

THE IRAN-IRAQ WAR (1980–1988)  
AND  
THE LAW OF NAVAL WARFARE

edited  
by

ANDREA DE GUTTRY

and

NATALINO RONZITTI



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## A. COMMENTARY\*

### 1. INTRODUCTION

On 22 September 1980 Iraq began a large-scale military operation against the territory of Iran. The same day Iran reacted by applying certain restrictions to the freedom of navigation in the Persian Gulf. In June 1982, after having successfully repulsed Iraqi troops from its territory, Iran in turn undertook military operations on enemy territory. In order to force Iran to accept its peace offers Iraq decided to interrupt the export of Iranian oil by sea. One by one oil terminals, Iranian exploitation platforms and tankers transporting Iranian oil were subjected to Iraqi air attacks. Iran replied by intensifying inspections of neutral ships in the search for war contraband intended for Iraq. In addition, the dereliction of their duty of neutrality by certain countries bordering on the Persian Gulf caused Iran to attack tankers travelling to and from these countries more or less openly.

Finally, the mass arrival of the United States fleet in the Persian Gulf, thereby increasing tension in the area, was the origin of limited military action against Iranian targets. In this way the theatre of operations gradually moved into the maritime area, which brought about very thorny judicial problems.<sup>1</sup>

### 2. RESTRICTIONS OF FREEDOM OF NAVIGATION

During the first few months of the war the Ministry of Roads and Transportation, Ports and Shipping Organization issued several notices to mariners on the initiative of the Commander in Chief of the Naval Forces. By means of these notices, Iran established a maritime war zone along its Persian Gulf coast, in which shipping was to be regulated, and announced the blockade of the Iraqi coast.

\* Commentary prepared by D. Momtaz. The author makes it clear that opinions expressed in this article are his own and commit only himself.

<sup>1</sup> On the chronology and principal events of the war, see P. Balta (ed.), *Le conflit Iran-Irak 1979-1989. Notes et Etudes documentaires*, no. 4889 (1989-14).

2.1. *Iran's Maritime War Zone*

Set up on 22 September 1980, this war zone covered the waters between the Iranian coast and a line joining points located respectively 12 miles south of the islands of Abu Musa and Sirri, to the south of Cable Bank Light, and 12 miles south-west of the island of Farsi.<sup>2</sup> These are the most southerly Iranian islands in the Persian Gulf. Thus, contrary to allegations,<sup>3</sup> Iran never extended its war zone to the Strait of Hormuz and, on 22 October 1980, reaffirmed its commitment to keeping the Strait open to navigation.<sup>4</sup>

The establishment of this war zone by Iran was in response to two different concerns, the first being of a defensive nature. By setting up this zone, Iran was guided by the concern to protect its coastline against intrusion by ships likely to present a risk to national security. For this reason, foreign ships wishing to pass through the zone had to request prior authorization from the appropriate authorities. To do this, ships calling at an Iranian port had to contact the port authorities at Bandar-Abbas before passing Ras Al Kuh at the entry to the Strait of Hormuz, to advise them of the ship's route and destination.<sup>5</sup>

Ships calling at a port in one of the countries bordering the Persian Gulf were, for obvious security reasons, subject to stricter regulations. Every ship intending to do so had to contact the Iranian Navy Headquarters 48 hours before its passage and provide it with a number of pieces of information, such as its point of departure, its destination, its route, its speed, its time of departure and all features facilitating its visual identification.<sup>6</sup>

In both cases the intention was to enable the authorities to identify hostile shipping and forbid access to the zone.

Iran's second concern was to guarantee the safety of international shipping. As was confirmed time and again, the zone could be dangerous to shipping due to warlike events likely to take place there. Without going as far as forbidding access to

<sup>2</sup> See doc. 1.1.

<sup>3</sup> See S.H. Amin, *International and Legal Problems of the Gulf* (1984), pp. 53 ff. Taken up by N. Ronzitti, 'Passage through International Straits in the Time of International Armed Conflicts' in *International Law at the Time of its Codification. Essays in Honour of Roberto Ago* (1987), Vol. II, p. 373.

<sup>4</sup> UN Doc. S/14226. Letter from the Iranian Foreign Minister to the Secretary General of the United Nations.

<sup>5</sup> See doc. 1.4.

<sup>6</sup> See doc. 1.5.

the zone, Iran therefore recommended foreign ships to avoid the zone by following shipping lanes outside it, thereby disclaiming responsibility for any damage which might be incurred on passing through the zone.<sup>7</sup> Thus warned of the risk, ships which persisted in navigating their way through it did so at their own risk. In order to guarantee the safety of ships coming from or heading towards an Iranian port, the captains of such vessels had to ensure "that necessary coordination should be made with the navy of the Islamic Republic of Iran before taking any action and to inform the relevant Iranian port of their situation and position in the Persian Gulf once every hour".<sup>8</sup>

The war zone established by Iran was similar to the 10 mile wide zone set up by Japan during its war with Russia in 1904 in order to distance international shipping.<sup>9</sup> On the other hand it differed from zones set up during both world wars, the Falklands war and the zone declared by Iraq on 7 October 1980.<sup>10</sup> In these cases any ships which ventured into the zones, usually called exclusion zones, were considered *ipso facto* as hostile and were liable to attack without warning, which constitutes an intrinsically illegal act in that it violates the principle of freedom of navigation and contradicts the concept of neutrality.

"Insofar as the declared war zone had as its effect the protection of Iran's near-territorial waters, it, too, is not legally objectionable".<sup>11</sup> Indeed, "the system's more defensive purpose, its restriction to an area near Iran's coastline, and its limited interference with international shipping lanes, all lead one to view Iran's measures as reasonable and therefore justifiable in the circumstances".<sup>12</sup>

## 2.2. *The Iran Blockade of Iraq's Coastline*

On 22 September 1980, without express reference to the

<sup>7</sup> See doc. 1.1.

<sup>8</sup> See doc. 1.3.

<sup>9</sup> See R. J. Dupuy – D. Vignes (eds.), *Traité du nouveau droit de la mer* (1985), p. 1099.

<sup>10</sup> See R. Leckon, 'The Iran-Iraq Conflict in the Gulf: the Law of War Zones', *International and Comparative Law Quarterly*, Vol. 37 (1987), pp. 637 ff.; W.J. Fenrick, 'The Exclusive Zone Device in the Law of Naval Warfare', *Canadian Yearbook of International Law*, Vol. 24 (1986), p. 118.

<sup>11</sup> See F. V. Russo, Jr., 'Neutrality at Sea in Transition. States Practice in the Gulf War as Emerging International Customary Law', *Ocean Development and International Law*, Vol. 19 (1988), p. 389.

<sup>12</sup> See R. Leckon, op. cit., *supra*, note 10.



establishment of a blockade, Iran announced that it would refuse ships access to Iraqi ports.<sup>13</sup> This was undeniably a ban on communications with the enemy coast.

The superiority of Iran's fleet over Iraq's, the greater part of which had been destroyed during the first few days of the war, as well as the very limited extent of the Iraqi coastline ensured the effectiveness of the blockade, which was maintained throughout the war by a force large enough to prevent access to the enemy coast.<sup>14</sup> No attempt to break the blockade was made by merchant shipping. Only a few small vessels of the Iraqi fleet held in the port of Umm Qasr endeavoured, without success, to reach the high seas.

On 1 October 1980, Iran extended the blockade to the Shatt-al-Arab, the closure of this shipping lane being justified by the fact that "Iraq by its aggression to Iran has strongly endangered the safety of navigation". Iran announced at the same time: "When the aggression is over and normal situation being restored, all the regulations concerning the navigation in Shatt-al-Arab which has governed by the Iran and Iraq Common Bureau of Coordination (C.B.C.) will be enforced as before".<sup>15</sup>

This Bureau, established by the "Agreement between Iran and Iraq concerning Regulations on Navigation in the Shatt-al-Arab" concluded on 26 December 1975 and annexed to the "Treaty concerning the State Frontier and Neighbourly Relations between Iran and Iraq" of 13 June 1975, was responsible for guaranteeing navigation in this seaway and drafting regulations relating thereto.<sup>16</sup>

Although nothing prevents a belligerent country blockading a waterway,<sup>17</sup> the reasons which led Iran to do so are not entirely clear. Indeed the blockade of the Iraqi coastline declared beforehand covered the mouth of the Shatt-al-Arab, which had been rendered unfit for navigation since the initial days of the

<sup>13</sup> See doc. 1.1.

<sup>14</sup> In accordance with paragraph 4 of the Declaration of Paris, "Blockade in order to be binding must be effective, that is to say, maintained by a force sufficient to prevent access to the coast of the enemy".

<sup>15</sup> See doc. 1.2.

<sup>16</sup> For more details on this Bureau see our previous study, D. Momtaz, 'Le statut juridique du Chatt-el-Arab dans sa perspective historique', in *Actualités juridiques et politiques en Asie. Etudes à la mémoire de Tran van Minh* (1988), pp. 59 ff.

<sup>17</sup> See C. Rousseau, *Le droit des conflits armés* (1983), p. 269. During the Crimean War the mouths of the Danube were blockaded by the Franco-British squadron.

war by the wrecks of a number of ships which were there at that time.

Extending the blockade to the Shatt-al-Arab offered Iran the opportunity of confirming its adherence to the 1975 Treaty which had been unilaterally repudiated by Iraq on 17 September 1980.<sup>18</sup>

Although doubts had been expressed following the adoption of Additional Protocol I to the Geneva Convention of 1949 on the legality of maritime blockades,<sup>19</sup> the doctrine continues in its quasi-unanimity of considering the blockade as a form of hostility in accordance with the law of war resulting from the Declaration of Paris of 16 April 1856 and codified by the Declaration of London of 26 February 1909.<sup>20</sup>

Nevertheless, Iraq protested against the blockade of its coasts, justifying its decision of 7 October 1980 of establishing, as a reprisal, an exclusion zone in the north-west of the Persian Gulf.<sup>21</sup> It should be remembered here that counter measures must be directed towards the state, or interests of the state, which is responsible for the violation of international law, as the creation of the exclusion zone also affected the interests of neutral countries.

### 3. SANCTIONS AGAINST VIOLATIONS OF THE OBLIGATIONS OF NEUTRAL COUNTRIES

A distinction should be made between the obligation of neutral vessels not to transport war contraband for belligerent countries and the obligation of abstention and impartiality on the part of neutral countries.

<sup>18</sup> U.N. Doc. S/14236 of 24 October 1980.

<sup>19</sup> See E. Rauch, *The Protocol Additional to the Geneva Conventions for the Protection of Victims of International Armed Conflicts and the United Nations Convention on the Law of the Sea: Repercussions on the Law of Naval Warfare* (1984). This thesis has been vigorously rejected by H. Meyrowitz, 'Le Protocole additionnel I aux Conventions de Genève de 1949 et le droit de la guerre maritime', *Revue générale de droit international public*, Vol. 89 (1985), pp. 243 ff. For Meyrowitz the theory put forward by E. Rauch comes up against a decisive objection: "la différence fondamentale et absolue entre le droit de la guerre terrestre – dont relève le champ d'application essentiel et historique des règles réaffirmées dans le Protocole I – et le droit de la guerre maritime", p. 254.

<sup>20</sup> See N. Ronzitti (ed.), *The Law of Naval Warfare. A Collection of Agreements and Documents with Commentaries* (1988), p. 1.

<sup>21</sup> See Letter from the Iraqi Foreign Minister, dated 19 October 1984, addressed to the Secretary General of the United Nations.

3.1. *Inspection of Neutral Vessels and Seizure of War Contraband*

On 12 August 1981 Iran announced the seizure at the entrance to the Strait of Hormuz of the Danish vessel *Elsa Cat* which was carrying military equipment intended for Iraq.<sup>22</sup>

From 1985 onwards the Iranian Navy systematically inspected neutral vessels suspected of carrying war contraband for the enemy. According to the commander of the Iranian Navy, over 1000 ships had been inspected by the end of 1986.<sup>23</sup> In accordance with Article 61 of the Declaration of London, only ships travelling in convoy and escorted by a warship from their country were exempted from inspection. Nevertheless for Iran this exemption could be rejected if it turned out that the escort, devoid of good will, was intended to assure the immunity of ships transporting war contraband. This applied to the transfer of flags simply to benefit from the protection of a foreign warship,<sup>24</sup> as happened when part of the Kuwaiti tanker fleet was reflagged under the flag of the United States of America. However, the Iranian Navy preferred not to exercise its right to inspect these tankers.

The increase in the number of cases where the cargo of inspected vessels was seized caused the Iranian legislators to adopt the "law regarding the settlement of disputes over war seizures" on 17 November 1987. As its title indicates this law is not restricted to war contraband in the strictest sense but covers a wider scope, being called on to settle not only differences of opinion arising out of the seizure of objects and materials as war contraband, but also those resulting from the confiscation and liquidation of goods belonging to the enemy and to its nationals.

3.1.a. *Goods which can be seized*

In accordance with Iranian law, all goods, merchandise, means of transport and equipment belonging to states at war with Iran immediately become the property of Iran. As far as other goods

<sup>22</sup> See C. Rousseau, 'Chronique des faits internationaux', *Revue générale de droit international public*, Vol. 86 (1982), pp. 812 ff.

<sup>23</sup> See *Journal Resalat*, 4 January 1987.

<sup>24</sup> See *A Review of the Imposed War by the Iraqi Regime upon the Islamic Republic of Iran*, Published by the Legal Department of the Iranian Foreign Ministry, 1988 (in Persian), Vol. 119, p. 119.

are concerned, who they belong to, their nature and destination should all be taken into consideration at the same time.<sup>25</sup>

Two categories of goods, merchandise and means of transport belonging to neutral states, their nationals or enemy subjects, may be seized: those which are not permitted to be transported to enemy territory, for which Iran has still not drawn up a list, and all goods, the final destination of which, either directly or through intermediaries, is enemy territory, if they effectively increase the enemy's combat capacity. It was this double criterion which Iran referred to throughout the war in order to classify goods found on board neutral ships as war contraband and to confiscate them.

#### *Hostile destination of the goods*

As a result of the effective blockade of the Iraqi coastline and the closure of the Shatt-al-Arab to navigation, no neutral vessel was able, during the period of hostilities, to reach Iraqi ports. On the basis of the tonnage unloaded at the port of Kuwait, the Iranian authorities suspected that country of facilitating the transport of goods via its territory to Iraq ever since the beginning of the war. For this reason the Iranian Navy endeavoured particularly to inspect ships heading for Kuwait<sup>26</sup> and to confiscate goods which turned out to be for a hostile destination. Thus on 20 June 1985 the Iranian authorities inspected the vessel *Al-Muharaq* flying the Kuwaiti flag and heading for Kuwait and seized 5 tonnes of merchandise clearly intended for Iraq.<sup>27</sup> This practice is in accordance with the law and, on being repeated several times, the abnormal increase in exports to countries bordering on enemy territory was taken into account in the case law concerning seizures.<sup>28</sup>

#### *Contribution to increasing the combat capacity of the enemy*

This can lead to confusion. The question arises of knowing

<sup>25</sup> Art. 3 of the Iranian Law on War Prizes; see doc. 1.6.

<sup>26</sup> See list of ships inspected by the Iranian Navy, drawn up by T. S. Schiller, 'The Gulf War and Shipping: Recent Developments', in B. A. H. Parritt (ed.), *Violence at Sea*, 2nd ed. (1986), pp. 114 ff. According to this list, almost all the ships visited between September 1985 and January 1986 were heading for Kuwait.

<sup>27</sup> Op. cit., *supra*, note 24, p. 116.

<sup>28</sup> See D. P. O'Connell, *The International Law of the Sea* (1984), edited by I. A. Shearer, Vol. 2, p. 1145.

whether the intention of the Iranian legislators was to limit war contraband to materials of war in the proper sense as well as objects and materials considered as having an exclusively military use, that is to say absolute contraband.<sup>29</sup> This restrictive interpretation of war contraband is in accordance with certain expressed opinions. Thus, the United Kingdom considered that "Iran, actively engaged in an armed conflict, is entitled in exercise of its inherent right of self-defence to stop and search a foreign merchant ship on the high seas if there are reasonable grounds for suspecting that the ship is taking arms to the other side for use in the conflict".<sup>30</sup> In the same way it has been maintained that such a definition of war contraband would best protect the interests of non-combatants and would thus be in line with Additional Protocol I to the Geneva Conventions of 1949.<sup>31</sup>

The practice followed by Iran during the war is based on a broad interpretation of war contraband. For this country, any merchandise benefiting the war effort of the enemy, either directly or indirectly, can be seized. This practice is in line with developments since the Second World War which are tending towards the obsolescence of any distinction made between absolute and conditional contraband.<sup>32</sup> Since then the demands of economic warfare have led belligerent countries to stop completely maritime trade with the enemy plied under neutral flags.<sup>33</sup>

#### *Seizure of neutral ships transporting war contraband*

Here, the Iranian legislator does not appear to take into account international law, more particularly the Declaration of London of 1909, which is a reflection of a well-established international customary rule.<sup>34</sup> Indeed, in accordance with Article 40 of this Declaration "a vessel carrying contraband may be

<sup>29</sup> Art. 3.2 of the Iranian Law on War Prizes; see doc. 1.6.

<sup>30</sup> See *House of Commons Debates*, Vol. 90, Col. 428, 28 January 1986, document reproduced in Chapter V.B.2.a.14. See also A.V. Lowe, 'The Laws of War at Sea and the 1958 and 1982 Conventions', *Marine Policy*, Vol. 12 (1988), p. 286.

<sup>31</sup> See E. Rauch, op. cit., *supra*, note 19.

<sup>32</sup> See C. Rousseau, op. cit., *supra*, note 17, pp. 467 ff.

<sup>33</sup> See 'The Persian/Arabic Gulf Tanker War: International Law or International Chaos', Report of the Conference sponsored by the Council on Ocean Law and the Law of the Sea Institute, held on 26 January 1988, Washington D.C., reproduced in *Ocean Development and International Law*, Vol. 19 (1988), p. 307.

<sup>34</sup> Art. 3.9 of the Iranian Law on War Prizes, see doc. 1.6.



condemned if the contraband, reckoned either by value, weight, volume or freight, forms more than half the cargo". In contrast, the practice followed before adoption of the law is in accordance with the law. This is cited as evidence for the release on 12 July 1985 of the vessel *Al-Muharraq*, belonging to the United Arab Shipping Corporation, of which Iraq is nevertheless a member.<sup>35</sup> Only the vessel *Ibn Al Beitar*, flying the Kuwaiti flag, and seized on 25 November 1985 by the Iranian Navy, was not authorized to take to sea again as a result of serious doubts as to whether this ship belonged to the enemy.<sup>36</sup> Attacked by the Iraqi Air Force this ship subsequently sank.

*3.1.b. Judgment of the validity of seizure*

The confiscation of goods, merchandise and means of transport must be pronounced by the War Prizes Tribunal. However, in two cases confiscation can take place without the intervention of the judge.<sup>37</sup> The first exception relates to the confiscation of enemy public property; this is in accordance with the law, and may even be seen as moderate when compared to contemporary practice which henceforth generalizes the seizure of enemy property, both public and private.<sup>38</sup> The second exception relates to goods, merchandise and means of transport which Iran has forbidden to be transported to enemy territory. This exception is certainly incompatible with the rule that "every seizure must be judged". Nevertheless this affirmation should be qualified as any claim relating to confiscation of goods can be submitted to the Tribunal.

Apart from these two exceptions, the confiscation of goods, merchandise and means of transport must be submitted to the Tribunal office within four months of the date of seizure. Perishable foodstuffs and goods whose storage would not be economic can be sold on the authorization of the Public Prosecutor of the Tribunal and returns on the sale are paid to the account of the Ministry of Justice while awaiting the Tribunal's verdict.

In so far as the Tribunal forms part of the regular court under

<sup>35</sup> See T. S. Schiller, *op. cit.*, *supra*, note 26, p. 114, note 114.

<sup>36</sup> *Op. cit.*, *supra*, note 24, p. 112.

<sup>37</sup> Art. 4 of the Iranian Law on War Prizes, see doc. 1.6.

<sup>38</sup> See C. Rousseau, *op. cit.*, *supra*, note 17, p. 54.

the legal system, cases are heard in accordance with the regulations of civil procedure. Its seat is in Tehran. To date, March 1990, no verdict has been reached.

*3.1.c. Exercise of the right of inspection and seizure after the cease-fire*

The day the cease-fire was established between Iran and Iraq, the commander of the Iranian Navy announced that his forces would continue to inspect vessels until peacetime.<sup>39</sup> Iraq rejected this, considering it incompatible with the United Nations Charter, and more particularly, with the principle of collective security.<sup>40</sup> Iran's view was based on the fact that the armistice, and even more so the cease-fire, did not end the state of war, and that the law of war continued to govern relations between the two countries until a peace treaty had been achieved, adding though that it was prepared to seek a compromise formula.<sup>41</sup>

Although Iran hardly even exercised this right, the question nevertheless remains and is of a certain theoretical interest. It is within the framework of armistice conventions that a solution may be found. The majority of these in effect prohibit the exercise of the right of seizure, and the doctrine remains divided. However, it appears that a majority of authors are in favour of the opposite argument.<sup>42</sup> For the cease-fire period precedents are rare, if not non-existent. In so far as the exercise of the right of seizure cannot be considered as being a hostile act in itself, it can be concluded that the belligerents could continue to exercise this right, at least until the conclusion of an armistice convention.

*3.2. Reactions Against the Violation of the Obligation of Abstention and Impartiality*

Kuwait, Saudi Arabia and the United States of America were accused by Iran of failing, during the war, in their obligations of

<sup>39</sup> *Journal Ettela'at* of 20 August 1988.

<sup>40</sup> Declaration by the Iranian Foreign Minister to the 43rd session of the General Assembly of the United Nations on 4 October 1988.

<sup>41</sup> Declaration by the Iranian Foreign Minister to the 43rd session of the General Assembly of the United Nations on 3 October 1988.

<sup>42</sup> See O. Rojahn, 'Ship, Visit and Search', in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Instalment 4 (1982), pp. 128 ff.; R. R. Baxter, 'Armistices and Other Forms of Suspension of Hostilities', in *Recueil des Cours de l'Académie de droit international*, 1976, Vol. I, p. 376.

abstention and impartiality.<sup>43</sup> The Iranian position was not the same for all three. Iran responded to the shortcomings of Kuwait and Saudi Arabia by attacking tankers transporting their oil. With regard to the United States, which Iran had accused of co-belligerence, reactions were qualified and measures taken in accordance with circumstances.

### 3.2.a. *The attack on neutral tankers*

After extension of the Iraqi exclusion zone on 12 August 1982,<sup>44</sup> the Iraqi Air Force carried out a number of attacks on neutral oil tankers in the vicinity of the oil terminal on the Iranian island of Kharg. On 25 April 1984 Iraq for the first time attacked a supertanker, the *Safina Al Arab*, flying the Saudi flag.<sup>45</sup> Over the following days the same country intensified its attacks. Iran retaliated on 16 May 1984 by attacking the *Yanbu Pride*, which was also flying the Saudi flag.<sup>46</sup> Less numerous attacks attributed to Iran were principally directed against tankers which had taken on cargo in Kuwait.

The “tanker war” continued until the end of hostilities and proved to be very costly for neutral shipping. On 25 May 1984, in a letter addressed to the Secretary General of the UN on the occasion of the session of the Security Council by the six members of the “Gulf Co-operation Council”, the Iranian ambassador to the United Nations tried to justify the attacks. The Iranian argument principally revolved around two ideas – reaction against aid provided to Iraq by certain States in the region, and the indivisibility of security in the Persian Gulf.

### *Consequences of aid afforded to Iraq*

For Iran, certain States in the region “pour extensive financial

<sup>43</sup> Art. 9 of the Convention V of The Hague, 1907, obliges neutral States to deal with the belligerent States in an identical and equal manner. Thus, any restrictive measures taken by neutral powers with regard to the transit of arms or supplies must be applied integrally to all belligerent states.

<sup>44</sup> See C. Rousseau, ‘Chronique des faits internationaux’, *Revue générale de droit international public*, Vol. 86 (1982), pp. 1137.

<sup>45</sup> On these questions see P. Tavernier, ‘La guerre entre l’Irak et l’Iran et la navigation dans le Golfe’, in *Actes du colloque de Brest: les communes faces à la loi ‘littoral’ du 3 janvier 1986*, reproduced in *Annuaire de l’Association Droit, Littoral et Mer* (1987), pp. 6 ff.

<sup>46</sup> See M. Jenkins, ‘Air Attacks on Neutral Shipping in the Persian Gulf: the Legality of the Iraqi Exclusion Zone and Iranian Reprisals’, *Boston College International and Comparative Law Review*, Vol. 8 (1985), p. 518.



and material resources into Iraq, encouraging it to threaten commercial shipping in the Persian Gulf and yet they wish to remain secure from the consequences of their obvious backing of the aggressor Iraq in its war of aggression against us".<sup>47</sup> Kuwait and Saudi Arabia are implicated in particular.<sup>48</sup> As oil constitutes the only source of revenue for these countries, Iran's view was that the oil "being carried by these tankers under present conditions is considered prohibited goods".<sup>49</sup> Iran thus reserved the right to have recourse to force against tankers from these countries. The question of the legality of such actions was keenly posed.

A distinction should be made here between tankers flying the flag of a neutral State not involved in the conflict, and those flying the flag of States failing in their obligations of neutrality. It appears that in its Resolution No 552 of 1 June 1984, the Security Council retained this distinction by only condemning attacks against vessels belonging to States not bordering on the Persian Gulf and trading with non-belligerent States in the region.<sup>50</sup> Such an interpretation leads us to admit that Iran was right to resort to force against ships flying the flag of Kuwait and Saudi Arabia in order to force them to fulfil their obligations. In this case Iran "would have to comply with the criteria of necessity and proportionality established by the modern law of self-defence".<sup>51</sup> Finally in this area, the liberty of action of the belligerent country depends on the amount of aid a neutral State affords to the enemy war machine, and which can in extreme cases deprive the latter of the rights neutrality confers.

Be that as it may, there is hardly any doubt that in all cases the destruction of merchant ships must be preceded by warnings and the warship must ensure the safety of the crew members.<sup>52</sup>

<sup>47</sup> See doc. 4.b.1.

<sup>48</sup> U.N. Doc. S/18557-5 January 1987. Declaration by an Iraqi pilot captured by Iran regarding the use of Kuwaiti airspace by the Iraqi Air Force to attack Iranian tankers and oil installations in the Persian Gulf.

<sup>49</sup> Letter dated 23 July 1987 by the Iranian Foreign Minister to the Secretary General of the United Nations. See *Keesing's Contemporary Archives*, Vol. 33 (1987), p. 35598.

<sup>50</sup> See F. V. Russo, op. cit., *supra*, note 11, p. 396.

<sup>51</sup> See S. Davidson, 'United States Protection of Reflagged Kuwaiti Vessels in the Gulf War: the Legal Implication', *International Journal of Estuarine and Coastal Law*, Vol. 4 (1989), p. 184.

<sup>52</sup> See E. David, 'La guerre du Golfe et le Droit International', *Revue belge du Droit International*, Vol. 20 (1987), p. 175.

*The indivisibility of security in the Persian Gulf*

“From the viewpoint of the Islamic Republic of Iran the security of the Persian Gulf is indivisible. Either there is security for all, or there is no security for anyone”.<sup>53</sup>

The importance to Iran of security of navigation in the Persian Gulf is undeniable, as it is through this seaway that Iran exports the majority of its oil. With the aim of drying up its principal source of revenue and to force it to accept its peace offers, Iraq attacked tankers heading for or leaving Iranian terminals. Iran was thus led to respond by attacking neutral shipping, thereby disrupting exports of oil from other countries through the Persian Gulf. This was in the context of Iran having recourse to the principle of indivisibility of security in the Persian Gulf in order to justify its action. Indeed, the promoters of this new policy, lacking in any legal basis, nourished the hope that the victims would end up by putting pressure on Iraq to end its attacks. It is within this context that the Iranian leaders on several occasions during the war threatened to close the Strait of Hormuz if Iran was unable to use it to export its oil.<sup>54</sup> The fact that more than half the Kuwaiti tanker fleet<sup>55</sup> passed through the Strait under the flag of the United States of America, and Iranian failure to become involved earlier explain the relative failure of this policy.

*3.2.b. The co-belligerence of the United States of America*

The massive presence of the US fleet in the Persian Gulf<sup>56</sup> was the origin of acute tension with Iran. In exercising its “right of self-defence”,<sup>57</sup> the United States launched a series of aerial and

<sup>53</sup> See doc. 4.b.1.

<sup>54</sup> Sermon by M. Khamenei, President of the Republic, during Friday prayers on 4 March 1984, cited in *A Review of the Imposed War by the Iraqi Regime upon the Islamic Republic of Iran*, op. cit., *supra*, note 24, p. 118.

<sup>55</sup> On this question see R. Wolfrum, ‘Reflagging and Escort Operation in the Persian Gulf: an International Legal Perspective’, *Virginia Journal of International Law*, Vol. 29 (1989), pp. 387 ff.; S. Davidson, op. cit., *supra*, note 51.

<sup>56</sup> In October 1987, 31 American warships representing a tonnage of more than 420.000 tonnes were present in the Persian Gulf and the Sea of Oman. Declaration by Admiral Le Pichon at study days on ‘Enseignements militaire, juridiques et économiques de la Guerre du Golfe’, 7–8 December 1989, Grenoble, France.

<sup>57</sup> See among others, U.N. Doc. S/19149, 22 September 1987, reproduced in Chapter IV.B.4.b.6.; S/19194, 9 October 1987, reproduced in Chapter IV.B.4.b.7.; S/19219, 19 October 1987, reproduced in Chapter IV.B.4.b.8.; S/19791, 18 April 1988, reproduced in Chapter IV.B.4.a.3.

naval operations against Iranian targets.<sup>58</sup> Iran, immediately classing these as acts of aggression, refused to allow the American fleet to exercise its right of non-offensive passage through its territorial waters.

*Acts of aggression by the United States of America*<sup>5</sup>

The importance of this question for Iran was such that it was the Iranian Foreign Minister who developed the Iranian argument by means of a series of letters to the Secretary General of the UN, an argument which was then detailed before the Security Council during the debates on the destruction of the Iran Air airbus.

For Iran, the presence of the US fleet was contrary to the letter and spirit of Resolution 598 of the Security Council, especially paragraph 5. Reference to this resolution by a State which has not yet accepted it appears paradoxical to say the least. Whatever the Iranian attitude, the United States was bound, by its membership of the United Nations, to apply the decision of the Council. Moreover, the role and special responsibility of the United States, a permanent member of the Security Council, in maintaining peace and security should be emphasized. Far from ensuring the safety of shipping in the Persian Gulf, the presence of the US fleet proved to be a source of tension. Furthermore, "the US through its presence and disturbance of the exercise of the right of search and visit of ships has supported the aggression and violated its neutrality".<sup>59</sup>

Iran rejects the United States' arguments according to which it claims to have acted in accordance with Article 51 of the Charter. According to Iran "the Charter recognizes that acts of self-defence can only be initiated in response to prior armed attack". In the majority of cases the United States took the initiative in attacking civil targets, devoid by definition of any means of armed attack.

Under these conditions "such measures can only be considered

<sup>58</sup> Attack on 21 September 1987 on the vessel *Iran Ajr* flying the Iranian flag and suspected of laying mines; assault against Iranian naval units in the territorial waters of the island of Farsi on 8 October 1987; attack on exploitation platforms Resalat and Rechadat on 19 October 1987, and platforms Nasr, Salman and Mobarak on 18 April 1988; and finally the destruction by an American missile of an Iran Air airliner on 3 July 1988.

<sup>59</sup> See doc. 4.b.7.

as a blatant breach of the principle of non-use of force in international relations".<sup>60</sup> Iran contested the very broad interpretation the United States applied to Article 51 according to which self-defence could be exercised in the event of a hostile attack, but also in the event of simple hostile intentions.<sup>61</sup> This evidently no longer has anything to do with self-defence and constitutes one of the manifestations of the theory of preventive self-defence, which has never received the backing of the Security Council.<sup>62</sup>

According to Iran, the action taken by the United States in its territorial waters and airspace, that is to say the attacks on units of the Iranian Navy and the destruction of the Iranian airbus, combine all the characteristics of an act of aggression as defined in the Resolution on the Definition of Aggression. Indeed, this expressly sets out that included among acts constituting acts of aggression is "the use of any arms by one State against the territory of another State".<sup>63</sup> This being so, Iran considers that "by committing these acts of aggression the US is participating actively in the imposed war on the side of its aggressor clients in Iraq".<sup>64</sup> Finally, the fact that the United States had acted as a supplier of arms to Iraq and had officially declared that "Iran's defeat of Iraq would be contrary to US interests and (that) steps would be taken to prevent this result",<sup>65</sup> gives more than adequate support to the Iranian point of view.

*Innocent passage of American warships through Iranian territorial waters*

Throughout the war, notes were exchanged between the United States and Iran through their "interests sections" in the

<sup>60</sup> *Ibidem*.

<sup>61</sup> See N. Ronzitti, 'La guerre du Golfe, le déminage et la navigation des navires', *Annuaire français du droit international*, Vol. 33 (1987), p. 655.

<sup>62</sup> Resolution 487 (1981) condemning the bombardment of the Iraqi Tamuz reactor by Israel, which justified its actions on the basis of this theory.

<sup>63</sup> Resolution 3314 (XXIX) of 14 December 1974.

<sup>64</sup> See doc. 4.b.5. According to Iran the attack on several Iranian tankers close to the island of Larak terminal by Iraq on 14th May 1988 "took place with the complete co-operation of the American forces ... During this episode, the American Navy, by jamming the communications network of the Iranian warships and creating a safe fly corridor for Iraqi aircraft, placed its facilities at the disposal of the Iraqi regime". UN Doc. S/19885, 16 May 1988.

<sup>65</sup> See F. Boyle, 'International Crisis and Neutrality: U.S. Foreign Policy towards the Iran-Iraq War', in A. T. Leonhard (ed.), *Neutrality: Changing Concepts and Practices* (1987), p. 73.

two countries concerning the incidents in which their naval and air forces had been involved. The creation by the United States of "cordons sanitaires" around their ships and aircraft,<sup>66</sup> as well as their willingness to exercise the right of innocent passage through Iranian territorial waters were the origin of these incidents.<sup>67</sup> On this last point, Iran, in a note sent to the United States Department of State and issued as a document by the Security Council, set out its position in detail.<sup>68</sup>

This note deals separately with the question of passage through territorial waters in a general way and the question of passage through the part of the territorial waters in the Strait of Hormuz. As regards the first case, reference is made to the work of the Third United Nations Conference on the Law of the Sea to affirm that in accordance with Article 19 of the United Nations Convention on the Law of the Sea, Iran was able to subject the innocent passage of warships through its territorial waters to prior authorization,<sup>69</sup> an assertion in line with the declaration made by Iran on signing the above Convention.<sup>70</sup> Be that as it may, Iran considers that the passage of United States warships cannot be considered innocent. Previous developments relating to hostile activities of the American Navy back up this assertion. As regards passage through the Strait of Hormuz, the United States considers that in accordance with the United Nations Convention on the Law of the Sea "throughout such a strait and its approach all nations enjoy the right of unimpeded transit passage, which specifically includes the right of overflight".<sup>71</sup> For Iran the principle of transit passage "is not based on customary international law, and it will be brought into force only for States which are party to the Convention",<sup>72</sup> with neither the United

<sup>66</sup> Special Notice dated 22nd January 1984 regarding restriction of overflight above certain areas of high seas in the Persian Gulf and the Sea of Oman, reproduced in Chapter IV.B.1.8. For Iran "the notice is a clear violation of International Law and Common practice regarding the freedom of flying over high seas... and a direct interference in the internal affairs of the coastal States" MID/3 - WP/108 of 5 April 1984. I.C.A.O. Third Middle East Regional Air Navigation Meeting. See also UN Doc. S/16381 of 1st March 1984: Letter from the Iranian Foreign Minister to the Secretary General of the UN.

<sup>67</sup> See, among others, Department of State, *Note*, Washington, 4 October 1988.

<sup>68</sup> See doc. 4.a.1.

<sup>69</sup> A. V. Lowe, *op. cit.*, *supra*, note 30, p. 289.

<sup>70</sup> See *The Law of the Sea; Status of the United Nations Convention on the Law of the Sea*, Office for Ocean Affairs and the Law of the Sea (1985).

<sup>71</sup> *Op. cit.*, *supra*, note 67.

<sup>72</sup> Declaration by Iran on signing the Convention, *op. cit.*, *supra*, note 70.

States nor Iran being party thereto. In any event, it is generally admitted that a littoral State "cannot be obliged to grant transit passage when it is at war. For such a passage would be inconsistent with the right of self-defence and State practice which proves that littoral States are endowed with substantial powers".<sup>73</sup> In this case it appears that application of the principle of innocent passage offered the best guarantee of the security of the coastal State.

<sup>73</sup> See N. Ronzitti, *op. cit.*, *supra*, note 3, p. 383.





## B. DOCUMENTS

### 1. LEGISLATION, ORDERS AND REGULATIONS

#### *1.1. Notice to mariners No. 17/59, 22 September 1980\**

From: Commander-in-Chief of Naval Army of Islamic Republic of Iran.

Regarding to the Iraqi aggression we declare Iranian maritime border nearby coast war area.

The Iranian Government does not give any authorization to the vessels intending to proceed to Iraqi ports for the safety of shipping in Persian Gulf the following route shall be strictly observed.

Vessels after having passed Hormuz Strait will change the route to pass 12 miles south of Abu Musa Island, 12 miles south of Sirri Island, south of Cable Bank Light and 12 miles south west of Farsi Island.

Iranian Government will not take responsibility for those vessels which do not pay consideration to this notice. Thanks.

#### *1.2. Notice to mariners No. 18/59, 1 October 1980\**

Following our notice to mariners No. 17/59, this is to inform you the following:

1. Since the Government of Iraq by its aggression to Iran has strongly endangered the safety of navigation in the Shatt-al-Arab, therefore, Shatt-al-Arab is closed for all marine crafts until further notice.
2. When the aggression is over and normal situation being restored, all the regulations concerning the navigation in Shatt-al-Arab which was governed by the Iran and Iraq Common Bureau of Coordination (C.B.C.) will be enforced as before.

\* Text provided by D. Momtaz.



IRAN: DOCUMENTS

*1.3. Notice to mariners No. 20/59, 4 November 1980\**

To maintain the safety of navigation and safe passage of the vessels, the captains of the vessels destined to/or leaving the Iranian ports are requested to ensure that necessary coordination should be made with the navy of the Islamic Republic of Iran before taking any action, and to inform the relevant Iranian port of their situation and position in the Persian Gulf once every one hour.

*1.4. Notice to mariners No. 22/59, 16 November 1980\**

This is to inform mariners that all ships heading to Iranian ports and islands upon passing Ras al Kuh, are to report Bandar Abbas port control authorities their ETA to Strait of Hormuz and her destination. They are also to get clearance in order to continue to their destinations.

If no clearance granted, will anchor at Bandar Abbas anchorage while awaiting for clearance.

*1.5. Notice to mariners No. 23/59, 21 January 1981\**

1. All VLCC/ULCC, not inbound for Iranian ports, intending to cross the restricted area stated on Iranian P.S.O. notice to mariners No. 17/59, are requested to contact Iranian Navy headquarters with the following information 48 hours prior to their departure:
  - a) Origin b) Destination, c) Route d) Speed e) Time of departure f) Visual identification of the vessels.
2. Necessary clearances will be given through P.S.O. by Iranian Navy.

\* Text provided by D. Momtaz.

## LEGISLATION, ORDERS AND REGULATIONS

### 1.6. *Law Regarding the Settlement of Disputes over War Prizes, 17 November 1987\**

#### *Article 1*

In order to hear complaints and disputes relating to war seizures, a War Prizes Tribunal shall be set up by the Upper Legal Council.

#### *Article 2*

The Tribunal shall form part of the legal institutions of common law and shall have the required number of chambers at its disposal.

#### *Article 3*

According to this law, the following goods, merchandise and means of transport shall be considered as war prizes:

(a) All goods, merchandise, means of transport and equipment belonging to a State or to States at war with the Islamic Republic of Iran.

(b) Merchandise and means of transport in paragraph (a) belonging to neutral States or their nationals, or to nationals of the belligerent State if they could effectively contribute to increasing the combat power of the enemy or their final destination, either directly or via intermediaries, is a State at war with the Islamic Republic of Iran.

(c) Vessels flying the flag of a neutral country as well as vehicles belonging to a neutral State transporting the items set out in this article.

(d) Merchandise, means of transport and equipment which the Islamic Republic of Iran forbids from being transported to enemy territory.

#### *Article 4*

All goods, merchandise and means of transport indicated in paragraph (a) of Article 3 will become the property of the Islamic

\* Text provided by D. Momtaz. This law, which consists of six articles, was adopted, in accordance with principle 85 of the Constitution, by the Commission of Judicial and Legal Affairs during its session of 12 January 1988, following a public hearing of 17 November 1987, at which the Assembly of the Islamic Council had approved its experimental implementation for a period of five years.

Finally, on 31 January 1988, it was ratified by the Constitutional Council.

## IRAN: DOCUMENTS

Republic of Iran. All goods, merchandise and means of transport indicated in paragraphs (b) and (c) of Article 3 will be confiscated by the Government of the Islamic Republic of Iran.

All documents relating thereto shall be placed at the disposal of the War Prizes Tribunal within two months.

Two months after receipt of the aforementioned documents, the Tribunal, whether a complaint has been lodged or not, will commence investigating the case and will reach an appropriate verdict.

The means of transport indicated in paragraph (d) of Article 3 will become the property of the Islamic Republic of Iran or be confiscated according to circumstances. Any person contesting this must appear before the Tribunal.

### *Article 5*

With regard to merchandise indicated in paragraphs (b) and (d) which is susceptible to rapid deterioration, or which it is not worthwhile preserving, the authority confiscating it can, with the authorization of the Procurator of the War Prizes Tribunal, sell it. Returns on the sale will be paid into the deposit account of the Ministry of Justice awaiting the verdict of the Tribunal.

### *Article 6*

Proceedings at the War Prizes Tribunal shall be in accordance with the regulation of civil proceedings. The President of the Tribunal shall be able to decide on a new session of the Tribunal.

## 2. PARLIAMENTARY DOCUMENTS

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## 3. GOVERNMENT DECLARATIONS

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## DIPLOMATIC PRACTICE

### 4. DIPLOMATIC PRACTICE

#### *4.a. Inter-State Practice*

##### *4.a.1. Note to the United States Department of State, 15 March 1989\**

Firstly, contrary to what has been mentioned in the United States Department of State note, on the issue of the innocent passage of warships within the territorial sea, there exists no consensus among States. Some States have always believed that prior permission and/or prior notice is required for any innocent passage of warships within the territorial sea. In the conference on the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone most of the participating States were in favour of obtaining prior permission and/or prior notice for the innocent passage of warships. Also, in the proceedings of the Third United Nations Conference on the Law of the Sea, the Group of 27 (including the Government of the Islamic Republic of Iran) submitted an amendment to Article 21 of the preliminary draft of the Convention, which authorizes States to regulate innocent passage within the territorial sea for the preservation of their security (A/CONF: 62/L:117). None the less, in response to the request of the Chairman of the Conference, the sponsors of the amendment, for the sake of clarity of the suggested text of the Convention, agreed to not insist on voting for the amendment.

However, in the statement which was read by the Chairman of the conference on 26 April 1982, it was clarified that "the sponsors of the amendment have persisted that this decision would not in any way damage the right of the littoral States in taking necessary measures for the safeguard of their security interests according to Articles 19 and 25 of the suggested text of the Convention". Whereas none of the participating delegations had any objections in regard to this matter, it should be noted that the Government of Iran adopted specific regulations concerning the innocent passage of warships 50 years ago and also at the Third Conference on the Law of the Sea, requested that prior permission for the innocent passage of warships in the

\* Reproduced in UN Doc., S/20525

territorial sea should be obtained. Therefore, the Government of the Islamic Republic of Iran, at the time of the signing of Article 310 of the Convention on the Law of the Sea, registered its interpretation of Article 19 upon the condition that innocent passage of warships in the territorial seas be with prior permission.

Secondly, "innocent passage", as it is evident from its title, is innocent to the extent that it does not create any danger for or harm to the littoral States. This concept has been mentioned in paragraph 4 of Article 19 of the Geneva Convention of the Territorial Sea and the Contiguous Zone (1958), and also in paragraph 1 of Article 19 of the 1982 United Nations Convention on the Law of the Sea. According to paragraph 2 (a) of Article 19 of the same Convention, if threat or force is used against the sovereignty, territorial integrity and political independence of any littoral State, and/or any action is taken contrary to established principles of international law, as stated in the Charter of the United Nations, passage would not be considered innocent, the littoral State has the right to prevent the passage of foreign ships from its territorial sea. Therefore, in a situation in which the United States has used force by positioning its warships in the Persian Gulf and by placing them on military alert, as well as the flying of its helicopters from warships (Convention on the Law of the Sea, Art. 19, paragraph a), is in violation of the Charter of the United Nations. In the light of attacks on the Iranian ship, the *Ajr*, and on the Reshadat, Nasr and Salmon oil platforms, as well as the frequent warnings to the Islamic Republic of Iran's sea patrolling aircraft, the Government of the Islamic Republic of Iran not only considers the passage of the United States warships from its territorial sea as not being innocent, but it regards their presence in the Persian Gulf as a threat to its security.

Thirdly, the United States claim with respect to the regimen of transit passage from the international straits does not conform with reality. Transit passage has not been mentioned in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, and it has been included in the United Nations Convention on the Law of the Sea for the first time; it is not based on customary international law, and it will be brought to force only for the States parties to the Convention.

Fourthly, as has been noted in the Farsi text of the Interests Section of the Islamic Republic of Iran in Washington, U.S.

warship No. 10 at the position N 2548 and E 5456 in the territorial sea of the Islamic Republic of Iran warned the pilot of the Islamic Republic of Iran's sea patrolling aircraft, whose position was N 2548 and E 5436. Evidently, the positions given in the unofficial translation of the said note, being clearly labelled as such, cannot be considered valid; the correct positions are the ones that were mentioned in the Farsi text.

*4.b. National Practice in International Organizations*

*4.b.1. Letter from the Permanent Representative of the Islamic Republic of Iran to the UN to the UN Secretary-General, 25 May 1984\**

At the beginning of the war, the Government of the Islamic Republic of Iran declared that it was ready to guarantee the freedom and security of navigation in the Persian Gulf, it being understood that others would not attempt to do otherwise. Iran has so far allocated considerable resources and man-power to secure that objective.

[OMISSIS]

From the viewpoint of the Islamic Republic of Iran, the security of the Persian Gulf is indivisible. Either there is security for all, or there is no security for anyone. Some States in the area and beyond attempt to impose an unacceptable situation on the Government of Iran. They pour extensive financial and material resources into Iraq, encouraging it to threaten commercial shipping in the Persian Gulf, and yet they wish to remain secure from the consequences of their obvious backing of the aggressor Iraq in its war of aggression against us as well as against international peace and security. These States are therefore contributing to the internationalization of a conflict from which they can hardly remain secure. For this, only they themselves are to be blamed next to Iraq.

The Islamic Republic of Iran has been witnessing for a long time serious violations of international law and international norms of behaviour against its interests in the region, and has so far maintained a policy of restraint towards these violations. The Government of the Islamic Republic of Iran invites each Member

\* UN Doc., S/16585. See also Chapter III.B.4.b.5.

State to put itself in a similar situation and judge how long it would have maintained its patience.

The position of the Islamic Republic of Iran with regard to the attempts of Iraq and its friends to internationalize the conflict is clear. If the security of the Persian Gulf is violated, then it is violated for all. We will not permit the Persian Gulf, on which we have more than a thousand kilometers of littoral, to be closed to us and to be used by others against us. We will not allow any Power to misuse the Persian Gulf in order to attempt to suffocate our Islamic Revolution. We are prepared to defend our integrity with determination.

[OMISSIS]

*4.b.2. Letter from the Minister for Foreign Affairs of the Islamic Republic of Iran to the UN Secretary-General, 22 September 1987\**

[OMISSIS]

2. Resolution 598 (1987) has been flagrantly violated and the United States has made a mockery of the peace and security of the region and the decision of the Security Council.

[OMISSIS]

4. American aggression, which is in blatant violation of the letter and the spirit of the Charter of the United Nations, creates an unambiguous and serious responsibility for the Security Council to condemn this American act of aggression and to take every necessary measure to put an end to such criminal acts.

[OMISSIS]

*4.b.3. Letter from the Minister for Foreign Affairs of the Islamic Republic of Iran to the UN Secretary-General, 29 September 1987\*\**

[OMISSIS]

To prevent the further spreading of turbulence, the Islamic Republic of Iran has, so far, exercised a great deal of self-restraint. However, it is deemed necessary to draw Your

\* UN Doc., S/19153.

\*\* UN Doc., S/19161. See also Chapter IV.B.2.a.8, 3.9, 4.a.3., 4.b.6.



Excellency's attention to the most serious and dangerous step taken by the United States of America. The Iranian cargo vessel *Iran-Ajr*, under commercial registration, while carrying materials and victuals, at 2335 hours on 21 September 1987, was attacked in international waters by military helicopter gunships of the United States. A number of the crew were martyred and some others were taken prisoner by the American forces. Concurrent with this action, the United States claimed that the said vessel was photographed while mining the regional waters. However, subsequently it was claimed that the photographs could not be developed. Furthermore, to destroy the evidence of its own crime, the United States took the vessel to Bahrain territorial waters and then condemned it. The United States Administration, which claims impartiality in the imposed war against the Islamic Republic of Iran, can have no legitimate reason in perpetrating such a terrible crime in violation of all international rules and norms. It is evident that the fundamental motive behind such dangerous military adventurism by the United States is only to bring political pressure to bear and to interfere in the affairs of the Islamic Republic of Iran.

It is evident that the claim by the United States to the effect that the said vessel was mining the waters is total fabrication and it has simply been put forward to create disrepute for the Islamic Republic of Iran. How could this vessel, which was a slow-speed vessel, commercial and unarmed, be used for the purposes of mining? In fact, the United States, owing to its inability to present evidence and proof for its allegations, resorted to blowing up the vessel and thus eliminated the evidence of its crime and the most important item documenting the baselessness of its allegations.

Under the present circumstances, the Government of the Islamic Republic of Iran emphatically requests Your Excellency and the International community strongly to condemn this aggressive act by the United States while investigating and drawing the attention of the Security Council to the blatant aggression which has seriously endangered international peace and security. The United States Government should also be compelled to pay compensation for incurred damages and to withdraw its forces from the region.



*4.b.4. Letter from the Minister for Foreign Affairs of the Islamic Republic of Iran to the UN Secretary-General, 9 October 1987\**

Only days after the latest instance of American military aggression against the sovereignty of the Islamic Republic of Iran in the Persian Gulf, the war-mongering policies of the American Administration were manifested in an attack by American military vessels – including helicopters, gunships and gunboats – against the Islamic Revolutionary Guard boats patrolling Iranian territorial waters around Farsi Island. This incident, once again, illustrates the true intentions and aggressive policies of the United States Administration in our region. While the United States has dispatched its naval armada to the Persian Gulf in clear violation of Security Council resolution 598 (1987), and while the expansionist forces of the United States have been responsible for serious and dangerous breaches of norms of international law and violations of the sovereign rights of the Islamic Republic of Iran on a daily basis, it is indeed absurd to take seriously American peaceful gestures and their claim of protection of international navigation and preservation of regional security.

The dimensions of American aggression in the region and the extent of its dangerous military provocations are gaining momentum and threatening world peace. Meanwhile, international bodies have maintained a deafening silence in the face of this serious threat to international peace and security and have not shown the courage to voice their opposition and take practical measures to end these dangerous militaristic policies of the American Administration and acts of lawlessness of the expansionist United States forces in the region, as if the Charter of the United Nations had not entrusted these organs with the serious responsibility of maintaining international peace and security and preventing aggression.

Last night, the brave sons of our nation, while engaged in the sacred defence of our territory, became the targets of a barbaric attack by American forces. As a result, a number of these brave young men were martyred. However, this latest act of aggression will not shake the resolve of the Iranian people to resist American expansionism and will further strengthen their determination to teach an unforgettable lesson to the foreign aggressors. It is

\* UN Doc., S/19192. See also Chapter IV.B.2.a.9., 4.b.7.

necessary to reiterate here that the United States Administration alone bears full responsibility for the consequences of its acts of lawlessness.

[OMISSIS]

4.b.5. *Letter from the Minister for Foreign Affairs of the Islamic Republic of Iran to the UN Secretary-General, 21 October 1987\**

On 19 October 1987, the naval forces of the United States, illegitimately stationed in the Persian Gulf, attacked two Iranian oil platforms – Resalat and Reshadat – injuring a large number of civilian technical employees and inflicting heavy damages. The said platforms were purely economic installations operated and manned by the Ministry of Petroleum of the Islamic Republic of Iran.

This latest act of aggression by the United States against the Islamic Republic of Iran represents an illegal resort to force against the sovereignty and territorial integrity of the Islamic Republic and once again illustrates the aggressive intent of the presence of the American armada in the Persian Gulf. Such presence – which can only exacerbate tension in the region – can never be justified by the United States Administration in the face of the series of aggressive acts it has carried out in the past month against the Islamic Republic of Iran, including its unwarranted attack and destruction of the unarmed *Iran Ajr*, its aggression against Iranian patrol boats defending Iranian territorial waters, and its most recent aggression against Iranian territory. It is clear beyond any doubt that by committing these acts of aggression, the United States is participating actively in the imposed war on the side of its aggressor clients in Iraq. This fact further deprives the United States of any legitimacy in participating in multilateral diplomatic efforts on this issue.

We regret to note that when the United States embarked on its tension-generating policy of dispatching an unprecedented naval fleet to the Persian Gulf, and when it continued to illustrate its true aggressive intentions by attacking Iranian vessels and territory, the international community and particularly the United Nations Security Council remained silent. The American

\* UN Doc., S/19224. See also Chapter IV.B.2.a.10., 3.10., 3.11., 4.b.8., Chapter V.B.2.b.6. and Chapter VIII.B.i.2.3.

policy of illegal resort to force directly against the territorial integrity and sovereign rights of a State Member of the United Nations has yet to be addressed by the world body. Moreover, the Security Council has failed to address the most serious violation of its Resolution 598 (1987) by one of its permanent members. The Islamic Republic of Iran does not wish to believe that the domination of the United States over the International Organization is so intense and overwhelming that these serious and dangerous acts of aggression by the United States receive no attention at the Security Council. The statement of 16 October 1987 by the President of the Security Council, which fails to address its call to non-belligerents as well as belligerents – in contravention of operative paragraph 5 of the Security Council's own Resolution 598 (1987) – is the most recent indication of this regrettable trend. This indeed is a serious challenge to the credibility, integrity and relevance of the Council and of the United Nations as a whole, which should immediately be remedied.

While reiterating its basic position that the presence of foreign forces in the Persian Gulf and the ensuing American acts of aggression are the most serious sources of tension and gravest threats to international peace and security, the Islamic Republic of Iran declares that it will continue to take the necessary and effective measures under Article 51 of the Charter of the United Nations in order to defend its territorial integrity and sovereign rights against the American policy of aggression and intimidation, including their latest illegal armed attack. Clearly, the United States and its clients will have to bear full responsibility for the consequences of a fire they initially set.

*4.b.6. Letter from the Minister for Foreign Affairs of the Islamic Republic of Iran to the UN Secretary-General, 18 April 1988\**

The war-monger United States Administration, in continuation of its enmity towards the Islamic Revolution and in blatant support of the Aggressor Iraqi régime, on the morning of this day, 18 April 1988, resorted to a series of premeditated acts of aggression against the territorial integrity of the Islamic Republic

\* UN Doc., S/19796. See also Chapter IV.B.2.a.11., 3.12., 4.b.9. and Chapter V.B.2.a.34.

of Iran by attacking three Iranian oil platforms of Nasr, Salman and Mobarak from air and sea. This is not the first time that the United States Administration has committed such crimes against the Islamic Republic of Iran. The rulers in Washington, from the very inception of the Islamic Revolution, have shown their aversion to it by committing illegal acts of aggression against it.

Prior attacks by the United States military forces against the Resalat and Shahadat platforms in October 1987 as well as today's attacks coupled with the provocative behaviour of the United States in the Persian Gulf fully illustrate American adventurist and expansionist policies in the region. It has been clearly substantiated by independent sources that the presence of the United States forces in the Persian Gulf, contrary to their claims, has not only failed to enhance the security of the region but has in fact increasingly undermined the very security of the international waterway.

American attacks against Iranian oil platforms which have no means of defence have no military value. They simply indicate a plan by both the United States and Iraq to aggress against the Islamic Republic of Iran in an attempt to divert attention from the heinous war crimes of Iraq, particularly the chemical bombing of Halabja.

[OMISSIS]

*4.b.7. Statement of the Minister for Foreign Affairs of the Islamic Republic of Iran before UN Security Council, 14 July 1988\**

[OMISSIS]

The international community should demand that the United States puts an end once and for all to its attempts to justify its inhuman massacre of innocent civilian passengers of Iran Air flight 655 as an act of self-defense. Such contention would fly in the face of reason, humanity, and international law. According to Article 51 of the United Nations Charter, only a state which is subjected to an armed attack is entitled to resort to force in order to defend itself. In other words, the Charter recognizes that acts of self-defense can only be initiated in response to prior armed attack and not in response to other breaches of international law.

\* UN Doc., S/PV 2818. See also Chapter IV.B.2.a.12., 3.14., 3.15., 3.18., 3.19., 4.b.10., 4.b.11., 4.b.12., Chapter V.B.2.a.38., 2.b.11., 4.b.3. and Chapter IX.B.1.8., 1.9., 1.10., 1.11., 1.12.

In fact, preemptive measures before occurrence of an armed attack can not be justified as acts of self-defense; rather such measures can only be considered as blatant breach of the principle of non-use of force in international relations. Therefore, according to well-established principles of international law, the United States criminal act of attacking a civilian airliner can never be justified under the term "self-defense," particularly since the civilian airliner did not even have the potential of launching an attack.

Moreover, by trying to justify such atrocity under the guise of self-defense, the American officials are taking a serious step in allowing others to resort to the same justification in similar incidents. And in that case, freedom and safety of civil aviation will become an unattainable dream. The Security Council is therefore duty bound to reject these arguments, not only because of the available evidence as already suggested, but also out of respect for Article 51 of the Charter and out of concern for freedom of civil aviation.

Mr. President,

Taking into account the number of civilian flights in the Persian Gulf, the Security Council is also faced with another challenge. Let us for the sake of argument take the American story at face value. If the most sophisticated American warship in the Persian Gulf allegedly failed to distinguish between an airbus and an F-14, the question that needs to be asked is whether one should not expect more severe incidents caused by other less sophisticated US warships in the area. When the most sophisticated U.S. warship panics over the remote possibility of the existence of an F-14 which in any case as we discussed could not pose a serious threat to a surface target, and goes on a shooting spree against an unidentified target, should we not expect less sophisticated warships to mistake commercial jets smaller than the airbus for fighter jets probably larger than the F-14? Are we not simply waiting for more tragedies to happen, and more innocent lives to be lost?

The rules of engagement prescribed to the American forces in the Persian Gulf by the US Administration has called for taking "defensive" measures before being attacked against "hostile" targets; a position that flies directly in the face of accepted norms of international law particularly Article 51 of the United Nations

Charter. It is important to note that following the criminal shooting down of Iran Air flight 655, the government of the United States has declared in the most arrogant fashion that it is not contemplating any revision in these rules of engagement.

The Security Council has to take immediate measures to compel the United States to abandon such war-mongering and arrogant mentality in the Persian Gulf. Otherwise, similar incidents, even by mistake, can occur much more often.

Mr. President,

Measures we referred to in the previous section certainly have temporary effect, and should not be mistaken for the treatment of the root cause of tension and instability in the Persian Gulf. Since the very inception of the United States policy of dispatching its largest naval fleet to the Persian Gulf, the international community has witnessed nothing but tragedy, exacerbated tension and increased instability in this volatile waterway.

The officials of the United States government have loudly declared since early last year that the objective of American presence in the Persian Gulf was protection of commercial shipping and maintenance of freedom of navigation in international waters. This claim is baseless because of the responsibility of littoral states – and not of the outsiders – for the maintenance of the security and is also unacceptable due to results and consequences emanating from the presence of American forces in the region. It should be added that the result of their presence not only did not establish security in the region but also has escalated tension. Only statistics of attacks against merchant shipping in the Persian Gulf would clearly illustrate that the policy has been a dismal failure in its declared objectives. The number of ships attacked in the Persian Gulf has been doubled since last July with ever greater intensity and number of casualties.

Indeed, one could not have expected anything else. When a superpower decides to impose itself in a region on the side of one party to a conflict, it would be clear to every one that it would not be able to protect a principle of international law. (The United States policy in the Persian Gulf has in fact been an attempt to allow one side of the conflict to carry out attacks against merchant shipping under the protection of American warships, while at the same time trying to prevent the other party from taking



legitimate action to defend its vital interests thereby repeatedly violating the sovereign rights of the Islamic Republic of Iran.) Such a policy cannot be reasonably defined as a policy of safeguarding freedom of navigation in the Persian Gulf.

Mr. President,

Even if one accepts the United States' claim for the sake of argument, the large scale presence of the American forces comprising tens of warships and destroyers is not proportionate to the intensity of the alleged danger existing in the region. In fact stationing tens of warships in limited marine area like the Persian Gulf automatically causes further confrontation and escalation of tension.

In case we accept the unacceptable argument by the United States that the attack by the *U.S.S. Vincennes* on the Iranian airliner was a mistake, this question comes to mind immediately that is the occurrence of such a tragedy and victimization of 290 innocent civilians not the result of unjustified presence of the American forces in the region? Does the continuation of the presence not fill us with forebodings about the repetition of such tragedies in the future?

Mr. President,

I should like at this point to consider very briefly the adverse legal consequences of American presence in the Persian Gulf.

### *1. Violation of Neutrality*

The presence of the United States forces in the region of the Persian Gulf and Sea of Oman is contrary to the neutrality claimed by the United States Administration in the imposed war. Universally accepted principles of customary international law recognize the rights of the belligerent States and prescribe specific rights and obligations for neutral States. For example, the belligerent State has the right to search and visit the ships belonging to neutral States in the high seas. Moreover, the neutral State should not act in a manner that is considered siding with one of the belligerent parties.

The presence of the United States warships in the region and their continuous harassments of Iranian naval vessels have imposed certain restrictions in the exercise of the universally recognized right of the Islamic Republic of Iran in searching and

visiting the suspected ships carrying goods that boost military strength of the enemy. In fact, the United States through its presence and disturbance of the exercise of the right of search and visit of ships has supported the aggressor and violated its neutrality. It is evident that the United States Administration cannot claim unilateral responsibility for maintenance of international peace and security.

*2. Violation of the Sovereignty of the Islamic Republic of Iran*

Mr. President,

The presence of the United States Navy in the Persian Gulf and Sea of Oman is contrary to the elementary principle of international relations namely respect for sovereignty, political independence, and territorial integrity as well as sovereign equality of States embodied in Articles 1 and 2 of the United Nations Charter. The American warships have on more than one occasion – and in contravention of the United Nations Convention on Law of the Sea of 1982 which recognizes the principle of sovereignty of a coastal State over its territorial sea – entered Iranian territorial sea, thereby violating the sovereignty and territorial integrity of the Islamic Republic of Iran. In this respect, the Islamic Republic of Iran has officially and repeatedly protested against such breaches of international law through United States Interests Section in Tehran and has circulated its protest notes as documents of the Security Council.

The American warships on many occasions have warned the Iranian naval patrol planes as well as search and rescue planes and helicopters within airspace of the Islamic Republic of Iran, preventing Iran from exercising its sovereign right. The American forces in violation of the provisions of the Chicago Convention concerning absolute sovereignty of states over their airspace have issued warning to the Iranian planes flying over the territory of the Islamic Republic of Iran to keep a 10-mile-distance from the American warships stationed near or even inside the territorial sea of our country, while such interference cannot even occur over the high seas.

[OMISSIS]