometers distance from Halabja, in a city called Sayyid Sadiq.

(10) I was able to see one or two things very well with binoculars.

I saw Iraqi Sukhoy and MIG planes that flew in formations of four and also Russian and Alouette helicopters with Iraqi signs. (14) I saw planes coming from the direction of Darbandi Khan so that they could have taken off from Jalawla, Kirkuk or Baghdad. The attacks were meant to destroy people, not to capture the city. Furthermore it was not only the Iraqi's intention to hit Iranians, but also the Kurds in Halabja / the Kurdish Peshmerga-combatants. (15) How I know this? That is just a matter of military strategy.

12.55 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number G1, dated 17 June 2004, legally drawn up by competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made by [witness 1] before these investigating officers on 17 June 2004 (G1 - pages 001 through 007):

In the morning of 16 March 1988 I was at home with my family. My house was in Halabja. Around 16.00

hours I saw 8 airplanes flying towards us. I saw and I heard them coming. The brand of these airplanes was Hunter. Their color was between khaki and grey. I saw these were propeller airplanes and they came from the direction of Darbandi Khan. I supposed that the airplanes came from Kirkuk. The Air Force base of the Iraqi Northern Air Force was established in Kirkuk. I saw that these planes dropped balloons. I realized they did this in order to determine the wind direction. After the first two planes had dropped the balloons I saw bombs being dropped by the airplanes.

I saw that all six airplanes dropped bombs. From one bomber I counted the number of bombs it dropped. I counted that the plane dropped eight bombs. After the bombs had been dropped by the planes and they continued their flight towards Anab, I saw a second formation of eight planes coming and from this formation also bombs were dropped on the city. I saw a thick layer of smoke rising up from the city of Halabja. The smoke developed at the moment the bombs hit the ground. I saw the bombs falling down, hit the ground and subsequently I saw a fire ball and the smoke. I also heard explosions taking place. I saw that in this second formation the airplanes were Iraqi planes, because I saw the Iraqi flag on the side of the body of the airplanes.

I also saw these were propeller planes, similar to the first formation. From the sound of the explosions I could deduce that these were not 'normal' bombs. The next day, my wife and I returned to Halabja. After I entered the city of Halabja I saw a lot of dead bodies. For example, the trunk of a van or a tractor was full of dead people piled up on top of each other. Then I went to my parents' house. The first thing I saw was my mother holding my daughter in her arms. I saw my daughter's face was full of blisters. Also her skin was discolored. I also saw foam and blood coming out of her mouth. After that I saw that my father held my son in his arms. My father, my mother and my two children had all died. I saw no external wounds.

I have seen hundreds of corpses in air-raid shelters that didn't have external wounds either. I have seen other corpses of which the skin was full of blisters and with foam coming out of their mouths. I smelled the odor of fruit. I smelled like the scent of apples or oranges. Actually there were only civilian victims. I have not seen any military victims in Halabja. I have retained injuries from my stay in Halabja. My lungs are affected and I have headaches. Also my eyes deteriorated severely. My own children and father and mother had red skins and red blisters, but a little farther up in the street the corpses had severe burns and sometimes the corpses were charred.

12.56 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number G2, dated 15 June 2004, legally drawn up by competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 15 June 2004 [witness 2] (G2 - pages 008 through 010):

I can still remember the attack with poison gas on Halabja. I was 5 years old then. I remember that the following day I heard the sound of airplanes flying over. I also heard cracking sounds. I remember our whole family went into the air-raid shelter. Someone came in and said that poison gas had been used. We went out. After we had walked for a while we all started to suffer from breathing problems and we had to vomit. At one point I fainted. I came to my senses and saw that I was on a stretcher in an airplane.

I remember that I smelled a strange odor at the time of the explosions. I didn't see any explosions but I did see the smoke. The smoke was everywhere. It was a white/grey smoke and it smelled bad. I felt I had trouble breathing. I was very much injured. Today I only have 33% lung capacity left. My body was also burnt from tip to toe. I had bandages all over on my body. In time these burns healed. After I stayed in the Belgian hospital for a month I returned to Iran. In Iran I spent several days in the hospital. After a while my internal wounds worsened. My lungs were on fire. I ended up in several hospitals in Iran. A doctor in the Netherlands, doctor [name] treated me here. They took some lung tissue which was sent to America for research. There they came to the conclusion that my lungs were affected by a cocktail of chemical substances.

12.57 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number G3.1, dated 15 June 2004, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 15 June 2004 [witness 3] (G3.1 - pages 011 through 013):

On 16 March 1988 I went to Halabja in Iran. My brother was a peshmerga, a fighter for the PUK. My brother told me what had happened in Halabja. I went to Halabja with him to search for family members who lived there. We only found dead people. Of my family we found my mother, a brother and a sister in the hospital. They had already died. As a result of the attack with poison gas on Halabja I lost my mother, two brothers, a sister and two cousins and my aunt. I arrived in Halabja about ten days after the attack had occurred. I was not an eye witness of the attack myself.

12.58 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number G3.2, dated 23 August 2004, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 23 August 2004 [witness 3] (G3.2 - pages 014 through 015):

I am in possession of a video tape that I got in the early nineties from doctor [name] from Ghent, Belgium. Doctor [name] is a prominent toxicologist from Belgium. I received this tape because my nephew [name] was treated in Belgium after the attack on Halabja of 16 March 1988. [Nephew] was treated for his injuries in the hospital in Belgium. [Nephew] was treated by [doctor] name, among others.

12.59 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 20040804900, dated 4 August 2004, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 4 August 2004 [witness 7] (G7.1 - pages 108 through 111):

I was a fighter pilot from 1986 until halfway through 1988. The bombings were executed with Mirage airplanes in four squadrons. It was easy to execute a bombardment with chemical weapons. We had the MIG-23 and a 'Sukhoi'. Every squadron had the capacity to execute a bombardment with chemical weapons. The bombs came from a central depot.

The orders to the command for a bombardment with chemical weapons came directly from Saddam Hussein. Ali Hassan al-Majid (Chemical Ali) had some sort of carte blanche to use chemical weapons at will. At one point I got the briefing for the mission. I was one of the replacement pilots. Within the air force the term 'chemical weapons' was never used. They always said that special ammunition was involved and then we knew we were dealing with chemical weapons. The briefing was done by the commander of the air force base and the commander of the squadron. We received the coordinates of the site that was to be bombed. A man from the intelligence service told us about the location of the mosque in Halabja and some other matters.

12.60 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200410151000, dated 15 October 2004, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 15 October 2004 [witness 11] (G11.1 - pages 139 through 146):

On the day of the attack with poison gas in 1988 I was in the center of Halabja. On the day of the attack we were in the air-raid shelter of my grandmother. Towards the evening we got out of the shelter. I can remember that there was a white layer of dust over the things in the kitchen. I remember I was very thirsty and that I had a cup of water from the bucket. I had to throw up immediately. We were taken to Teheran to a women's hospital. My eyes and lungs were treated there. I had trouble breathing. I also had to cough a lot. When I coughed I also coughed up black mucus. The doctors told me that this was as a result of the chemical attack.

When I arrived at the hospital I had a brown spot around my nose and mouth because of the piece of cloth I had kept against my face. This spot slowly turned black. Over time new skin replaced the old one at this spot and so it was healed. In the Netherlands the doctors concluded that part of my right lung had turned black and that it didn't function anymore.

It was decided to remove that part of the lung. The doctor here has told me the same thing as the doctor in Iran. He has told me that the air pipe has been stretched. I was treated in Deventer by doctor [name], the lung specialist. I was operated on in 1999. One of the reason I had this operation was because I coughed up mucus and blood. Doctor [name] has told me that my lung looks like the lung of someone who has smoked very much.

12.61 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 2005, dated 5 May 2005, drawn up in the judicial manner by an authorized investigating officer. This official report includes, among other matters, - rendered in a compact way - the statement that was made before this investigating officer as well as before [expert-witness] (expert witness) by [witness 78] on 5 May 2005 (G78.1 - pages 682 through 689):

You ask me how I know that the victims died as a result of mustard gas and not from any other cause. Many of them died several days or weeks after the attack and they had distinct symptoms of mustard gas, i.e. decreased white blood cells, blisters. You could still smell the mustard gas from the patients who were severely contaminated. Mustard gas is absorbed by the skin and hair. After the patient had died the dependants wanted to claim the body for burial. With respect to the serious cases we tested the body by using detection paper in order to avoid the dependants being contaminated. Often the patients who died were still contaminated with the mustard gas. The chronic effects of mustard gas are continuous. Still every year people die from the results of mustard gas.

In the first few days hundreds of victims came to our medical aid station. These were clearly mustard gas victims. I would like to add that it was clear that nerve gas had been used because many of the victims reacted positively on atropine. My conclusion is that there are only two ways for people to die so suddenly: nerve gas and cyanide. Because there were so many corpses spread over a large area, I concluded that this couldn't be caused by cyanide. Cyanide is too volatile for that. Moreover I had already treated many patients from Halabja with nerve gas syndromes and none with cyanide poisoning symptoms.

12.62 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505061340, dated 6 May 2005, legally drawn up by the

competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 6 May 2005 [witness 78] (G78.2 - pages 690 through 696):

I went to Halabja twice. The first time was two days after the people arrived at my hospital. I stayed in Halabja for two to three hours and saw hundreds of corpses there. In the first instance I saw victims of nerve gas in Halabja because I thought I was in an area where nerve gas had been used. Before that, in the hospital where I worked in Iran, I saw many victims from Halabja who had symptoms of exposure to mustard gas.

A few days later, I think two, I returned to Halabja with an ambulance. I stayed there for three or four hours. On my way to Halabja I saw heavy air raids. The planes were white or silver colored. I didn't hear the explosions from the bombs. During my second visit to Halabja I didn't see any victims with symptoms of exposure to mustard gas. Patients from Halabja didn't always go to our medical aid post but also to other posts in Iran. I know they were also taken to Sarvabad. I heard from doctors there that they had many victims from Halabja with symptoms of exposure to mustard gas.

12.63 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200529041000, dated 29 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 29 April 2005 [witness 80] (G80 - pages 697 through 700):

My base was 10 to 20 kilometers from Halabja. You ask me whether I experienced chemical attacks. Yes, I can remember that day very well. It was the last day of Ramadan. It was about 08.00 hours in the morning. 10 Minutes later we saw an airplane arriving. It flew very high over our base. After that it returned and flew back in the direction of Iraq. That's all it did. 15 Minutes after that plane the first wave of airplanes out of the direction of Iraq flew in at great height. The second wave, two or three planes, followed over very low. After that the planes started to fly very quietly. All of a sudden I heard a strange sound. I thought I was hit by a flying object.

It appeared that a bomb had been dropped very close to me and I saw a strange substance which I had never seen before. The substance had a white color. I waited till the substance would drop but it only spread out. The substance came out of that bomb. I smelled a very bad odor, like rotten garlic. I put on my gas mask. After a few hours the substance had more or less disappeared. I put off my mask. One of my friends was startled and told me I had very red eyes. He gave me a mirror and I saw that the white part of my eyes had completely turned red.

Later we went to the field hospital where they put two drops in my eyes. I didn't feel anything wrong. Just as I wanted to stand up I saw many red spots on my hands. I started to walk but I felt nauseous. I walked towards the river to drink water. I started to feel very nauseous and had to throw up all the time. A van of which all the seats had been taken out stopped. I saw many people in the van. I saw they (Kurdish women, men and children) were all victims of the chemical attack. I entered the van. I kept on vomiting, also blood. The other victims in the bus had the same symptoms as I did. I was taken to a hospital in Sari. All the time I kept losing my consciousness. It was then that I realized that I couldn't see anything. I was completely blind for a week. I could see again after 13 days. This was in March 1987.

The planes came from the direction of Iraq and later returned in that same direction. The planes bombed us with I don't know what. The bomb hit the ground and I didn't hear an explosion but a soft boom. I smelled an odor of rotten fish, rotten garlic. When I woke up the first time in the Sari hospital the doctors told me I had been exposed to mustard gas. I saw blisters all over my body. Now, after eighteen years, my health is deteriorating. When the weather changes, I suffer from lung problems. My eyes hurt more and more and I get tired very quickly.

12.64 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 20052104, dated 28 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 28 April 2005 [witness 81] (G81 - pages 701 through 705):

I experienced chemical attacks several times. The first time was near to Khoramshahr, the town of Shalamchec in Iran. It was an air raid and an artillery attack. That was around 1986. These were Iraqi planes, MIG's 23. I know that because I had learned this as a soldier. We didn't have MIG's and Mirages in Iran. Iran only had American Phantoms and F14.

During that attack a number of Iraqi planes were shot down. I saw for myself that the planes had the Iraqi flag on them. You ask me what kind of ammunition was used. Bombs and grenades, different kinds of ammunition were used. The explosions I heard sounded like some kind of a plop, no heavy explosions. I smelled a strong garlic odor.

I have been exposed to many chemical attacks but the largest quantity was in Halabja. The great attack was on 16 March 1988. I can remember that because it was just a few days before the Iranian new year. I was stationed north of Halabja close to a lake that is called Darbandi which is in the mountains called Shakh-e-Shamran. The distance to Halabja was about 5 to 10 kilometers. The Iranian army was stationed outside of the city of Halabja. There was no army base in Halabja.

During the great attack on 16 March 1988 I saw a number of airplanes that arrived in numbers of two to three. They came in different waves of attack. Those were Iraqi type MIG and Mirage 23 planes. The city of Halabja was bombed and also attacked with grenades. The city of Halabja was bombed by airplanes. After the bombs had been dropped I saw a large white cloud. The sound wasn't as loud as is the case with normal bombs, it was some sort of plop. My position was attacked with grenades. They came from the direction where the Iraqi army was stationed.

You ask me how I know that the grenades had a chemical load. They expelled clouds of white smoke and I smelled a strong garlic odor. I saw that a number of my fellow soldiers got foam around their mouths and they dropped dead almost immediately. At least three of them. I went to help the wounded. My gas mask was in the way so I took it off. After a few minutes I started to suffer from burning eyes, teary eyes and I felt nauseous. I recognized the gas as being mustard gas. In every army unit there was someone who was a chemical weapons specialist. He could recognize the gas right away. During both attacks they yelled that it concerned Khardal. Later, in the hospital, the doctors confirmed that it concerned mustard gas.

12.65 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number G102.1, dated 17 August 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 17 August 2005 [witness 102] (G102.1 - pages 1077 through 1083):

I am a Kurd. I have lived in Halabja since 1980 with my family, parents, three brothers and two sisters. You ask me how the attack on Halabja took place. On 16 March 1988, my family and I left Halabja around 11.20 hours or 12.20 hours, because the first bombardment by the Iraqis had already taken place. When we left I saw that more civilians left the city. When I was outside of the city I saw four airplanes arriving. The planes were flying very low; one could see the marks, like the Iraqi flag, very well. After the first bombardment I saw that black and white smoke was released after the bombs hit the ground. At first the bombs were dropped in the northern part of the city, with the government buildings like the court of justice, the town hall and an army barrack. The number of planes increased from different directions. They came in waves of eight, dropped their bombs and were followed by eight other planes that dropped bombs all over the city. When the attack on Halabja occurred I was in several caves near the villages of Ababayale and Jalila, about a half hour walk from where I lived in Halabja.

At around 17.00 hours the bombardments changed, the explosions were different, the sound was muffled. A lot of smoke was released, white and sometimes yellow and pink. A smell of apple, garlic and flowers was released. I smelled this myself. We had been warned that when a chemical attack would occur, we should press wet cloths against our faces. That is what I did.

The bombardments lasted until 18.00 or 19.00 hours. When I returned to Halabja with my brother [name] it had become somewhat darker. I saw people leaving Halabja, they were crying, vomiting and laughing. They were mainly civilians. It was a terrible sight; the people who were laughing had lost their minds, I think.

Because of my eye problems I was taken to a hospital in Kermanshah in an ambulance. After four days we were taken, by helicopter, to the Iman Khomeini hospital in Teheran, where I stayed for 45 days and where my eyes were treated. The doctors said that my eye problems were the result of the poison gas attack that I had been exposed to. Other patients that had been exposed to the attack on Halabja were burnt. Many died. I saw that they had severe burns, the skin detached and they had severe scars on their faces. There were many people with eye problems. People also became blind. Many patients also had breathing problems.

12.66 a document, being a witness statement [witness 135] dated 9 February 2000, drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 5):

On 16 March 1988 at 12.20 hours the Iraqi planes started to bomb the area. At around 16.00 hours the Iraqi planes returned, they came from the direction of Kirkuk and Sulaimaniya. I clearly saw the Iraqi flag on the planes when they flew over at low height. We knew these weren't ordinary bombs. When they exploded the sound was more like a plop than a loud bang. Some released white smoke, some dark smoke. Also there didn't seem to be any grenade shells. Every time the planes returned after about fifteen minutes and then they first bombed the suburbs and then the city center. My eyes started to itch, we smelled of garlic.

12.67 a document, being a witness statement [witness 120] dated 28 January 2001, drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 5):

On the morning of the attack on Halabja (16 March 1988) I was called to assist in the command room. Upon arrival I heard that one hour before Saddam Hussein had personally given the order for a counter attack with chemical weapons.

In general the order to use chemical weapons came directly from Saddam Hussein. Five times I have witnessed that orders for chemical attacks were given, among those the attack on Halabja. In the case of the chemical attack on Halabja on 16 March 1988, planes were sent out from four different air bases. About 16 Sukhoy, 22 fighter bombers left from Kirkuk; about 16 Mirage fighter bombers from the air base in Al-Bakr and finally one heavy bomber, a TU-22, from the Habaniye base.

Most planes were covered with orange, beige and green camouflage. During the first raid regular bombs were used. After that the city was invaded from the Iranian sections, which was followed by an attack with chemical bombs. We knew of the effects that chemical bombs had on people, on civilians, but there were no warnings. The order was given to lay a carpet of bombs on the city. We all knew that the city was full of civilians.

12.68 a document, being a witness statement [witness 125] drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 4):

Orders to use chemical weapons came from the Presidential Palace. It was very common to use gas. In practice artillery grenades were filled with chemical substances and they were delivered to the commanding officers without us knowing about it or agreeing to it. Our plans for an attack did not include the use of chemical weapons. The agents of the Presidential Palace arrived, presented the weapons to the commanding officers and gave directions how to use them safely. The power structure in Iraq depended on Saddam Hussein and the inner circle existing of his most dedicated confidants. For 30 years, Ali Hassan Al-Majid and the others in the Revolutionary Command Council have proven their personal loyalty to Saddam Hussein. Based on many years of experience with the power structure in Iraq there is no doubt in my mind that Ali Hassan Al-Majid was personally responsible for the supervision over the attack with chemical weapons on Halabja in March of 1988. Ali Hassan Al-Majid is one of the people who were closest to Saddam Hussein personally. I believe that Ali Hassan Al-Majid was present in the mobile headquarters during the attack on Halabja on 16 March 1988 and that he had total control of the attack and got full authority from the Revolutionary Command Council (RCC). The government and the military command were of the opinion that the Kurdish groups which cooperated with the Iranian armed forces at the time of the Halabja bombardment on 16 March 1988, could be considered as collaborators of Iran and actually as part of the enemy forces during the war between Iran and Iraq. They also called other opposition groups "agents of Iran". I am convinced that the following persons knew beforehand about the attack on Halabja and actively supported it: Saddam Hussein, Izzat Ibrahim Al-Douri, Ali Hassan Al-Majid, Hussein Khameel, Saddam Khameel and Taha Yasin Ramadan.

12.69 a document, being a witness statement [witness 120] dated 2 May 2001, drawn up by Belgian investigating officers. This document includes, among other matters (H46a - pages 1 through 11):

At this moment I am a member of the Leadership Committee of the Patriotic Union of Kurdistan (PUK) in Sulaimaniya in Northern Iraq. As a commander at the front lines in Halabja I was in charge of the PUK troops which were involved in the operation. During the night of 13 to 14 March 1988, the Iranian and SCIRI troops occupied the hills along the border. On 14 March 1988, various Kurdish troops took up their positions. The PUK troops started by occupying a number of outside posts around the city of Halabja and the surrounding hills. On 15 March 1988 the Iraqis withdrew and at 15.30 hours I entered the city of Halabja with the PUK troops; at around the same time we joined the troops of the KDP and the KSP. In the morning of 16 March 1988 we organized a meeting between the members of the Kurdistan Front and the Iranian liaison officer. While I was briefing the group we heard the airplanes flying over. The guards outside reported that seven Iraqi airplanes flew over at very high altitude. At around 11.20 the planes returned, flew at low altitude over the city and started bombing. The planes were predominantly Mirages and Sukhoys. Some were painted in camouflage colors, light brown, grey and white. The bombs fell on the Sara city district. The bombs contained conventional explosives. Seven citizens and 2 peshmerga died. At around 17.15 hours I was standing, with other peshmerga, on the roof of the Istikhabarat headquarters. Through my binoculars I saw eight planes coming from the direction of Seyed Sadiq towards the city. They flew around the city once and then they started a series of bombardments. The bombs fell within the city. I knew right away that these bombs contained chemical substances. The sound of the explosions was different and they released a type of smoke that was different from conventional bombs. The smoke was partly white and it seemed to lift in a mushroom like cloud before it settled on the ground. The smoke was partly black and some bombs released a yellow smoke. The citizens started to suffer immediately. There were dead and dying people everywhere. Many of the bodies turned black. People had foam around their mouths and many bled from their noses, eyes and ears. My eyes hurt, my armpits turned red and painful and I had to throw up. At the time of the chemical bombings I reported to the PUK headquarters that there were approximately 5000 deaths. This estimate was communicated to Iran and there it was released to the media. Since then this is the number that is used by everybody with respect to the number of people that fell victim to the bombardments in Halabja.

12.70 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 20050824, dated 25 August 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 25 August 2005 [witness 99] (G99.1 - pages 1045 through 1047):

I lived in Guktappa from 1986 till the end of 1988. I lived there with seven brothers and sisters and with my

mother. Guktappa is the Kirkuk province. In 1988 I was 16 years old. On 3 May 1988, our village was attacked by the Iraqi regime with chemical weapons. At the end of the day, around half past five, I heard bombs exploding. The booms of the explosions were very much softer than the explosions that I had heard during earlier attacks. Our village happened to have been attacked before with conventional bombs. Right after I heard the explosions, I saw planes flying from the direction of the Garmain area, from the direction of Kirkuk.

I saw they were fighter planes. I saw four of those planes. The planes flew back in the direction of Kirkuk immediately after the explosions. After I heard the soft explosions I saw white smoke coming towards us. My mother gave me a wet piece of cloth that I had to press against my face. Never before we had seen smoke with such a white color. From peshmergas my mother had heard stories about chemical attacks and she recognized this attack as being a chemical attack.

Then we went to our neighbors. On the way I heard my brother complaining about his eyes. I smelled an odor of rotten apples and garlic. We ran to a nearby river, but when we arrived it appeared the river was poisoned. We saw dead fish floating. My sister went back to the house to fetch some eye drops for my brother and she never returned.

After that we were taken away from Guktappa on tractors. My brother and I jumped off the tractor because we wanted to find our sister back. My mother also went off the tractor. All the others left on those tractors. Later we found out that all the people who left on the tractors got rounded up by the Iraqi army. We went in hiding in the neighboring villages during the weeks after the attack.

After the chemical attack I got breathing problems. When I climbed a hill I saw many people who were wounded. I saw that their bodies were completely swollen. I saw many people who had foam around their mouths and I saw and heard many who had sore eyes. During and after the attack about 100 people died as a result of the chemicals. Our village Guktappa has been attacked with the gas that was called Khardal. I heard this from different people from Guktappa. I fled to Iran and there I was treated for a long time with injections and pills to clean my body. I frequently have breathing trouble, I guess my lungs have been affected.

My mother has more health problems than I do. Her nerve system has been affected. However, it has not been established that this is a result of the exposure to chemicals. Since the attack, my mother is easily irritated. Before the attack she had a very quiet character. At this moment, my brother suffers a lot from sore eyes and breathing problems.

12.71 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200508241550, dated 30 August 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 August 2005 [witness 98] (G98.1 - pages 1031 through 1035):

I lived in Guktappa from 1963 till 1988. I lived there with my 8 children. The attack on 3 May 1988 on Guktappa went as follows. At around 4 o'clock in the afternoon, I saw helicopters that dropped balloons. These were Iraqi helicopters since they came from the direction of the Iraqi army. I recognized the helicopters because they have a long nose. At 18.00 hours airplanes arrived that had a dark color. I saw four of them. They flew around the village three times and the fourth time they dropped their bombs. My family and I were outside of the village in our summer cabin. My daughter [name] had an FM-radio on which one could hear the communications between the pilots in Arabic. It was said they had to shoot. I heard one of the pilots saying that they were shooting women and children, another pilot then said that they had to continue.

The bombs fell, with soft cracks. I saw a light blue, light grey cloud. I smelled the scent of burnt plastic and burnt garlic and onions. I saw many wounded and dead people lying down on the ground. I saw their skin was swollen and had turned black, some had foam around their mouths and blood came out of their noses. I saw these people on the escape route from the village. My eyes hurt, they burned severely and were full of tears, I saw through a sort of mist. My son [name] had swollen eyes and his sight was bad. When we came to Iran I got medication, my son [name] still has eye problems and I do too, they turn red easily and since that time I get nervous quickly and I also suffer from kidney problems.

I heard that Khardal was used. Most victims were civilians, mainly women and children. My neighbors, the [name] family consisted of a man, woman and children, all died in the attack. An acquaintance named [name] and his six children also died. I never found my daughter [name] back, I don't know what has happened to her.

With respect to count 2:

12.72 an official report of the witness examination on 5 October 2005 drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 110] made before the examining magistrate on 5 October 2005 (G110.I - pages 1480 through 1486):

(2) I was an eye-witness of the chemical attack on Khoramshahr on 11 April 1987. Together with three others I was a guard at a water treatment company. We heard the sound of artillery coming from the Iraqi side. A bit farther away we heard the sound of an explosion. The sound was more muffled than usual. After that I heard a hissing noise, as if water was released.

12.73 an official report of the witness examination on 4 October 2005 drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 109] made before the examining magistrate on 4 October 2005 (G109.I - pages 1474 through 1479):

(2) I was an eye-witness of the chemical attack on Khoramshahr. (4) In the afternoon we had seen Iraqi planes flying over; grey planes which were kept under fire by the Iranian anti aircraft guns. Around midnight we heard three to four explosions, the sound of which was softer than usual. (4) When we understood we were dealing with a chemical attack, we went upstairs to take a shower up on the roof. However, the water there had been turned off. (5) We went downstairs. After five minutes my sight started to deteriorate. When I was under the shower downstairs I noticed I couldn't see anymore. Shortly after that I lost consciousness. (6) I saw several dead people. (7) I suffer from nerve problems and shortness of breath. I have become slow of comprehension and suffer from trembling hands and feet. I haven't been able to work for six months while I was treated for lung trouble.

12.74 the statement of witness [witness 67], made during the court session of 23 November 2005, consisting of the following:

You say to me that, before the examining magistrate, I made a statement with respect to the date on which the attack on Alut occurred and you ask me whether I still remember that date. I have always said that it was at the beginning of spring. I never mentioned a day. Maybe the interpreter made a miscalculation. I only said that it was the beginning of spring. I have always said that.

You say to me that, before the examining magistrate and in answer to his question whether I knew by heart when the attack on Talut had occurred, I have answered that this was on the 27th day of the 2nd month of 1366. I don't remember that very well. After all, Farsi is not my native language. I have only said that it was at the beginning of spring.

You say to me that I first mentioned the date 16 May 1987, then the second month and that I then said that my head was not functioning properly. Indeed, my memory isn't functioning well. I am sure it occurred at the beginning of spring. I have always wanted to say that. By the beginning of spring I mean the first month of spring, named Farwardin.

12.75 an official report of the witness examination on 2 October 2005 drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 67] made before the examining magistrate on 2 October 2005 (G67.I - pages 926 through 929):

(2) The attack on Alut occurred on 16 May 1988. The date that I mentioned at the police station is not correct. (3) On that day I was working on the land of my father. Around 12.00 hours I saw three planes coming from the Iraqi direction. They dropped their bombs and turned towards Sardasht and then they flew back towards the direction of Iraq.

The bottom of the planes had a beige or white color, but this could also have seemed to be so because of the reflection of the sun. People from the village told me they were MIG's. (9) They told me this that same day. I don't know how they knew. (4) They didn't fly very high. (3) Around me and [witness 68] four bombs fell. A bit farther away three more bombs fell. The explosions were not very loud. I saw black smoke that turned more and more white. The smoke didn't rise but stayed low. I smelled the strong scent of garlic. My eyes started to run, I got trouble breathing and I had to cough. (8) I buried bomb remains. They were rubbery remains, not metal. (5) I helped the wounded. I saw burns and black spots in the faces. They had blisters on their skins. I personally saw six wounded people, among whom two wounded from [witness 68]'s family.

Others told me that there were a lot more wounded people. I know that a little boy named [name], son of [name], died from his wounds in Baneh. After the attack, the village had become uninhabitable. (6) After the attack my skin was itching a lot. Years later I began to have breathing problems. My nose doesn't function well anymore, my eyes are bad and my memory has been affected. I am capable of a lot less than I used to. I still work at a bazaar though. (17) My wife, my son and my daughter have the same problems as I do. My son, who is 18 years old now, is limited in his social functioning because of his injuries.

12.76 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200530041830, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 66] (G66 - pages 651 through 653):

I have been living in Sardasht for six years now, in 1987 I lived in Alut. Alut is a village right at the border between Iran and Iraq. The chemical attack occurred at 11.30 hours. On 16 April 1987 at 11.30 hours in the morning, I saw three airplanes. I was at home, high up in the mountains. I saw that one plane flew very high and two others lower. These two planes were bombing the town opposite of our village. Alut is a very small and

sparsely populated village. The houses are widely spread out. I saw two planes diving down and a bit later I saw them climbing up again. I heard the sound of exploding bombs. No loud explosions, but soft booms. When I looked at the far side I saw black smoke in the valley. When the smoke dissipated I saw it turning to a lighter color. After half an hour my skin started to itch. I also had terribly burning eyes.

When I was home again, I felt I couldn't breathe anymore. I know there were several wounded. I know of 7 or 8 people who suffered from injured eyes, skin and lungs. After the bombardment I smelled a strong scent of garlic. After the attack my skin itched a lot and I had several small blisters. Because of the attack I suffer from eye problems and my lungs are glued together. During the attack I was at home with my wife, who was born in 1944, and my children. Two days after the attack I took my wife to the hospital in Sardasht. She had severe breathing problems. Only civilians lived in my village, no soldiers.

12.77 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200504301430, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 67] (G67 - pages 654 through 656):

You tell me that you understand that I have been a witness/victim of an attack in which chemical weapons were used. You ask me when this attack took place. This was in Alut, on 27-1-1366 Persian, which is on or around 18 April 1987. I saw three airplanes. There were about 20 to 25 people working on the nearby farm and most of them said these were MIG's. I don't know this myself but I saw that the undersides of the planes had a light color. They came from Iraq, dropped the bombs, turned towards Sardasht and flew back to Iraq. It was 12.00 hours noon. In the area where I was working four bombs were dropped. They all came from the same plane. This caused the death of the [name] family. I heard light explosions. For a short time the smoke was black and then it turned white or beige. I smelled a strong garlic odor. However, I couldn't see very well so I washed my face first. Two persons at my farm died instantly, they had a black skin and white foam around their mouths, they were very near to the point of impact. There were six wounded persons. In the meantime my eyes and skin began to bother me and I had to cough. I washed my face. The bomb remains were different from usual, some parts were plastic/fiber. About four years after the attack I received treatment in Teheran and the doctor there told me that I had been exposed to mustard gas.

There was no army base in Alut, just a police station with a couple of officers. Where I worked, there were only civil houses and farms. Nowadays I still have breathing problems and my eyes are bad. When it gets warm I have trouble breathing. All my children have health problems. My daughter, who was 4 to 5 months old at the time of the attack, has bad

eyesight and a dry cough. My 17 year old son has heart problems and bad eyesight. During the attack my wife was at about a hundred meters away from me. The first year and a half to two years after the attack she had little complaints, but then she began to develop the same symptoms as I have. She also has nervous breakdowns.

12.78 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 2005042301745, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 68] (G68 - pages 657 through 659):

I was not at home when on 16 April 1987 the village of Alut was bombed. I heard bomb explosions coming from the direction of Alut. I could see the smoke as a result of the explosion. It must have been around 11.30 hours or twelve o'clock. I saw planes in the sky. I recognized the planes as being MIG's. I knew that the MIG's were Iraqi planes since Iran doesn't have MIG's. I saw the planes flying away to Iraq. When I got home, I saw that one of my children, my daughter [name], was choking. She died later. She was six years old at the time. My other daughter, six months old, was vomiting. Their eyes were completely red. When I saw this I took my entire family to Banaj, by car. The family consists of my wife, my two daughters, my brother and my sister.

From Banaj we were taken to a hospital in Teheran. I also went to Teheran but I wasn't admitted to the hospital. I did have blisters myself and I had also had to throw up, but I didn't want to leave my family alone. I suffered less than they did. After two days, my daughter [name] became unconscious. Then I was asked by the UN-mission to accompany them to the location of the bombed sites, so we returned to Alut together. After the UN-mission examined my house they advised me to have the house and everything in it decontaminated and destroyed. Seven bombs appeared to have been dropped around my house, at different distances. Some had been dropped at distances varying from 25 to 100 meters. I noticed rubber or polyester bomb fragments. I also smelled a strong garlic odor. The UN-mission told me that mustard gas had been used. When I returned, I heard that my wife and my daughter had died in the meantime. I would like to add that my wife was 7 months pregnant at the time. My other daughter, who was six months old then, was unconscious in a hospital in Teheran. She has been declared 70% disabled.

The consequences of the chemical attack that I still suffer nowadays are: first of all I am nervous, I have trouble breathing, I have a heart condition, my eyes, my skin and my stomach have been affected. Every week I get blisters in my mouth. I can't eat normally. A year ago my daughter underwent an eye operation. She is almost 18 now. She has bad eyesight. Even wearing glasses she can't recognize a person at a 15 meters distance. She has

been declared 70% disabled. My sister was also declared 70% disabled and my brother 45%.

12.79 an official report of the witness examination on of witnesses [witness 20], [witness 58], [witness 64], [witness 65] and [witness 71], in the case against [accused], on 25 September 2005, 27 September 2005 and 28 September 2005, drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 20] made before the examining magistrate on 24 September 2005 (G20.I - pages 900 through 905):

(7) Prior to the attack on 28 June 1987, there already was a war situation in Sardasht, which is located near the border between Iran and Iraq. In the days before we had already been

been bombed by Iraq. (9) Iranian troops were stationed in the surroundings of Sardasht, not in Sardasht itself. (10) Neither in Sardasht, nor in its surroundings were any peshmerga troops present. (11) At the time of the attack I didn't see any airplanes, but I did hear them. (14) I cannot distinguish the sounds of the different airplanes. (23) The interpreter (23) - who, by the way, interpreted in Kurdish, not in Arabic - apparently did not understand me very well, since it is not correct that I can recognize Mirages and Sukhoys by their sounds.

(16) I cannot indicate how many bombs had fallen when I fled into the house on Pirozi street. In my opinion the attack lasted for one minute. Later, the planes returned and bombed the inner city. I have seen the victims in the streets; only civilians, no soldiers. (17) I have heard anti-aircraft guns; I cannot say anything about the direction of these guns. (21) Before the attack I did see Iranian soldiers in Sardasht, but there was no military activity in Sardasht. The soldiers were passing through, for example. There was no military base in Sardasht, or anti aircraft weapons. (26) There are still traces of the attack in my body. Now and then I have trouble breathing. I have psychic complaints. I am treated by a dermatologist, a lung specialist and an eye specialist. I don't harbor the illusion that I will ever recover.

12.80 an official report of the witness examination on of witnesses [witness 20], witness 58], [witness 64], [witness 65] and [witness 71], in the case against [accused], on 24 September 2005, 27 September 2005 and 28 September 2005, drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements of [witness 58] made before the examining magistrate on 25 September 2005 (G58.I - pages 910 through 915):

(4) I remember the time of the attack very well, it was the moment of the noon prayer. I heard airplanes flying over and I smelled the scent of garlic. (5) I didn't see the planes dropping their bombs. I saw a cloud of smoke hanging over the city. After that I saw two airplanes flying in the direction of Iraq. I didn't see any distinguishing marks on those planes. (10) I did hear anti-aircraft guns.

(8) Shortly after the attack I saw six bomb craters. I indicated four of those to the police on a map. The locations of two other craters were not marked on the map: the craters in Rash Harmeh. (18) In that town, which is located two kilometers from Sardasht, and where I only came back for the first time two months after the attack, I didn't see any victims. (22) I did hear there were victims there. (8) I didn't see any bomb debris. I saw a lot of white powder in my own house, after the attack. (9) In the period prior to the attack, there was no military activity in or around Sardasht. There was no army base in Sardasht, only one or two kilometers outside the town, but that was not a base from which war activities originated. (21) I have breathing trouble and my eyes bother me. I have an itching groin. I am still treated by doctors. I have been declared 30% disabled.

12.81 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number G13.1, dated 19 October 2004, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 19 October 2004 [witness 13] (G13.1 - pages 161 through 165):

During the eighties I lived in Sardasht in Iran. When did the first chemical attack occur? That was on 28 June 1987. I was working in the hospital of Sardasht. Just before the attack I was walking through the hospital. I walked outside. I looked up and I saw four airplanes. I heard muffled booms. This was not the usual sound of a bombardment.

I think these planes were Mirages. I knew Mirages were from Iraq since Iran didn't have them. Three bombs landed in the inner city of Sardasht. The first thing that struck me was the strange smell and the crying of the people. I also saw a cloud of smoke. I smelled a strong scent of garlic. Then I knew it had been a chemical attack. The army doctors had told us that mustard gas smells like garlic.

The smoke had a white color. I quickly went to my car and got inside. I closed the windows and quickly drove to my house. I saw many people coughing and throwing up mucus. I saw they had wounds and blisters on their bodies. I drove to my house and I took my family to a safe place. I drove back to the hospital right away and I arrived there a bit later. I saw very many injured people in the corridors. I saw and heard that the injured had trouble breathing and I saw they had large blisters on their bodies. The injured were women, children and men. All civilians. I think that 530 people died in total as a result of this attack.

12.82 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200504301120, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 29 April 2005 [witness 46] (G46 - pages 565 through 568):

On 28 June 1987 I was in Sardasht. The attack took place at around 16.15 hours. When I heard the planes, I quickly returned to my house. There I grabbed my two sons by their arms and jumped into a ditch. After we had jumped into the ditch I heard the sound of an explosion. However, the sound was not as loud as the sound of a conventional bomb, which made me think that the bomb had fallen far away from where I was. But then I noticed that the bomb had fallen at approximately 25 meters from where we were. I also saw a grey cloud of dust hanging over the street. I smelled a strong garlic odor. It was an attractive odor, one that invited you to inhale it more and more.

Later, I understood that this had been a chemical attack, when my brother told me this. My brother had been trained with respect to chemical weapons. I took everybody out of the city and stopped at a brook. There I saw a black airplane flying over at low altitude. I only remember that it was a black plane and that it was flying in the direction of Iraq. After that, my brother [witness 52] said to me that he was feeling very bad. My brother had red eyes, he trembled and he indicated that he had to throw up. Then we went back to Sardasht, to a place that I thought wouldn't be contaminated by chemical substances. There I left my children and my wife at the care of my family and I took my brother to the stadium, which harbored a military medical center. My brother's eyes were cleaned and treated there with medication. After that I returned to my wife and children and I saw that they suffered from the same symptoms as my brother. They also trembled vigorously and vomited, so I took them to the military center as well. My eyes felt very bad, as if someone had thrown sand in them. That same day I, as well as my brother [witness 52], my wife, my two children and my mother were taken to a hospital in Baneh, about 50 kilometers from Sardasht. On the way, our eyes closed completely, we couldn't see a thing anymore and we started to throw up.

We went to different hospitals. We all went blind. Ten days after I arrived in Tabriz, I heard that my father had died. After 20 days, I heard that my mother had died as well and I also heard that 10 members of my family had been injured and contaminated. When I was in Tabriz I was told to have myself treated by a dermatologist.

At that moment, my whole family had been admitted to various hospitals in Teheran and I was taken to a hospital in Teheran as well. Everybody was in a hospital in Teheran except my brother, he was in Madrid. We were all out of the hospital within a month. Nowadays, 17 years later, my health is still deteriorating and the same goes for my family. My current health condition is as follows: I suffer from burning eyes and I cannot sleep anymore because I have trouble breathing. Sometimes my skin itches to the point that I cannot stop scratching. This also has consequences for my mental health. I get more nervous all the time and sometimes I am aggressive.

At this moment ten of my family members suffer from the consequences of the chemical attack. I frequently have to go to hospital for treatment. Sometimes I need to stay for three days to get a treatment with cortisones. On average, I have been admitted one month per year in hospital in Teheran. I know that I have been exposed to mustard gas. I am not an expert myself, but I have been told it was mustard gas and nerve gas. According to the doctors it was a mix of mustard gas and nerve gas. In total I have seen 4 locations in Sardasht where bombs had been dropped.

12.83 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200504292000, dated 29 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers and Public Prosecutor F. Teeven, on 29 April 2005 [witness 47] (G47 - pages 569 through 575):

On 28 June 1987, at around 16.15 hours, the city of Sardasht was attacked. I was at home and I heard explosions. One bomb exploded near my house. After several minutes I smelled the odor of decay, a garlic odor. Subsequently my family and I fled into the air-raid shelter in my house and we stayed there for about 15 minutes. When we got out of the shelter I noticed that my two year old daughter suffered from breathing and lung trouble. I had to throw up myself and we all suffered from red eyes and a burning feeling in our lungs.

We went to the hospital where my eyes were cleaned. We returned home and when I had to throw up again after two hours, I returned to the hospital. This is the normal hospital in Sardasht. The second time, I was sent to the stadium which harbors a military field hospital. From this field hospital I was sent to a hospital in Tabriz. When we were examined there, our injuries proved to be so serious that we, i.e. my whole family, were sent immediately to a hospital in Teheran for further treatment. That includes my husband, me and my three daughters who were 6, 3 ½ and 2 years old at the time. In Teheran we were admitted to a hospital named 'Baghiyatollah'. After two weeks of treatments in Teheran we were sent to Madrid, Spain, on 10 July 1987. There we were treated during 40 days. The name of the hospital in Spain was Gomez Ocha, it was a large military hospital. We arrived back in Iran on 20 August 1987. When I returned on 20 August 1987 I couldn't be operated on right away. I had to wait or else I would become blind. I did have my operation after two months. My left eye functions properly again but the sight in my right eye is still bad. My lungs appeared to be damaged very much as well. It felt like I was suffocating. Now I use three different sprays, syrup and antibiotics. My

lungs still do not function properly because the lung tissue is stuck together which makes that I cannot use my entire lung capacity. I also suffered from many blisters. Right from the start I was itching all over. After two or three days I got blisters.

All these disorders of my eyes, skin and lungs have resulted in my being very nervous now. My entire family suffers from the same symptoms. That is because our nerve system has been damaged. My husband had blisters all over his body. Some blisters come up and go again all the time. My 3 ½ year old daughter had large blisters on her chest. My youngest, a two year old daughter, died five days after the attack. She died on 3 July 1987.

My daughters and I are under treatment in the hospital. We have to be treated at least twice a week. The doctors have told us that our lungs are damaged by the mustard gas to the point that they will never heal again. My husband has many health complaints. He suffers a lot from infections.

12.84 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200504291800, dated 29 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 29 April 2005 [witness 49] (G49 - pages 581 through 584):

In 1987, because of the Iranian victories, the Iraqis started to attack civilian targets with chemical weapons. The first city to be hit by chemical weapons was Sardasht. Sardasht is inhabited by Sunnite Kurds. Different expert opinions indicate the number of victims as being between 5000 and 7000. When the attack started, around 16.30 hours, I heard airplanes, the alarm went off and I went for cover in a trench. It was only when I left the trench that I discovered it had been a chemical attack. I also saw people panicking and falling down. I smelled an odor of rotten fish, garlic and cucumber. In preparation of conventional bombardments and prior to the attack, we had set up a stadium for the treatment of large numbers of victims. Most victims suffered eye, skin and lung injuries. They became short of breath, suffered tightness of the chest and/or chest pains and felt like they were suffocating. They coughed heavily. I still have eye, lung and breathing problems. I also suffer from skin problems like acne. I use sprays to facilitate my breathing. After I got contaminated in Sardasht I got a daughter. This daughter has a lot of health problems like epileptic attacks. The doctors don't know what the reason can be. I think it is because of the contamination, but that is not a fact. It is also the doctors' guess, but it is not a medical fact.

12.85 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200504301430, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 50] (G50 - pages 585 through 589):

The attack took place on 28 June 1987. At the time of the attack I was in Teheran. The day after I returned to Sardasht. You ask me at what time the attack took place; it was at 16.16 hours in the afternoon. I heard this from my brother. My brother [name] told me that he heard some sort of plop, after the planes had passed by. Different from normal bombs. My brother heard that sound of the explosions came from the direction of our house and he ran towards it. The family and the neighbors went to the shelters for cover. In total there were 40 people in those shelters. Nobody survived. My brother, who told me this, died 4 months later. Nobody is alive anymore. The following day I saw what had happened in the city. I arrived in Sardasht at 17.00 hours. I was a soldier then and I was based in Kirman. I was on leave in Teheran. I called home at 17.00 hours to tell them that I would be coming home that night. His (the court reads: my) father then said that the attack had occurred and that the bomb had fallen right next to their house. My father said that he was told it concerned a chemical bomb. You ask me for the location of the house in the city of Sardasht, the quarter. I will indicate it on the map. There was no military base around it. When I was exposed to the chemicals I got burning eyes and an itching skin. That is probably because I slept in our house. In the hospital in Terbriz I heard from a lung specialist that Khardal (mustard gas) had been used. You ask me what kind of effects I saw of the chemical attack on other people, like my deceased and injured family members. I saw some of them had pieces of black skin, but most of all I saw large blisters on their skins.

You ask me about my injuries. As already described, large blisters under my right arm pit and under my left arm I became completely black. I got a cream to treat this and eye drops to wash my eyes with. I still suffer from skin irritations and shortness of breath and I am still under treatment in the clinic for chemical victims in Sardasht. I have contracted these injuries indirectly since I was not present during the attack, but afterwards.

12.86 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200504301520, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 51] (G51 - pages 590 through 593):

On 28 June 1987 I lived on the hospital compound. It was around 16.00 in the afternoon. I heard the air-raid alarm on the military base. I ran to the garden of the hospital and I heard the explosion of a bomb. The sound of

the explosion was different from usual. The sound was not loud. Then I saw two airplanes flying over. During earlier bombardments the planes returned directly to Iraq after having dropped their bombs. This time was different because the planes kept on circling around the village. Five minutes after the explosion I smelled the odor of garlic. I went to my mother's house, which was right next to one of the bomb craters. This location is called 'Char Rah Farmandari'. I entered the houses in that area. I saw white dust in the house and on the people.

The other people around there were also covered with white dust. On that day three or four people in Sardasht died. I know this because I worked in the hospital. However, the number of dead people increased over time. From talking to people in other hospitals I know that after the attack an average ten people a day lost their lives. I got blisters on my back after four days myself.

Already during the first night after the attack I had to throw up, but I thought this was because I was so tired. It was only after I got blisters that I realized that I had been exposed to chemical weapons. Three days after I got the blisters my eyesight was affected and I remained blind for almost 20 days. At the time I was six months pregnant. I know that all women who were pregnant at the time bore children who have health problems nowadays. My son was also accepted by the commission as a victim of chemical weapons and he now gets medication. About my health condition I can say that victims of chemical weapons do not have a social life. A chemical victim will never recover completely. In winter I have breathing problems and in summer the places on my body where I first had blisters itch a lot. I often need to see a doctor. For extensive treatment I have to go to Teheran. My mother became completely blind after the attack on 28 June and she still is. Besides the victims that I mentioned, being my brother, my mother and my son, my uncle also died as a result of the chemical attack. In addition the following family members have been contaminated: my three sisters, my husband, a brother, my sister-in-law and my four nephews.

12.87 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200530041525, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 52] (G52 - pages 594 through 595):

On 28 June 1987 I was in Sardasht and I heard the sound of airplanes. The sound of explosions I heard was not normal. Shortly after, I heard that the first bombs had hit three surrounding villages and the second series of bombs had hit the town center. When the bombs had hit the ground I saw white/grey smoke. It was around 16.25 or 16.20 hours in the afternoon. After the bombardment there was smoke everywhere over the city. I remember I smelled garlic; 3 hours after the attack my eyes turned red and 4 hours after the attack I saw people in their cars who had running eyes, some had to throw up and some had trouble breathing right after the attack and painful lungs. Some people were in a very bad condition 7 hours after the attack. At 20.30 we went to Baneh by car. There was a field hospital in Baneh. When I got eye drops there I lost my eyesight.

We were sent to Tabriz by bus, but before that, we passed by the hospital in Saghez. I suffered from burnt skin under my armpits, but the pain in my eyes was the worst. The next day I arrived in the Bobac hospital in Tabriz; 29 June 1987 at 13.00 hours. In Tabriz I was sent to the Iman Khomeini Hospital. All that time I was unconscious. I had blisters that were caused by the poison in my genital area and under my armpits. Because of my serious injuries I was sent from Tabriz to Teheran. My throat was treated with syrup.

In Teheran I wanted to take a shower because I felt so hot. I also suffered from hallucinations. If I look at the period between June 1987 and April 2005, I see no improvements. After one week in Teheran I was able to see a little bit better, but I had become short-sighted. Compared to the past, my situation has improved however, although I still am short of breath. I am still under treatment of ophthalmologists and lung specialists for injuries to my eyes and throat. I still have to use creams for damage to my skin.

12.88 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200530041950, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 53] (G53 - pages 596 through 598):

I still remember that chemical attack on Sardasht on 28 June 1987 at 16.15 hours. Sardasht was attacked by airplanes. I saw four planes myself. When the bomb landed, I heard a very soft boom, nothing like the normal sound of an explosion. I walked over to the spot where the first bomb had landed. I clearly smelled the odor of rotten garlic. From the moment I returned home till the moment that we were to have dinner, many family members wanted to throw up, so we didn't fancy eating. Also our eyes hurt very much, we all had tears in our eyes. Our skins gave us a lot of trouble all over our bodies; arms, armpits and genital area. At that time 5 persons were living in our house: my father and mother, my wife and my eldest daughter. My daughter was 4 years old. The skin on her ankles gave her a lot of trouble. Especially my father and I had eye trouble. In the evening the pain increased. I had two problems myself: first my skin itched terribly and secondly, I had to throw up all the time but I couldn't. My wife's skin itched a lot, my mother had to throw up, my father slowly became blind, my daughter had blisters on her feet which contained a lot of fluid.

My wife was nine months pregnant and four days after the bombardment, my son was born. One of my family members died of his injuries, he had large blisters all over his body.

I took my family to the 250Bet Hospital in Mahabad, where they were taken care of. With my father I went on to Tabriz. We received treatment with creams and eye drops. In Tabriz I heard from an acquaintance that my wife wasn't doing very well, so I returned to Mahabad.

For the past 18 years I have had a lot of eye problems. I still suffer from burning skin, especially in my genital area. My nerve system also deteriorates. When it is getting colder outside, I become ill. I have to belch then and when I spit my saliva is black. My wife suffers from breathing problems and her nerve system is also deteriorating. Her skin itches around her ankles. The same goes for my daughter. Her nerve system is giving her trouble too. So my wife gave birth to a child 4 days after the attack and when she breast-fed him, it appeared to be very bad for the baby. When the little boy got ill, it would sometimes take a year for him to recover. His immune system doesn't work very well anymore. My son is 18 years old now and he has to cough a lot. He also has eye problems. My father and mother have died in the meantime, that was 3 years after the attack.

12.89 the statement of witness [witness 54], made during the court session of 23 November 2005, consisting of the following:

On the day of the attack on Sardasht, 28 June 1987, I returned home from my work at a quarter past three. I heard the sound of airplanes over the city. I went outside. I must have been around 16.00 hours. I looked up and I saw four airplanes. They didn't fly very high, nor did they fly very low. With the naked eye I could see something yellow falling down. At that moment I heard the sound of anti-aircraft guns coming out of the direction of Iran.

When I saw the planes for the first time, they came from the left side and later from the other side. The Iraqi border is located on the left side of Sardasht, so the planes came from the Iraqi side. I have only seen the yellow things that came from the airplanes in the sky, they didn't come near me.

The things didn't make much noise, a soft explosion when they hit the ground. I don't know exactly what came down, whether it was some sort of bomb or some sort of parachute. I only know something came down. The explosion took place when I was still in the street, not far from my house. I heard the explosion when I was still lying in the ditch with my brother. The explosion came from the thing that had been thrown down. I have heard this sound much more often, since it was not the first time that I had heard airplanes. I have experienced other bombardments at other locations before.

I smelled an odor of garlic as well as of rotten apples. I also saw a cloud of white smoke over Sardasht. I have visited the locations of the bomb craters, four in total. I smelled the same odors at all these sites. The sites of impact were near to each other. There was also something on the ground, it seemed like flour and the color was broken white, whitish, I touched it with my foot. Shortly after my foot started to itch. After four to five hours I got a blister on my foot.

I went to the hospital in Sardasht. When I arrived there I saw many people lying on beds. Some were coughing, some were crying. The people suffered from vomiting, they were very hot, they had red skins and after a while they got small blisters on their bodies. The color of their skins turned black. People became short of breath. They breathed very fast but this required a great effort. The people I saw there didn't recover, most of them have died. Towards midnight I became so weak that I could barely do anything. I was taken home by car. At around three o'clock in the night I became blind and my skin was itching terribly. My brother and my other family members had also become ill. My main complaints were: pain, blisters and blindness. The worst was the pain in my eyes and lungs.

I did not see the injuries of my brother because of my blindness. I just recognized his voice. My brother even gave up blood. Later I heard about his injuries. He recovered the same way I did. He still suffers from problems with his eyes, skin and breathing. My main complaints concern my eyes, skin, lungs and psychic condition. My eyes give me a lot of trouble when it gets warm or cold outside. I cannot read two pages without getting problems. I cannot see very well. I do have glasses, but they are not sufficient. My skin itches everywhere. I use pills and an ointment for that. As a result of my lung trouble I cannot walk very far. Climbing the stairs is also a nuisance, and washing clothes too. We do not have electric appliances for that. Even cooking is a problem for me. Before the attack I didn't have those complaints, I was as strong as a man then. The future holds no improvements for me. My husband also has health complaints. He has lung problems as a result of the attacks. He was in Sardasht too. Among the victims I only saw people from my own city. They were all Kurds. All inhabitants of Sardasht are Kurdish. I think that in Sardasht and the surrounding villages approximately 170 people died in total.

Before the attack on Sardasht in 1987, there were no soldiers at all in the inner city. The locations that have been bombed during the attack were living areas. The Iranian soldiers only were outside the city. The anti-aircraft guns were also there.

You say to me that I just stated that I think that my health situation will not improve anymore, and you ask me whether my condition is stable or deteriorating.

My condition only deteriorates. Sometimes I used to refuse to take my medication, but nowadays that is no option, I cannot do without them. I take medication for my lungs, stomach and mental state. I don't know how many. I have bags full of medication for my complaints. I will show them to you.

12.90 the statement of witness [witness 55], made during the court session of 23 November 2005, consisting of the following:

You ask me whether I can say something about the attacks on Sardasht or Rash Harmeh, I haven't written down the date of the attack since I am illiterate. I only know at what time the attack occurred. There was one big attack in the summer. The weather was nice and I was in the village Maragany, near Sardasht. At around 16.00 hour I heard the sirens in Rash Harmeh. Later I heard that my children got injured during the chemical attack in Sardasht. Since Maragany is located higher one could see Sardasht from there.

I saw two planes flying back to Iraq. Later I was told what had happened. I didn't see the planes dropping bombs, but I heard booms, which were considerably softer than other explosions that I heard before. Four bombs fell on Rash Harmeh. I only saw the craters, which must have been caused by the very same planes that I had seen, since this was at the same time and Maragany is only one kilometer away from Rash Harmeh. Before the children came towards me I vaguely smelled something, but after they were brought to me and I held them, I smelled the unpleasant scent of garlic. I held my children for a long time. Immediately afterwards the skin on my hands started to trouble me. At the moment of the explosion I was working in Maragany and my family was in Rash Harmeh. When I got to the hospital in Baneh they told me that I had to wash my children first and go to the hospital afterwards. My children were very ill already and I had blisters on my hands myself. The blisters started to come up when I washed my children in the bathhouse. After I washed them, my children started to tremble.

I had two sons, [name] and [name], they were twins, a daughter named [name] and my wife was heavily pregnant at that moment. They all suffered from eye problems and burning skin. After we got the advice to wash the children, we returned to the hospital. There we were sent to the hospital in Tabriz. The doctor there took a look at our children and told me that there was nothing he could do and that we had to go to Teheran at once.

In Baneh I got blisters but I didn't pay attention to that since I was worried about my children. About two hours after I had been in contact with my children's clothes, I got blisters. While I was busy bringing my children to the ambulance that was to take us to Teheran - I had to do that myself because nobody wanted to touch them - my wife gave birth. The ambulance was in a hurry and didn't want to wait, so I took my children out of the ambulance again. In the meantime, my wife had given birth to a daughter. Shortly after, we were taken to the airport. I don't remember what happened after that. I do remember that I was with my wife and children at the airport. We had to leave our newborn baby behind and I have never seen her again. While we were at the airport, my son asked for water. I went to fetch it, but when I returned he had died.

I am not doing very well at this moment. I am short of breath, I am itching all over and I have blisters on my hands. I cannot really work, but I have to, since I have 6 more children. I use medication. My health condition is deteriorating. My shortness of breath and the itching are getting worse. You ask me whether there also were soldiers in Rash Harmeh. There were no soldiers in Rash Harmeh. There are 22 houses in Rash Harmeh and all inhabitants are Kurds. I am a Kurd as well.

12.91 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200530041115, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 56] (G56 - pages 604 through 608):

The attack took place on 28 June 1987. The bomb was dropped near the city center. There was no military base near the city center. There were some soldiers there, but not many. It was 16.15 hours in the afternoon. I heard the sound of an airplane and shortly after, the sound of bombs falling down. The sound of the bombs falling down was different from the usual sound. The sound seemed like some sort of plop. I heard 3 to 4 explosions around me. Normal bombs make a lot more noise. I saw white smoke rising up from the craters. The bomb that came down nearest to me, fell down at a distance of approximately 50 meters.

I smelled a strong garlic odor, or onion. At first, I felt nothing. Then my eyes started to bother me, I got nauseous to the point that I vomited blood, I got large blisters on my skin. My skin burnt all over and my genital area was completely burnt. I couldn't see at all then, so I don't know what my skin looked like. I was not able to see at all for thirty days. After thirty days my eyesight slowly returned. The blisters only started to heal after three months of hospital treatment. As a result of the attack I lost 18 family members. From the start I have had lung problems and over the years this situation has been getting worse. I can't handle weather changes very well. I need to take medication on a daily basis and I always carry oxygen with me. I also need an Imukin-injection. I have scars of the blisters all over my body. I still have skin, lung and eye problems.

12.92 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200530041115, dated 30 April 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 30 April 2005 [witness 57] (G57 - pages 609 through 61):

The attack took place on 28 June 1987. At the time I was living in the city center of Sardasht. There was no military base around there. At was around 16.15 hours in the afternoon. I heard airplanes. We had been bombed before. The sound was different from earlier bombings, a low sound. Small fragments fell into our front garden, the bomb came down at about 50 meters from our house. Small flames came out of those fragments and then a strange grey mist emerged which covered our entire front garden. There also was a strange odor, like rotting garlic. I told my mother to leave the city and I ran towards the CMR, which was a center for victims of chemical

weapons. When I got there, I saw three people lying on beds, one of them being my brother [name] who was still conscious. I asked him what was the matter with him and he answered that he had a small head injury and that his body was burning all over.

My brother was very restless and all of a sudden he started to vomit. A bus came and my brother, with many others, left on that bus towards the hospital in Baneh. With my other brother and my mother, I left the city and we went to a village named Nalas. It was only in the hospital in Mahabad that I heard that my brother had died the first night. When evening came, my eyes started to burn and my skin started to itch, especially the arm on which my brother had leaned. I was in pain and at around midnight I couldn't see very well anymore. When we arrived at the CMR, my mother couldn't see very well either. I started to vomit. In the hospital I got large blisters on my hands. I didn't see a thing anymore.

After one week I was able to open my eyes again. I still have skin problems and I am itching at various spots. My eyes often burn and my eyesight has deteriorated, but my biggest problem concerns my breathing. My mother has similar complaints. My wife also has complaints, lung problems, skin problems and female related complaints. At least once a month I have to see a doctor, but many people are in a far worse condition than I am.

12.93 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505061340, dated 6 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 6 May 2005 [witness 78] (G78/2/G79 - pages 690 through 696):

You ask me about the victims whom I have treated after the attack on Sardasht. Almost all victims I saw suffered from blisters. The group of patients from Sardasht included many people who suffered from bad eyesight, in various degrees. The victims from Sardasht also had lung problems; after two days the epithelium (the outer layer) of the wind pipe was affected as if it was burnt. When they had to cough, the sputum they produced included some of that epithelium.

12.94 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 2005, dated 5 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 5 May 2005 [witness 78] (G78/1/G78 - pages 682 through 689):

In Teheran I have treated approximately 600 victims from Sardasht who had been taken there. It was a mustard gas attack, nothing else. Everybody had the symptoms of the use of mustard gas. It is quite clear to me that it was mustard gas which was used during the big attack on 28 June 1987 in Sardasht.

12.95 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505031200, dated 4 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 4 May 2005 [witness 64] (G64 - pages 641 through 643):

I have been a victim of a chemical attack in Zardeh, Iran. The attack occurred at 06.00 hours in the morning of 31 Tier 1367 (Persian), which is 22 July 1988. At one point in time I saw two airplanes arriving, I saw they were flying at low altitude from the direction of Iraq, towards Zardeh. I heard a small explosion. Right after that, I saw the planes returning to Iraq, from Zardeh. The explosion I had heard was quite softer than the explosions I had heard before. After the planes had flown away I got up and looked at the city of Zardeh.

I saw light colored smoke hanging over the entire city of Zardeh. At that moment I was on a high mountain, about 2 to 3 kilometers from Zardeh, so I looked down on Zardeh. I went to Zardeh right away. When I arrived, I heard that the water was contaminated. Many people who had used it to wash themselves became unconscious right after. I found 22 dead members of my family, among them my father and my brother. The corpses I saw there had blisters all over them. The injured also had blisters and I saw red eyes. I saw that several injured people got a black skin in a matter of hours. I felt I was injured myself as well.

During the burying of the dead I began to have problems. I held some handkerchiefs against my mouth, but still I needed to throw up. Soon my hands started itching, my eyes were bothering me and I got blisters. These were small blisters on my hands about half a centimeter. As a result of the attack 27 members of my family have died. Although my mother survived, she has serious breathing problems. I also have serious breathing problems at this moment. I need to take medication continuously or else my skin starts itching. The doctors have told me that my lungs are burnt. My lungs lost their elasticity and lost quite some capacity. My son also has breathing problems. After the attack I had two more children and both these children suffer from asthmatic attacks. When the weather gets cold, they suffer from skin problems.

12.96 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505031100, dated 4 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way

- the statement that was made before these investigating officers on 4 May 2005 [witness 65] (G65 - pages 644 through 650):

We received the call to go to Zardeh on the day of the attack. It took us 1 to 1 ½ hour to reach Zardeh. It was on 31 Tier 1367 (Persian), which was on a Friday. When I approached the city I smelled a clear scent of herbs. Other people have told me that 9 bombs had been dropped on three different locations. I saw the corpses had a black skin. I saw that the injured had many blisters on their skins and I saw they had red eyes. During the transport to Islamabad I saw many victims vomiting. I think there were more than 1000 injured people, some of them died. I know that there were no soldiers in the city at the moment of the attack on Zardeh. On that day a ceremonial offering was going on and there were only civilians. Since that day I suffer from breathing problems and I also had some small blisters. I also suffered from red eyes.

12.97 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505041105, dated 4 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 4 May 2005 [witness 61] (G61 - pages 627 through 631):

At the moment of the bombardments on 22 July 1988, I was in Zardeh. I was twelve years old then. It was 06.00 hours in the morning when the bombardment started. I heard the sound of airplanes. Then I heard the sound of explosions. When I got outside, I saw two airplanes. I also saw a multi-colored smoke. I went drinking water from a spring and when I drank the water, I felt my eyes burning. I smelled a strange odor that I didn't recognize. It smelled a bit like rotten onions. My throat started burning and I spat blood. At the time of the attack more people got killed. Some people died immediately after they had drunk the water and some got eye, skin and lung problems, just as I did. I got blisters on my skin and my eyes were running seriously. At this moment I have blisters on my face again. I am blind now. I only see the difference between light and dark, I don't see any forms. My eyesight gradually deteriorated. The doctors gave me antibiotics, penicillin and anti-irritation medication. In 1992, my lungs were full of dirt. At that moment I started to suspect that I had been a victim of a chemical attack. I went to a doctor in Kermanshah on my own and he told me that I was a victim of a chemical attack. The symptoms, burning and running eyes, continued for a year. I slowly lost my eyesight. I am allergic and my body is itching all over. I cannot walk without the help of somebody else. My father is bothered by itching blisters on his hands, his throat and his bronchi, my mother is very nervous. After the attack, my father and his eldest daughter were taken to hospital. They both had blisters. The son who was born in 1976 has a medical file concerning the same symptoms. Now they are itching at spots where the blisters used to be and they are very nervous. Besides, they have enormous breathing problems and they cough a lot.

12.98 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505041150, dated 4 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 4 May 2005 [witness 62] (G62 - pages 632 through 637):

I think Zardeh had 1400 inhabitants at the time of the attack in 1988. If I remember well the attack occurred on 31 Tier 1367, which is 22 July 1988, at around 06.00 hours in the morning. I was in my house and I had already woken up. I saw two airplanes flying over. Nothing happened as yet. In any way, these were very fast planes. The first time they flew over, they came from the western direction, from Iraq. It is about 30 kilometers to the border with Iraq. I saw the two planes returning and diving down they dropped their bombs. I saw them flying away in a western direction, to Iraq. At that moment, I heard several explosions. Later, I understood that 9 bombs had been dropped. The sound of the explosions was not like the usual sound of normal bombs, it was not as loud. I saw a cloud of smoke with different colors, but not so dark. I smelled the odor of cooked vegetables, like the Iranian dish Ghormeh. I had trouble breathing and I had burning and running eyes and couldn't see a thing after a while. I became unconscious and caretakers took me to the aforementioned hospital. The bombs had been dropped in a parallel line on our village, from the tomb towards the end of the village. After I regained consciousness, my eyes hurt. I could see again, but only within a short distance, and my skin itched, especially on my breast. I had large and small blisters on my body, especially on my hands and spots which were uncovered at the moment of the attack, and I had breathing problems. When I received treatment at the hospital, my eyesight improved, but it has never recovered fully to the eyesight I had before the attack. I still suffer from breathing problems, headaches, dizziness, running and burning eyes. I see and I heard that people from my village are still dying as a result of the chemical attack.

At the time of the attack I was in the company of my father, mother, 2 brothers and a sister. My brother [name] died the same day of the consequences of the attack, he was 18 years old then. My sister [name] died of lung cancer in the Taleghani Hospital in Kermanshah in 2002, she was 45 years old then. My father [name] also died of lung cancer in 1994, he was 63 years old. My mother [name] died of lung cancer in 2000. The doctors said that the lung cancer had probably been caused by the chemical attack. My other brother is still alive, but he has the same problems as I do. At the time of the attack I was a soldier, but I was on leave and therefore I was at

home. I was a soldier from 13 April 1987 until 16 November 1989.

12.99 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505041215, dated 4 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 4 May 2005 [witness 63] (G63 - pages 638 through 640):

At the time of the bombardment on Zardeh on 22 July 1988, I was 20 years old. When the bombardment took place I was in Zardeh. It took place at 06.00 hours. I heard the sound of airplanes. I saw two planes and after that I heard the sound of explosions. I heard about 9 bomb explosions. Then I saw a multi-colored smoke (yellow, violet, white and green). They bombed three different locations in our village. After the explosions, the smoke rose and then it came down again, covering the entire village in smoke. This smoke had various scents. It smelled like vegetables and chewing gum and burning tires and rotten garlic. Since I was a member of the Basiji (people's militia), I had followed a basic chemical training, so I realized that a chemical attack had occurred.

One bomb fell into the well from which people drew their drinking water. Most people didn't know that it was a chemical attack, so everybody was just drinking that water. People who had drunk from the water started throwing up. Their vomit had a yellow color, like cheese. Their eyes turned red and they got blisters on their skins that itched terribly. Some of them turned blind. Some died.

The victims developed breathing problems and threw up, they became nervous. I also saw they had blisters. They also had burning eyes which reduced their eyesight. My present wife and I were both injured. My wife has limited lung capacity and she coughs all the time. After the attack I had to throw up and I got blisters all over my body. These blisters have become scars now. I show you the scars. When I returned to the village after a week, I heard that 150 people had died as a result of the chemical attack. Nowadays, many people have leukemia and they throw up blood. Many people also turned blind and many of their children were born with a deformation. My father, who also lives in the village, has eye problems. My oldest brother is nervous and my sister has limited lung capacity. We all suffered one way or another from the bombardment and we are all under doctor's treatment.

12.100 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505011310, dated 1 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 1 May 2005 [witness 70] (G70 - pages 663 through 664):

You say to me that you have understood that I witnessed the consequences of an attack in which chemical weapons have been used. You ask me when this attack occurred and at what location. That was in Oshnaviyeh. I think it was in the year 1367 (Persian), that is 1988. It was summer.

I had worked as a Behyak, that is sort of a relief worker, in Oshnaviyeh since 1979. It was around 16.00 hours. I know this because I was watching the clock. Many people started coming in with injuries. They were in groups of 5 or 6. The people suffered from problems with their skin, breathing and eyes. Their skins and eyes were red and many had blisters and they were itching a lot. They looked as if they were burnt. I also saw people vomiting, even blood. Many couldn't see very well anymore. We relocated them to other hospitals, in particular to Urumyeh. That day, I didn't see any dead people myself, but I remember that I saw Mr. [name] later. He had gone to Tabriz. When I saw him, he had lung problems, he threw up blood and he had black spots on his skin as well as blisters. He died about a week after the attack.

12.101 an official report of the witness examination on 1 October 2005, drawn up and signed by [.....], examining magistrate in charge of the proceedings in this court, and [.....], clerk of the court. These official reports include, among other matters, - rendered in a compact way - the afore mentioned statements made before the examining magistrate on 1 October 2005, of [witness 70] (G70.I - page 949 through 970):

(2) I remember the attack on Oshnaviyeh in 1988 very well. I was living in the center of Oshnaviyeh. At 08.00 hours I went to the Red Cross post where I was working as a emergency nurse. When I arrived, there were already many injured people. They had injuries in their eyes and their skins. (3) The injured all came from Oshnaviyeh. (5) They were about 300 to 350. (22) There also were small children; they had burnt hands and breathing problems. They also had injuries in their noses and skins. (26) There are still many people who suffer from their injuries, they come to our post. They suffer from head problems and their skin is affected.

(5) I treated injured people all day long. Most of them had lung problems, burns on their skins, nose and eye problems, they were itching all over and they had nervous break downs. (6) That day, no people died in our post, although some people have died who had been relocated to other hospitals, like [name], of whom I carry the hospital data with me. (7) I have spoken to injured people. They told me about a boom around 02.00 hours in the night, that there was a smell of burnt plastic and that they got blisters on their hands. Supposedly the attack took place within the city. Some people had seen Iraqi airplanes coming from the direction of Iraq (11) which afterwards flew back to Iraq again.

12.102 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505011310, dated 1 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 1 May 2005 [witness 69] (G69 - pages 660 through 662):

You ask me when the attack took place and where. It was in Oshnaviyeh during the night of 2 to 3 August 1988. I was working at the farm. I didn't see any airplanes. It was 01.00 hours in the night. I heard a loud noise in the sky, a sound that increased gradually, it seemed like the sound of a propeller, it could have been a propeller plane or a helicopter. I heard two explosions, one near the river and one in the back of my garden, about 100 meters away from me. I tried to remove the bomb debris, but I smelled a disgusting odor. It was around 03.00 hours and I went to warn the police about this bomb being in my garden. At 12.00 hours, a friend of mine told me that my hands and legs were covered with blisters. I got running and burning eyes and breathing problems. I was taken away with an ambulance to Urmieh and there I was admitted to a hospital. I stayed there for four days. They gave me a cream for my blisters and drops for my eyes. My eyes hurt terribly but I retained my eyesight. There was no military post near Oshnaviyeh; a few outer posts with 4 or 5 soldiers, not a main base or something like that.

When I looked later, I saw that the bomb debris was white from the inside and khaki colored from the outside. It was the sound of an explosion, but not of a normal explosion. A 17 to 18 year old boy, named [name] (family name), who was admitted to hospital at the same time as I was and who had been injured at the attack as well, died two years later. He had small blisters on his skin and he also had terrible eye problems as well as breathing problems.

I am still under medical treatment because of the attack. I have eye problems and breathing problems. I see a doctor several times a year for these complaints. I think there were about 25 injured people.

12.103 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505011300, dated 1 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 1 May 2005 [witness 71] (G71 - pages 665 through 666):

The chemical attack took place at 01.00 or 02.00 hours in the night of 2 August 1988, or shortly after, I think. I was outside and heard the sound of airplanes. My house is in the suburbs of Oshnaviyeh. I did hear the bombs that were dropped. It was not like earlier bombings, the sound was very different from the earlier bombings that I witnessed. Immediately after the bombs hit the ground, 300 meters from my house, I smelled a disgusting odor, like rotten vegetables or garlic. 10 Minutes later I suffered from burning eyes and burning lips. I also felt my nose and tongue burning. Right away my skin started to itch, I am still bothered by that.

It was one big massacre. Many people were hurt. At the time of the attack, the following people were in my house: my 63 year old mother, my 23 year old sister and someone who was staying with us. This guest died a year and a half after the attack. From a week after the attack I seriously suffer from burning eyes, vomiting, pain in my lungs and itching skin, in particular my arms and back. My chest also hurt a lot. My kidneys were affected because the water in our town was contaminated. I had some spots on my feet that itched terribly. I didn't turn blind although I really suffered from burning eyes. During the week after the attack, my mother suffered from breathing problems and she had pain on the chest. My sister only suffered from burning eyes. But my neighbors did suffer from blisters on their feet and arms. The guest who was staying with us also suffered serious breathing problems. I was treated in the Sheikh Sarmasht Hospital, which is near the airport of Oruniyeh. We had a small medical facility, but soon 2000 victims started to arrive. So we were quickly sent to Orumiyeh. These past years I have suffered a lot from burning eyes and my left breast hurts. Also my back and my arms are still itching. Sometimes I cannot stop vomiting and I don't feel like eating at all.

12.104 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 200505011420, dated 1 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 1 May 2005 [witness 72] (G72 - pages 667 through 668):

I think the bombardments occurred during the first days in August 1988. It was around 02.00 hours in the night. My house was located in a suburb of Oshnaviyeh. Shortly after the bombs had fallen, I smelled an odor of decay. It smelled urine. I washed my face. After one hour, I got blisters all over my face. A lot of fluid came out of those blisters. Everybody who used the water was contaminated. I also got brown spots on my body. I will show you that I still suffer from those brown spots. They are still on my skin.

12.105 an official report of a witness examination by the National Police Agency, National Criminal Investigation Department, official report number 2005042302010, dated 1 May 2005, legally drawn up by the competent investigating officers. This official report includes, among other matters, - rendered in a compact way - the statement that was made before these investigating officers on 1 May 2005 [witness 73] (G73 - pages 669 through 671):

During the first days of August 1988, the village of Oshnaviyeh was attacked by Iraqi airplanes with chemical

weapons. This took place at 01.00 or 02.00 hours in the night. I was a soldier then and I was on guard in Oshnaviyeh, at a small military base. This base is called Seidabad. Sixteen or seventeen soldiers worked there, guarding the village. I heard a noise which seemed like the sound of an airplane or a helicopter. From a hill in the village, we heard the sound of an explosion. This explosion took place at about 3 kilometers distance. Then we saw a great light. After the light, I saw a large cloud coming from the location of the explosion.

The wind blew the cloud away from me. This is why our base was only slightly contaminated. The cloud was mainly blown towards the mountain. I was taken to hospital four hours later. I had stomach problems. My stomach burned. My eyes were a bit red. Later it appeared that about 2500 people in the village had been exposed to chemical weapons. I know that the Iraqi army was responsible for the chemical attack. I happen to know that Iraq is very near. I still suffer the consequences of the chemical attack. According to the doctors I have a lung problem. Besides that, I suffer from skin problems.

13. Considerations with respect to the causality between the TDG supplies and the mustard gas attacks.

Now that it has been determined that the accused has contributed to the supplies of TDG which has been used for the production of mustard gas, and it also has been established that mustard gas has been used at the proven attacks, the question arises whether there is a causality between these supplies and these attacks.

The court assumes that complicity in this court case can only be proven if it can be determined that the deliveries, to which the accused has contributed, have furthered or facilitated the execution of the proven attacks, during the period from 11 April 1987 through 2 August 1988. The court is of the opinion that this has been the case.

In this context, the reports of the expert witness [expert witness] of 10 November 2005 and 3 December 2005, are of importance. In his report of 10 November 2005, [expert witness] concludes in the first place that a minimum of 800 metric tons of the TDG that were supplied through the intermediary of the accused, ended up on the battle field. Furthermore, [expert witness] has concluded that it is presumable that this TDG, besides the TDG from other suppliers, has ended up on the battle field since 1985.

In addition, [expert witness] has drawn a situation in his report of 10 November 2005, in which it is assumed - most likely highly hypothetical - that for the production of mustard gas at MSE, all the TDG which had been supplied by the other suppliers was used up first, before changing to the TDG which had been supplied through the intermediary of the accused. [Expert witness] concludes that in that situation, the mustard gas that ended up on the battlefield since December 1987, had been produced with the TDG which had been supplied through the intermediary of the accused.

During the court session of 28 November 2005, [expert witness] indicated to the court that in the calculations that had led to the just mentioned conclusion, he did not include two documents which had only been found (back) after the release of his report of 10 November 2005. From these two documents, [expert witness] deduces that at the end of the Iran-Iraq war in August 1988, Warehouse number 1 of MSE still contained (rounded up) 49 metric tons of TDG in 1953 barrels of 25 kilograms each. Wolterbeek has stated that the 25-kilogram barrels had not been supplied through the intermediary of the accused and that these smaller barrels were a lot less practical for the production of mustard gas than the barrels in which the TDG was transported and supplied, which had been supplied through the intermediary of the accused. In addition [expert witness] has stated that if the above mentioned scenario would include the discovered 25-kilogram barrels, the date from which the mustard gas had been produced that ended up on the battlefield and which had been supplied through the intermediary of the accused, would change.

Following the latter mentioned statement, the court ordered [expert witness] to include the discovered 25-kilogram barrels in the scenario, which resulted in the 3 December 2005 report.

In the latter report, [expert witness] concludes that if all the TDG of the other suppliers would have been used first - with the exception of the mentioned 25-kilogram barrels - the mustard gas that ended up on the battlefield as of 1 May 1987, must have been produced with the TDG that had been supplied through the intermediary of the accused.

In view of the fact that the court deems the factual material on which [expert witness] bases his conclusions to be reliable, and all these conclusions lie within the specific field of expertise of [expert witness], the court takes up and adopts the above mentioned conclusions. With respect to the reliability of the figures, among which the figures of the FFCD and the figures of UNSCOM, the court not only took note of the statements of [expert witness] in that regard, but also of those of [witness 18] and [witness 19]. The statement of the latter two witnesses includes a confirmation of the statement of [expert witness], being that Iraq has exercised full cooperation with regard to the mustard gas and nerve gas programs, with the aim to get the inspectors out of the country as soon as possible so they would not find out anything about the (secret) VX-program.

From the conclusion that in the above mentioned scenario the mustard gas that ended up on the battlefield since

1 May 1987, has been produced with the TDG that had been supplied by the accused, the court deduces the following:

if the deliveries in which the accused was involved, would not have taken place, the TDG, and therefore the mustard gas, would have been depleted after 1 May 1987 (the 25-kilogram barrels not taken into consideration). From this it can be concluded that the mustard gas attacks after 1 May 1987, have (partly) been executed with the TDG that had been supplied through the intermediary of the accused, or have been made possible with the TDG which has been supplied through the intermediary of the accused for attacks prior to 1 May 1987. In the latter case, TDG from other suppliers would have been left over after 1 May 1987, with which the attacks after this date could (partly) have been executed. After all, obviously the TDG which has been supplied through the intermediary of the accused, has made it possible to leave the - for the production of TDG - impractical 25-kilogram barrels unused. This leads to the conclusion that the supplies in which the accused was involved, made, or at least facilitated, the attacks that occurred after 1 May 1987.

With respect to the proven attacks which occurred right before 1 May 1987, being the attack on Khoramshahr of 11 April 1987 and the attack on Alut around 16 April 1987, the court considers as follows: from table 1B on page 19 of the report of [expert witness] dated 10 November 2005, it appears that during the period from the end of May 1985 through May 1986, a substantial amount of 385,440 kilograms of TDG which has been supplied through the intermediary of the accused, has arrived in a continuous stream, in Iraq. It appears from the statement of [expert witness] which he made during the court session of 28 November 2005, that the production of mustard gas in MSE was halted in March 1985 and only started again in December 1986, and that a considerable part of the just mentioned amount of TDG can only have been processed after December 1986. Before the examining magistrate, [witness 18] has stated that in the eighties there were never large stocks of TDG or mustard gas at MSE. Considering the conclusion of [expert witness] that the TDG that was supplied through the intermediary of the accused probably reached the battlefield as early as September 1985, leads to the conclusion that the afore mentioned attacks which were executed in April 1987, were made possible, or at least were facilitated, by means of the of the TDG which has been supplied through the intermediary of the accused.

14. The judicial finding of fact.

With reference to the contents of afore mentioned evidence - each of those, also partly, which have been used as evidence for the related facts and circumstances mentioned therein have been established undisputedly. Based on this, the court has come to the firm conviction that it has been legally proven that the accused has committed the offenses set out in the charges, documented in the modified writ of summons as 1 alternatively and 2, on the understanding that the court deems proven the facts as they are represented in the finding of fact stated below, including the corrections of eventual typing or spelling errors which may appear in the document and which corrections do not hamper the defense of the accused.

count 1. alternatively:

that Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an)other person(s) (who so far has/have remained unknown),
on 5 June 1987 in Zewa and
on 16 March 1988 in Halabja and
on 3 May 1988 in Goktapa (Gukk Tapah),
together and in conjunction with (an) other(s), (again and again) has/have violated the laws and practices of war, while that offense/those offenses (again and again) resulted in the death of (an)other(s) and/or that offense/those offenses (again and again) inflicted grievous bodily harm on (an)other(s) and/or that offense/those offenses (again and again) was/were (an) expression(s) of a policy of systematic terror or wrongful performance against the whole population or a specific group thereof,
by then and there intentionally using chemical weapons (mustard gas and/or nerve gas(es)) against persons who were present then and there and as a result of which those persons have died and/or suffered grievous bodily harm, contrary to international customary law (in particular the prohibition on the use of chemical weapons and/or the prohibition on the use of poison or poison weapons and/or the prohibition on the use of asphyxiate, poison or other gases and/or the prohibition of inflicting unnecessary suffering and/or the prohibition of carrying out attacks which do not distinguish between military and civilians) and/or the stipulations of the Geneva Gas Protocol (1925) and/or the stipulations of Article 147 of the Geneva Convention on the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention", 1949) and/or the stipulations of the "common" Article 3 of the Geneva Conventions of 12 August 1949, (as members of the Government (of the Republic) of Iraq) belonging to one of the fighting parties in a state of war and/or in a (non-international and/or international) armed conflict several times at places in the territory of Iraq and/or by (systematically) terrorizing (part of) that Kurdish population group while those chemical weapons were (also) used against persons who did not directly

participate in the hostilities, to wit civilians from Zewa and/or Halabja and/or Goktapa (Gukk Tapah) and/or the use of those chemical weapons involved the cruel and/or inhuman treatment and/or mutilation of these persons and/or purposely causing serious suffering to these persons

to commit said crime(s), accused and/or his co-perpetrator(s) at points in time in the period between 19 April 1984, through 25 August 1988 in Baghdad and/or in Antwerp, or in Trieste, and/or in Aqaba, has/have intentionally supplied thiodiglycol (TDG) intended for the production of chemical substances (mustard gas) to the Republic of Iraq, for the production of chemical warfare.

count 2:

that Saddam Hussein Al-Tikriti and/or Ali Hassan Al-Majid Al-Tikriti and/or Hussein Kamal Hassan Al-Majid and/or (an)other person(s) (who so far has/have remained unknown), on 11 April 1987 in Khoramshahr and on or around 16 April 1987 in Alut and on 28 June in Sardasht and in Rash Harmeh (in the immediate surroundings of Sardasht) and on 22 July 1988 in Zardeh and on or around 2 August 1988 in Oshnaviyeh, together and in conjunction with (an) other(s), (again and again) has/have violated the laws and practices of war, by then and there intentionally using chemical weapons (mustard gas and/or nerve gas(es)) against persons who were present then and there and as a result of which those persons have died and/or suffered grievous bodily harm, contrary to international customary law (in particular the prohibition on the use of chemical weapons and/or the prohibition on the use of poison or poison weapons and/or the prohibition on the use of asphyxiate, poison or other gases and/or the prohibition of inflicting unnecessary suffering and/or the prohibition of carrying out attacks which do not distinguish between military and civilians) and/or the stipulations of the Geneva Gas Protocol (1925) and/or the stipulations of Article 147 of the Geneva Convention on the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention", 1949) and/or the stipulations of the "common" Article 3 of the Geneva Conventions of 12 August 1949, (as members of the Government (of the Republic) of Iraq) belonging to one of the fighting parties in a state of war and/or in a (non-international and/or international) armed conflict several times at places in the territory of Iraq and/or by (systematically) terrorizing (part of) that Kurdish population group while those chemical weapons were (also) used against persons who did not directly participate in the hostilities, to wit civilians from Zewa and/or Halabja and/or Goktapa (Gukk Tapah) and/or the use of those chemical weapons involved the cruel and/or inhuman treatment and/or mutilation of these persons and/or purposely causing serious suffering to these persons (civilians)

to commit said crime(s), accused and/or his co-perpetrator(s), at points in time in the period between 19 April 1984, through 25 August 1988, in Baghdad and/or in Antwerp, or in Trieste, and/or in Aqaba, has/have intentionally supplied thiodiglycol (TDG) intended for the production of chemical substances (mustard gas) to the Republic of Iraq, for the production of chemical warfare.

15. Punishability of the proven facts and of the accused.

According to the law, the proven facts are punishable.
Therefore, the accused is punishable since no grounds for exemption from criminal liability have been made plausible.

16. Considerations with respect to amendments in legislation.

The Criminal Law in Wartime Act (WOS) as it was valid at the time of the period of the indictment, has been amended several times and at the implementation of the International Crimes Act (WIM) on 1 October 2003, the war crimes in the WOS have been transferred to the so-called WIM.

In order to establish whether the later provisions are more favorable to the accused than the provisions set out by the law which was valid at the time of the period of the indictment, only the amendments in the laws of 27 March 1986 (Bulletin of Acts and Decrees 1986, 139) and of 14 June 1990 (Bulletin of Acts and Decrees 1990, 369) are of importance.

A new Article 10a in the law of 27 March 1986 has been inserted in the WOS, in which the additional punishment that is mentioned in Article 28, first paragraph, under 3°, of the Penal Code being disfranchisement (the right to vote and to stand for election) is made possible in case - among other matters - of a conviction for committing war crimes, whereas in the law of 14 June 1990 the death penalty as a possible punishment has been deleted from the WOS.

In the WOS which entered into force on 1 January 1991, after the amendment of the law of 14 June 1990, on the

one hand the penalty resulted more favorable for the accused, but on the other hand, in view of the disfranchisement, less favorable.

It cannot be said that the transfer on 1 October 2003 of the penalties with respect to the war crimes from the WOS to the WIM, will result in more favorable provisions for the accused.

Pursuant to the provisions of Article 1, second paragraph, Penal Code, the WOS as it read as of 1 January 1991, with the exclusion of Article 10a, will be used as a basis.

17. Grounds for the penalty.

The penalty mentioned below is in accordance with the seriousness of the committed offenses, the circumstances under which they have been committed, and is based on the person and the personal circumstances of the accused, as they have appeared during the investigation and the court hearing.

Furthermore, the following is particularly taken into account.

It has been established that the accused, consciously and solely acting in pursuit of gain, has made an essential contribution to the chemical warfare program of Iraq during the nineteen eighties. His contribution has enabled, or at least facilitated, a great number of attacks with mustard gas on defenseless civilians. These attacks represent very serious war crimes. Of course the accused cannot get away from his complicity to these kinds of war crimes neither by relying on the fact that it was not his decision to have these chemical attacks executed, nor by relying on the fact that these crimes would also have occurred without his contribution, because someone else would certainly have made the contribution.

The attacks have caused the death of many people and have inflicted much harm on those who survived, including the loss of dead children, husbands, wives and family members, as well as causing serious health problems, in many cases worsening as time passes by. The survivors have had to suffer this grief continuously for many years and will have to do so for the rest of their lives.

It is the opinion of the court that the proven facts and the consequences thereof are serious to the extent that even imposing the maximum penalty will not do sufficient justice to the victims. The question whether the accused has supplied or has wanted to supply the Iraqi regime with substances for the production of poison gases after the attack on Halabja, is not relevant herein. The court considers unnecessarily that this has not been proven conclusively, but the fact that the accused, almost immediately after seeing the images of the victims of the attack on Halabja, wanted to continue his trade in TDG (renamed Fixsol) and the fact that he was already back in Baghdad on or around 28 July 1988, telling an employee in Europe not to mention to anybody where he was, do not show any remorse or repentance, to put it mildly. The court has not experienced any remorse, repentance or compassion from the accused at all, for that matter.

The fact that complicity to genocide has not been proven does not imply that a lower penalty than the 15 year term that has been demanded, would be acceptable. After all, taken into consideration their gravity, there is no order of rank between war crimes and genocide. This is, among other matters, expressed in the fact that for both crimes life imprisonment may be imposed and for complicity a maximum of 15 years of imprisonment.

In addition, according to international law and with respect to the penalty, there is no distinction between genocide and war crimes; international legislation provides for life imprisonment in both cases. Although the international administration of justice seems to proceed from the assumption that genocide is a more serious form of international liability than crimes against humanity or war crimes - because of the special intention that serves as the basis for genocide - (ICTR, Kambanda, sentence of the court of first instance, paragraph 16; ICTR, Musema, case nr. ICTR-97-23-S, sentence of the court of first instance, 4 September 1998, paragraph 981; ICTR, Rutaganda, case nr. ICTR-96-3-T, sentence of the court of first instance, 6 December 1999, paragraph 451), with respect to the applicable sanction for international crimes, the international administration of justice also assumes that the seriousness of the crime as well as the form and the level of participation should play a central role, regardless of the legal qualification ICTY, Krnojelac, case nr. IT-97-25-T, sentence of the court of first instance, 15 March 2002, paragraph 522; ICTY, Celebici, case nr. IT-96-21-A, sentence on appeal, 20 February 2001, paragraph 731; ICTY, Blaškic, case nr. IT-95-14-A, sentence on appeal, 29 July 2004, paragraph 683).

In view of the suffering of the victims, which will only intensify in the course of the coming years, and because of the fact that prescription is not applicable to the proven facts, the court is of the opinion that moderation of the penalty is not appropriate. Nor do other facts or circumstances justify such a moderation of the penalty.

The months which the accused spent in custody pending extradition in Italy, will not be deducted from the penalty to be imposed. After all, this detention was not related to the proven facts, but to the violation of the

American export regulations.

18. Seized objects.

The court shall order the return of the seized goods numbered 4 through 10, 13 through 15, 18 through 20, 23, 24, 27 and 28 on the seizure list, to the accused.

Now that the public prosecutors have ordered that object number 29, i.e. the goods as they are listed in the summons of seizure (E1.2) under 6.1 - being a strip with medication, copied articles from magazines and papers concerning [accused], Saddam Hussein and the poison gas attacks, as well as an invoice from hotel Van der Valk - be returned to the accused, with the exception of the magazines, the court will also order the return of object number 29 to the accused, in so far as this regards the afore mentioned strip with medication and the afore mentioned hotel invoice.

It has not become sufficiently clear to whom the following objects belong that are listed on the seizure list: 1 through 3, 11, 12, 16, 17, 21, 22, 25, 26, 30 through 36. Since nobody can be designated as owner of the objects, the court shall order the deposit of these objects for the benefit of the entitled person(s).

19. Claims of the aggrieved parties.

The persons mentioned hereunder, named:

1. [aggrieved party 1];
2. [aggrieved party 2];
3. [aggrieved party 3];
4. [aggrieved party 4];
5. [aggrieved party 5];
6. [aggrieved party 6];
7. [aggrieved party 7];
8. [aggrieved party 8];
9. [aggrieved party 9];
10. [aggrieved party 10];
11. [aggrieved party 11];
12. [aggrieved party 12];
13. [aggrieved party 13];
14. [aggrieved party 14];
15. [aggrieved party 15];

have joined as a party concerning the claim for indemnification, each for fl. 1,500,= (currently €680,67).

With respect to the presented claims of the aggrieved parties, the Articles 332 and the following of the Code of Criminal Procedure are applicable as they read before the implementation of the Law of 23 December 1992 (Bulletin of Acts and Decrees 1993, 29) in the district of The Hague, since the proven facts date from before 1 April 1995.

The court establishes that aggrieved party [.....] has withdrawn his claim, which makes that no decision will have to be made concerning his claim.

Since the accused has not pleaded for a possible prescription of the claims, the court does not need to present a judgment.

The court establishes that the damages of the aggrieved parties have been caused by the dropping of bombs, filled with poison gas, by the government of Iraq. The proven facts with respect to the actions of the accused concern the supply of precursors for the production of the said poison gas. The violated norm of complicity in being a co-perpetrator of a violation of the laws and practices of war, also serves as a protection against damages such as the damages that the aggrieved parties have suffered.

With respect to substantive law, the following articles of the Conflict Laws concerning Unlawful Acts (WCOD) are significant:

Article 3:

1. Obligations resulting from unlawful acts are ruled by the judicial system of the State on which territory the crime is committed.
2. Contrary to the first paragraph, the law of the State on which territory the harmful effects are caused will be applied, in case a wrongful act harms a person or an object (...) other than in the State on which territory the act

is committed, unless the perpetrator was not able to reasonably foresee the harmful effect of that act on that territory.

3. If the perpetrator and the aggrieved party both have their residence (...) in the same State, contrary to the first and second paragraph, the law of that State is applicable.

Article 6:

1. If the parties have agreed upon the applicable law with respect to the obligation resulting from unlawful acts, this law is applicable between them, contrary to the Articles 3 (...).

Parties have not made a choice as referred to in Article 6, first paragraph, WCOD [Conflict Law concerning Unlawful Acts]. Based on the first paragraph of Article 3 WCOD, substantive law, according to the judicial finding of fact regarding the charges against the accused, would be dominated by the judicial system of Iraq (Baghdad) and/or Belgium (Antwerp) and/or Italy (Trieste) and/or Jordan (Aqaba).

However, based on the second paragraph of Article 3 WCOD, the judicial systems of Iraq (counts 1) and Iran (count 2) are eligible for application, since the damages of the aggrieved parties occurred in those States.

With respect to the aggrieved parties [aggrieved party 14], [aggrieved party 15] and [aggrieved party 10], who presently all live in the Netherlands, both their lawyer and the prosecutor argued that based on the exception of Article 3, third paragraph, WCOD, the Dutch judicial system should be applied, because the accused also resides in the Netherlands at this moment. The court rejects this argument, since at the time the unlawful acts were committed by the accused and the Iraqi government, and at which time the damages for these aggrieved parties occurred, they did not live in the same State. After all, at that time the accused lived successively in Switzerland, Singapore and Italy, while [aggrieved party 14] and [aggrieved party 15] were living in Iraq and [aggrieved party 10] lived in Iran.

For that reason, with respect to the aggrieved parties [aggrieved party 14] and [aggrieved party 15], Iraqi law shall be applicable and with respect to the remaining aggrieved parties, Iranian law shall be applicable.

The Articles 202 and 204 of the Iraqi Civil Code (1951), at the time read as follows (in the English translation):

202:

“Any conduct injurious to the person or another, whether resulting in death, injury, beating up or any other type of harm, shall render the person causing harm to be liable for damages.”

204:

”Any wrong causing others (their property or their person) any other injury not mentioned in the preceding articles, shall merit reparation.”

The Articles 1 and 5 (in so far as relevant) of the Iranian Civil Liability Act (1960) at the time read as follows:

1.

“Each person who, without legal authority, knowingly or through negligence, causes harm to the life, health, properties, freedom, honor, trading reputation or any other legal rights of another person, causing material or immaterial damage to the entitled party, shall be obliged to repair the damages caused by his acts.”

5:

“The perpetrator shall be liable to compensate all damages caused by him (...), if causing harm to body or health of a person results in an ailment, or diminishes or destroys his working capacity, or increases the costs of living of that person.”

The proven complicity to supply precursors for the production of mustard gas that was used to fill the bombs which were actually deployed and which caused damages, provides sufficient evidence to conclude that the accused committed an unlawful act according to Iraqi Civil Law and Iranian Civil Law, and is therefore liable for damages.

The accused did not deny the fact that the aggrieved parties suffered the claimed damages as a consequence of the proven facts. Therefore, the claims will be admitted as being rightful and well-founded.

The amount of each claim NLG. 1,500.- (currently €680.67) is the maximum amount to be awarded to each aggrieved party in criminal proceedings, according to the Dutch law applicable until 1 April 1995. Although this amount is not in relation to the real damage suffered by the aggrieved parties, it is not a symbolic amount either, in which case it could not have been awarded, as argued by the counsel for the defense.

Considering that the claims of the aggrieved parties will be admitted, the accused shall be liable to pay the costs made by them, estimated at €100.- for each party up till now, such as costs for legal assistance and any future costs regarding the execution of the sentence.

20. The applicable legal articles.

The penalty to be imposed is based on the following articles:

- 48 and 57 of the Penal Code
- 8 Criminal Law in Wartime Act.

21. The judgment.

The court,

invalidates the amended indictment regarding the principal charge under count 1, the alternative charge under count 1. and count 2, in so far as it concerns " in any case at one (or more) point(s) in time in the years 1986 and/or 1987 and/or 1988 in Iraq";

declares it that has not been legally and convincingly proven that the accused committed the offense he was accused of in the principal charge under count 1. of the amended indictment, so that the accused must be acquitted of that charge;

deems legally and convincingly proven that the accused committed the offenses he was charged with under alternative count 1. and under count 2. and that the proven facts consist of:

regarding alternative count 1.:

- complicity in being a co-perpetrator of a violation of the laws and practices of war, while that fact includes inhuman treatment and while that fact causes the death or severe bodily harm of an other person, and while that fact is the expression of a policy of systematic terror or illegal conduct against an entire population of a certain group thereof, committed several times;

regarding count 2.:

- complicity in being a co-perpetrator of a violation of the laws and practices of war, while that fact includes inhuman treatment and while that fact causes the death or severe bodily harm of an other person, committed several times;

acknowledges the proven facts and judges that the accused is liable to punishment;

sentences the accused to a term of imprisonment of 15 YEARS;

orders that the time spent by the convicted person in police custody and pre-trial detention before the execution of this penalty to be deducted from this sentence, in so far as it has not yet been deducted from another sentence;

remanded in custody on: 06 December 2004;
taken into pre-trial detention on: 09 December 2004;

orders the return of seized goods to the convicted person according to the seizure list included in this sentence, numbered 4 through 19, 13 through 15, 18 through 20, 23, 24, 27 and 28;

subsequently orders the return of seized article to the convicted person according to the seizure list included in this sentence, number 29, in as far as this concerns a strip of medicines and an invoice of Hotel Van der Valk;

orders the deposit of the seized articles on behalf of the entitled party listed on the seizure list attached to this sentence as number 1 through 3, 11, 12, 16, 17, 21, 22, 25, 26, 30 through 36;

allows the claims for damages of the aggrieved parties and orders the accused to pay against proper receipt to:

1. [aggrieved party 1];
2. [aggrieved party 2];
3. [aggrieved party 3];
4. [aggrieved party 4];
5. [aggrieved party 5];
6. [aggrieved party 6];
7. [aggrieved party 7];
8. [aggrieved party 8];
9. [aggrieved party 9];
10. [aggrieved party 10];

11. [aggrieved party 11];
12. [aggrieved party 12];
13. [aggrieved party 13];
14. [aggrieved party 14];
15. [aggrieved party 15];

an amount of €680.67 each, being a total amount of €10,210.05;

including a conviction regarding the costs made by the aggrieved parties, until this sentence as costs for legal assistance for every aggrieved party estimated at €100.=, being a total of €1500.= and costs still running for the execution of this sentence;

declares that other or more facts charged to the accused have not been proven other than the charges as proven above, and orders that the accused must be acquitted of them.

This sentence was delivered by

R.A.C. van Rossum, President of the court,

D.R. Glass and J.R.G. Jofriet Judges,

in the presence of M. Gest and B.J. Koning Clerks of the court,

and was pronounced at the public hearing of this court on 23 December 2005.
