

CML 4108 JD Studies in International Relations: The Non-proliferation of Weapons of Mass  
Destruction

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The United States' Decision to Ignore the Use of Chemical Weapons in  
the Iran-Iraq War: An Involvement that Remains Unpunished

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## I. INTRODUCTION

Known as one of the most violent conflicts since World War II in the Middle East, the Iran-Iraq War commenced on September 22, 1980 with the air and land invasion of Iran by Iraqi forces. Lasting approximately eight years, the war claimed the lives of over one and a half million Iranian and Iraqi soldiers and civilians, leaving over half a million severely wounded and even more turned into refugees.<sup>1</sup> The war concluded in 1988 when Iran accepted the United Nation's Security Council Resolution 598, which eventually, led to a cease-fire on August 20.<sup>2</sup> The significance of the Iran-Iraq War is two-fold. Not only is it recognized as one of bloodiest wars since World War II, it is also known for Iraq's use of chemical weapons against Iranian soldiers and civilian population. The use of these weapons breached Iraq's obligations under the Geneva Protocol of 1925, which prohibits the "use of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, as well as the use of bacteriological methods of warfare."<sup>3</sup> Even though Iraq signed the Geneva Protocol in 1931, Iraqi President Saddam Hussein used these weapons as early as 1980 and continued to use them in mass quantities until the end of the war in 1988.<sup>4</sup>

In 2013, a series of declassified Central Intelligence Agency (CIA) documents revealed the extent of American involvement and intelligence surrounding the chemical weapons situation in the war. These documents provided proof that the U.S. not only knew about the manufacture and use of weapons of mass destruction (WMDs) by Iraq, but that it did nothing to stop the use

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<sup>1</sup> Stephen R Shalom, *The United States and the Iran-Iraq War 1980-1988*, online: Iranian Chamber Society <

<sup>2</sup> History of Iran, *Iran-Iraq War 1980-1988*, online: Iranian Chamber Society <

[http://www.iranchamber.com/history/iran\\_iraq\\_war/iran\\_iraq\\_war1.php](http://www.iranchamber.com/history/iran_iraq_war/iran_iraq_war1.php)> [*Iran-Iraq War*].

<sup>3</sup> Julian Perry Robinson & Jozef Goldblat, "Chemical Warfare in the Iran-Iraq War 1980-1988" *Stockholm International Peace Research Institute Fact Sheet* (May 1984), online: Iran Chamber Society <

[http://www.iranchamber.com/history/articles/chemical\\_warfare\\_iran\\_iraq\\_war.php](http://www.iranchamber.com/history/articles/chemical_warfare_iran_iraq_war.php)>

[Robinson].

<sup>4</sup> Daniel Joyner, *International Law and the Proliferation of Weapons of Mass Destruction* (Oxford University Press, 2009) ch 7 at 264 [Joyner].

of those weapons. The decision to ignore Iraq's use of WMDs against Iran stemmed from the U.S. governments' desire to ensure American interests prevailed.

The decision to ignore Iraq's use of chemical weapons by the United States brings to light many serious questions that have yet to be resolved by the international community. Some of these questions include: why did the Reagan administration get away with aiding, supplying and even allowing the Iraqis to continue their use of chemical weapons against the Iranians? Is it plausible to argue that American interests are more important than the interests of the Iranian peoples, therefore rendering it acceptable for the U.S. to turn a blind eye to use of chemical weapons? And lastly, why has no one been punished for using illegal war tactics, which clearly breach accepted international law? These are only some of the unanswered questions still existing today.

The United States should be held accountable for their involvement in the Iran-Iraq War for many reasons. By focusing primarily on the U.S. government's decision to ignore Iraq's use of chemical weapons against Iran, this paper will attempt to prove that the U.S. should share in the responsibility of the wrongfully committed act by first, providing a brief summary of the primary causes of the Iran-Iraq War, of the U.S.'s role in the war and of Iranian-American relations during the war. It will then move to discuss the developments of Iraq's WMD program and its effect on diplomatic relations between all three countries. And lastly, it will apply the concept of shared responsibility to the Iran-Iraq War as a way to explain why it is essential that the United States of American be held accountable for their active involvement in the war.

## II. A BRIEF HISTORY OF THE IRAN-IRAQ WAR

### a. Primary Causes of the War

The outbreak of the war occurred as a result of a number of long-term and short-term causes. Some of these primary causes included Iranian and Iraqi disputes over border territories, the exchange of personal animosity between Iraqi President, Saddam Hussein, and the Iranian theocratic ruler, Ayatollah Ruhollah Khomeini, Hussein's fear that the Islamic Revolution in Iran would threaten the already delicate balance between Sunni and Shia sects of the Muslim faith and lastly, as a result of over five centuries of conflict between the Persian and Arab peoples in their quest to be the dominant regional power in the Middle East.<sup>5</sup> When Saddam Hussein became President of Iraq in 1978, he vowed to retrieve the land Iraq lost when Iran and Iraq agreed to the Treaty of 1975 which ended the war between Iraq and Kurdistan, the Shatt al-'Arab waterway, and to restore Iraqi national pride.<sup>6</sup> Upon realizing the gravity of the situation in Iran due to the outbreak of the Iranian Revolution, Hussein decided to strike against Iran in order to regain the waterway and to show the rest of the Arab nations the strength of Iraq.<sup>7</sup>

Along with the goal of reclaiming the waterway, most of the border issues with Iran centered on the fact that the Iraqi oil fields were next to the Iranian border and that Iran held control of most of the Persian Gulf making it difficult for Iraq to use the Gulf to ship its oil. Border skirmishes between Iran and Iraq were constantly occurring and in September of 1980, the skirmishes erupted when Hussein announcement that the waterway would be returning to Iraqi sovereignty, which Iran rejected. Hostilities escalated resulting in Iraqi forces launching a full-scale invasion of Iran on September 22. Iran retaliated by matching Iraq's declaration of war,

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<sup>5</sup> Charles Tripp, *A History of Iraq*, 3d ed (New York: Cambridge University Press, 2007) at 203-204.

<sup>6</sup> *Ibid.*

<sup>7</sup> Will B Swearingen, "Geopolitical Origins of the Iran-Iraq War" (1998) 78 *Geographical Review* 405 at 405 and 411-412 [Swearingen].

a move that united the Iranian people against a common enemy, Iraq, during a time of civil unrest.<sup>8</sup> Hussein's initial belief that the war would be easily won vanished as the Iranians fought back vigorously, turning the war into a war of attrition.<sup>9</sup> A stalemate resulted between the two sides and in order to end the stalemate, Hussein ordered the use of chemical weapons against Iranian infantry lines.

#### **b. The American Role in the War**

Besides the devastating realization that the Iraqi forces deployed the use of chemical weapons against the Iranians, it is vital to understand what role the United States of America played in the war, as it is their role that inevitably stigmatized the reputation of the U.S. government in the Middle East and led to future conflicts. When the war began, the United States expressed its neutrality stating that it would remain out of the conflict mainly because no diplomatic ties existed between the United States and Iraq or Iran, leaving Washington's relations with both countries weak. Notwithstanding America's neutrality claim, both the Carter administration and the Reagan administration proceeded to aid both sides of the war in order to further American interests in the Middle East, whether those interests focused on the release of American hostages, first in Tehran in 1979 and then in Lebanon in 1983, or oil. In order to accomplish their goals, the United States provided both sides with aid, military intelligence and weapons.<sup>10</sup>

In the early years of the Iran-Iraq War, the CIA received military intelligence, revealing that Iraq's use of chemical weapons against Iran started as early as 1980. Even though the United States knew about the use of these weapons, the United States continued to arm and aid Iraq. As Colonel Walter P. Lang, a senior Defence Intelligence Agency (DIA) officer at the time, stated, "The use of gas on the battlefield by the Iraqis was not a matter of deep strategic concern...[the

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<sup>8</sup> Swearingen, *supra* note 10 at 405 and 411-412. See also *Iran-Iraq War*, *supra* note 2.

<sup>9</sup> Joyner, *supra* note 4 at 255. See also Shalom, *supra* note 1.

<sup>10</sup> Dilip Hiro, *The Longest War: The Iran-Iraq Military Conflict* (New York: Routledge, 1991) at 71-72.

DIA] would never have accepted the use of chemical weapons against civilians, but the use against military objectives was seen as inevitable in the Iraqi struggle for survival.”<sup>11</sup> Another DIA officer stated that “They [the Iraqis] had gotten better and better’ and after a while chemical weapons ‘were integrated into their fire plan for any large operation.”<sup>12</sup> In fact, in November 1984, the United States and Iraq restored diplomatic relations and removed Iraq from its list of nations supporting international terrorism.<sup>13</sup> President Reagan made it very clear in his policy that an Iraqi victory in the war must be ensured, whatever the cost, therefore it chose to ignore the use of chemical weapons by Iraq.<sup>14</sup>

### c. Iranian-American Relations in the War

In contrast to the restoration of American-Iraqi relations, relations between Iran and the United States took a different route. Out of fear of what an Iranian victory in the Iran-Iraq War might produce, the Reagan administration charged the Iranian government with supporting international terrorism in 1983. By 1984, the State Department created Operation Staunch to punish the Khomeini regime by prohibiting the sale of arms to Iran by all American Allies. The U.S. Secretary of State, George Shultz, then officially declared Iran a sponsor of international terrorism therefore, making it illegal to sell U.S. arms to nations that sponsored terrorism as set out in the 1976 Arms Export Control Act.<sup>15</sup> However, the taking of seven American hostages in

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<sup>11</sup> The Research Unit for Political Economy (RUPE), “The Iran-Iraq War: Serving American Interests,” online: Iran Chamber Society <[http://www.iranchamber.com/history/articles/iran\\_iraq\\_war\\_american\\_interest.php](http://www.iranchamber.com/history/articles/iran_iraq_war_american_interest.php)> [RUPE]. See also Patrick E Tyler, “Officers Say US Aided Iraq in War Despite Use of Gas” *The New York Time Archives* (18 August 2002), online: The New York Times <<http://www.nytimes.com/2002/08/18/world/officers-say-us-aided-iraq-in-war-despite-use-of-gas.html?pagewanted=all&src=pm>> [Tyler].

<sup>12</sup> RUPE, *supra* note 11.

<sup>13</sup> Shalom, *supra* note 1.

<sup>14</sup> Shane Harries & Matthew M Aid, “Exclusive: CIA Files Prove American Helped Saddam as he Gassed Iran” *The Foreign Policy Group* (26 August 2013), online: The Foreign Policy Group <[http://www.foreignpolicy.com/articles/2013/08/25/secret\\_cia\\_files\\_prove\\_america\\_helped\\_saddam\\_as\\_he\\_gassed\\_iran](http://www.foreignpolicy.com/articles/2013/08/25/secret_cia_files_prove_america_helped_saddam_as_he_gassed_iran)> [Harris]. See also Agence France Presse, “US Gave Iraq Intel, Ignored Chemical Attacks in 1980s, Report says” *The Huffington Post* (26 August 2013), online: The World Post <[http://www.huffingtonpost.com/2013/08/26/us-gave-iraq-intel-ignored-chemical-attacks\\_n\\_3817868.html](http://www.huffingtonpost.com/2013/08/26/us-gave-iraq-intel-ignored-chemical-attacks_n_3817868.html)>.

<sup>15</sup> Theodore Draper, *A Very Thin Line: The Iran-Contra Affairs* (New York: Hill and Wang, 1991) at 120 [Draper].

Lebanon between 1984 and 1985, forced the Reagan administration to review the U.S. policy of not selling arms to Iran because of Iran's influence in Lebanon with the radicals responsible, the Hezbollah.<sup>16</sup> President Reagan and his team of advisors decided to start the Iran-Contra affair with the primary aims of rescuing the seven American hostages held in Lebanon, decreasing the use of terrorist tactics in the Middle East and stopping the spread of communism in both the Middle East and Central America.<sup>17</sup>

Desperate to save the hostages, the Reagan administration wrote a National Security Decision Directive (NSDD), which proposed to change U.S. policy against Iran; Secretary of State Shultz and Secretary of Defence Casper Weinberger rejected the NSDD.<sup>18</sup> In response, National Security Council advisor Robert McFarlane concocted a plan to use Israel to sell the arms to Iran in exchange for the American hostages. President Reagan agreed to the arms-for-hostages deal via Israel and on August 20, 1985, Israel sent the first shipment of American arms to Iran in exchange for the release of one of the hostages.<sup>19</sup> These exchanges continued into 1986 and resulted with the United States failing to obtain all the hostages alive and with more hostages being taken. After the Iranians exposed the affair to the global community, American-Iranian relations took a turn for the worst. By the end of the affair, the United States had supplied and armed a known terrorist country by violating U.S. policy in the process, which condemned arms exchanges with recognized terrorist supporting regimes.

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See also William S Cohen & George J Mitchell, *Men of Zeal: A Candid Inside Story of the Iran-Contra Hearings* (New York: Penguin Group, 1988) at 1; Peter Kornbluh & Malcolm Byrne, editors, *The Iran Contra Scandal: The Declassified History* (New York: The New Press, 1993) at 213 [Kornbluh].

<sup>16</sup> Draper, *supra* note 15 at 120.

<sup>17</sup> "The Iran Contra Report: Excerpts from the Iran Contra Report: A Secret Foreign Policy," (January 19, 1994), online: The New York Times <<http://www.nytimes.com/1994/01/19/world/iran-contra-report-excerpts-iran-contra-report-secret-foreign-policy.html?scp=1&sq=IranContraAffairpoliticalcauses&st=nyt&pagewanted=1>>.

<sup>18</sup> Kornbluh, *supra* note 15 at 213-214.

<sup>19</sup> Sean Wilentz, *The Age of Reagan: A History 1974-2008* (New York: HarperCollins, 2008) at 217-218 [Wilentz]. See also Draper, *supra* note 15 at 169.



### III. IRAQ'S DECISION TO MAKE AND USE WMDs

When Hussein became President in 1979, the West saw this as their opportunity to use Iraq as a way to counter the Islamic fundamentalism growing in the Middle East because of Iran; therefore, Iraq was provided with aid, a variety of materials, military support and intelligence throughout the 1980s from Britain, France, Portugal and others.<sup>28</sup> Upon receiving this support, President Hussein began building a WMD arsenal, which included chemical, biological and nuclear weapons as well as ballistic missile programs. By 1983, Iraq's chemical and biological weapons programs were in full-scale production.<sup>29</sup> Iraq produced mustard gas, tabun, cyclosarin, the nerve agent VX and sarin, which were weaponized in artillery shells, grenades, mortars, aerial bombs and rockets.<sup>30</sup> As early as November 1980, Tehran Radio broadcasted allegations against Iraq for their use of chemical weapons during the bombing of Susangerd.<sup>31</sup> By 1982, the Iraqis were deploying tear gas to break up Iranian infantry assaults. Mustard gas was first used in 1983 and even though the United States had no part in this attack, they did not offer any aid to Iran who desperately tried to make a case against Iraq to the United Nations (U.N.) nor did they inform the U.N. about Iraq's use of chemical weapons.<sup>32</sup>

By 1984, the scenario changed as evidence became available to the United Nations through various tests conducted by a team of specialists at the different battle sites as well as from the International Committee of the Red Cross (ICRC) who announced that 160 cases of wounded combatants who visited Tehran hospitals after battle, were victims of chemical weapons. In conjunction with the new evidence found by the U.N. teams and the ICRC, the United States Department announced that the "United States Government has concluded that the

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<sup>28</sup> Joyner, *supra* note 4 at 255.

<sup>29</sup> Joyner, *supra* note 4 at 256.

<sup>30</sup> Joyner, *supra* note 4 at 265.

<sup>31</sup> Robinson, *supra* note 3.

<sup>32</sup> Harris, *supra* note 14.

available evidence indicates that Iraq has used lethal chemical weapons.”<sup>33</sup> Iraq denied this claim alleging that the United States was “full of lies”, stating that the CIA fabricated the evidence; however, Hussein continued to order the use of these weapons on the battlefield and even against his own people.<sup>34</sup> Unbeknownst to Iran and the international community in the 1980s, the CIA had uncovered information, which it labeled “Top Secret”, that proved “that the Iraqis used Tabun nerve agent (also known as “GA”) against Iranian forces in southern Iraq.” This declassified CIA document, along with many others, showed that Director of Central Intelligence, William J. Casey, “and other top officials were repeatedly informed about the Iraq’s chemical attacks and its plans for launching more.”<sup>35</sup> Retired Air Force Colonel Rick Francona revealed that while he was in Iraq, he “saw zones marked off for chemical contamination, and containers for the drug atropine scattered around, indicating that Iraqi soldiers had taken injections to protect themselves from the effects of gas that might blow back over their positions.”<sup>36</sup> In spite of condemning the use of chemical weapons and fully knowing that the weapons were being used, the United States did nothing to support any U.N. Security Council action against Iraq. A veteran of the program noted that “the Pentagon wasn’t so horrified by Iraq’s use of gas...it was just another way of killing people – whether with a bullet or phosgene, it didn’t make any difference.”<sup>37</sup>

It was not until 1986, that the United Nations Security Council finally denounced Iraq for using chemical weapons in the war.<sup>45</sup> In 1987, with the Iran-Contra Affair exposed, the United States focused its energy to ensuring an Iraqi victory. The U.S. promised Hussein that they would

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<sup>33</sup> Robinson, *supra* note 3.

<sup>34</sup> Robinson, *supra* note 3. See also Harris, *supra* note 14.

<sup>35</sup> Harris, *supra* note 14.

<sup>36</sup> Tyler, *supra* note 11.

<sup>37</sup> Tyler, *supra* note 11.

<sup>45</sup> Shalom, *supra* note 1.

lead an effort at the U.N. for a mandatory arms embargo of Iran. The U.S. drafted a resolution and presented it to the U.N. where the non-permanent members of the Security Council altered it to include the formation of a commission to investigate the origins of the war and to eliminate the mandatory sanctions against Iran. The Security Council passed the revised document and it became known as Resolution 598.<sup>46</sup> Initially, Iran refused to accept the Resolution.

By 1988, the United States government authorized the U.S. naval forces in the Persian Gulf to aid in the attack against Iranian naval forces and oil platforms. The government then sent the DIA authorization to provide Iraq with as much intelligence as possible in order to ensure that Iran did not win its next offensive strike against Iraq at the Fao Peninsula. The DIA provided Iraq with detailed battle plans, military intelligence and satellite images in order to ensure that Iraq could successfully counter the Iranian offensive strike against Iraq. The information the Iraqis obtained by the U.S. resulted in Iraq recapturing the Foa Peninsula. Due to the level of detail provided by the U.S. to Iraq, it is clear that the U.S. battle plan included the use of chemical weapons, as Iraq had come to use them in all major battles. As reported by Shane Harries and Matthew M. Aid in their article for *The Foreign Policy Group* entitled, “Exclusive: CIA Files Prove American Helped Saddam as He Gassed Iran,” the declassified documents showed that senior U.S. officials within the Reagan administration, received regular, updated information detailing the scale of the chemical attacks upon Iran stating that “they are tantamount to an official American admission of complicity in some of the most gruesome chemical weapons attacks even launched.”<sup>47</sup> Top CIA officials knew

The location of the Iraqi chemical weapons assembly plants; that Iraq was desperately trying to make enough mustard agent to keep up with frontline demand

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<sup>46</sup> Shalom, *supra* note 1.

<sup>47</sup> Harris, *supra* note 14.

from its forces; that Iraq was about to buy equipment from Italy to help speed up production of chemical-packed artillery rounds and bombs; and that Iraq could also use nerve agents on Iranian troops and possibly civilians.<sup>48</sup>

The recapturing of the Fao Peninsula proved to be the turning point of the conflict as it brought Iran to the negotiation table.<sup>49</sup> On July 18, 1988, Iran declared its full acceptance of U.N. Security Council Resolution 598 however, Hussein refused to accept a cease-fire as Iran regained all of its lost territory on land. Iraq continued its offensive operations, using chemical weapons against Iran and the Kurds. Iraq finally agreed to a cease-fire in August 1988, due to an increase in international pressure placed upon them, ending the Iran-Iraq War.<sup>50</sup>

#### **IV. SHARED RESPONSIBILITY: HOW IT MAY APPLY TO U.S. INVOLVEMENT IN THE IRAN-IRAQ WAR**

The United States active involvement in the Iran-Iraq War brings to light many legal issues that are currently in the process of being debated in the international community. The International Law Commission (ILC) recognized that “attribution of acts to one state or organization does not exclude the possible attribution of the same act to another state or organization.”<sup>51</sup> This type of allocation is known as shared responsibility. Even though there is limited guidance on how to properly allocate shared responsibility of states and organizations, the Articles of Shared Responsibility (ASR) were created in order to help define what shared responsibility entails. Shared responsibility, as defined in Article 47 is used “to refer to a situation where two or more states have committed an internationally wrongful act and these two

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<sup>48</sup> Harris, *supra* note 14.

<sup>49</sup> RUPE, *supra* note 11.

<sup>50</sup> Shalom, *supra* note 1.

<sup>51</sup> André Nollkaemper, “Issues of Shared Responsibility before the International Court of Justice” in Eva Rieter & Henri de Waele, eds, *Evolving Principles of International Law: Studies in Honour of Karel C Wellens* (Leiden-Boston: Martinus Nijhoff Publishers, 2011) 199 at 199 [Nollkaemper].

wrongs result in, or contribute to, a single injury.”<sup>52</sup> Since both states are responsible for the same injury, both states should incur responsibility and both are obligated to provide reparation to the injured party. It is important to note that even though both states share responsibility, such responsibility falls on each state independently, as it is not a collective responsibility.<sup>53</sup>

Shared responsibility can be divided into two groups: cooperative responsibility and cumulative responsibility. Cooperative responsibility arises out of “joint or concerted action” which includes instances of coalition warfare, joint border patrols or when one state is found to be aiding another in committing wrongful acts. Cumulative responsibility is the opposite of cooperative, as it does not occur because of a concerted action but rather, injured parties may be able to make claims against several independent states who acted independently from each other; for instance situations that include pollution of international waterways.<sup>54</sup> In the Iran-Iraq War situation, it is cooperative responsibility that should be applied.

The ASR provides two conditions for the existence of an internationally wrongful act: the first includes that the act must breach an obligation of the state and the second is that the act must be attributable to the state.<sup>55</sup> In order to determine whether two states share responsibility for a wrongful act, it is vital to consider what each state has actually agreed to with regards to their involvement in the act.<sup>56</sup> For instance, in the *Oil Platforms Case (Islamic Republic of Iran v United States of America)*<sup>57</sup>, the International Court of Justice (ICJ) required the U.S. to demonstrate that Iran individually infringed on its treaty obligations by placing mines in the Persian Gulf, which resulted in the United States incurring injury. The U.S. became no longer

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<sup>52</sup> Nollkaemper, *supra* note 51 at 200 and 202.

<sup>53</sup> Nollkaemper, *supra* note 51 at 202. See also André Nollkaemper & Dov Jacobs, “Shared Responsibility in International Law: A Conceptual Framework” (2013) 34 *Mich J Int’l L* 359 at 366-368 [Jacobs].

<sup>54</sup> Jacobs, *supra* note 53 at 368-369.

<sup>55</sup> Jacobs, *supra* note 53 at 402.

<sup>56</sup> Jacobs, *supra* note 53 at 393.

<sup>57</sup> [2003] ICJ Rep 161. See also Nollkaemper, *supra* note 51 at 221-222.

able to navigate freely in the Gulf as was agreed upon in a bilateral treaty agreement made in 1955 between Iran and the U.S., therefore the Americans alleged that Iran breached its treaty obligations. According to the facts of the case, Iran was not the only state responsible for the mines in the Persian Gulf; Iraq also placed mines in the Gulf. The problem focused on the fact that both Iran and Iraq committed acts that resulted in the Gulf becoming unsafe for the U.S. to travel through which went against the terms of the treaty. The ICJ considered the concept of shared responsibility in order to determine if both countries could be found liable for the damage incurred by the U.S. Although, the Court found it impossible to determine the wrongful acts committed by Iran and Iraq separately resulting in neither being held responsible and the U.S. claim being rejected,<sup>58</sup> the *Oil Platform Case* does provide an instance in international law where shared responsibility was considered by the Court.

To date, shared responsibility lacks sufficient evidentiary support in ICJ case law to provide a detailed guideline as to how to allocate the principles of shared responsibility. However, it is still a concept that is considered when determining cases where more than one state or international organization may be responsible for a wrongfully committed act against another state. Another example of its consideration is found in the *Nicaraguan Cases* of the 1980s. The cases focused on Nicaragua's claims against the United States, Costa Rica and Honduras for their role in aiding and supplying rebel groups, called the Contras, against the Nicaraguan government. Upon reviewing the facts of the cases, the ICJ decided to apply its finding in the *Corfu Channel Case (United Kingdom v Albania)*<sup>59</sup> where it explained that when "two concurrent independent wrongful acts [occur], the Court can independently determine responsibility of each of the

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<sup>58</sup> Nollkaemper, *supra* note 51 at 221.

<sup>59</sup> [1949] ICJ Rep 4.

wrongdoing states without them being simultaneously party to the proceedings.”<sup>61</sup> Therefore, the Court alleged that Honduras, even though not a party to trials, acted wrongfully against Nicaragua by allowing “their territory to be used as a staging ground for unlawful uses of force against Nicaragua. It could be inferred that responsibility for the attacks against Nicaragua was shared between the United States and Honduras.”<sup>63</sup> The *Nicaraguan Cases* provide an instance where shared responsibility applied in international law.

In attempting to apply the principles of shared responsibility to the actions of the United States in the Iran-Iraq War, it necessary to re-emphasize that fact that there does not exist a sufficient amount of case law to provide any sort of guidance in the allocation process. It is also essential to explain that the current system of international responsibility suffers from a lack of clarity as to when and how responsibility can be shared between states and what consequences may arise as a result of this sharing.<sup>64</sup> However, based on the little case law that does exist and through the direction of the Articles of the ASR, an argument can be made showing that the U.S. and Iraq shared responsibility for the internationally wrongfully committed act of using chemical weapons against the Iranian people in the Iran-Iraq War. Article 47 of the ASR explains that where several states are responsible for the same internationally wrongful act, “the responsibility of each state may be invoked in relation to that act.”<sup>65</sup> The internationally recognized wrongful act includes Iraq’s breach of its obligation under the Geneva Protocol of 1925 to not use chemical weapons in warfare. The act is attributable to the state, because Iraq did in fact use those weapons against Iran.<sup>66</sup> In order to determine whether both Iraq and the U.S. share

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<sup>61</sup> Nollkaemper, *supra* note 51 at 212.

<sup>63</sup> Nollkaemper, *supra* note 51 at 212.

<sup>64</sup> Jacobs, *supra* not 53 at 422.

<sup>65</sup> Nollkaemper, *supra* note 51 at 200.

<sup>66</sup> Tyler, *supra* note 11.

responsibility for this wrongful act, it is necessary to consider what the U.S. agreed to with regards to their involvement in the execution of the confirmed act.

The revealed declassified CIA documents provide substantial amounts of concrete evidence proving that the United States not only knew about the Iraqi use of chemical weapons in the war, but that the Pentagon and the U.S. government determined that using those weapons against soldiers was acceptable because it was “just another way of killing people.”<sup>67</sup> From these CIA documents and through its decision to play an active role in the planning of the Fao Peninsula battle strategy of Iraq in 1988, it is acceptable to believe that the U.S. knew that Iraqi military strategy involved the use of chemical weapons, therefore any plans devised by the U.S. must have included the use of chemical weapons.<sup>68</sup> As a result, it can be argued that the United States agreed to being involved in the internationally wrongfully committed acts by Iraq. Under the Article 47 of the ASR, since both states can be viewed as being involved in the wrongful acts, both the U.S. and Iraq should incur responsibility and both should be obligated to provide reparation to the Iran.<sup>69</sup> The United States can be seen as having a cooperative responsibility as it aided in Iraq in committing the wrongful act against Iran, which parallels the ICJ’s decision in the *Nicaraguan Cases* when it found that both the U.S. and Honduras shared liability for the damage incurred by Nicaragua.<sup>70</sup>

The concept of shared responsibility, if applied to the U.S. for its participation in the chemical warfare used against the Iranians by the Iraqis, provides a reasonable attempt at making the United States accountable for their deceitful actions in the war. Even though the principles of shared responsibility remain restricted, an argument may be made that the United States and Iraq

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<sup>67</sup> Tyler, *supra* note 11.

<sup>68</sup> Harris, *supra* note 14.

<sup>69</sup> Nollkaemper, *supra* note 51 at 202.

<sup>70</sup> Jacobs, *supra* 53 at 368.



should be held responsible for their roles in the use of chemical weapons against Iran, as well as for all reparations required by Iran to account for these damages.<sup>71</sup>

## V. CONCLUSION: UNANSWERED QUESTIONS

The United States involvement in the Iran-Iraq War leaves many questions unanswered regarding how the U.S. was able to continuously escape any responsibility for their actions during the war. Many documents prove that the United States, contrary to its claims of neutrality, knowingly breached U.S. policy and illegally took part in the arms-for-hostages deal, known as the Iran-Contra Scandal; that the U.S. aided and supplied military intelligence and weaponry to both Iraq and Iran ensuring that both arsenals remained fully stocked throughout the war; and that the Reagan administration knew about Iraq's use of chemical weapons against both military and civilian populations in Iran but decided to turn a blind-eye in order to guarantee that the Iranian's did not win the war. By the end of the war, the Middle East and the rest of the world learned that the U.S. was willing to construct deals with enemies as long as the deals proved beneficial to American interests. The gravity of the U.S. involvement in the chemical warfare that occurred in the 1980s placed a stigma on the U.S. which still exists today.

When the war ended, diplomatic relations between both Iraq and Iran and the U.S. continued to worsen. In 1993, President Bill Clinton's administration announced its policy of dual containment, which included partial economic sanctions against Iraq and Iran. These sanctions impacted Iran's billion-dollar deal with Conoco as the U.S. placed a total embargo on all dealings with Iran, which cancelled the deal and resulted in a cease of trade between Iran and America.<sup>72</sup> With regards to its relations with Iraq, the end of the war saw America views of Hussein change as he went from being an ally to the U.S. to an enemy. When the September 11,

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<sup>71</sup> Jacobs, *supra* note 53 at 363.

<sup>72</sup> Nikki R Keddie, *Modern Iran: Roots and Results of Revolution* (New Haven and London, Yale University Press, 2003) at 263-264 [Keddie].

2001 terrorist attacks occurred against the U.S., Hussein was re-instated as an enemy of the U.S. and as a supporter of international terrorism. The U.S.-led invasion of Iraq of 2003 occurred as an attempt to remove Hussein from his presidency and to install a pro-American state.<sup>73</sup> All of the American efforts during the war to establish somewhat friendly diplomatic relations with either Iran or Iraq failed as neither country viewed the U.S. as an ally.

In considering President Obama's stance against the use of chemical weapons in Syria, one cannot help but wonder what makes the Syrian situation different from the Iran-Iraq War situation. Both conflicts included the use of chemical weapons. The main difference seems to be that the Reagan administration decided to ignore all evidence of chemical weapon use by Iraq in order to ensure that American interests benefited while the Obama administration acknowledged the use of the WMDs and refused to allow such use to continue; Obama threatened the use of military force against Syria in order to ensure that chemical weapon use would be discontinued.<sup>74</sup> The conflicting decisions of the two administrations pose many questions to the international community. A main question is what could have occurred if American interests in Syria resembled American interests in the Middle East during the 1980s? Is it safe to assume that a country can learn from its previous mistakes? Or are countries destined to be creatures of habit, and act according to what is in the best interest of their state, as set forth from the idea of modern nationalism and patriotism? Another question that remains unanswered focuses on why the United States was able to walk away from its involvement in the Iran-Iraq War unpunished? The simple answer is that international law is not strong enough, nor does it have the jurisdiction to act as courts do in domestic settings; international is confined to what the international community as a whole agrees to. The more complex answer is yet to be determined.

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<sup>73</sup> Keddie, *supra* note 72 at 327-330.

<sup>74</sup> Harris, *supra* note 14.