

Multilateralism in Multinational Perspective

Viewpoints from Different
Languages and Literatures

Edited by

James P. Sewell

Professor Emeritus of Politics

Brock University, Ontario



United Nations
University Press

9

A Study of Multilateralism in Iran: the United Nations and the Iran–Iraq Conflict

Djamchid Momtaz

The attitude of the United Nations during the eight-year conflict between Iran and Iraq stimulated, a few years after the beginning of the war, a strong interest within scientific and academic circles in Iran. Most of the work done at this time, though limited, addresses the issue of the Security Council's responsibility in the event of an infraction of the peace or of an act of aggression, as well as its role regarding the respect of human rights on the part of aggressors.¹

The United Nations and respect of the *jus contra bellum*

On 22 September 1980, 22 divisions of Iraqi motorized troops made a surprise advance into Iran in order to occupy an area of approximately 30,000 square kilometres. Given the definition of aggression formulated in the UN General Assembly's Resolution 3314 of 14 December 1974, this Iraqi advance must lie at the base of any debate as to whether Iraq should be deemed an aggressor or not.²

Faced by this armed aggression, Iran took action, exercising its legitimate right of self-defence, as provided for in Article 51 of the UN Charter.³ The deficiency of the UN Security Council, as well as its refusal to take the 'measures necessary to maintain international peace and security', provided a legal basis for the pursuit of military operations on the part of Iran.

a. Refusal to acknowledge Iraq's act of aggression

The day after Iraq's penetration of Iran's borders, the UN Secretary-General brought this act of aggression to the attention of the Security Council. In spite of the severity of the situation, the Council went only so far as to express, on 23 September 1980, its profound distress in

witnessing the conflict expand.⁴ It was not until 28 September that the Security Council decided to adopt Resolution 479. Clearly ignoring the fierce combat taking place on Iranian territory, the Council refused to recognize Iraq's armed advance as an act of aggression.⁵ Instead the conflict was qualified as a 'situation between Iraq and Iran'.⁶ Contrary to the practices it had used with regard to previous instances, the Security Council had now shunned its responsibility by requiring neither a ceasefire nor a withdrawal of forces from international borders.⁷

The iniquity and partiality⁸ of this first resolution regarding Iran became undeniable when the Security Council, having remained quiet for a period of more than twenty-one months (a period during which Iraq was able to consolidate its positions in Iran), decided finally to come out of its lethargy.⁹ In view of Iran's military pressure, which succeeded in liberating the majority of its territories and which threatened the principal Iraqi cities, the Security Council unanimously adopted Resolution 514 on 12 July 1982.¹⁰ It is believed that the Security Council in this way intended to aid Iraq by rearticulating the principles of sovereignty, independence and territorial integrity. Not only did the Security Council call for a ceasefire, but it also required that all forces retreat to the internationally recognized boundaries.¹¹ When, on 19 February 1986, Iranian forces succeeded in crossing the Chatt-El-Arab and seizing the peninsula of Fao, the Security Council reacted by adopting Resolution 582. In this resolution the Security Council referred to the illegality of any acquisition of territories obtained through force, whereas it had remained silent when Iraq had occupied vast stretches of Iranian territory.¹² One can hardly fail to notice a pattern symptomatic of the Security Council's attitude. The period from 1982 to 1987, during which Iran posed the greatest threat to Iraq, corresponds with the phase of the conflict in which the Security Council adopted the greatest number of resolutions.¹³

b. Refusal to recognize the exercise of legitimate defense by Iran

As a victim of armed aggression, Iran immediately took those measures provided for in its legitimate right to self-defence, as defined in Charter Article 51. While refusing to take the 'measures necessary' to re-establish peace, the demand which the Security Council was addressing to those involved in Resolution 479 amounted to denying the victim of this act of aggression the right to continue its struggle in legitimate defence.¹⁴ Taking into account the absence of a simultaneous demand for the retreat of forces from the internationally recognized borders, this resolution put Iraq at an undeniable advantage, for Iraq could now remain in

its positions inside Iran. This explains the dispatch with which Iraq accepted the resolution.

Starting in July 1982, Iran's approach to the natural right to legitimate defence changed slightly. Now Iranian forces had succeeded in liberating the greater part of the territories which had been occupied, and were initiating operations inside Iraq. For the first time the Security Council, in Resolution 514, declared itself profoundly concerned about the prolongation of a conflict which could endanger peace and security, and asked for a ceasefire. This organ and, shortly thereafter, the UN General Assembly, through its adoption of Resolution 37/3 of 22 October 1982, put the brunt of responsibility on Iran for prolongation of the conflict by referring to its unwillingness to accept the ceasefire.

The question arises as to the juridical nature of the resolutions adopted by the Security Council without any reference to Chapter VII of the UN Charter. Almost without exception,¹⁵ these resolutions did not carry obligatory force.¹⁶ Iran was therefore never expected to conform to the conditions of and accept the ceasefire. The view has been upheld, in accordance with this thesis, that Iran, the only judge of the efficacy of measures adopted by the Security Council, had the right to pursue the exercise of legitimate defence so long as it had not received sufficient guarantee from the Council. In citing this doctrine, a number of jurists have stressed the punitive end of legitimate defence. Qualified as international crime, a war of aggression brings to bear not only the penal responsibility of the authorities which undertook it, but also, on the level of civil responsibility, the obligation to pay war reparations. In these circumstances Iran had the right to pursue the exercise of its legitimate defence until the Security Council should adopt the necessary measures.¹⁷

For a long time, Iran has felt that the first measure the Security Council had to take was to recognize the existence of an act of aggression perpetrated by Iraq against Iran. By asking the Secretary-General to explore, in consultation with Iran and Iraq, the possibility of having an impartial body look into the question of responsibility for this conflict, the Security Council, on 20 July 1987, and within the framework of Resolution 598, finally approached the matter in this manner. Nonetheless such an initiative was seen as feeble and not very promising.¹⁸ It was again noted that only the Security Council has the authority to recognize the act of aggression, and that under no circumstances could it delegate this power elsewhere.¹⁹

It is for this reason that Iran refused once more to follow the injunctions of the Security Council. In effect, the Security Council

required that all parties involved adhere to a ceasefire as a prerequisite to its taking any action. Iran's military superiority on the front explained its intransigence. It must be kept in mind too that Iran made it a point to reject the ceasefire in order to have the Security Council focus on the question of responsibility for the conflict, thereby leaving the door open for future negotiations.²⁰ The defeats that Iran suffered following its rejection of the resolution led this state, in a spectacular about-face, to accept, on 18 July 1988, the Council Resolution, with the hope that an impartial third party would make known Iraq's responsibility for creating the conflict in the first place.

While awaiting the formation of this impartial investigative party, the report of the UN Secretary-General, dated 9 December 1991, on the application of Resolution 598²¹ was to acknowledge that Iran was right. The Secretary-General recognized in effect that the Iraqi attack could not be justified by the UN Charter, with the rules and principles of international law, or with some principles of international morality, and therefore Iraq carried the responsibility for the conflict. In the opinion of the Secretary-General, the fact that Iran had made some movement on Iraqi territory before the conflagration did not justify Iraq's aggression toward Iran, following which Iraq occupied Iranian territory for the duration of the conflict, in violation of the prohibition against the use of force, considered to be one of the rules of *jus cogens*. It was this tardy recognition that, in his message of 22 March 1992, with the advent of the Iranian new year, the Ayatollah Ali Khamenei, Iran's 'spiritual guide', extolled as 'the grand victory of the nation'. It is all the same regrettable that the Secretary-General should have found it useful to suggest, in the interest of peace, that the impartial party be put in place, as foreseen by Resolution 598, thereby depriving Iran of the possibility of bringing to bear the penal responsibility of the Iraqi authorities, as well as of assuring that war reparations be paid as a measure of Iraq's civil responsibility – a proposition which the Security Council does not seem to have entertained very seriously, since no mention of it has been made.

The United Nations and respect for the *jus in bello*

In spite of its failure to apply the rules of *jus contra bellum*, starting in 1983 the Security Council found itself beginning to respect the *jus in bello*. Even in this area, its declarations and resolutions have been qualified as being shy and partial regarding the interests of Iran, an opinion supported by the Council's reactions following

the use of chemical arms and the attacks made on neutral ships in the Persian Gulf.

a. The use of chemical weapons

The Security Council's refusal to carry out its responsibilities in the matter of peace and international security is what led Iran to boycott this body. Iran's political stance was counterbalanced by consistent contact with the Secretary-General and with a full-fledged expression of confidence in the person of Javier Perez de Cuellar. It was believed that this political confidence in the Secretary-General would pay off; as proof one has but to look at the report prepared on 20 June 1983 in response to demands made by Iran on the evaluation of damages to civil properties. The inventory of violations of those obligations with which Iraq found itself confronted²² was to encourage Iran to put more before the Secretary-General in the area of respect for human rights and, more particularly, with regard to Iraq's use of chemical weapons.

Consistent with the earlier pattern, and following Iran's complaints concerning the use of chemical arms, the Secretary-General sent a number of investigative missions. In every case the reports submitted to the Secretary-General and immediately communicated to the Security Council concluded, to the great satisfaction of Iran, that chemical weapons were being used. Nonetheless, the lax reactions of the Security Council gave rise to new criticisms regarding this body.

From 1984 to 1988, the Security Council went only so far as to adopt more declarations, while the importance of the question would have merited the adoption of resolutions in their full effective form.²³ As it turned out, the Council was to have recourse to the more formal procedure only at the end of the war, at which time it adopted Resolution 612 of 9 May and Resolution 620 of 26 August 1988. Aside from these resolutions addressing exclusively the use of chemical weapons, the declarations touched on the matter only in the general context of the war. It should have been necessary to condemn Iraq's use of chemical arms independently of the respective positions of the belligerent parties regarding the Security Council's resolutions.²⁴ Yet only after the cease-fire did Resolution 620 express the profound consternation of the Security Council regarding the intensive and frequent use of these bombs against the Iranian people,²⁵ and to express these sentiments without naming or condemning Iraq. The absence of firmness by the Council and its failure to adopt effective measures encouraged Iraq to violate, throughout the duration of the war, and with complete impunity, the Protocol established in Geneva during 1925.

b. The attacks on neutral merchant vessels

Even though Iraq took the initiative to attack neutral tankers by instituting, on 7 October 1980, a zone of exclusion around the Iranian terminal on the Island of Kharg, the Security Council refused to condemn this. By Resolution 540 of 13 October 1983, the Council demanded that both warring nations immediately halt all hostilities in the merchant shipping routes. It was claimed that the co-authors of the plan for this resolution had been encouraged by France, thereby justifying the location in Iraq of super tankers used in attacking tankers.²⁶

Resolution 552 of 1 June 1984 was voted under the initiative of the member states of the Gulf Cooperation Council, alarmed by the attacks Iraq was making on tankers going to or coming from the ports of Kuwait and Saudi Arabia. This resolution condemns only the attacks made by Iran and does not mention the more numerous attacks made by Iraq, which prompted those attacks undertaken by Iran against neutral vessels.²⁷ It is interesting to note that the Security Council considered the attacks to be a threat to the security and stability of the region and that they had serious repercussions for international peace and security. This claim was used as justification for the alacrity with which the Council reacted to the demands of the member states of the Gulf Cooperation Council. The firmness with which the Security Council acted with respect to attacks on neutral merchant vessels constituted a reference point for those who believe that its reaction to the violations of the Protocol established in Geneva during 1925 were too timid.²⁸

Conclusion

All the studies cited undeniably hold against the Security Council its neglect to play the role that the Charter imposed regarding the maintenance of international peace and security, and for not having taken the measures that would have been necessary to discourage Iraq's repeated violations of human rights. This default by the Security Council contrasts with the speed and effectiveness with which it reacted during Iraq's aggression against Kuwait. On 2 August 1990, the same day Iraqi forces entered Kuwaiti territory, the Security Council was adopting Resolution 660 within the framework of Chapter VII of the Charter. In this resolution the invasion was condemned and it was demanded that Iraq retreat immediately and unconditionally to those positions it had occupied prior to the attack. Following this, the Security Council adopted, still within the framework of Chapter VII, a whole

series of resolutions condemning Iraq's violations of human rights during this conflict.

It should be noted, though not going so far as to justify, that the default of the Security Council was at least in part due to current opinion on Iran which, for the duration of the first conflict in the Persian Gulf, was the overriding view of the international community. The taking as hostages of the diplomatic personnel of the American Embassy in Teheran, and the holding of these hostages despite many efforts to have them released, including a ruling by the International Court of Justice, made this country something of an international outcast.

In these most difficult moments the support of the permanent members of the Security Council and the sympathy of the international community were lacking. Moreover, being unfamiliar with the mechanisms of the United Nations, and overwhelmed by domestic problems, the Iranian authorities were unable to see the importance of diplomatic action.²⁹ On the other hand, Iraq knew how to reorient the action of the Security Council in such a way that it would serve Iraqi ends in this particular situation.

Be this as it may, and in spite of the criticism directed at the Security Council, it does not seem that the amount of confidence placed in this body was very seriously damaged. Resolution 598, adopted in the framework of Chapter VII of the Charter, by which the Council directed itself to engage, with success, in a peace process, is considered the point of departure of a new era in the affairs of this body, at which time the end of the cold war permits glimpses of a promising future.³⁰

Stress is put on the necessity to get around the shortcomings of the United Nations system by assuring a return to the spirit in which the Charter was written³¹ without ignoring the positive experiences acquired. It is in this manner that the return to the operations in maintaining the peace, whose positive results are unanimously recognized,³² should be pursued.

Translated from the French by Gunnar R. Sewell

Notes

- 1 These studies are all rendered from the Persian language: M.J. Mahalati, 'L'évolution de l'attitude du Conseil de Sécurité à l'égard de la guerre imposée', *Rapport de Séminaire No. 4*, Publication de l'Institut d'Etudes politiques et internationales, March 1986, pp. 53-66; A. Alem, N. Mossafa, B. Mostaghimi, M. Taramsari, under the direction of D. Momtaz, *L'agression de l'Irak contre l'Iran et la position des Nations Unies*, Publication du Centre des Hautes Etudes Internationales de l'Université de Téhéran, 1987; M. Zandieh, 'L'analyse de

l'attitude du Conseil de Sécurité', *Journal de Politique étrangère*, 2, April-June 1988, pp. 137-53; A. Malecki, 'La guerre imposée et le Conseil de Sécurité de l'Organisation des Nations Unies', *ibid.*, pp. 155-87; M.J. Larijani, 'Actions internationales de la République islamique d'Iran au sujet de la guerre imposée', *Rapport de Séminaire No. 8*, Publication de l'Institut d'Etudes politiques et internationales, January 1988, pp. 13-20; N. Sagafi Ameri, *L'Organisation des Nations Unies et la responsabilité du maintien de la paix et de la sécurité internationales*, Publication de l'Institut d'Etudes politiques et internationales, Téhéran, 1989; D. Momtaz, 'Le droit naturel de légitime défense dans la guerre irano-irakienne', *Etude des aspects de l'agression et de la défense*, 2, 1989, Téhéran, pp. 185-92; M.R. Ziaei-Bigdeli, 'La Légimité de la guerre et du recours à la force en droit international', *Journal de politique étrangère*, 5, Summer 1991, pp. 387-416; H. Falsafi, 'Le Conseil de Sécurité et la paix mondiale', *Revue de recherche juridique*, No. 8, Autumn-Winter 1990-91; A. Hedayati-Khomeini, *Le Conseil de Sécurité et la guerre imposée par l'Iraq à la République islamique d'Iran*, Publication de l'Institut d'Etudes politiques et internationales, Téhéran, 1991; N. Mossafa, 'L'évolution du concept du maintien de la paix', *Journal de politique étrangère*, 5, Summer 1991, pp. 363-86.

- 2 A. Alem, p. 59.
- 3 D. Momtaz, p. 186.
- 4 A. Hedayati, p. 70.
- 5 A. Maleki, p. 178.
- 6 A. Alem, pp. 110-11.
- 7 A. Maleki, p. 158; A. Alem, p. 115.
- 8 A. Hedayati, p. 92.
- 9 *Ibid.*, pp. 78, 82.
- 10 A. Maleki, p. 161.
- 11 A. Alem, pp. 110-11.
- 12 A. Hedayati, p. 112.
- 13 This coincidence is one of the principal theses of A. Hedayati.
- 14 A. Alem, p. 102.
- 15 H. Falsafi, p. 55.
- 16 A. Hedayati, p. 84.
- 17 D. Momtaz, pp. 187-8.
- 18 M.J. Larijani, p. 17.
- 19 A. Hedayati, p. 147.
- 20 *Ibid.*, p. 162.
- 21 UN Document S/23273.
- 22 A. Alem, p. 136.
- 23 *Ibid.*, p. 107.
- 24 M.D. Mahalati, p. 327.
- 25 A. Hedayati, p. 208.
- 26 *Ibid.*, p. 98.
- 27 A. Maleki, p. 165; A. Alem, p. 108.
- 28 A. Alem, p. 107.
- 29 A. Hedayati, pp. 78-9.
- 30 N. Sagafi, pp. 95, 97.
- 31 M. Zandieh, p. 152; N. Sagafi, p. 107.
- 32 N. Mossafa, p. 382; M.R. Ziaei-Bigdeli, p. 414.