

A. UN Security Council Resolution 598 (1987)

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: UN Doc. S/RES/598 (July 20, 1987), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Chap VII SRES 598.pdf>]

The Security Council,

[...]

Deeply concerned that, despite its calls for a cease-fire, the conflict between Iran and Iraq continues unabated, with further heavy loss of human life and material destruction, [...]

Determining that there exists a breach of the peace as regards the conflict between Iran and Iraq,

Acting under Articles 39 and 40 of the Charter of the United Nations,

1. *Demands* that, as a first step towards a negotiated settlement, 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;
2. *Requests* the Secretary-General to dispatch a team of United Nations Observers to verify, confirm and supervise the cease-fire and withdrawal and further requests the Secretary-General to make the necessary arrangements in consultation with the Parties and to submit a report thereon to the Security Council;

3. *Urges* that prisoners of war be released and repatriated without delay after the cessation of active hostilities in accordance with the Third Geneva Convention of 12 August 1949;

4. *Calls upon* Iran and Iraq to cooperate with the Secretary-General in implementing this resolution and in mediation efforts to achieve a comprehensive, just and honourable settlement, acceptable to both sides, of all outstanding issues in accordance with the principles contained in the Charter of the United Nations; [...]

6. *Requests* the Secretary-General to explore, in consultation with Iran and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict and to report to the Security Council as soon as possible; [...]

B. Letter of July 17, 1989 from Iran

[Source: UN Doc. S/20740 (July 19, 1989)]

ANNEX

Statement dated July 17, 1989 by the Foreign Ministry of the Islamic Republic of Iran

Exactly one year ago, on July 17, 1988, the Islamic Republic of Iran removed the only remaining excuse concocted by Iraq to prevent the implementation of Security Council resolution 598 (1987). The highest authority of the Islamic Republic of Iran officially and unconditionally accepted resolution 598 (1987), and, in response to the invitation of the United Nations Secretary-General, a high-level delegation was dispatched to New York to consult with the Secretary-General about the procedures for the full and rapid implementation of the resolution.

Unfortunately, what the Islamic Republic of Iran had always warned the international community about materialized. Iraq, which had declared, time and again, that the only obstacle for the implementation of the resolution was lack of official acceptance by the Islamic Republic of Iran – refused to implement the resolution by insisting on pre-conditions which were illogical, unacceptable and contradictory to the letter and spirit of resolution 598 (1987) and the plans of the Secretary-General. [...]

The legal and practical prominence and priority of withdrawal to the internationally recognized boundaries is also manifested in Security Council resolution 598 (1987). Acting under Articles 39 and 40 of Chapter VII of the Charter of the United Nations, the Security Council, in paragraph 1 of resolution 598 (1987), demanded the cease-fire followed by withdrawal of forces to the internationally recognized boundaries without delay as a “first step towards a negotiated settlement”. Therefore, withdrawal, which is an inseparable part of this mandatory first step, is prior to and independent of any negotiation.

However, since the beginning of direct talks on 25 August 1988, Iraq has used every conceivable method to

evade its commitment under the resolution as well as those under general principles of international law. The introduction of pre-conditions for the implementation of the resolution started with direct talks as a pre-condition for cease-fire and developed into continuously evolving conditions for implementation of other provisions, the most prominent and urgent of which is withdrawal. [...]

[...]

However, from the very first meeting of direct talks, the Foreign Minister of Iraq called for the necessity of reaching a common understanding with regard to the cease-fire itself, and used this pretext to introduce extraneous elements which by no extension of logic could be considered as a part of regulations for cease-fire.

It is interesting to note that both the Secretary-General [...] and Iraq [...] had excluded a cease-fire from the agenda of direct talks. The statement of the President of Iraq is even more direct than that of the Secretary-General in doing so. [...]

It is clear that the President of Iraq not only excludes all issues related to the cease-fire from direct talks, but also concedes that withdrawal is the first subject on the agenda of direct talks. Yet, to this date Iraq has refused even to comment on what it itself considered the first agenda item, and has prevented the implementation of the resolution by introducing elements which it claimed related to the observance of the cease-fire. [...]

[...]

While Iraq has failed to comply with the prominent element of the resolution and withdraw to the internationally recognized boundaries and refused to accept any proposal of the Secretary-General, it has selected one element of the resolution – namely the question of prisoners of war (POWs) – and with a view to undermining the resolution itself, has called for its implementation outside the framework of the resolution. However, what has actually occurred in the past year proves the lack of good will on the part of Iraq even regarding this issue. The timetable presented by the Secretary-General and accepted by the Islamic Republic of Iran called for the release and repatriation of all prisoners of war within 90 days. Had Iraq accepted that proposal, all POWs would have been released and repatriated by November 20, 1988. Likewise, had Iraq accepted – like the Islamic Republic of Iran – the four-point plan of October 1, 1988, all POWs would have been released and repatriated by the end of 1988. It is clear, therefore, that Iraq does not seek the release and repatriation of POWs; rather it endeavours to undermine and disintegrate resolution 598 (1987) and sabotage the efforts of the Secretary-General.

Another illustration of the real intention of Iraq with regard to POWs is the number of registered Iranian POWs in Iraq. Iraqi officials claimed during the last days of the war that the number of POWs on two sides had become balanced. Recently, the Governor of Basra claimed that only during the last year of the war did

Iraq capture more than 25,000 Iranian prisoners. None of these prisoners have been registered. In fact, while close to 50,000 Iraqi POWs have been registered in the Islamic Republic of Iran by the International Committee of the Red Cross, Iraq has allowed the registration of only about 18,000 prisoners. Therefore, if Iraq has any real humanitarian concern for POWs, it has to bring the number of registered prisoners to a balance, since proportionality with regard to POWs has always been the Iraqi line. The International Committee of the Red Cross bears special responsibility to convince and compel Iraq to register these prisoners and bring the number of registered POWs on the two sides to a balance.

Close to one year after the establishment of the cease-fire, nothing has been achieved in the road to peace between Iran and Iraq. This brief assessment of the underlying reasons behind the stalemate clearly illustrates the fact that Iraq has failed to comply with a mandatory resolution of the Security Council adopted under Articles 39 and 40 of Chapter VII. The Security Council has committed itself [...] [in] resolution 598 (1987) – to take appropriate measures to ensure compliance with the resolution. Failure to do so will not only be a violation of the resolution by its authors, it will also be a violation of the trust the United Nations has placed on the Security Council as the primary organ responsible for maintenance of international peace and security. The institutional implications of political expediency on the part of some members of the Council who have confused bilateral relations with their official function as members of the Security Council are grave, and the precedent it creates is disastrous. If the Security Council fails to take resolute measures to ensure compliance with a resolution it adopted with massive international fanfare, it cannot expect other Member States to entrust to the Council and United Nations the resolution of conflicts [...].

C. Letter of July 21, 1989 from Iraq

[Source: UN Doc. S/20744 (July 21, 1989)]

ANNEX

Commenting on the communiqué issued by the Iranian Ministry of Foreign Affairs on July 17, 1989, a spokesman for the Permanent Mission of Iraq in New York stated as follows:

“On 17 July the Iranian Ministry of Foreign Affairs issued a communiqué concerning the situation between Iraq and Iran and the progress of the negotiations that was full of fallacies and lies. For purposes of clarification, we should like to set forth the following facts:

“1. The communiqué of the Iranian Ministry of Foreign Affairs made it appear that Iran accepted resolution 598 (1987) officially on July 18, 1988 as a diplomatic step taken by the Iranian Government to facilitate the implementation of resolution 598 (1987). The truth, as the members of the international community know, is that Iran did not accept resolution 598 (1987), which was binding after its adoption, but used in dealing with its various kind of stratagems and manoeuvres in an attempt to prolong the war and win time in the hope of achieving its aggressive expansionist goals. [...]

[...]

"3. The agreement reached between Iraq and Iran on 8 August 1988 through the Secretary-General of the United Nations removes all doubts about the topics to be dealt with in the direct negotiations under the auspices of the Secretary-General. These topics are all the provisions of the resolution that have not been implemented so far. [...]

"The one topic that actually does lie outside the scope of the negotiations is the topic of the release of prisoners. Paragraph 3 of resolution 598 (1987) and article 118 of the Geneva Convention relative to the Treatment of Prisoners of War of 1949 and precedents throughout the international community all affirm in a way that admits of no other interpretation the binding obligation to release and exchange prisoners without delay after the cessation of active hostilities and entrust the supervision of this process to the International Committee of the Red Cross. The Iranian side's insistence on not proceeding to release and exchange prisoners after a year has elapsed since the cessation of active hostilities fully demonstrates how incompatible this régime's position is with international law and international humanitarian law and its readiness to gamble with the lives and suffering of tens of thousands of Iraqi and Iranian human beings in order to achieve political ends. It shows once again the selective approach adopted by this régime throughout the years of conflict with regard to Security Council resolutions and the provisions of international law, taking from them what it will and refusing to be bound by the obligations which they create for it.

"The fallacies contained in the communiqué of the Iranian Foreign Ministry regarding the question of the registration of the prisoners is another proof of the bad intentions of the Iranian régime and its constant inclination to trickery and plays on words at the expense of human beings. The question of the registration of the prisoners is clear and unambiguous in international law; it is incumbent on the parties to the dispute to inform the Red Cross promptly of the number of prisoners and to provide the necessary information concerning them without delay.

"We informed the President of the International Committee of the Red Cross and the Secretary-General of the United Nations officially of our readiness to register all Iranian prisoners who were not registered when the Iranian side showed the same readiness, and the Security Council is cognizant of this. Resorting to percentages on this question is a contravention of international law and a ruse. Indeed, it is an unethical procedure, making human beings into numbers. Iraq rejects it on ethical and legal grounds and reaffirms the obligation on both parties to inform the International Committee of the Red Cross at the same time of the names of all non-registered prisoners. [...]

"5. Iraq once again affirm its will to continue the negotiation process under the auspices of the Secretary-General of the United Nations. if the Iranian side is serious about arriving at a comprehensive and lasting peaceful settlement, it has only to respond to the Secretary-General's invitation and concur with Iraq's wish to sit down at the negotiating table under the auspices of the Secretary-General and enter into genuine direct

negotiations with a view to arriving at a common understanding of the peace plan and the positioning of the necessary mechanisms for its implementation. [...]

D. Iran/Iraq: more than 70,000 POWs repatriated

[Source: *ICRC Bulletin*, No. 177, October 1990, p. 1]

By 14 September, over 70,000 prisoners had returned home in the operation launched on 17 August to repatriate all prisoners of war captured during the conflict between Iraq and Iran. As reported in the last Bulletin (No. 176, September 1990), about 60 delegates had been sent out from Geneva as of 18 August to reinforce the two ICRC delegations in Baghdad and Teheran. By the end of the month, 77 delegates were at work in the two countries.

During the period from 17 to 31 August, more than 2,000 prisoners of war were released daily overland via the border post at Qasr-e-Shirin, air shuttles were organized as from 22 August. A total of 798 Iranian prisoners of war and 1,193 Iraqi prisoners of war were flown back to their respective countries on three flights by Iran Air Jumbo jet, while the ICRC chartered an aircraft to repatriate (on four flights) some 500 wounded and sick prisoners (221 Iranians and 257 Iraqis). Two more flights under ICRC auspices were made on 13 September to repatriate another 210 wounded and sick Iranian prisoners of war.

From the end of August, overland operations continued, with a daily flow of 900 prisoners in each direction, rising to a daily figure of 2,000 men both ways from 10 September.

ICRC delegates record each prisoner's identity and make sure they are returning to their countries of their own free will.

The prisoners repatriated include captives whom the ICRC had been unable, both in Iraq and in Iran, to visit during their detention. The delegates took this opportunity to register them.

Throughout the past weeks, the ICRC has maintained a constant dialogue with the Iraqi and Iranian authorities, in order to plan the remaining repatriations as efficiently as possible and arrange for all prisoners of war on both sides to be back home again soon.

Discussion

1. a. What do the provisions of IHL stipulate regarding the repatriation of prisoners of war "after the cessation of active hostilities"? (GC III, Art. 118; CIHL, Rule 128)
- b. When are active hostilities considered to have ceased? After the establishment of a cease-fire? Only after the withdrawal of all military forces to the internationally recognized borders? Only after Iran and Iraq have reached a final peace treaty? Had active hostilities between Iran and Iraq ceased to such an extent in summer 1989 that prisoners of war should have been repatriated?

- c. Does the fact that Security Council Resolution 598 (1987) provides for the repatriation of prisoners of war in its operative para. (3) thereof mean that the prisoners of war have to be repatriated only once operative paras (1) and (2) have been complied with? If this implication were correct, would it be compatible with IHL? If the Security Council Resolution contradicts IHL, does the resolution take precedence under Art. 103 of the UN Charter? (GC III, Arts 1 and 118; CIHL, Rule 128) [Article 103 of the UN Charter, available on <http://www.un.org/en/documents/charter/>, reads: "In the event of a conflict between the obligations (...) under the present Charter and (...) obligations under any other international agreement, (...) obligations under the present Charter shall prevail".]
- d. Is the Iraqi position correct that the repatriation of prisoners of war lies "outside the scope of the negotiations" between the parties? (GC III, Arts 6 and 118; CIHL, Rule 128)
- e. Is Iraq correct in stating that IHL affirms the "binding obligation to release and exchange prisoners without delay after the cessation of hostilities"? Does Iraq have an obligation to repatriate them even though Iran does not do so? Has Iraq complied with that obligation? (GC III, Arts 1, 13(3) and 118; Vienna Convention on the Law of Treaties, Art. 60(5))
2.
 - a. What are the responsibilities of the parties to the conflict regarding the registration of prisoners of war? (GC III, Arts 70 and 122; CIHL, Rule 123)
 - b. Are a party's responsibilities towards its prisoners of war applicable solely on the principle of reciprocity? Is Iran correct in stating that the ICRC has a responsibility to compel Iraq to register prisoners of war? And also that it has "to bring the number of registered POWs on the two sides to a balance"? (GC III, Arts 13(3), 70, 122, 123 and 126; CIHL, Rule 140)
 - c. Is Iraq correct in stating that "it is incumbent on the parties (...) to inform the Red Cross promptly of the number of prisoners and to provide the necessary information"? Is the Iraqi position indicating its "readiness to register all Iranian prisoners (...) when the Iranian side showed the same readiness" acceptable under IHL? (GC III, Arts 13(3), 70 and 122; CIHL, Rule 140)
3. Who has to determine whether a POW objects to his/her repatriation? The ICRC? Is that provided for in IHL? Why does the ICRC insist on visiting prisoners and interviewing them without witnesses? Does the ICRC have a right to insist on the latter condition? (GC III, Art. 126)
4. Do you agree with Iran's statement in the letter's last paragraph concerning the credibility of the Security Council? Can such a conclusion not also extend to the credibility of IHL? Does this situation between Iran and Iraq demonstrate the ineffectiveness of IHL? (GC I-IV, Art. 1; CIHL, Rule 139)
5. Security Council Resolution 598 (1987) addresses both political and humanitarian issues; what kind of problems does such a mixture of elements raise? Should the Security Council have omitted any reference to IHL and prisoners of war? Would that have improved the situation?