

# IRANIAN PERSPECTIVES ON THE IRAN-IRAQ WAR

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## THE IMPLEMENTATION OF UN RESOLUTION 598

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On 20 July 1987 the UN Security Council adopted Resolution 598, without doubt a turning point in the council's role in the Iran-Iraq war. Nearly seven years after the Iraqi invasion of Iran, the council determined for the first time that there had been a breach of peace and expressed its intention to act according to articles 39 and 40 of the UN charter.<sup>1</sup> Apparently, the greatest impetus for the council to change its *modus operandi* was the prospect of ending a war that seemed headed toward Iranian victory. The resolution was a tool to force Iran to accept the cease-fire. A year later, after Iran had accepted the resolution, the situation on the battlefield changed in favor of Iraq. For this reason, Iraq, which had been constantly advocating cease-fire, began to find excuses for not implementing certain paragraphs of the resolution.

This chapter concentrates on the legalities of the resolution, the process of its acceptance, and the implications of its implementation. What factors contributed to its formation? What made both sides in the conflict accept it? What made the Iranians so suspicious that they accepted the resolution a year after its initial UN adoption? What pending issues have slowed or blocked implementation of various paragraphs of the resolution? Why were the Iraqis initially eager to accept the resolution but raising suspicions about Iranian intentions when the Iranians accepted it? Why did Iraq insist on direct talks with Iran and thus eliminate the UN secretary-general from the process? These are the questions that guide my discussion.

### A Tool to Force Iran to Accept a Cease-Fire

Successful operations among the Iranian armed forces in February 1986 led to Iranian takeover of the Faw peninsula, continuous Iranian operations inside Iraqi territory, and intensification of the tanker war. They also led the UN's secretary-general, Javier Perez de Cuellar, and members of the Security Council to take a serious step.<sup>2</sup> The result was the formation and the adoption of Resolution 598.

### *The Binding Nature of the Resolution*

On 13 January 1987 the secretary-general requested a meeting of the Security Council at the foreign ministerial level. By coincidence, Germany, Italy, and Japan had just gained membership; thus, the time appeared ripe for a serious decision now that such enormous power was concentrated in the council.<sup>3</sup> In a meeting of the five permanent members, which had been initiated by the secretary-general, Iran's longstanding demand for determining responsibility for the conflict was presented on the agenda. Using its prerogative, based on article 39, the council had decided to end the war to prevent an aggravation of the situation and "achieve a comprehensive, just and honorable settlement, acceptable to both sides." The result was a draft resolution in which paragraph 1 demanded that both Iran and Iraq "observe an immediate cease-fire, discontinue all military actions on land, at sea and in the air and withdraw all forces to the internationally recognized boundaries without delay." The authoritative tone of the resolution indicated that the parties had to abide by it according to article 25 of the charter. Immediately Iraq<sup>4</sup> and, in the course of negotiations, Iran<sup>5</sup> acknowledged the binding nature of the resolution. Thus, the legal basis of the resolution was not the mutual consent of the parties but chapter 7 of the charter.

This binding nature made it hard for Iran to dismiss it as it had other resolutions.<sup>6</sup> But in accordance with paragraph 10 and in light of Iran's noncompliance and Iraq's acceptance, England and the United States took preparatory measures to implement it.<sup>7</sup> In a speech before the General Assembly on 21 September, U.S. President Ronald Reagan asked the Iranian president to accept the resolution; otherwise, the Security Council would be forced to take special measures: "I know that the president of Iran will be addressing you tomorrow. I take this opportunity to call upon him clearly and unequivocally to state whether Iran accepts 598 or not. If the answer is positive, it would be a welcome step and a major breakthrough. If it is negative, the Council has no choice, but to rapidly adopt enforcement measures." It is true that in a declaration on 24 December 1987 the council expressed dismay at the slow progress in implementing the resolution, but paragraph 10 was not invoked due to Chinese and Soviet opposition in the council. Nevertheless, measures taken outside the UN forced Iran to accept the resolution.

### *Iranian Acceptance of the Resolution*

By the summer of 1987, a series of reactions in the international community began to create various difficulties for Iran. France banned the pur-

chase of Iranian oil on 6 August. England attempted to close the Iranian office of arms purchase in London on 23 September. On 26 October the United States banned the import of Iranian goods and the export of fourteen military-related items to Iran. Gradually, Iran suffered setbacks in its positions on the battlefield. Iraq's extensive use of chemical weapons in March 1988, resumption of the war of the cities on 3 April, Iran's inability to contain Iraqi advances, loss of the Faw peninsula on 18 April, and the Iraqi offensive in the summer of 1988 threatened Iran's province of Khuzestan with imminent Iraqi occupation. At the same time, U.S. military pressure on Iran accelerated. On 19 October 1987, two Iranian oil platforms, Nasr and Mobarak, were destroyed. Several Iranian ships were sunk on 18 April 1988, and Iran's position deteriorated. Continuing clashes between Iranian speedboats and American naval vessels resulted in the loss of an Iranian Airbus, shot down by the U.S. vessel *Vincennes* on 3 July 1988 and killing all passengers on board.<sup>8</sup>

Following this disaster, Ali Akbar Hashemi Rafsanjani, then speaker of the Iranian parliament and acting commander in chief, stated that it had not been in Iran's best interest to talk about the resolution until now. The U.S. action "in our understanding constitutes a warning."<sup>9</sup> In a 16 July 1988 meeting of the heads of the three branches of government and in the presence of other top politicians, including Ahmad Khomeini, Imam Khomeini's son, acceptance of the principle of the resolution was approved.<sup>10</sup> The next day the president of the republic officially informed the secretary-general of Iran's acceptance.<sup>11</sup> The country's new position surprised both the Iraqis and the international community. Iraq immediately launched an attack and occupied a large portion of Iranian territory.

### **Iraqi Disruptions of Implementation**

After Iran's acceptance of the resolution, Iraq sought to postpone the cease-fire in order to secure a total victory on the ground. In a 19 July letter, Iraqi foreign minister Tariq Aziz raised doubts, declaring that, until his government was assured of Iran's intentions, the war would continue.<sup>12</sup> In another letter, sent the next day, he asked for direct talks with Iran.<sup>13</sup> The secretary-general embarked on extensive diplomatic maneuvering, meeting nine times with the Iranian foreign minister and seven times with his Iraqi counterpart. Increasing pressure by members of the Security Council and various Arab states (in particular, Saudi Arabia), disturbed by the consequences of nonimplementation, forced Saddam Hussein to concede to the cease-fire in a letter dated 6 August 1988.<sup>14</sup> On 8 August the Security Council announced that cease-fire would be established on 20 August 1988. Direct negotiations would immediately follow in Geneva, commencing on 25 August

1988.<sup>15</sup> The next day the council established the UN Iran-Iraq Military Observer Group (UNIIMOG), entrusted for six months “to verify, confirm and supervise the cease-fire and withdrawal.”<sup>16</sup> The duration of this mandate was renewed many times to achieve complete withdrawal of all forces to internationally recognized boundaries.

From 25 August 1988, when the first round of talks began, until 23 April 1989, when the last meeting of the fifth round ended with no tangible result, the foreign ministers of the two nations met no less than fifteen times. The outline of the plan for implementation was approved by the Security Council. The secretary-general held that the paragraphs of the resolution should be implemented in the order in which they appeared.<sup>17</sup> The withdrawal of all forces, repatriation of prisoners of war, and entrusting an impartial body to inquire into responsibility for the conflict were priorities for the secretary-general. He expected to deliver a report on the issue by 1 December 1988.<sup>18</sup> Iraqi unwillingness, however, stalled the process of implementation.

#### *Iraqi Insistence and Implementation of the Resolution*

Describing its geographically disadvantaged situation in the Persian Gulf, Iraq declared in a 23 July 1987 letter to the secretary-general that it should be able to use its internal waters, territorial waters, and the high seas immediately after a cease-fire on a footing equal to Iran's.<sup>19</sup> To justify this demand, Iraq presented its own interpretation of cease-fire, which served two Iraqi interests: a guarantee of shipping in the Persian Gulf and the Strait of Hormuz, and a clarification about cleaning the Shatt al-Arab.

One day after the cease-fire, the chief of Iran's naval forces declared that, in accordance with international law, while respecting and guaranteeing free passage, Iran would exercise its rights of inspection and seizure of war contraband.<sup>20</sup> The head of the legal department of the Iranian Ministry of Foreign Affairs declared that it was within the rights of a belligerent state to impede any increase in the military capability of the other side.<sup>21</sup> Iranian insistence on these rights was intended to stop the entry of six Italian-made Iraqi warships into the Persian Gulf.

In a letter to the secretary-general on 20 August 1988, the Iraqi foreign minister declared the Iranian exercise of inspection a clear violation of the arrangements of Resolution 598 and said that Iraq would react appropriately.<sup>22</sup> In the beginning session of the first round of negotiations, he said that to strengthen the cease-fire and avoid undesired incidents both sides should agree to the details of the cease-fire, including freedom of shipping in the Persian Gulf. The Iraqis based their argument legally on the notion

that cease-fire puts an end to the state of war; inspection of vessels is allowed only during a war. According to Riyadh al-Qaysi, legal advisor to the Iraqi delegation, when the UN charter declares a war illegal, the law of war is not applied, and no state is allowed to implement the law of war after the cease-fire begins. In the Iraqi view, the cease-fire of 20 August 1988 implied a moral and political commitment on both sides that should also lead to a legal arrangement.

Responding to this claim, Iran's foreign minister, Ali Akbar Velayati, defined a cease-fire as a temporary cessation of hostilities; thus, the laws of war were applicable until the conclusion of a final peace. This interpretation agrees with the conduct of the Allied forces after World War II: The state of war with Germany had ended in 1951 even though a cease-fire had been in effect since 8 May 1945. In a similar case, the 1973 Arab-Israeli war, Egypt and Israel ended the state of war in 1979. Most qualified legal experts support such an arrangement for a cease-fire.<sup>23</sup> Clearly, a transition from war to peace in which belligerent states do not conclude a peace treaty is a gradual process. Considering that Iraq's insistence on the definition of cease-fire came only a few days after the cease-fire began, when neither the withdrawal of forces nor the repatriation of prisoners had been implemented, it is hardly possible to say that the state of war had ended between the two nations.

To break the deadlock and show its good intentions, Iran suggested in the first round of talks that, while preserving their rights, both sides would refrain from inspecting ships in the Persian Gulf and the Strait of Hormuz provided that such a practice would not serve as an opportunity for strengthening the military capabilities of either side. As expected, Iraq's reaction showed that it did, in fact, intend to bring warships into the region. Its refusal to compromise forced Iran to withdraw all its suggestions in a letter to the secretary-general on 6 September 1988 and made the Iranian foreign minister announce that Iraq should be held responsible for bringing the first round of talks to a deadlock.

The secretary-general put forward a plan at the beginning of the second round of negotiations on 1 October 1988, suggesting that both sides should refrain from inspection as long as it did not affect their military disposition. This plan would have given Iraq the freedom to bring its warships into the Persian Gulf, but Iraq did not accept the offer.

#### *Cease-fire and the Cleaning of the Shatt al-Arab*

During the first round of negotiations, Iraqi foreign minister Tariq Aziz suggested that there should be a "balance of benefits" from the cease-fire. Since

the time of cease-fire, Iran had been engaged in shipping; however, due to the closing of the Shatt al-Arab, Iraq had not been able to open its port city of Basra. To quicken the process, Aziz suggested that the matter be taken to the UN. Iran insisted that the issue was an important one that, if resolved, would help normalize relations. Therefore, it should be dealt with in accordance with existing arrangements between the two countries and at an opportune time. What Iran referred to was the "Agreement Concerning Navigation Rules in the Shatt al-Arab," dated 26 December 1975, which deals with the cleaning of vessels that have sunk, run aground, or need to be desalted. By suggesting that the matter be entrusted to the UN, Iraq was trying to weaken the 1975 border treaty between Iran and Iraq and the 13 June 1975 protocol setting the river boundary at the thalweg line.<sup>24</sup> Iraq had unilaterally abrogated this treaty on 17 September 1979.<sup>25</sup>

As expected, the validity of the 1975 treaty was brought into question. On 28 August 1988, Saadoun Hamadi, Iraqi foreign minister, claimed exclusive Iraqi sovereignty over the Shatt al-Arab and declared that any Iranian attempt to limit Iraqi rights would be met with a severe Iraqi response. On 31 August the secretary-general suggested that a team carry out a survey on behalf of the governments of Iran and Iraq for cleaning the Shatt al-Arab. As encouragement, he suggested that expenses be paid by the UN. Iran did not agree with the suggestion, declaring that such an action would undermine the 1975 treaty, and once more emphasized the priority of withdrawal. In a letter dated 29 December 1988, the Iranian minister declared withdrawal to be the first step in rectifying Iraqi aggression. In a follow-up letter on 3 March 1989, before the fifth round of talks, he presented a map showing that Iraq was occupying 2,663 square kilometers of Iranian territory.

### *Liberation and Repatriation of War Prisoners and the Meaning of "Active Hostilities"*

When negotiations reached a dead end, the international committee of the Red Cross sent a letter to both parties in October 1988 asking for the release and repatriation of prisoners without any conditions.<sup>26</sup> The organization asked the parties to act outside the arrangement of the resolution and in accordance with article 118 of the third 1949 Geneva convention. As a first step, it suggested that all prisoners be registered and those who were very sick be sent home immediately.

Iraq responded positively for several reasons.<sup>27</sup> First, it had more prisoners than Iran did.<sup>28</sup> Second, the Iraqi soldiers were more professional; thus, their return would enhance Iraq's military force. Moreover, acting outside the arrangement of the resolution would prolong Iraqi occupation. The Ira-

nian delegation told Red Cross officials that, as long as Iraq was occupying Iranian territory, the cease-fire remained precarious; therefore, Iran would preserve its right of individual self-defense in accordance with article 51 of the charter. The delegation claimed that at present the cease-fire was hardly an end to active hostilities. Article 118 of the convention is applicable only to situations in which, due to the complete defeat of one side, the possibility of resuming hostilities is nonexistent. Because neither party had claimed a total victory in the war, hostilities could resume at any point.<sup>29</sup> But the labor of the Red Cross paid off in a memorandum dated 10 November 1988 dealing with the release of a number of sick and disabled prisoners. The two countries agreed that 1,158 Iraqi prisoners would be exchanged for 411 Iranians. Nevertheless, smooth implementation of the accord was obstructed by mutual distrust.<sup>30</sup>

### **Iraq's Lack of Cooperation with the Secretary-General**

During the war, Iran had insisted that Iraq be recognized as the party initiating the aggression against Iran. One of the main reasons explaining why Iran did not accept the Security Council resolutions that preceded Resolution 598 was UN indifference to this demand. Efforts by the Iranian delegation did encourage the council to mention, in the last paragraph of the preamble of Resolution 540 (31 October 1983), "the desirability of an objective examination of the causes of the war." Iran's continued efforts over the next year were blocked by opposition from the United States, England, and France. In Resolution 582 (24 February 1986), rather than condemn the initial aggression as proposed by the Nonaligned Movement, the council expressed sorrow for the "initial acts which gave rise to the conflict between Iran and Iraq."

The need to end the war forced the council to address this issue in Resolution 598. Paragraph 6 requests "the Secretary General to explore, in consultation with Iraq and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict and report to the Council as soon as possible." Iranian officials considered this paragraph to be one of the strong points of the resolution.<sup>31</sup> Iraq, however, was wary. Knowing the possible adverse results of such findings, it demanded that a similar body also identify the party responsible for prolonging the conflict.<sup>32</sup> The secretary-general's plan included a formula for forming such a body, but Iraqi disruption stopped the implementation of that measure.

Following the direct exchange of letters between the presidents of both countries in 1991, the secretary-general undertook new steps toward implementing paragraph 6 of the resolution. In two similar letters, he asked Iran and Iraq to explain in detail their respective positions. In a letter dated 26



August 1991, Iraq criticized the secretary-general's letter<sup>33</sup> and did not explain its position; Iran sent a long report on 15 September.

The secretary-general gave his report to the council on 9 December 1991.<sup>34</sup> It explicitly stated that the Iraqi attack of "22 September 1980 against Iran cannot be justified under the Charter of the United Nations, by any recognized rules and principles of international law or by any principles of international morality and entails responsibility for the conflict." In his opinion, "even if before the outbreak of the conflict there had been some encroachment by Iran on Iraqi territory, such encroachment did not justify Iraq's aggression against Iran, which was followed by Iraq's occupation of Iranian territory during the conflict, in violation of the prohibition of the use of force which is regarded as one of the rules of *Jus Cogens*." He added, however, that "in my opinion it would not seem to serve any useful purpose to pursue paragraph six of the resolution." Despite the significance of the report, the international community ignored it, and the Security Council did not react at all.<sup>35</sup> Iraq protested the report, claimed that it reflected the personal views of the secretary-general, and refused to accept any responsibility.<sup>36</sup>

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Iraq insisted on dealing with Iran without the mediation of the secretary-general and beyond the framework of the UN. It believed that in direct contact it could use its military superiority to impose conditions on Iran. But Iraq's attack on Kuwait and the severe reaction from the international community forced Iraq to normalize relations with Iran and relocate its forces to a different strategic position. In his letter of 14 August 1990, Saddam suggested that he would withdraw his forces in lieu of immediate release of prisoners. Further, he said that "Iran will reach its demand completely." In fact, he was suggesting that the 1975 arrangement was acceptable.<sup>37</sup>

On 23 August 1990, Iraq's foreign minister declared that withdrawal had been completed.<sup>38</sup> In its report of 20 February 1991, UNIIMOG verified that Iraqi forces had withdrawn in accordance with the 1975 treaty.<sup>39</sup> Thus, all ambiguities about the validity of the treaty and the meaning of international boundaries were removed. UNIIMOG forces successfully accomplished their mission on 28 February 1991, but problems such as implementing paragraph 3 and the complete exchange of prisoners remain unresolved.

## Notes

1. From the beginning of the war until the adoption of Resolution 598, the Security Council had issued seven resolutions about the war but all under the rubric of "the situation between Iran and Iraq."

2. *Le Conflit Irak-Iran, 1979–1989* (The Iran-Iraq War, 1979–1989), under the direction of Paul Balta, Institut Français de Polémologie, Centre d'Études de l'Orient Contemporain, no. 4889 (1989).

3. Emmanuel Decaux, "La Resolution 598 (1987) du Conseil de Sécurité et les efforts entre l'Iran et l'Irak" (SC Resolution 598 and the council's efforts in the Iran-Iraq War), *Annuaire français de Droit International* 34 (1988):69.

4. Letter of the Iraqi foreign minister to the Security Council, 23 July 1987, in Majid Khadduri, *The Gulf War* (Oxford: Oxford University Press, 1988), appendix 5, 217.

5. Statement of the Iranian foreign minister before the 43d session of the General Assembly of the United Nations, 3 October 1988.

6. Iran's reply to Resolution 598, S/118993, 24 July 1987, and S/19031, 11 August 1987.

7. S/pv 2750, 16–17.

8. See Abbas Hedayati, *Shora-ye Amniyat va Jang-e Tahmili Araq aliyeh Jumhuri-ye Eslami-ye Iran* (The Security Council and imposed war against the Islamic Republic of Iran) (Tehran: Daftar-e Motal'at Siyasi va Beynolmellali, 1991), 170–76; Maouchehr Parsa-Doust, *Naqsh-e Sazeman-e Mellal dar Jang-e Iran va Araq* (The role of the UN in the Iran-Iraq War) (Tehran: Enteshar, 1992), 694–703.

9. *Ettela'at*, 19 June 1988.

10. *Keyhan Havayi*, 27 July 1988.

11. S/20020, 18 July 1988.

12. S/20031.

13. S/20039.

14. Statement of Tariq Aziz before the 43d session of the General Assembly, 4 October 1988.

15. S/pv 2823, S/20095, S/20036.

16. S/Res/613, 9 August 1988.

17. Memorandum of Understanding, 31 August 1988.

18. *Ibid.*, section 6.

19. Khadduri, *The Gulf War*, 217; see also the letter of 20 July in S/20039.

20. Djamchid Momtaz, "A Commentary," in *The Iran-Iraq War and the Law of Naval Warfare*, edited by Andreo De Guttry and Natalino Ronzitti (Cambridge: Grotius Publication, 1993), 28.

21. *Ettela'at*, 21 August 1988.

22. S/20140.

23. See, for example, R. R. Baxter, "Armistice and Other Forms of Suspension of Hostilities," *Receuil des Cours de l'Académie de la Haye* 1 (1976):359, 372; G. Scharzenberg, "Law of Armed Conflict," in *International Law* (London: Stevens and Sons, 1968), 2:726.

24. Djamchid Momtaz, "Le Statut Juridique du Chatt-el-Arab dans sa Perspective Historique" (The legal status of Shatt-al-Arab in historical perspective), in *Actualités Juridique et Politique en Asie* (Pedone, 1988), 59–67.

25. S/14272, 26 November 1980.

26. Milan Sahovic, "La Question de la Libération des Prisonniers de Guerre entre L'Irak et L'Iran" (The issue of the release of POWs between Iran and Iraq), *Annuaire Français de Droit International* 35 (1989):159-65.

27. S/20932, 17 October 1988.

28. In August 1988 there were 46,098 Iraqi prisoners and 18,596 Iranian. See S/20147, 24 August 1988.

29. Christiane Shields Delessert, "Release and Repatriation of Prisoners of War and the End of Active Hostilities," in *Annals of International Studies* 8 (1977):81-82.

30. Iran's letter S/20304, 30 November 1988, and Iraq's letter S/20313, 7 December 1988.

31. For example, see the reaction of the speaker of the Iranian parliament, Mr. Rafsanjani, in *Ettela'at*, 12 September 1987.

32. Majid Khadduri, *The Gulf War*.

33. "Iraq's Aggression against the Islamic Republic of Iran: A Study Presented to the Secretary General of the United Nations," September 1991.

34. "Further Report of the Secretary General on the Implementation of Security Council Resolution 598 (1987)," S/23273, 9 December 1991.

35. Rouhollah K. Ramazani, "Who Started the Iran-Iraq War?" *Virginia Journal of International Law* 33, no. 1 (Fall 1992):70-71.

36. S/23311, 23 December 1991.

37. Clive R. Symmons, "L'Échange des Lettres de 1990 entre L'Iraq et L'Iran: Un reglement definitif du différend et du conflit?" (1990 exchange of letters between Iraq and Iran: a definitive settlement of disagreement and conflict), *Annuaire Français du Droit International* 36 (1990):238, 243-44.

38. S/21621.

39. S/22279, 28 February 1991, and S/22263, 26 February 1991.