

## The U.N. Security Council's Approach towards Iraq: 1980-2003

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### **Abstract**

Between 1980 and 2003 Iraq was involved in three armed conflicts; namely, the Iran-Iraq War in the 1980's, the occupation of Kuwait in 1990-1991, and the American-led war against Iraq in 2003. These are three different conflicts with their own distinct characteristics. A comparative study on the behavior of the United Nations Security Council with regard to each of these conflicts reveals that the Security Council has had three different and notably imbalanced reactions towards these conflicts. While At the beginning of the Iran-Iraq conflict, the Council was silent for a few days and later adopted a very ineffective resolution, the approach and conduct in the second conflict was quite different. A few hours after the Iraqi invasion of Kuwait, the Council adopted a very strong resolution, under Chapter VII of the Charter. In the case of the third Persian Gulf conflict – 2003 - the Security Council was in the middle of discussions as to how to deal with the Iraqi crisis when the American and British forces started the military attacks against Baghdad. Furthermore, international humanitarian law has been violated during these conflicts on numerous occasions, most notably the use of chemical weapons by Iraq during the Iran-Iraq conflict. The Security Council's lack of resolve to adopt necessary punitive measures against Iraq to prevent further use of chemical weapons was considered by Iraq as a green light to continue its resort and practice with a sense of impunity. As discussed in the paper, blatant lack of resolve on the part of the Security Council towards Iraq's repeated use of chemical weapons was, as a matter of fact, the most manifest expression of the strong pro-Iraq tilt in the Council's approach and conduct; the outward expression of alternating implicit-explicit consensus among the permanent members on how to punish the revolutionary Iran and reward a friendly Iraq. The present paper concludes that a different approach and conduct by the Council vis-à-vis Iraq 's aggression against Iran would have most probably created a different situation and dynamism in the Persian Gulf area with all its significant repercussions and implications.

**Keywords:** Security Council, Iran-Iraq Conflict, Iraq-Kuwait Conflict, US-Iraq Conflict, Chemical Weapons

## **Introduction**

Between 1980 and 2003, Iraq was involved in three armed conflicts; namely the Iran-Iraq War in the 80's, occupation of Kuwait in 1990-91, and the American-led war against Iraq in 2003, the consequences of which are still lingering in Iraq and the region. These are three different conflicts with their own distinct characteristics.

The object of this paper is to undertake a comparative study of these three conflicts from the vantage point of the behavior of the United Nations Security Council with regard to each of them. Specifically, the reaction of the Council at the outbreak of hostilities in each case will be analyzed, examining whether, on the basis of the U.N. Charter, the Council has shouldered its responsibilities or not. Furthermore, international humanitarian law was violated by Iraq, on numerous occasions during these conflicts, the most notable of which was the use of chemical weapons in the course of the Iran-Iraq conflict. The Security Council's approach – and response - towards this issue will also be examined.

### **1. The U.N. Charter and the Use of Force**

Given the nature of the issue at hand, it is worthwhile to have a

look at how the UN Charter has addressed and dealt with the question of the use of force; or in other words, under what circumstances the use of force is permissible under the Charter. In accordance with the Charter, there are two instances under which the use of force is permissible: Articles 42 and 51.

1. As per Article 41: "All measures not involving the use of armed forces"<sup>(1)</sup> can be applied to give effect to the Security Council's decisions. Article 42 states: "Should the Security Council consider that measures provided for in Article 41 would be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."<sup>(2)</sup> If Article 42 is invoked, Article 43 provides the necessary arrangements for the contribution of armed forces of member states to the Security Council in accordance with special arrangements.<sup>(3)</sup> It is interesting to note that throughout the history of the UN, Article 42 has never been invoked due to lack of agreement among the Permanent Members.

2. Article 51 states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."<sup>(4)</sup> Although there seems to be an implicit time-bound framework for the application of this article, however, Article 51 has been invoked on some occasions without proper consideration for



this time-frame. To give an example, reference could be made to the fact that Article 51 continued to be used as justification for the use of force against Iraq by American-led coalition in the 90s even after the expulsion of Iraqi forces from Kuwait.

#### 1-1. The First Conflict

Iraq invaded Iran on 22 September 1980. The prime motive for Iraq, in the wake of the demise of the monarchical regime in Iran as the dominant regional power and the seeming power vacuum in the Persian Gulf, was to assert the Iraqi power and position in the area and also, within the bilateral context, regain what it considered to have lost under the 1975 Treaty of State Frontiers and Neighborliness between Iran and Iraq, most notably with regard to the common river frontier (Shatt al-Arab/Arvandrood) and the territorial claim on Iran's oil-rich Khuzestan Province. The Iraqi Charge d' Affaires to the UN sent a letter to the Secretary-General the same day and described Iraq's invasion of Iran as an exercise of self-defense.<sup>(5)</sup>

Before the beginning of the war, Iraq accused Iran of large-scale interference in its internal affairs. Reflecting on the conflict in 1981, Sadoun Hammadi, the Iraqi Foreign Minister, attempted to justify Iraq's invasion of Iran by claiming that when Iraq resisted such interference, "Iran took military action against us along the border. The 1975 agreement fell to pieces and war conditions were created."<sup>(6)</sup> It may suffice, in passing, to cite the following three reasons to challenge Iraq's flimsy argument in justifying its unilateral abrogation of the 1975 Treaty and subsequent resort to brute force: 1) the provisions of

the Treaty envision in very clear terms the peaceful mechanisms for the resolution of differences between the two sides; 2) the Treaty in its Article 5 clearly describes the boundaries as "inviolable, permanent and final." Furthermore, Article 70 of the Vienna Convention on the Law of Treaties does not recognize "any right, obligation, or legal situation of the parties created through the execution of the treaty prior to its termination."<sup>(7)</sup> In this regard, Cameron Hume argues that "If Saddam Hussein wanted to shift the boundary back to the left bank, he would have to secure Iranian agreement to the revision, and the only means likely to accomplish this was force."<sup>(8)</sup>

Six days after the beginning of the conflict, Iraq announced its war objectives: "full control over the Shat al Arab, freedom from external interference in Iraq's domestic politics, adherence to good neighborly relations, and the return of the UAE islands."<sup>(9)</sup> David Malone also refers to the other goals pursued by Saddam Hussein; namely, to capture Khuzestan, destabilize Iran, and possibly topple the new revolutionary regime in Iran.<sup>(10)</sup>

The first reaction of the Security Council came a day after the start of the war. On 23 September 1980, the president of the Council stated: "Members of the Council are deeply concerned that this conflict can prove increasingly serious and could pose a grave threat to international peace and security."<sup>(11)</sup> He went on to say: "The members have asked me to appeal, on their behalf, to Iran and Iraq to desist from all armed activity."

It is interesting to note that for the members of the Council, Iraqi invasion of Iran was not considered a threat to peace requiring it to invoke Chapter VII of the Charter. As it



turned out, astonishingly, it took the Security Council almost seven years to determine the existence of a breach of peace in the course of the Iran-Iraq conflict. Lack of any censure – even in mild diplomatic language – of the Iraqi military adventure in the presidential statement was glaring. The President merely confined himself to an “appeal” to both sides with equal measure rather than adopting a concrete position denouncing the aggression and instituting concrete measures as the nature and magnitude of the aggression required.

The first resolution of the Council (resolution 479) was passed on 28 September 1980 -- six days after the beginning of the conflict when the Iraqi forces which had encountered little resistance in the first days of the conflict had already occupied enormous areas of five western provinces of Iran. This resolution "Calls upon Iran and Iraq to refrain immediately from any further use of force" and "urges them to accept any appropriate offer of mediation."<sup>(12)</sup> Resolution 479 lacked the resolve needed to deal with the cases threatening international peace and security. In essence, as far as the Security Council was concerned, the use of force by Iraq during the six first days of the conflict resulting in the loss of life and destruction of towns and villages was acceptable and both countries – the aggressor and the victim - were expected to refrain from "further" use of force.

Considering the Presidential Statement of 23 September 1980 and resolution 479 of 28 September 1980 at the time when the Council was not prepared to call for a cease-fire and the withdrawal of foreign forces from occupied areas, it became

evident that the Council was determined not to play a major role in dealing with the conflict as required by the Charter. Brian Urquhart, then Under Secretary-General for Political Affairs, considers the Iraqi invasion as "a clear and massive violation of the sovereignty of another state which should, if only as a matter of principle, have immediately been denounced as such. As it was, it was impossible to avoid the conclusion that the members of the Security Council, under strong Iraqi pressure, were sitting on their hands hoping that the Iraqi victory would be quick and total."<sup>(13)</sup> Reflecting on the situation at the time in his memoirs, he also refers to the informal meetings of the Council which, "under Iraqi pressure," produced no result. In his words, the Security Council "had seldom seemed less worthy of respect."<sup>(14)</sup> Gary Sick, then member of the US National Security Council and close Carter aide, also criticized the resolution for not being strong enough when "surely there was already a breach of the peace."<sup>(15)</sup>

Perhaps the most questionable measure on the part of the Security Council at the beginning of the war was its mild reaction to a clear case of aggression. As Malone states, "The Security Council's muted response to an act of aggression (by Iraq) against a Member State (Iran), which on its face warranted a proactive approach under relevant provisions of the UN Charter, probably bore out Saddam's initial calculations of Great Power disinterest."<sup>(16)</sup> Of the five permanent members, the US was furious over the continued holding of the American hostages in Iran. The UK, France and the Soviet Union enjoyed economic dealings with Iraq on wide-ranging issues particularly





in the area of armaments. Only China seemed to be neutral. In Malone's analysis, the positions of the permanent members vis-a-vis the beginning of the war were translated into non-action for the first few days by the entire Council.<sup>(17)</sup>

After initial surprise gains by Iraq, Iranian resistance emerged and bogged down the Iraqi forces. The fronts did not change much until the spring of 1982 when Iranian forces initiated major offensives and liberated most of the occupied areas, and even entered the territory of Iraq in late summer the same year. In the intervening period, UN Secretary-General's envoy, Olaf Palme, paid a number of visits to both countries to secure an agreement to a cease-fire and the withdrawal of Iraqi forces from Iran, but to no avail. Iran was against any negotiation when Iraq was still occupying Iranian territory and later, after the expulsion of Iraqi forces from the bulk of the initially occupied areas, it demanded condemnation of Iraq as the aggressor and called for the ousting of Saddam Hussein and receiving of war reparations. Iraq, on the other hand, was not prepared to accept a withdrawal in the first days of the conflict and later, with the prolongation of the conflict particularly after consecutive military setbacks, showed eagerness for a cease-fire and withdrawal of its forces from Iran, but still insisted on its claim to sovereignty over the entire Shatt al- Arab.<sup>(18)</sup>

In the course of the first two years of the conflict, the Security Council was nearly absent in the conflict between Iran and Iraq and in the words of Hume, "had done next to nothing."<sup>(19)</sup> However, in a quite equally surprising approach, the Council became active again in the conflict following the

successful Iranian offensives in the spring of 1982 – which, as already indicated, led to the liberation of vast areas of Iran. The next resolution was adopted on 12 July 1982 and for the first time called for a cease-fire and a withdrawal to internationally recognized boundaries.<sup>(20)</sup> Between 1982 and 1988 when the two sides agreed to a cease-fire, the borderline did not change much. During these six years, depending on the ebb and flow of the war and the particular prevailing political circumstances, the Security Council adopted six more resolutions under Chapter VI of the Charter and a number of Presidential Statements mainly calling on the two countries to immediately cease all hostilities and withdraw all forces to internationally recognized boundaries without delay. The general positions of the two sides on the termination of the conflict did not alter and the war continued.

Hume, then a political counselor at the US Mission in New York and the American officer dealing with the Security Council matters, describes in his book on the conflict how the Council changed course in the mid-1980's and how its permanent members attempted to close ranks and come up with a unified position to end the conflict utilizing Chapter VII powers of the Charter to deal with a threat to peace. "In early 1986, the fourth phase of the war began, bringing with it successful Iranian ground offensives into southern Iraq and extension of the scope of the war through Iraqi air power, to Iranian urban areas and to shipping throughout the [Persian] Gulf. The Arab gulf states, previously opposed to the presence of outside military forces in the gulf, now wanted protection from the consequences of the war." As for the approach of the superpowers, the Iran-Contra



scandal seemed to have prompted the Reagan administration to search for a more legitimate format for its policies. And Gorbachev's accession to power in 1985 brought new flexibility in the Soviet policy, suggesting possibility of improvement in their relations, which also manifested itself in the permanent members' cooperation in 1986 in the reelection of Perez de Cuellar.<sup>(21)</sup>

In January 1987, in response to the Secretary-General's call on the permanent members to collaborate to end the conflict, their ambassadors started to negotiate with the aim of using the authority of Chapter VII of the Charter. Six months later on 20 July 1987 the Council adopted resolution 598 under Chapter VII. This was, in fact, the most important – and consequential – resolution adopted by the Council during the conflict. Resolution 598 which brought about the establishment of cease-fire in the war and provided the basis and framework for the peace talks between the two countries, was important in a number of respects. It, for the first time, a) determined that there existed a breach of peace; b) acted under Articles 39 and 40 of the Charter; c) decided to consider further steps to ensure compliance with this resolution; and d) requested the Secretary-General to explore the question of entrusting an impartial body with enquiring into responsibility for the conflict.<sup>(22)</sup> In Hume's assessment, the move on the part of the permanent members to discuss amongst each other how to use the powers enshrined in Chapter VII of the Charter was unique in the history of the United Nations, never experienced before.<sup>(23)</sup>

Even if much belatedly, it could be said that it was

encouraging that the Council had finally decided to discuss the issue of the responsibility for the conflict and treat the Iran- Iraq conflict as a breach to peace requiring, if necessary, follow-up measures under Chapter VII of the Charter. A similar approach – and action - by the Council at the beginning of the conflict almost seven years earlier could have had tremendous impact, including saving of hundreds of thousands of lives and incalculable human suffering and material destruction. It would have most probably also left its impact on a whole range of other issues and situations.

Judging from the particular vantage point of the provisions of the UN Charter, it could easily be argued that the Iraqi invasion of Iran was in total disregard of Articles 2.3 and 2.4 of the Charter – and also of as the bilateral agreements between the two countries. Article 2.3 states that "All members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."<sup>(24)</sup> As per Article 2.4, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."<sup>(25)</sup> Furthermore, the 1975 Treaty between the two countries, an internationally-recognized and registered document, – was – and still is – a legal framework covering comprehensively different aspects of relations between them, including in the peaceful settlement of disputes. All in all, in a span of eight years of a conflict – generally billed as the longest war in the 20<sup>th</sup> century - the Council passed only twelve resolutions.



### 1-2. The Second Conflict

After the end of the Iran-Iraq War in August 1988, Saddam Hussein, who had failed to subdue the revolutionary Iran and also had escaped outright defeat in the course of the 8-year-long conflict, branded himself the victor of the war and returned to his political dreams almost a decade earlier. With almost one million men in his battle-hardened army and amassed weaponry, even though heavily indebted, he turned his attention once again to the Persian Gulf area and resuscitated some of his radical rhetoric against his smaller Arab neighbors, specifically accusing them of harming the Iraqi economy by flooding the market with oil, keeping the price low, and thus depriving Iraq from the badly-needed oil revenue for reconstruction. The Iraqi new found wrath was directed initially against both the UAE and Kuwait, and soon came to be focused on the latter. Malone refers to Iraq's increasingly harsh language against Kuwait a few weeks before its occupation. "On July 18, in a memorandum to the Arab League, Iraqi Deputy Prime Minister and Foreign Minister Tariq Aziz accused Kuwait of attempting to weaken Iraq, encroaching on its territory, draining oil from the Rumaila field, which straddles the two countries' border, and conspiring to undermine oil prices. This, it concluded, was tantamount to military aggression."<sup>(26)</sup> That was the pretext for the invasion and occupation of Kuwait on 2 August 1990. A few days after the military action, Iraq announced that it annexed Kuwait – Anschluss a la Saddam Hussein.

The first reaction of the Council came a few hours after the invasion. In a late night session, the Security Council, "acting

under Articles 39 and 40 of the Charter of the United Nations", adopted a very strong resolution (resolution 660). It "condemns the Iraqi invasion of Kuwait" and "demands that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990". It also "Calls upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences."<sup>(27)</sup> The Council's swift action, and more so, the clear, unambiguous language of its resolution, proved, without a shadow of doubt, that the Council was determined, in this particular case, to play the major role in dealing with the crisis. And it did – as discussed below.

The second resolution (resolution 661) was passed only four days after resolution 660. This resolution included very comprehensive economic and military sanctions against Iraq.<sup>(28)</sup> The Council, fully seized of the matter on a continuous, even daily basis, adopted nine more resolutions on the situation in a span of three months, mainly related to tightening economic sanctions and imposing blockade of Iraq.<sup>(29)</sup> After Iraq failed to respond to the calls of the Security Council to withdraw its forces from Kuwait, on 29 November 1990, the Council adopted resolution 678 and issued an explicit ultimatum to Iraq to implement the relevant resolutions on or before 15 January 1991 or the coalition forces could use all necessary means to uphold and implement resolution 660 and all subsequent relevant resolutions.<sup>(30)</sup> That was an implicit, albeit clear reference to the use of force as stipulated in Article 51 of the Charter on self-defense. Iraq did not heed these calls and the conflict started on 16 January 1991 and took around six weeks



before the Iraqi forces were expelled from the Kuwaiti territory. As for the Security Council activism in the course of the second conflict, it suffices to observe that between 2 August 1990 and 3 April 1991 – in a span of seven months to date – the Council passed fourteen resolutions.

Soon after the Iraqi forces had been pushed out of Kuwait and the military action by the coalition forces had all but come to a halt, the Council adopted resolution 687 on 3 April 1991 – indeed a unique resolution in its kind in terms of length as well as breadth and depth of its numerous provisions in its various parts. The resolution formally established the cease-fire and enumerated Iraq's wide-ranging obligations, including the demand for the total dismantling of its weapons of mass destruction.<sup>(31)</sup> Having suffered heavy casualties and left with an almost ruined country due to heavy, intensive air campaign against its installations, Saddam Hussein's Iraq was hardly in a position to even object to the paralyzing provisions of this unprecedented resolution. Refusal to accept the resolution might have precipitated the removal of the Iraqi regime by the victorious coalition forces - as happened in the course of the third conflict in 2003.<sup>(32)</sup>

Given the circumstances, Iraq undertook to comply with the biting, in fact, humiliating, provisions of resolution 687 and the arrangements it had put in place, inclusive of the program geared towards the elimination of its weapons of mass destruction (WMDs). Iraqi cooperation with international inspectors was generally smooth at the beginning, but soon gave way to foot-dragging; finding all kinds of excuses to hamper

their work and finally reneging on the earlier commitments to destroy its existing and developing WMDs.

### **1-3. The Waiting Period**

Between April 1991 and March 2003 when the third Persian Gulf conflict started, Iraq played a long, drawn-out cat and mouse game with the UN and the Security Council; that is, in specific terms, with resolution 687 and the mechanisms it had envisioned and put in place. As already indicated, the interaction with the UN arms inspectors started with a general sense of cooperation, and was followed in subsequent years with an unmistakable policy of foot-dragging involving intermittent instances of partial cooperation with the inspectors, and periodic suspension, and even total stoppage of all their activities as befitted Iraq and the shifting sands of politics. This pattern of behavior on the part of the Iraqi regime made the relations with Security Council quite rocky.

The initial relatively working attitude was replaced with one of suspicion, gradual increasing intransigence, and effective hindrance, especially after Iraq had managed – with implicit connivance of the US and the Western members of the coalition during the Kuwait crisis – to crush the internal opposition – rebellious Kurds in the north and the disenchanted Shi'ites in the south. The Council, for its part, adopted a number of resolutions dealing essentially with monitoring and verification of Iraqi weapons capabilities, and addressed the immediate needs of vulnerable Iraqi citizens suffering from the crippling sanctions.<sup>(33)</sup> The height of the problem with the Iraqi





intransigence came in October 1998 when Iraq decided to prevent the monitoring teams to conduct any activity.<sup>(34)</sup> Reacting to the Iraqi conduct, the Council adopted resolution 1205 on 5 November 1998 and condemned Iraq for the decision.<sup>(35)</sup> Despite Iraq's subsequent expressed willingness to cooperate fully with the UN, the UN Special Commission decided on 16 December 1998 to withdraw from Iraq. The international inspectors who left Iraq following this decision were absent from Iraq for almost four years until they arrived in Baghdad under the new name UNMOVIC.

During the period of Iraqi non-compliance with its obligations with regard to the elimination of weapons of mass destruction, the American and British forces responded with limited military attacks against certain targets within Iraq. During the same period, the US and UK also kept attacking Iraqi sites on various occasions in both north no-fly zone established by the US, UK and south no-fly zone established by the US, UK, and France.<sup>(36)</sup>

It is interesting to note that the Security Council took no serious measure during almost four years of absence of international inspectors in Iraq. With the gradual erosion of international support for the continuation of support for the sanctions against Iraq, and the growing uncertainty in the US and the UK about the successful conclusion of the inspection process, the United States appeared to have come to the conclusion that the UN's approach towards Iraq was not going to produce the desired results.<sup>(37)</sup> The 9/11 terrorist attacks and the subsequent US invasion of Afghanistan in October 2001

created a whole environment conducive to the grand designs of the Neo-Con administration in Washington. The US took advantage of the fluid situation created by the defeat of the Taliban and brought the situation of Iraq back into international limelight; raising the question of the necessity of destroying the remaining weapons of mass destruction in Iraq.

In early November 2002, following months of intensive negotiations at the UN, the Security Council adopted resolution 1441 unanimously, in which references were made to resolution 687 of 1991 that was the basis of cease-fire in Iraq in 1991.<sup>(38)</sup> Since the sole objective of this resolution, as far as the US and UK were concerned, was to provide a legal basis for future military action against Iraq, resolution 687 was much highlighted in its various provisions. This particular emphasis in the new resolution was meant to imply that since resolution 687 had determined that a cease-fire would be based on the acceptance by Iraq of its obligations, if the inspectors had concluded that Iraq had not fulfilled its obligations, the cease-fire was not in place anymore.

Resolution 1441 deplored in clear terms "the absence, since December 1998, in Iraq of international monitoring, inspection, and verification, as required by relevant resolutions, of weapons of mass destruction and ballistic missile." It decided that "Iraq has been in material breach of its obligations," and further to afford to Iraq, "by this resolution, a final opportunity to comply with its disarmament obligations." The reference to "material breach" was specifically used to prove that Iraq was in violation of resolution 687 and obviously of the cease-fire. In retrospect,



that reference came to play a critical role in the argument employed subsequently by the US to declare that there would be no need for another resolution in the event that Iraq failed to cooperate, once more, in accordance with relevant resolutions, with international inspectors.

Moreover, the reference in the resolution to the fact that Iraq would face “serious consequences” as a result of its continued violation of its obligation, was also used by the US to further its arguments for endorsement of military action against Iraq without further approval of the Council. At the same time, as far as France, Russia and China were concerned, this resolution did not automatically endorse military action against Iraq. That showed the ambiguous nature of this resolution where, on the one hand, it gave Iraq an ultimatum of sorts, and on the other, no date for this ultimatum was specified in the resolution.

## **2. The Third conflict**

Before turning to the third conflict, a brief word is due on how the UN Charter attaches importance to consensus-building, collectivity and multilateralism in dealing with a threat to international peace and security requiring the use of force. The spirit prevailing over the UN Charter is the creation of coordination and broad working consensus among member states in line with the purposes and principles of the Charter. In other words, the Charter on different occasions has upheld the idea of collectivity and consensus-building in dealing with

international problems. For instance, based on the Introduction to the Charter, "armed forces shall not be used, save in the common interest."<sup>(39)</sup> Moreover, Articles 1.1 and 1.4 of the Charter define the purposes of the UN as follows:

Art.1.1: to take effective collective measures for the prevention and removal of the threats to the peace, and for the suppression of acts of aggression; and

Art.1.4: to be a center for harmonizing the actions of nations<sup>(40)</sup>

In light of the provisions of the Charter, as well as the past practice of the Security Council, an analysis of the American approach and conduct prior to the conflict makes it abundantly clear that they were determined to engage in military action against Iraq irrespective of the consensus reached by the Council members in resolution 1441. Affording Iraq a final opportunity to meet its disarmament obligations was the result of a delicate compromise deal reached among the permanent members of the Council. While the US and UK had sought to include the authorization of the use of force in the resolution, Russia, France, and China were not in favor of such a critical provision, at least at that time, insisting instead to defer it to a later - second - resolution.<sup>(41)</sup> President Bush, while welcoming the adoption of resolution 1441, stated: "Members of the Council acted with courage and took a principled stand. The UN has shown the kind of leadership promised by the Charter."<sup>(42)</sup>

On 13 November 2002, Iraq accepted to allow the return of the inspectors.<sup>(43)</sup> Soon afterwards the new inspection teams visited Iraq and immediately started their work. As reported



subsequently, Iraqi cooperation, including the submission, in accordance with resolution 1441, of the declaration on its programs to develop weapons of mass destruction, was generally satisfactory, and the inspectors were free to choose any site they wanted to visit. Iraqi decision to cooperate with the inspectors, in particular to allow them to visit the presidential palaces without any hindrance, was welcomed and encouraged by the inspectors as well as by those members of the Security Council opposed to the American interpretation of resolution 1441. While the US and the UK denounced the Iraqi declarations as "lies," most Council members were prepared to give the inspectors more chance to continue their work.<sup>(44)</sup> Interestingly enough, both UNMOVIC and IAEA refuted the claims of Western intelligence agencies with regard to the presence of WMD in sites identified by the US and the UK.<sup>(45)</sup>

Before the conflict started on 20 March 2003, the inspectors called for more time to complete their work, particularly in the areas related to the missing data on chemical and missile programs. Simultaneously, the US and the UK were pushing the Security Council to adopt a short resolution declaring that Iraq had missed the final opportunity provided for under resolution 1441. Faced with the prospects of the Council acting on the US-UK proposal, France and Russia threatened to veto the proposed resolution. That threat by these two permanent members prompted President Bush to state on March 17th that "the UN has not lived up to its responsibilities, so we will rise to ours". He went on to add that "Saddam Hussein and his sons must leave Iraq within 48 hours. Their

refusal to do so will result in military conflict."<sup>(46)</sup> It goes without saying that the ultimatum issued by the US President had no legal basis in international law, as was equally the case for the use of military force the US was determined to undertake in a few days' time.

The military undertaking against Iraq started on 20 March 2003, resulting in the overthrow of the Saddam's regime in less than three weeks. Over four years later, in late June 2007, the Security Council terminated the mandate of UNMOVIC which was in charge of dismantling Iraq's weapons of mass destruction<sup>(47)</sup> - even if little had been found in the meantime of the so-called WMDs that appeared to have constituted the rationale for the US military action - thus closing another chapter in the history of Iraq's mixed record of cooperation and intransigence with international inspectors.

Since March 2003, the Security Council has passed 20 resolutions on Iraq, ranging from calling for rendering humanitarian assistance to the Iraqi people to welcoming the approval of the Iraqi constitution and supporting the establishment of the new Iraqi government, and to extending the mandate of the United Nations Assistance Mission to Iraq (UNAMI) - which is still active in Iraq.

### **3. The Use of Chemical Weapons During the Iran-Iraq War**

Iraq used chemical weapons against Iranian troops as well as its own citizens in the course of the eight-year war. Iran made public every instance of a chemical attack and even sent the



victims to some European hospitals for treatment. International specialists visited Iran on many occasions and confirmed the use of chemical weapons by Iraq. Hume refers to the findings of a team of experts sent by the Secretary-General to Iran in response to an Iranian request "in which the use of chemical weapons against Iranians is evident."<sup>(48)</sup>

Notwithstanding mounting reports, by the UN teams as well as by other independent sources, on the repeated use of chemical weapons by Iraq against Iranians starting from 1982, it was not until 1986 that the Security Council was in a position to concede referring to the use of these prohibited weapons. The first instance of such a reaction by the Council consisted of only one sentence in resolution 582 adopted on 24 February 1986, which, surprisingly enough, merely noted that "both Iran and Iraq are parties to the 1925 Geneva Convention."<sup>(49)</sup> A month later, on 21 March 1986, the President of the Security Council issued a statement on behalf of the Council and declared that the Council "profoundly concerned by the unanimous conclusion of the specialists that chemical weapons on many occasions have been used by Iraqi forces against Iranian forces, strongly condemns this continued use of chemical weapons."<sup>(50)</sup> The Council's blatantly weak reaction despite conclusive findings and evidence, to the point of even avoiding to name Iraq as the party responsible for the crime and addressing both sides in equal measure, was, once again and in line with the dominant line and policy at the time, reflective of the peculiar superpower politics as well as the prevalence of still pro-Iraqi tilt in and around the Council.

This meek reaction notwithstanding, Iran continued to report the use of chemical weapons by Iraq to the Security Council. The next reaction of the Council came, once again, in the form of another presidential statement on 14 May 1987 that stated: "Deeply dismayed by the unanimous conclusions of the specialists that there has been repeated use of chemical weapons against Iranian forces by Iraqi forces, that civilians in Iran have been injured by chemical weapons, and that Iraqi military personnel have sustained injuries from chemical warfare agents."<sup>(51)</sup>

Continued and extensive use of chemical weapons by Iraq in the course of Iraqi offensives in the Spring of 1988, and Iranian protests to the UN accordingly, led to the Security Council's adoption of resolution 612 in early May - almost two months before the Iranian acceptance of resolution 598.<sup>(52)</sup> Resolution 612 was the first resolution of the Council on the subject. While condemning continued use of chemical weapons, it went only so far as to expect both sides to refrain from the future use of chemical weapons, and failed, as in previous cases, to take a firm position on the Iraqi practice, much less adopt effective measures needed to deal with such a blatant case of violation of international humanitarian law. The very fact that despite repeated confirmed reports of the specialists on the use of chemical weapons by Iraq, the resolution chose to treat both countries on equal footing was, as in the past, reflective of the Council's actual partiality in favor of the perpetrator.

The last reaction of the Council on the use of chemical weapons came after the cease-fire between Iran and Iraq. On 26





August 1998, resolution 620 was adopted in which the Council expressed its deep dismay by the specialists' conclusion that "there had been continued use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq and that such use against Iranians had become more intense and frequent."<sup>(53)</sup> The Council's somewhat objective wording in the last resolution in recognizing the Iraqi practice, after so many years and instances of repeated use that had already taken its heavy, tragic, and even decisive toll on the Iranian forces and civilians, could not but be considered by Iranians as just "too little too late." The Council's years-old failure in this regard was precisely similar to its much bigger failure in the beginning of the conflict; an unmistakably dominant pro-Iraq position in the Council held sway for the entire period of the 8-year conflict.

#### 4. A Comparative Study

A comparative study of the way the Security Council has dealt with the three military conflicts in the Persian Gulf since 1980 reveals interesting points, as illustrated in the following three Tables. Table 1 shows how the Council reacted at the beginning of each conflict. At the start of the Iran-Iraq conflict when the Iraqi forces had already advanced into the Iranian territory and were well positioned inside the country in five border provinces, the Council was almost absent from the scene for a few days. And once the Council found it inevitable to address the situation, it adopted a very weak and ineffective resolution – under Chapter VI of the Charter - and even failed to call for a

cease-fire and immediate withdrawal of foreign forces from the occupied territories. However, in a sharp contrast and a diametrically-opposed conduct, a few hours after the Iraqi invasion of Kuwait, the Council held a late night session and adopted a very strong resolution, under Chapter VII of the Charter, calling for the immediate withdrawal of Iraqi forces from Kuwait. Furthermore, while at the beginning of the Iraqi invasion of Iran, no serious follow up measure was envisaged, at the beginning of the Iraq's invasion of Kuwait, the Council adopted comprehensive economic sanctions against Iraq only four days after Iraq had invaded Kuwait. In the case of the third Persian Gulf conflict – the American invasion of Iraq - the Security Council was in the middle of political-diplomatic discussions on how to deal with the crisis when the American and British forces started the military attacks against Baghdad.

Table 2 compares resolutions 678 and 1441 which were considered as the basis for the use of force in the second and the third Persian Gulf conflicts. While in both instances the resolutions were adopted under Chapter VII of the Charter, resolution 678 contained a clear deadline for Iraq to meet its obligations, whereas in resolution 1441 no specific deadline was envisioned. Moreover, while resolution 678 implicitly gave the authorization for the use of force, resolution 1441 only included vague threats against Iraq without containing any explicit authorization as such.

Table 3 undertakes a comparison between the ultimatums issued to Iraq before the beginning of the second and the third conflicts. While the ultimatum issued in resolution 678



(November 1990) was based on the lack of implementation of relevant Security Council resolutions, the ultimatum issued on 17 March 2003 by President Bush was related to the US judgment on Iraq's refusal to disarm its purported banned weapons. Furthermore, while the former ultimatum had a direct relationship with the demands of the Council; that is, the implementation of the Council's previous resolutions, the latter ultimatum issued unilaterally by the US President on the exodus of Saddam Hussein and his sons from Iraq had no relations whatsoever to the Council's demands.

**Table 1- Security Council's reaction at the beginning of each conflict**

Conflict	S.C. Reaction	Basis for S.C. decision (Chapter 6 or 7)	Call for the cease-fire	Call for the withdrawal	Resolution's language and tone	Follow up action
First conflict (resolution 479)	Late	Chapter 6	No	No	Weak	None
Second conflict (resolution 660)	Immediate	Chapter 7	Yes	Yes	Very strong	Very serious (economic sanctions)
Third conflict (no resolution)	---	---	---	---	---	---

**Table 2- Comparison between the Council's resolutions before the beginning of the second and third conflicts**

S.C. Resolution	Basis for S.C. decision (Chapter 6 or 7)	Deadline	Authorization of the use of force	Voting pattern
Resolution 678	Chapter 7	Yes	Yes	12-2-1
Resolution 1441	Chapter 7	No	No	Unanimous

**Table 3- Comparison between ultimatums issued before the beginning of the second and third conflicts**

Document	Basis for ultimatum	relation with S.C. demands
Resolution 678	Lack of implementation of resolutions	Yes
Pres. Bush's statement	Lack of Iraq's disarmament (as judged by the US Government)	No



## Conclusion

This study concludes that the Security Council has had three different and notably imbalanced reactions towards three armed conflicts in the Persian Gulf area between 1980 and 2003. Bearing in mind the major and significant political developments and events on a global scale between 1980 and 2003, it can be concluded, in very general terms, that had the UN Security Council acted swiftly – and in accordance with the letter and spirit of the Charter - when the Iraqi invasion of Iran took place in September 1980 -- as it did immediately after the Iraqi invasion of Kuwait -- the world would have most probably been spared the suffering and destruction of the 8-year war, invasion of Kuwait, and all that came to pass since as a result of the existence and policies of the Saddam Hussein's aggressive, ambitious regime. Malone reflects on this point vividly. He refers to "...several critical moments during the Iran-Iraq war, the significance of which was overlooked at the time, beginning with the Security Council's inadequate, indeed misguided, reaction to Iraq's attack on Iran in 1980, that doubtless contributed to Saddam Hussein's contempt for the UN — with fateful consequences ten years later."<sup>(54)</sup>

Even if Iraq's invasion of Iran did not have the blessings of certain permanent members of the Council - as charged by Iran then and still to some degree – and considering the way the Council reacted to the Iraqi aggression and as Urquhart observes the members of the Security Council were waiting for a quick Iraqi victory, it can be confidently argued that the permanent



members just failed to shoulder their grave responsibilities under the Charter. Therefore, the message afforded to Iraq – whether inadvertently or otherwise - was that it could continue its aggressive, expansionist posture and policy with a sense of impunity. And that is exactly what happened in reality - as was seen in the preceding pages with regard to Iraq's repeated use of chemical weapons during the conflict with Iran. The Security Council, under the influence of the overtly pro-Iraq bloc, just stood by and watched Iraq's chemical carnage against Iran for so many years and until after the conflict had come to an end. The same was true when Iraq was given, before August 1990, an impression by the US that a military move against Kuwait would be deemed an "intra-Arab matter" and not of particular interest or consequence to the US. Moreover, bearing in mind how the Council had dealt with the previous case of military invasion of a neighboring country – in 1980 - Saddam Hussein's Iraq was confident – in August 1990 - that its invasion of Kuwait would also receive similar treatment and would go unheeded, much less punished.

Looking at the Council's actual conduct in the course of the three conflicts discussed in this paper, one can conclude that as far as the first and the third conflicts were concerned, the Council was not prepared to live up to its Charter-based responsibilities, although the motivations of its members, particularly the permanent members, were different in each conflict. In the first conflict, there appeared to be an implicit consensus among the permanent members to turn a blind eye to Iraq's invasion in its initial stage hoping perhaps that it could

finish off the new revolutionary regime in Iran. Once that stage had passed and the Iranian resistance had checked the invasion and brought about a stalemate, the implicit consensus turned into allowing a war of attrition that would check the Iranian revolution and tame its fervor and would as well - simultaneously - contain Iraq's regional ambitions. The unwritten agreement among Council's big five changed after 1982 into preventing an Iranian victory and an Iraqi defeat, and preferably, a war of attrition that would bleed both of them.

As for the third conflict, in 2003, contrary to the situation back in the 1980s, the division among the permanent members was out in the open – not implicit – and then on the interpretation of the provisions of resolution 1441, and specifically, whether to use force against Iraq. Ignoring the objections of the other three permanent members which were right from the viewpoint of the explicit language of the resolution at issue, the US and the UK resorted to force without a clear authorization from the Security Council. And as for the second conflict, it should be said that the reaction and conduct of the Council was, more or less, in line with the collective security system, as provided for in the U.N. Charter. It needs to be emphasized, however, that in 1990 the Berlin Wall had already crumbled and the Cold War was practically in its deathbed, allowing a long-paralyzed Security Council to start shouldering its responsibilities under the Charter – a situation that was far beyond any imagination a decade earlier when Iraq mocked the whole international community when it invaded Iran and went scot free.



As discussed in the paper, blatant lack of resolve on the part of the Security Council towards Iraq's repeated use of chemical weapons was, as a matter of fact, the most manifest expression of the strong pro-Iraq tilt in the Council's approach and conduct; the outward expression of alternating implicit-explicit consensus among the permanent members on how to punish the revolutionary Iran and reward a friendly Iraq. Iraq – understandably - had considered the Council's benign approach as a green light to continue its aggressive, even criminal policies, including through resort to chemical weapons. Jan Eliasson's insight on this is illuminating. The Swedish diplomat who had been directly and closely involved in political initiatives and processes as early as 1980 and up until 1988 to end the Iran-Iraq conflict, has expressed himself in the following words in an interview with David Malone in 2005 - "...reacting weakly and meekly to the use of chemical weapons may have been the single most objectionable feature of the international community's response to Saddam Hussein's aggression and foreshadowed his further depredations through chemical weapons in 1988."<sup>(55)</sup> The threat of the use of chemical weapons by Iraq during the second and third Persian Gulf conflicts appeared to be quite alive although such a resort was apparently not reported.

And as a final reflection, it could be surmised that the U.S. unilateralist approach in the post-2001 period, and particularly its military action against Iraq in 2003, without a clear authorization from the Security Council, badly damaged the credibility of the United Nations and multilateralism proper. Furthermore, the third conflict sharply divided the international

community, the repercussions of which seem, among others, to have encouraged the current US president to change the general trend of the US foreign policy, in particular in its relations with the UN and multilateral processes in general. Cognizant of the fact that unilateralism has not only tarnished the image of the US worldwide, but also has not served American interests, hence the change in gear and the new administration's explicit emphasis on multilateralism and closer working relations with allies in addressing and dealing with international issues on the agenda of the Security Council.



## Notes

1. The Charter of the United Nations, Article 41.
2. Ibid, Article 42.
3. Ibid, Article 43.
4. Ibid, Article 51.
5. David M. Malone, *The International Struggle Over Iraq, Politics in the UN Security Council, 1980-2005*, London: Oxford University Press, 2006, p. 27.
6. Cameron R. Hume, *The United Nations, Iran and Iraq, How Peacekeeping Changed*, Bloomington; Indiana University Press, 1994, p.37.
7. Ibid., pp. 37-38.
8. Ibid., p.38.
9. Stephen R. Grummon, 1982, cited in Malone, Op. Cit., p. 27.
10. Ibid., p.27.
11. The Official Records of the Security Council, Presidential Statement, 23 September 1980.
12. Ibid., Resolution 479, 28 September 1980.
13. Brian Urquhart, *A Life in Peace and War*, New York: Harper and Row, 1987, p. 324.
14. Ibid, p. 325.
15. Hume, Op. Cit., p. 40.
16. Malone, Op. Cit., p. 28.
17. Ibid., p. 29.
18. Hume, Op. Cit., pp. 43-45.
19. Ibid., p. 45.

20. The Official Records of the Security Council, Resolution 514, 12 July 1982.
21. Hume, *Op. Cit.*, p. 71.
22. The Official Records of the Security Council, Resolution 598, 20 July 1987.
23. Hume, *Op. Cit.*, p. 102.
24. The Charter of the United Nations, Article 2.3.
25. *Ibid.*, Article 2.4.
26. Malone, *Op. Cit.*, p. 57.
27. The Official Records of the Security Council, Resolution 660, 2 August 1990.
28. *Ibid.*, Resolution 661, 6 August 1990.
29. Hume, *Op. Cit.*, p. 236.
30. The Official Records of the Security Council, Resolution 678, 29 November 1990.
31. *Ibid.*, Resolution 687, 3 April 1991.
32. The rather confounding development at the end of the military operations of the coalition forces in chasing the Iraqi forces out of Kuwait occurred while they were already in southern Iraq, where a Shi'ite uprising was emerging against Baghdad. As reported then in the US press, General Schwarzkopf believed he needed a few more days to finish off the Iraqi regime in Baghdad, he was advised in clear terms by the US President against continuing the military campaign. As analyzed then, and corroborated in subsequent analyses thereafter, the US decision was made out of the apprehension that the collapse of the Saddam regime under the circumstances would all but play in Iran's hands and change the balance of power in the area. The US policy of "Dual Containment" of both Iraq and Iran, contemplated under the Bush administration and adopted and put in place under the Clinton administration, formalized that perception in early 1991.
33. Malone, *Op. Cit.*, pp. 326-333.
34. Letter dated 31 October 1998 from the Deputy Executive Chairman of the Special Commission addressed to the President of the Security Council, Official Records of the Security Council, S/1998/1023.



35. The Official Records of the Security Council, Resolution 1205, 5 November 1998.
36. Malone, *Op. Cit.*, p. 328.
37. *Ibid.*, p. 185.
38. The Official Records of the Security Council, Resolution 1441, 8 November 2002.
39. The Charter of the United Nations, Introduction.
40. Malone, *Op. Cit.*, p. 194.
41. The Charter of the United Nations, Article 1.
42. Bush, George W., the White House, Office of the Press Secretary, 8 November 2002.
43. Malone, *Op. Cit.*, p. 195.
44. *Ibid.*, p. 196.
45. Hans Blix, 2004, cited in Malone, *Ibid.*, p. 198.
46. Bush, George W., The White House, Office of the Press Secretary, 17 March 2003.
47. The Official Records of the Security Council, Resolution 1762, 29 June 2007.
48. Hume, *Op. Cit.*, p. 103.
49. The Official Records of the Security Council, Resolution 582, 24 February 1986.
50. *Ibid.*, Presidential Statement, 21 March 1986.
51. *Ibid.*, 14 May 1987.
52. *Ibid.*, Resolution 612, 9 May 1988.
53. *Ibid.*, Resolution 620, 26 August 1988.
54. Malone, *Op. Cit.*, pp. 22-23.
55. Malone, *Op. Cit.*, p. 32.