

March 7, 1991

## **POWS, WOUNDED AND KILLED SOLDIERS: MIDDLE EAST WATCH REMINDS ALLIED COUNTRIES AND IRAQ OF OBLIGATIONS UNDER GENEVA CONVENTIONS**

*This is the sixth newsletter that Middle East Watch has published on human rights and humanitarian issues arising from the Gulf War.*

Middle East Watch is gratified that both sides in the Persian Gulf war have begun to release prisoners of war (POWs) in their custody, and that Allied countries have stated their intention not to repatriate any Iraqi POW who claims to fear persecution in Iraq. The 294 ex-POWS who reached Baghdad yesterday were repatriated according to procedures established by the International Committee of the Red Cross (ICRC), which includes a private ICRC interview with each POW about his desire to return home.

However, Middle East Watch remains concerned that both Iraq and the Allied countries are disregarding certain of their obligations under the Geneva Conventions.<sup>1</sup> As a result, prisoners on both sides, as well as families of combatants, have been subjected to unnecessary suffering. In particular, Middle East Watch believes that:

\* **The Allied countries** should demonstrate their intention to comply fully with their obligation to search for and treat wounded and sick Iraqi soldiers in the areas under their control, and to provide proper documentation of dead Iraqi soldiers before burying them.

\* **Iraq** should release immediately the thousands of civilian residents of Kuwait whom it detained during its occupation of Kuwait. Pending their release, Iraq should provide a full accounting of all residents of Kuwait in its custody and permit the ICRC access to all detainees, both military and civilian.

This newsletter also describes violations of the laws of war by Iraq and Saudi Arabia in their treatment of POWs.

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<sup>1</sup> Iraq, Saudi Arabia and the US have all ratified the Geneva Conventions of 1949.

## **Allied Countries' Responsibility to Care for Iraqi Wounded**

**As of March 4, Allied forces had processed "60,000-plus" Iraqi prisoners of war and transferred them to Saudi control, and "close to 30,000" additional prisoners had yet to be processed,<sup>2</sup> according to Maj. Tom Nickerson, a public affairs officer at US Central Command Forward in Riyadh.**

**The huge number of POWs captured during the four-day ground war, which began on February 24, evidently caught the Allied forces by surprise. Before the start of the offensive, a Pentagon official had told Middle East Watch that the US was expecting 20,000 EPWs<sup>3</sup> during the first week of the campaign.<sup>4</sup> The rapid capture of at least three times that number, with resulting logistical problems,<sup>5</sup> has raised questions about whether the Allied forces are equipped to attend to the welfare of enemy troops as required by the Geneva Conventions.**

**Of paramount concern is the Allied coalition's preparedness to provide medical care to Iraqi wounded. Maj. Nickerson stated that as of March 2, the Allies were caring for 627 Iraqi wounded EPWs.<sup>6</sup> Maj. Nickerson asserted that the Allies had "more than enough" capacity to treat Iraqi wounded, since the Allies had readied facilities to treat "a higher number of US casualties than actually happened."**

**However, the figure of 627 Iraqis receiving medical care raises concern as to whether all Iraqi wounded who are either in the custody of Allied forces or in territory under their control are receiving medical care. Given unofficial estimates of Iraqi soldiers killed that range between 25,000 and 100,000,<sup>7</sup> it is reasonable to assume that tens of thousands of Iraqi soldiers were also wounded or contracted medical problems that may or may not be related to wartime conditions. While many of these presumably received medical treatment from their own side, or fled or died**

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<sup>2</sup> Other statements by Allied forces this week put the number of POWs closer to 60,000. But British Defense Secretary Tom King said on March 6 that the coalition was holding between 75,000 and 175,000 POWs, according to the March 7 *Financial Times*. Throughout the conflict, coalition partners have given conflicting statistics on the total number of Iraqi POWs they were holding at any one time. Part of the discrepancy seems to have been due to whether prisoners who had not yet been processed were included.

<sup>3</sup> "EPW" is the US government's designation for Iraqi POWs; the term POW is reserved for Allied prisoners in Iraqi hands. According to Department of Defense officials, the nomenclature is simply a way of distinguishing Allied POWs from Iraqi POWs.

<sup>4</sup> The *Washington Post* of January 24 quoted U.S. officials giving the same figure.

<sup>5</sup> The *Washington Post* of February 27 reported that there was a shortage of buses to transport the large number of surrendering Iraqis to holding camps behind the front lines, and that many of the Iraqis were too weak to walk. See also the *New York Times* of February 25 and 26.

<sup>6</sup> British Defense Secretary Tom King said on March 6 that British field hospitals were treating 19 Iraqi POWs, according to the March 7, *Financial Times*.

<sup>7</sup> See, for example, the *New York Times*, March 1, the *Washington Post*, February 28, and the *Independent on Sunday*, March 3. Neither Iraq nor the Allied forces have issued official estimates of Iraqi casualties.

before Allied coalition troops found them, the figure of 627 Iraqis receiving medical care from the Allied coalition seems remarkably low.

Large numbers of Iraqi soldiers remain in the theater of operations, according to press reports. The *New York Times* reported on March 2:

Thousands of Iraqi soldiers were bypassed as Allied columns rolled forward, and American commanders think it may be a week or more before they emerge from their bunkers or disabled vehicles because they have run out of food or water. "They are literally everywhere," an American officer said.

The Iraqi troops who remain in the field undoubtedly include soldiers in need of medical attention.

Under the First Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field, a party to a conflict is obligated not only to treat wounded POWs in its custody, but also to search for and collect the wounded and sick. The Allied forces do not appear to be fulfilling this obligation. Maj. Nickerson told Middle East Watch that the Allied troops do not go looking for wounded enemy soldiers, although when they run into them the Allies give them "better care than their own army."

The First Geneva Convention states in Article 15 that parties to the conflict shall, "without delay, take all possible measures to search for and collect the wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care..." Middle East Watch calls upon the Allied forces to specify the measures they are taking to ensure that medical care for the sick and wounded be given the high priority required by the First Convention, including the efforts taken to rescue wounded who may still be in areas of Iraq and Kuwait under Allied control.

### **Allied Countries' Responsibilities to Document Iraqi Dead**

Reports indicate that Allied forces are disposing of Iraqi military dead hastily and before proper documentation takes place, in violation of the First Geneva Convention. Article 16 states that "Parties to the conflict shall record as soon as possible, in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in his identification." The Article lists examples of the types of information to be recorded and forwarded to the families through the ICRC, and requires parties to prepare and forward to each other certificates of death or duly authenticated lists of the dead. Article 17 requires parties to conduct, "as far as circumstances permit...a careful examination...of the bodies, with a view to confirming death, establishing identity and enabling a report to be made."

US and Saudi officials responded to Middle East Watch inquiries about procedures for handling Iraqi dead in a contradictory and unsatisfactory manner. Maj. Nickerson at US Central Command Forward told Middle East Watch, "We are not in the business of burying," explaining that Saudi mortuary platoons were responsible for the burials. When asked whether the Allied forces were keeping track of the numbers of dead Iraqi soldiers, he replied, "We don't count bodies." He referred Middle East Watch's questions to the Saudi Ministry of Information representative at the US Central Command Forward in Riyadh. But a Saudi spokesman there, while confirming that some Saudi mortuary teams were in the field, said they worked under US military command. He referred Middle East Watch back to US Central Command Forward.

Press accounts make clear that US forces are participating in field operations during which Iraqi dead are buried. The March 2 *Boston Globe*, describing the aftermath of the February 25 attack on the Iraqi convoy retreating from Kuwait, reported that Allied soldiers were "burying hundreds of dead in shallow graves." The article quoted US and British troops who were burying the dead from this convoy. One U.S. officer told the *Globe* that some of the bodies would be taken to a grave registration site, where Kuwaiti and Saudi specialists would give them proper treatment under Muslim law.

The *Independent on Sunday* reported on March 3 that the burial work "was left to Saudi mortuary parties with US troops":

Sometimes trenches where Iraqis fell were used as mass graves, with sand pushed over corpses and marked with makeshift signs. A US spokesman said he did not know if the bodies would be exhumed and returned to Iraq, as it was a matter for the Saudis....

A US spokesman in Saudi Arabia acknowledged that mass burials were taking place well away from reporters, adding that the US would not get into a body count of dead Iraqi soldiers even though the conflict is over.

Gen. H. Norman Schwarzkopf, in his February 27 press conference, also displayed a cavalier attitude toward the coalition forces' obligation to document enemy dead. Referring to the Iraqi front-line units in southern Kuwait, he said, "There's a very large number of dead in these units, a very, very large number of dead." Asked whether there would ever be an accounting, he said, "No, there will never be an exact count." He continued:

In the days to come, you're going to hear many, many stories, either overinflated or underinflated, depending upon who you hear them from. The people who will know best, unfortunately, are the families that won't see their loved ones come home.<sup>8</sup>

Middle East Watch deplores this apparent disregard of First Geneva Convention obligations to examine and document enemy dead. If the Allied countries wish to offer reasons for abbreviating these procedures – which are required "as far as circumstances permit" – these reasons should be specified. To our knowledge, they have so far failed to do so.

## **Iraq's Detention of Residents of Kuwait**

During its occupation of Kuwait, from August 2 to February 25, Iraq detained thousands of people. Some are army and security personnel – both Kuwaiti and non-Kuwaiti – and others include Kuwaiti government employees and ordinary citizens. While a number of these detainees were suspected by Iraq of armed resistance, others were detained for peacefully opposing the occupation, for refusing to cooperate with Iraq, or for engaging in humanitarian relief work independently of the occupation authorities. Detainees also include relatives – including teen-age children – of suspects or of government officials and political figures who resisted Iraq's calls for them to cooperate. While the overwhelming majority of detainees are Kuwaitis, others include, according to testimony obtained by Middle East Watch, Bangladeshis, Egyptians, Iraqis, Jordanians, Lebanese, Palestinians and Sudanese.

An ICRC official told reporters in Baghdad that the ICRC was discussing the fate of the Kuwaiti detainees with Iraqi authorities, according to the *New York Times* of March 6. Iraq's chief delegate to the United Nations, Abdul Amir al-Anbari, was quoted as saying that Kuwaitis in Iraq would be allowed to return to Kuwait if they wished to do so.

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<sup>8</sup> *New York Times*, February 28, 1991.

The detainees have been held in detention centers in Kuwait and Iraq; Middle East Watch has information on more than 20 improvised or permanent centers. While the majority of the detention centers are in Kuwait, the majority of detainees seem to be in Iraq itself – in Basra, Baghdad and Mosul.

It has been difficult to determine the number of detainees because Iraqi authorities have given neither access nor an accounting of those arrested or in detention to the ICRC or to any other humanitarian organization.

Middle East Watch estimated in November that close to 5,000 were arrested in the first three months of the occupation, with more than 3,000 in detention at the time.<sup>9</sup> Since then a number have been released but more were arrested or re-arrested. A large round-up reportedly occurred in the last days of the Iraqi occupation.

About three weeks ago, Kuwait's government in exile gave the ICRC lists of missing soldiers and civilians, which the ICRC reduced to about 7,000 after eliminating duplications. According to the *New York Times* of March 6, the ICRC believes this figure is probably too low, because of the abductions of more Kuwaitis during the last week of Iraqi occupation. However, the ICRC believes the total to be lower than the 20,000-30,000 that some Kuwaiti officials assert are missing,<sup>10</sup> according to the *Times*.

Iraq formally annexed Kuwait in August 1990 and announced that these detentions were an internal matter. Such a position contradicted international law, which obliges Iraq to treat Kuwait as protected persons under the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. With regard to military detainees, the Iraqi position violates Article 4 of the Third Geneva Convention, which counts as prisoners of war "members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power." The official ICRC Commentary to the Third Convention includes as POWs "demobilized military personnel in occupied territory who are arrested by the Occupying Power because of their service in the armed forces of the occupied State." (p.68) As POWs, they should benefit from the protections to which all POWs are entitled.

Kuwaiti detainees who are not affiliated with the armed forces are civilians, protected under the Fourth Geneva Convention. The Occupying Power may intern them only as an exceptional measure, "for imperative reasons of security." (Art. 78) Protected persons are, in all circumstances, to be protected from violence to life and person, torture, outrages upon personal dignity and extrajudicial or excessive punishments. Civilians who are interned must not be transferred outside the occupied State.<sup>11</sup>

Iraq has subjected Kuwaitis in their custody to widespread torture and ill-treatment, Middle East Watch concluded from interviews with former detainees and relatives of Kuwaitis who have been killed or detained. Scores of detainees were summarily executed. Neutral humanitarian organizations, including the ICRC, were denied access to them. Families were usually not notified of arrests; many families recounted to Middle East Watch their arduous, and in many cases fruitless, efforts to obtain information about the status and whereabouts of their relatives.

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<sup>9</sup> *News From Middle East Watch*, "Kuwait: Deteriorating Human Rights Conditions," November 1990, 5.

<sup>10</sup> A Kuwaiti minister of state said on March 2 that some 33,000 Kuwaitis had disappeared during the occupation, 8,000 of them in the days before the withdrawal of Iraqi troops, according to *Le Monde* of March 5.

<sup>11</sup> Article 76 of the Fourth Convention states, in part, "Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein."

## **POWs under Saudi Control: Causes for Concern**

**The coalition forces' plan for transferring all POWs, after processing, to Saudi custody, does not alleviate the Detaining Power from responsibility for their treatment. The Detaining Power -- the country that initially took custody which means the United States in most cases -- remains jointly responsible for the transferred POWs.<sup>12</sup>**

**US officials told Middle East Watch that the US had received Saudi assurances that it would apply the Geneva Conventions, and that an agreement to that effect was concluded between the two governments. This agreement, however, is classified and these officials declined to comment on its specific provisions.**

**Despite Saudi assurances about respecting the Geneva Conventions, there are grounds for concern about the treatment of Iraqi POWs based on Saudi Arabia's treatment of those Iraqis it captured prior to the opening of hostilities on January 17, as well as its treatment of internal detainees and POWs during earlier wars.**

**In its war with North Yemen in 1969-1970 and border clashes with South Yemen in 1969 Saudi Arabia used POWs for propaganda purposes. Some appeared on Saudi television, denounced their own governments and praised the Saudi government. Such incidents, if coerced, would stand in violation of the Third Geneva Convention, and might also jeopardize the lives of POWs upon repatriation and the welfare of their families. In some of the publicized internal-security cases, the Saudi government also displayed suspects on television, including foreign nationals, to denounce themselves and their comrades and praise the government, before they were executed. Ill-treatment of security prisoners is routine and torture is common in Saudi jails as methods of extracting information.<sup>13</sup>**

**More recently, Saudi Arabia reported holding in detention several hundred Iraqi defectors between August 2 and January 17. During that period, the Saudis did not confirm that they considered these Iraqis to be entitled to the rights of POWs or of civilian internees. If the government intended to reject these designations on the grounds that Saudi Arabia and Iraq were not yet in a state of war, it did not articulate this argument. Instead, officials referred to these Iraqi "defectors" as "military refugees," a term that is not found in the laws of war. The government did not specify the rights to which these interned "refugees" were entitled, and to this date has not provided the ICRC with specific information about whom it was holding, or access to any of them. Authorities have given out few details about how they were being treated, their precise numbers or whereabouts.**

**The Saudis began to disclose information about the Iraqi prisoners they were holding only after the war started. On January 18, the Saudi Press Agency quoted Brigadier Fahd al-Jarbou, spokesman for the Joint Forces,<sup>14</sup> as**

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<sup>12</sup> Under the Third Geneva Convention, the Detaining Power is permitted to transfer POWs in its custody to another power that is a party to the Convention. But Article 12 allows such transfer only after "the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention." If the transferee Power "fails to carry out the provisions of the Convention in any important respect," then the original Detaining Power shall, "upon being notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with." In cases of different interpretations between the two powers, the official ICRC Commentary to the Third Convention states, "if it is the interpretation of the transferring Power which is more favourable to the prisoners, then it must prevail." (p.138)

<sup>13</sup> According to Amnesty International, "political suspects are routinely held in prolonged solitary confinement prior to and during interrogation. It is during this period that torture is reported to be systematically applied." Amnesty International, *Saudi Arabia: Detention without Trial of Suspected Political Prisoners*, January 1990, 11.

<sup>14</sup> This is the name given to forces from Arab and other Muslim countries that were part of the coalition allied against Iraq.

saying that 500 Iraqis had fled since the invasion of Kuwait. Joint Forces Commander Prince Khaled ibn Sultan said on February 8 that some 418 Iraqis had defected to Saudi forces between August 3 and January 17.<sup>15</sup> Press reports put the figure for the same period at 1,000.<sup>16</sup>

Saudi authorities persisted in calling this group of prisoners "military refugees" even after the outbreak of hostilities. For example, on January 19, Brigadier al-Jarbou said, "We will not treat these defecting military men, who before their arrival in the Kingdom got rid of their weapons, as war prisoners but we will treat them as military refugees, providing them with food, lodging and care and otherwise taking care of them as though they were pilgrims in our country".<sup>17</sup> The "military refugee" status was reiterated by Prince Khaled ibn Sultan, on February 8.<sup>18</sup>

The Third and Fourth Geneva Conventions set forth minimum conditions of treatment of prisoners of war and civilians in time of war, respectively. A detaining power may provide persons it is holding with better conditions, provided all of the stipulations of the applicable convention are met. While the ICRC held that before the outbreak of war there was some ambiguity about what humanitarian law was applicable to Iraqi defectors who came into Saudi custody, it maintains that after January 17, these defectors, if interned, should have been accorded the protections of the Fourth Convention, including visits by the ICRC.

The initial Saudi position with regard to Iraqis who defected after Saudi Arabia entered the war -- that these too were "military refugees" rather than "war prisoners" -- was also legally untenable. The Saudis have since dropped the distinction between these defectors and other Iraqi POWs, and have permitted the ICRC to visit them.

The Third Geneva Convention makes clear that voluntary defection does not absolve the detaining power from its obligations toward POWs. Article 7 states, "Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention..." States, according to the official ICRC Commentary to the Convention, "could not be released from their obligations towards prisoners of war, even if the latter of their own free will expressed a desire to that effect." (p.89) The reason for this categorical prohibition is that "it is difficult, if not impossible, to prove the existence of duress or pressure." Even if duress and pressure were proven not to be involved, the "[Diplomatic] Conference [of Geneva of 1949] also accepted the view that in war-time prisoners in the hands of the enemy are not really in a sufficiently independent and objective state of mind to realize fully the implications of a renunciation of their rights." Furthermore, there is a grave potential harm to the families of Iraqi POWs who are seen to have defected, voluntarily or not, including the likelihood of losing their government stipends. There is also a potential for retaliation against the POWs themselves upon repatriation.

The US makes no such distinctions between deserters, defectors and other prisoners. State and Defense Department officials interviewed by Middle East Watch stated that all Iraqi military personnel who fall into the power of<sup>19</sup> the Allies are treated as enemy prisoners of war (EPWs), including defecting or deserting military personnel and "accompanying civilians" as defined by Article 4 of the Third Geneva Convention.<sup>20</sup>

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<sup>15</sup> Saudi Press Agency, February 9, 1991. SPA is the official Saudi News Agency.

<sup>16</sup> *Washington Post* January 20, 1991, and *Los Angeles Times* February 8, 1991.

<sup>17</sup> SPA, January 19, 1991.

<sup>18</sup> SPA, February 9, 1991 and Reuters, February 8, 1991.

<sup>19</sup> The expression, "fall into the power," used in Article 4 of the Third Geneva Convention, is more inclusive than the word "captured," which was used in the 1929 Geneva Convention Relative to the Treatment of Prisoners of War.

<sup>20</sup> Interview with Maj. Arthur Gorman, special advisor for POW/MIA affairs at the Department of Defense; and with Edward

## **Iraq's Treatment of Allied Prisoners of War**

**This week, Iraq released a total of 45 Allied POWs, declaring it was holding no others. Some 26 Americans and one Saudi are still listed as missing in action.**

**While gratified by these releases, Middle East Watch condemns Iraq's mistreatment of the Allied POWs, which violated the Geneva Conventions in a number of ways. Iraq never allowed the ICRC to visit the prisoners. It showed several of them on Iraqi television denouncing the decision to attack Iraq, violating the prohibition on making POWs objects of public curiosity.<sup>21</sup> Iraq also announced it was placing POWs in selected targets to protect those targets from attacks by Allied forces,<sup>22</sup> and later reported that one prisoner had been killed in an air raid.<sup>23</sup>**

**The appearance of the POWs on Iraqi television, many of them with bruised and swollen faces, led to speculation that they had been mistreated. After their release, however, Capt. Richard Osborne, chief of medicine on the hospital ship *Mercy*, said of the first six American POWs to be freed, one of whom had denounced the war against Iraq on Iraqi television, his face swollen and bruised: "None of the physical findings that we found were accountable by anything other than ejection and landing and battle injuries."<sup>24</sup> Air Force Col. Wynn Mabry, who also examined the released prisoners, said there was no definitive word yet why some of the prisoners denounced the war on Iraqi television.<sup>25</sup> However, at least one of the freed Americans was reported to have told his family of physical abuse by his captors, including beatings.<sup>26</sup>**

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**Middle East Watch was created in 1989 to monitor human rights practices in the Middle East and North Africa and to promote respect for internationally recognized standards. The chairman of Middle East Watch is Gary Sick, the**

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**Cummings, assistant legal adviser for Politico-Military Affairs at the Department of State.**

<sup>21</sup> **Article 13 states, in part, "prisoners must at all times be protected, particularly against...insults and public curiosity." Article 13 also prohibits reprisals against POWs, and Article 14 states that they are "entitled in all circumstances to respect for their persons and their honour."**

<sup>22</sup> **Article 23 states, in part, "No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations."**

<sup>23</sup> *New York Times*, **January 30, 1991.**

<sup>24</sup> *New York Times*, **March 7, 1991.**

<sup>25</sup> *New York Times*, **March 6 and 7, 1991.**

<sup>26</sup> *New York Times*, **March 7, 1991.**

vice chairs are Lisa Anderson and Bruce Rabb, the executive director is Andrew Whitley, the research director is Eric Goldstein, and the associate director is Virginia N. Sherry.

Middle East Watch is a component of Human Rights Watch, a non-governmental organization which is also composed of Africa Watch, Americas Watch, Asia Watch, and Helsinki Watch. The chairman of Human Rights Watch is Robert L. Bernstein, the vice chairman is Adrian W. DeWind, the executive director is Aryeh Neier, the deputy director is Kenneth Roth, and the Washington director is Holly J. Burkhalter.

Recent Newsletters and News Releases of Middle East Watch include:

"The Bombing of Iraqi Cities: Middle East Watch Condemns Bombing without Warning of Air Raid Shelter in Baghdad's Al-Ameriyya District on February 13" (March 6, 1991)

"Reuters' Gaza Correspondent Enters Fifth Week in Investigative Detention" (February 27, 1991)

"Egyptian Authorities Clamp Down on Dissent" (February 13, 1991)

"Middle East Watch Condemns Great Britain for Holding 35 Iraqi Residents as Prisoners of War and Detaining Dozens of Arabs for Deportation" (February 10, 1991)

"Under the Toughest Curfew since 1973, West Bank and Gaza Palestinians Face Growing Hardship" (January 27, 1991)

"Middle East Watch Urges All Parties to the Conflict to Obey Rules of Law Protecting Civilians" (January 18, 1991)

"Kuwait: Deteriorating Human Rights Conditions Since the Early Occupation" (November 16, 1990)

"Egypt: Election Concerns" (November 15, 1990)

"The Conduct of Iraqi Troops in Kuwait toward Kuwaitis and Non-Westerners" (September 1990)

"Middle East Watch Condemns Iraq's Practices toward Foreigners under Its Control and Reminds Embargo Participants of Their Humanitarian Obligations" (August 29, 1990)