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Comments

THE IRAN-IRAQ WAR: UNITED NATIONS RESOLUTION OF ARMED CONFLICT

I. INTRODUCTION

For more than eight years, the Islamic Republic of Iran (Iran) and the Republic of Iraq (Iraq) waged a bitter war that included the "war of the cities," the mistreatment of prisoners, attacks on neutral shipping in the Persian Gulf, the use of chemical weapons, and the use of "human wave" attacks. Until a cease-fire agreement took effect on August 20, 1988, repeated efforts by the United Nations and regional organizations had failed to halt the fighting. Even now, although negotiations continue, a lasting settlement agreement between Iran and Iraq eludes the world community.

This Comment focuses on the attempts by the United Nations Security Council (Security Council) and Secretaries-General to achieve a peaceful resolution of the Iran-Iraq war. The Comment begins by discussing the bases for the dispute as well as each nation's account of

3. For a discussion of the mistreatment of prisoners, see infra notes 145-46 and accompanying text.
4. For a discussion of the attacks on neutral shipping, see infra notes 127-38 and accompanying text.
6. N.Y. Times, July 27, 1988, at A24, col. 1. Iran sent thousands of untrained men to "overwhelm" Iraqi guns. Id. In addition, teenage boys were sent to clear minefields, equipped only with a small metal key and Ayatollah Khomeini's special permission to enter Heaven. Id.
7. L.A. Times, Aug. 20, 1988, § 1, at 1, col. 4.
8. For a discussion of United Nations attempts to end the war, see infra notes 50-256 and accompanying text.
10. For a discussion of the bases of the Iran-Iraq conflict, see infra notes 28-49 and accompanying text.
how the war began. After analyzing the settlement efforts of the United Nations in chronological order, the Comment evaluates the overall performance of the United Nations during the Iran-Iraq war. Using the Iran-Iraq conflict as a model, the Comment then examines the roles and likely effectiveness of the Security Council and Secretary-General in causing United Nations members to peacefully resolve armed conflicts and comply with the Charter of the United Nations (Charter). The Comment concludes that although the United Nations can achieve peaceful resolutions to armed conflicts, as it did in the case of Iran and Iraq, international peace and security are best maintained through United Nations preventive action—United Nations involvement before the disputants take up arms.

II. ORIGINS OF WAR

A. How the War Began

Like many aspects of the Iran-Iraq war, how the war began is a matter of dispute between the parties. The Iraqis assert that the war began with an Iranian artillery attack on the Iraqi border town of Khanaqin on September 4, 1980. The Iraqis point to repeated hostile actions by Iran between February 1979 and September 1980 and note further

11. For a discussion of the Iranian and Iraqi accounts of how the war began, see infra notes 16-27 and accompanying text.
12. For a discussion of United Nations settlement efforts during the Iran-Iraq war, see infra notes 50-256 and accompanying text.
13. For an evaluation of the overall effectiveness of United Nations settlement efforts during the Iran-Iraq war, see infra notes 257-324 and accompanying text.
14. For a discussion of the prospects for future United Nations attempts to resolve armed conflicts and the roles of the Security Council and Secretary-General in those attempts, see infra notes 325-71 and accompanying text.
15. For a discussion of the value of United Nations preventive action, see infra notes 372-88 and accompanying text.
17. Mr. Al-Qaysi, an Iraqi delegate to the United Nations General Assembly, summarized the Iranian transgressions as follows:

[There were] 249 cases of incursion in Iraqi air space by the Iranian air force; 251 cases of firing on and artillery bombardment of border posts, civilian centres, economic installations, civilian aircraft and merchant shipping in Shatt al Arab; 293 Iraqi diplomatic notes substantiating the aforementioned cases to which no reply was received; the concentrated bombardment by 175 mm. artillery daily and for long periods at a time, from 4 to 17 September, of towns, villages, oil installations, merchant ships in Shatt al Arab and shipping lanes, as well as aerial bombardment of some of those targets, notably towns; Iraqi diplomatic notes delivered to the Iranian Embassy in Baghdad on 7, 8 and 11 September 1980, calling upon Iran to abide by its treaty obligations towards Iraq in compliance with international law, to which no reply was received; the escalation of the military operations by the Iranian military forces against the totality of Iraq’s territory throughout the period from 18 to
that during this time, the Khomeini regime rejected three "major over-
tures" by Iraq to reduce tensions between the two countries.\textsuperscript{18} As a
result, the Iraqis conclude that when they finally attacked Iran on Sep-
tember 22, 1980, they were not violating the Charter prohibition against
the aggressive use of armed force,\textsuperscript{19} but were simply exercising "pre-
ventive self-defence" to defend their people and territories.\textsuperscript{20}

Not surprisingly, Iran strongly disagrees with Iraq's version of the
commencement of the war. Iran asserts that the war began with the at-
tack by Iraqi fighter-bombers on ten Iranian airfields on September 22,
1980.\textsuperscript{21} Iran argues that Iraq chose to escalate the dispute between the
two countries and invade after a host of "criminal actions against the
newly established Islamic Republic . . . failed to slow down the pace of
[the Iranian] revolution . . . ."\textsuperscript{22} Furthermore, Iran cites the extensive

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22 September, bringing the situation to that of total war; the issuance
by the Joint Command of the Army of the Islamic Republic of Iran of
eight military communiques during the period from 18 to 21 Septem-
ber, in the first of which it was stated that the Iranian forces had de-
stroyed oil installations inside Iraq, in the third of which an admission
was made that the Iranian air force had been brought into the opera-
tions, and in the seventh of which general mobilization in Iran was
declared.

18. Hamdoon, \textit{Iraq Did Not Enter Willingly into the Long Gulf War with Iran},
19. \textit{U.N. Charter} art. 2, para.4. Article 2(4) provides: "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, or in any other man-
ner inconsistent with the Purposes of the United Nations." \textit{Id.}
(1980) ("Iraq's objective is only to gain Iran's irrevocable recognition of Iraq's
rights in its lands and sovereignty over its national waters."); 35 U.N. SCOR
expansionist territorial designs against Iran."); 35 U.N. SCOR Supp. (July-Sept.
waging war on Iran or of extending the scope of its dispute with it beyond the
limits of defending its sovereignty and legitimate rights."); N.Y. Times, Sept. 25,
1980, at A16, col. 6 (Iraq began full hostilities only after Iran stated that safety of
ships in Strait of Hormuz could not be guaranteed and that no cargo vessels
would be allowed to reach Iraq). Article 51 of the Charter permits a state which is
the victim of an armed attack to use armed force in self-defense, at least "until
the Security Council has taken the measures necessary to maintain international

(letter from then Iranian President Bani-Sadr to then Secretary-General
Waldheim); N.Y. Times, May 25, 1982, at A6, col. 3.
Mr. Moussavi, representative for Iran in the General Assembly, recited the
"criminal actions" of Iraq before its invasion of Iran:
First, the harassment of thousands of Iranians living in Iraq and their
forced deportation from their country of residence; some 50,000 Iraqis
and Iranians were accused of being of Iranian origin and expelled in
the most inhuman manner and many of them met their deaths in the
movement of Iraqi troops along the common border prior to the invasion as evidence of the "premeditated character of the Iraqi design." Thus, Iran concludes that it was faced with an aggressive force inside its territory and was authorized by Article 51 of the Charter to act in self-defense to secure its sovereignty and protect its vital oil interests.

Although periodic clashes began along the Iran-Iraq border in January 1980, Iraq is generally considered to have begun the war with its air attacks on September 22, 1980. Nevertheless, it is beyond the wilderness of the Iran-Iraq border areas, while the properties of some 115,000 Iranians residing in Iraq were forcibly seized. Secondly, Iranian Moslems were prevented from making pilgrimages to holy shrines in Iraq. Thirdly, the ill-treatment, torture and murder of prominent clergy and religious revolutionaries in Iraq, including the martyrdom of Ayatollah Mohammed Bagher Sadr and his learned revolutionary sister, which was a great catastrophe for the world of Islam. Fourthly, the raiding of Iranian schools in Iraq, imprisonment of the teachers and assault against and torture of their families; there are no traces of many such teachers in spite of repeated contacts with the Red Cross. Fifthly, the granting of refuge to a large number of Iranian army personnel who had participated in the slaughter of the Iranian people under the Shah’s regime and the organization of many political and military groups for terrorist attacks and sabotage against the newborn Islamic Republic of Iran. Sixthly, the transmission of radio programmes in Persian, Kurdish, Turkish, Turkoman, Armenian and Baluchi for the evil purpose of provoking tribal, religious and racial trouble inside Iran, mainly on the basis of chauvinistic aspirations similar to the propaganda of the Nazi predecessors of the Iraqi regime. Seventhly, the issuing of identity cards for Arabic-speaking nationals of Iran in the province of Khuzistan; those cards bear the signature of the Governor of Basra in Iraq. Eighthly, the establishment of the so-called Khuzistan Liberation Bureau for the purpose of provoking Arabic-speaking Iranian nationals to speak out against the Islamic Republic of Iran; the same people were later among the very first victims of the all-out Iraqi invasion of Iran. Finally, the perpetration of assassinations and a variety of sabotage actions inside Iran, including the blowing up of oil pipelines; altogether Iraq had committed some 425 acts of aggression against Iranian territory before the general invasion of Iran in September 1980.

Id. at 548-49.


24. U.N. Charter art. 51 ("Nothing in the present Charter shall impair the inherent right of individual . . . self-defense if an armed attack occurs against a Member of the United Nations . . . .").


scope of this Comment to undertake an in-depth consideration of responsibility for the start of the war. The issue has been raised to provide historical perspective to the United Nations efforts at bringing the war to a peaceful conclusion and to help illustrate the depth of the dispute between Iran and Iraq.

B. Basis of the Dispute

At least ostensibly, Iran and Iraq went to war over the three issues cited by Iraqi President Hussein as the reasons for the Iraqi attack of September 22, 1980: (1) the boundary line in the Shatt al Arab waterway, the combined estuary of the Tigris and the Euphrates Rivers that constitutes part of the Iran-Iraq frontier at the head of the Persian Gulf; (2) the boundary line in the area of Musian to the north of the Shatt al Arab waterway; and (3) sovereignty over Abu Musa, Greater Tunb, and Lesser Tunb, three islands that guard the entrance to the Strait of Hormuz at the southern end of the Persian Gulf. The first two of these issues had apparently been resolved by the parties only five years earlier.

On June 13, 1975, Iran and Iraq signed the Treaty Concerning the State Frontier and Neighbourly Relations between Iran and Iraq (Treaty) along with three appended Protocols. The Treaty essentially adopted the land boundary north of the Shatt al Arab waterway which had existed in 1913. This resulted in Iran gaining about 200 square miles of border area from Iraq. In addition, the Treaty shifted the

A6, col. 3. The consensus within the Carter Administration was that Iraq was responsible for starting the war. N.Y. Times, Sept. 23, 1980, at A1, col. 5. Professor Eugene Rostow may have summarized the views of most observers: "The attack by Iraq on Iran had absolutely no conceivable justification. . . . Iran was weak, and Iraq simply thought it was a good time to grab the oil." Armed Forces, Peaceful Settlement, and the United Nations Charter: Are There Alternatives to "A New International Anarchy?", 1983 AM. SOC'Y INT'L L. PROC. 31, 36 [hereinafter Armed Forces].

32. Treaty Concerning the State Frontier and Neighbourly Relations between Iran and Iraq, June 13, 1975, Iran-Iraq, 1017 U.N.T.S. 136 [hereinafter Treaty]. The Treaty grew out of two meetings between the late Shah of Iran, Mohammed Riza Pahlavi, and then Vice-President Hussein of the Iraqi Revolutionary Command Council. Amin, supra note 26, at 176-77. These meetings, which took place at a summit of the Organization of Petroleum Exporting Countries (OPEC) in Algiers in March 1975, resulted in a joint communique setting forth the principles which were ultimately incorporated into the Treaty. Id.

33. Treaty, supra note 32, art. 1, at 136; Treaty, Protocol Concerning the Redemarcation of the Land Frontier Between Iran and Iraq, supra note 32, at 140-89; see generally Amin, supra note 26, at 169-81 (history of border dispute).
34. Amin, supra note 26, at 178.
border by using the "thalweg" line to define the river frontier. This also benefited Iran, since the border was moved from the Iranian side of the Shatt al Arab to the middle of the waterway. Finally, the Treaty obligated both parties to exercise strict control over their common boundaries so that "any infiltration of a subversive nature from any source" would be prevented. This provision was particularly helpful to Iraq because it forced Iran to discontinue aid to Iraq's Kurdish rebels, who were then revolting against the central government in Baghdad.

On September 17, 1980, after the Treaty had been in effect for more than five years, Iraqi President Hussein declared it "null and void," alleging persistent violations of the Treaty's provisions following the Khomeini regime's takeover of power in February 1979. Iraq contended that since the Treaty was no longer effective, the Iran-Iraq border reverted to its location prior to the signing of the Treaty. Thus, Iraq proclaimed sovereignty over the entire Shatt al Arab as well as over the area of land Musian to the north of the waterway.

35. Treaty, supra note 32, art. 2, at 136; Treaty, Protocol Concerning the Delimitation of the River Frontier between Iran and Iraq, supra note 32, at 138-40. The thalweg line is the median line of the channel navigable when the water is at its lowest point. Amin, supra note 26, at 177.


38. N.Y. Times, Sept. 18, 1980, at A8, col. 1. The ten-year-old Kurdish insurrection collapsed only a month after the Treaty became effective. Id.

39. Id. Iraq argued that Iran had abrogated the Treaty by taking military action against Iraqi targets. Hamdoon, supra note 18, at A26, col. 4. In addition, Iraq contended that Iran had "never ceased to harm good neighbourly relations between the two countries" by failing to observe the strict respect for territorial integrity called for in article 5 of the Treaty as well as by failing to put an end to subversive infiltrations as required by article 8. 35 U.N. SCOR Supp. (July-Sept. 1980) at 114, U.N. Doc. S/14191 (1980). In fact, Iraq viewed Iran as having actually aided a subversive infiltration of Iraq by offering refuge to opponents of the Baghdad regime and thereby permitting them to use Iran as a base for their actions against the security of Iraq. Id.

40. 35 U.N. SCOR Supp. (July-Sept. 1980) at 114, U.N. Doc. S/14191 (1980). Iraq's conclusion that the Iranian violations of the Treaty rendered it void was based on article 4 of the Treaty. Article 4 provided in pertinent part that the provisions of the Treaty "shall constitute the indivisible elements of an over-all settlement. Accordingly, a breach of any of the components of this over-all settlement shall clearly be incompatible with the spirit of the [joint communiqué signed by the Shah and then Vice-President Hussein]." Treaty, supra note 32, art. 4, at 137.


42. N.Y. Times, Sept. 20, 1980, at A5, col. 1. Declaring the Treaty null and void was the only "legitimate" way for Iraq to reclaim the border area which had gone to Iran in the Treaty. Iraq also suggested that the Treaty itself required Iran to turn over the border land to the north of the Shatt al Arab to Iraq. 35 U.N. SCOR Supp. (July-Sept. 1980) at 113, U.N. Doc. S/14191 (1980); N.Y. Times, Sept. 20, 1980, at A5, col. 1. As Iran pointed out, however, the Treaty does not appear to include any such provision. Id. Moreover, Iraq's previous
Iran, on the other hand, took the position that the Treaty and its three appended Protocols were still valid and binding.\textsuperscript{43} Iran pointed to article 5 of the Treaty,\textsuperscript{44} under which the land and water frontiers of the parties were “inviolable, permanent and final.”\textsuperscript{45} In addition, Iran noted that even if Iraq had difficulty with the interpretation or application of the Treaty, Iraq should have followed the procedures for the settlement of disputes specified in article 6.\textsuperscript{46} Thus, the border between Iran and Iraq, both on land and at the Shatt al Arab waterway, was a point of contention between the two nations and, at least initially, a primary reason for the war.

actions undercut its own claim. First, Iraq did not demand the territory while the Shah was in power. \textit{Id}. Second, in early 1979, Iraq demanded a voluntary amendment to the Treaty on the ground that it was unfair. Amin, \textit{supra} note 26, at 178. By demanding an amendment, Iraq tacitly conceded that the Treaty did not require Iran to turn over land to Iraq. Thus, while Iraq’s dissatisfaction with the 1975 borders was understandable, particularly because Iraq effectively bargained away a piece of its territory in exchange for the Shah’s promise to stop meddling in Iraqi internal affairs (the Kurdish insurrection), the Treaty gave Iraq no right to regain this territory. \textit{See id.} at 178-79.

\textsuperscript{43} 35 U.N. \textit{SCOR} Supp. (Oct.-Sept. 1980) at 36, U.N. Doc. S/14249 (1980). Iran considered the Treaty to be binding even if the Iraqi claims of Iranian violations were true. \textit{Id}. Iran took care to stress, however, that it was Iran which had violated the Treaty by infiltrating agents and armed groups into several Iranian provinces for the purpose of assisting the counterrevolution against the Khomeini regime. \textit{Id}.

\textsuperscript{44} \textit{Id}.

\textsuperscript{45} \textit{Id}.


1. In the event of a dispute regarding the interpretation or implementation of this Treaty, the three Protocols or the annexes thereto, any solution to such a dispute shall strictly respect the course of the Iraqi-Iranian frontier referred to in articles 1 and 2 above and shall take into account the need to maintain security on the Iraqi-Iranian frontier in accordance with article 3 above.

2. Such disputes shall be resolved in the first instance by the High Contracting Parties by means of direct bilateral negotiations to be held within two months after the date on which one of the Parties so requested.

3. If no agreement is reached, the High Contracting Parties shall have recourse, within a three-month period, to the good offices of a friendly third State.

4. Should one of the two Parties refuse to have recourse to the good offices or should the good offices procedure fail, the dispute shall be settled by arbitration within a period of not more than one month after the date of such refusal or failure.

\textit{Treaty, \textit{supra} note 32, art. 6, at 137 (footnotes omitted).}

Iran responded to the Iranian position by arguing that articles 4 and 6 are mutually exclusive in that article 6 can only operate when there has been no violation of article 4. 36 U.N. \textit{SCOR} Supp. (Jan.-Mar. 1981) at 64, U.N. Doc. S/14401 (1981). Thus, article 6 would apply only when the parties disagreed on the interpretation or application of technical details of the Treaty provisions. \textit{Id}. From the Iraqi point of view, any other construction of articles 4 and 6 makes them contradictory and impossible to apply. \textit{Id}.
A less important, but initial source of conflict between Iran and Iraq involved the sovereignty over Abu Musa, Greater Tunb and Lesser Tunb, the three islands strategically located at the mouth of the Persian Gulf. Iran argued that its continual exercise of sovereignty over the islands had been interrupted only by the forceful occupation of the "British colonial Power," and that after the British contingent had departed from the Persian Gulf in 1971, Iran reasserted sovereignty over the islands. Iraq, however, argued that Iran had illegally seized the islands from the United Arab Emirates in 1971. Thus, while Iran was in one sense fighting on behalf of the United Arab Emirates, sovereignty over the islands was nevertheless one basis for the Iran-Iraq conflict, at least in the early stages of the war.

The task of the United Nations would have been difficult enough had the border dispute and question of sovereignty over the islands remained the sole issues of the Iran-Iraq war. Review of United Nations settlement efforts makes clear, however, that changing military fortunes, new demands by the parties, actions by the United Nations itself, and a host of other factors combined to complicate further an already daunting problem.

III. UNITED NATIONS PEACE INITIATIVES DURING THE IRAN-IRAQ WAR

The conflict between Iran and Iraq, which Secretary-General Kurt Waldheim accurately characterized as "not an incident," but "war," prompted several different peace initiatives by the United Nations within a week of the Iraqi air attack of September 22, 1980. On the day of the attack, the Secretary-General promptly offered his good offices to help end the conflict. On September 23, 1980, the Security Council, by

48. 35 U.N. SCOR Supp. (Oct.-Dec. 1980) at 89, U.N. Doc. S/14274 (1980). Iran noted that a number of existing maps showed that Abu Musa, Greater Tunb and Lesser Tunb were always an integral part of Iran. Id.
presidential declaration,\textsuperscript{55} appealed to Iran and Iraq to "desist from all armed activity . . . and to settle their dispute by peaceful means."\textsuperscript{54} As expected by most delegates, however, the declaration and offer of good offices were not strong enough to quell the fighting.\textsuperscript{55}

On September 28, 1980, the Security Council adopted Resolution 479.\textsuperscript{56} Although obviously stronger in form than the declaration, it was not much stronger in substance. The resolution simply supported the Secretary-General's offer of his good offices and called upon Iran and

\begin{flushleft}
Hammarskjold and U Thant: The Evolution of Their Office, 7 Case W. Res. J. Int'l L. 36, 52 (1974). Such assistance is provided with the consent, or at the request, of the parties. \textit{Id.} Technically, when the Secretary-General not only facilitates communications, but actively assists the disputants in reaching a settlement, "good offices" evolves into mediation. \textit{Draft General Treaty on the Peaceful Settlement of International Disputes: A Proposal and Report,} 20 Int'l L. Rev. 261, 271 (1986). In practice, however, "there is little distinction between good offices and mediation, and often the two functions are exercised together." \textit{Id.} at 272. For purposes of this Comment, the term "good offices" includes mediation.

\textsuperscript{53} A presidential declaration is the weakest form of action the Security Council can take. N.Y. Times, Nov. 6, 1980, at A6, col. 3. A declaration takes the form of a statement by the President of the Security Council on behalf of all its members, but lacks the strength of a formal resolution which is voted upon in open debate. \textit{Id.}


Members of the Council are deeply concerned that this conflict could prove increasingly serious and could pose a grave threat to international peace and security.

The members of the Council welcome and fully support the appeal of the Secretary-General, addressed to both parties on 22 September 1980, as well as the offer that he has made of his good offices to resolve the present conflict.

The members of the Council have asked me to appeal, on their behalf, to the Governments of Iran and Iraq, as a first step towards a solution of the conflict, to desist from all armed activity and all acts that may worsen the present dangerous situation and to settle their dispute by peaceful means.

\textit{Id.}

\textsuperscript{55} N.Y. Times, Sept. 24, 1980, at A12, col. 1. Diplomats noted that stronger action by the Security Council depended primarily on two factors: United States and Soviet Union agreement that the war should end, and Iran and Iraq willingness to stop fighting. \textit{Id.} Neither factor was to be easily achieved. Already, the presidential declaration had been delayed for five hours by Soviet resistance. \textit{Id.} The Soviets were viewed as either delaying on behalf of Iraq, which had not yet consolidated its military gains, or as attempting to profit from continued chaos in the region. \textit{Id.}

\textsuperscript{56} S.C. Res. 479, 35 U.N. SCOR Supp. (July-Sept. 1980) at 23, U.N. Doc. S/RES 479 (1980). The resolution was delayed for several days because Iraq and Pakistan had successfully argued that a peace mission organized by the Islamic conference should be given an opportunity to work without interference. N.Y. Times, Sept. 28, 1980, at A18, col. 6. The Islamic peace mission failed. N.Y. Times, Sept. 29, 1980, at A12, col. 1. The United States was critical of the delay, arguing that it served the Iraqi strategy of continuing the war for as long as gains could be made on the battlefield. N.Y. Times, Sept. 28, 1980, at A18, col. 5.
Iraq “to refrain immediately from any further use of force” and to settle their dispute by peaceful means.57 Moreover, Resolution 479 did not name Iraq as the aggressor, a failure which would be cited repeatedly by Iran as evidence of the Security Council’s bias toward Iraq.58 Not


The Security Council,

Having begun consideration of the item entitled “The situation between Iran and Iraq”,

Mindful that all Member States have undertaken, under the Charter of the United Nations, the obligation to settle their international disputes by peaceful means and in such a manner that international peace and security and justice are not endangered,

Mindful as well that all Member States are obliged to refrain in their international relations from the threat of or use of force against the territorial integrity or political independence of any State,

Recalling that under Article 24 of the Charter the Security Council has primary responsibility for the maintenance of international peace and security,

Deeply concerned about the developing situation between Iran and Iraq,

1. Calls upon Iraq and Iran to refrain immediately from any further use of force and to settle their dispute by peaceful means and in conformity with principles of justice and international law;

2. Urges them to accept any appropriate offer of mediation or conciliation or to resort to regional agencies or arrangements or other peaceful means of their own choice that would facilitate the fulfillment of their obligations under the Charter of the United Nations;

3. Calls upon all other States to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict;

4. Supports the efforts of the Secretary-General and the offer of his good offices for the resolution of this situation;

5. Requests the Secretary-General to report to the Security Council within forty-eight hours.

Id. The resolution avoided the use of the term “cease-fire” because both parties objected to it. N.Y. Times, Sept. 29, 1980, at A12, col. 1. Iraq wanted no restriction while it was winning; Iran opposed restrictions until it had recaptured lost territory. Id.

58. For a discussion of Iran’s claim of Security Council bias toward Iraq, see infra notes 89-103, 113-22 & 127-36 and accompanying text.

The United States, despite its opposition to any delay in adopting Resolution 479, must bear a large measure of the responsibility for the resolution’s failure to condemn Iraq as the aggressor. See J. Murphy, The United Nations and the Control of International Violence 65-66 (1982). Professor Murphy notes three possible reasons why the United States did not speak out for more forceful action by the Security Council: (1) the United States did not want to take any action which the Soviet Union could use as a pretext for itself taking part in the conflict; (2) the United States wanted to retain the appearance of neutrality so as not to offend either Jordan and Saudi Arabia, friendly states supporting Iraq, or Libya and Syria, unfriendly states supporting Iran; and (3) in the election year of 1980, the United States wanted to appear to the American public to be taking a hard line against Iran, the country holding American hostages. Id. at 66. Professor Murphy, however, rejects each of these reasons. First, had the United States called attention in the Security Council to the Iraqi aggression and its inconsistency with the provisions of the Charter, the Soviets
suprisingly, because the resolution effectively called for a cease-fire with Iraq in possession of Iranian territory, Iraq stated that it would accept the resolution if Iran did.\textsuperscript{58} Iran rejected the resolution, however, vowing not to cease fighting until the last Iraqi soldier had been driven back across the border.\textsuperscript{60}

After the initial failures of the United Nations, Secretary-General Waldheim tried a somewhat different tactic. On October 10, 1980, the Secretary-General appealed to the parties for a limited cease-fire to permit merchant ships trapped in the Shatt al Arab to leave the waterway and offered his good offices to help with the necessary arrangements.\textsuperscript{61} Iran supported the proposal, which guaranteed safe passage through the Shatt al Arab to any ship flying a United Nations flag so long as it did not unload cargo at an Iraqi port.\textsuperscript{62} Iraq effectively killed the plan, however, stating that the vessels must fly an Iraqi flag in conformity with Iraq's full national sovereignty over the river.\textsuperscript{59}

In late October 1980, after its initial reluctance to push for a strong resolution,\textsuperscript{64} the United States advanced an elaborate plan to halt the fighting between Iran and Iraq.\textsuperscript{65} The plan included the following provisions: an Iraqi withdrawal from Iran, with the evacuated area becoming a cease-fire zone patrolled by United Nations observers; mutual

would have had difficulty intervening on Iraq's behalf. \textit{Id.} Second, even nations friendly to the United States needed to be prevented from compounding the Iraqi aggression. \textit{Id.} Third, even in an election year, the United States government has the duty to educate the public as to Charter norms and reasons for foreign-policy decisions. \textit{Id.} Moreover, United States reticence in the Security Council contributed to the Iranian belief that the United States was behind the Iraqi invasion and thus made obtaining the release of the hostages even more difficult. \textit{Id.;} N.Y. Times, Oct. 11, 1980, at A4, col. 1.


64. For a discussion of the American failures to insist that Resolution 479 be more strongly worded, see \textit{supra} note 58.

control of the Shatt al Arab waterway under the chairmanship of a neutral third nation; a format to settle Iraq's claims to land in Iran; and a pledge by both sides not to interfere in the other's internal affairs.66 Notwithstanding a United States warning that the Iraqi invasion threatened to dismember Iran and endanger the stability and prosperity of the entire Middle East region,67 the United States was unable to garner the support necessary to have the plan adopted by the Security Council in resolution form.68 Too many Security Council members were of the view that "the war ha[d]n't been too bad . . . . Two unpleasant regimes [had] both been bloodied, and now there [was] less chance that either [would] realize its ambition to take over the region."69

As a result, the Security Council produced only a presidential declaration urging Iran and Iraq to refrain from the use of force and asking the Secretary-General to send an envoy to the Middle East to try to resolve the conflict.70 Secretary-General Waldheim chose Olaf Palme of Sweden as his representative.71 Palme appeared to have made progress on his initial peace mission, announcing on November 26, 1980 that he had achieved an "agreement in principle" between Iran and Iraq for freeing sixty-three merchant ships trapped in the Shatt al Arab waterway.72 Palme, however, was never able to complete the agreement. Iraq refused to allow the ships to fly the United Nations flag, insisting instead that the ships fly the flag of the Red Cross.73 For its part, the International Red Cross decided that the ships could not fly the Red Cross flag

67. Id. The apparent danger was that Iraq would conquer the Iranian oil-producing province of Khuzistan, causing separatist forces in neighboring Kurdistan to break with Iran. Id.
69. Id. Tunisia, which held the view of most Arab states that nothing should hinder Iraq's attack on a regime that had tried to stir religious strife in the Moslem world, was a major source of opposition to the American plan. Id. In addition, neither the United Kingdom nor France was committed to such a strong resolution. Id. Both had heavy investments in Iran and Iraq and sought to avoid provoking either of the warring countries. Id.
70. 35 U.N. SCOR Supp. (Oct.-Dec. 1980) at 23-24, U.N. Doc. S/14244 (1980); N.Y. Times, Nov. 6, 1980, at A6, col. 3. The decision to ask Secretary-General Waldheim to find a mediator was made largely to fill the void left by the Security Council, the United Nations organ with primary responsibility for maintaining international peace and security under article 24 of the Charter. N.Y. Times, Nov. 12, 1980, at A13, col. 4. Security Council members did not expect the mediator to succeed in bringing peace to Iran and Iraq. Id.
73. N.Y. Times, Dec. 30, 1980, at A4, col. 5; N.Y. Times, Nov. 27, 1980, at A16, col. 6. Iraq was unwilling to permit the Shatt al Arab to be perceived as an international waterway, even temporarily, because Iraq claimed the waterway as its own. N.Y. Times, Dec. 30, 1980, at A4, col. 5. For the same reason, Iraq insisted that only its ships could dredge the channel to restore its navigability. Id.
because the sailing of the ships would not be of an emergency, humanitarian nature. As a result, the projected ten-day cease-fire for the ship-freeing project never materialized. Four subsequent Palme peace missions were equally unsuccessful. Iran maintained its position that a cease-fire was unacceptable until Iraq withdrew from Iranian territory, and Iraq persisted in its position that a cease-fire be conditioned on Iranian territorial concessions.

On January 26, 1981, Secretary-General Waldheim tried another approach to resolve the conflict, urging the forty-two-member Islamic Conference Organization to mediate the Iran-Iraq war. In response, a nine-member Islamic peace mission presented a plan to the parties calling for a series of actions: a cease-fire; an Iraqi withdrawal from Iranian territory to begin one week after the cease-fire and to be completed within four weeks; supervision of the cease-fire and withdrawal by Islamic "military observers"; the establishment of a committee of Islamic countries to decide the sovereignty of the Shatt al Arab waterway; pending the decision, administration of the waterway by an agency set up by the Islamic countries; and the negotiation of other issues with the assistance of the Islamic peace mission. The plan, however, or a variation of it, was rejected on more than one occasion by both Iran and Iraq.

In fact, in rejecting the settlement efforts of the Islamic peace mission during 1981, both Iran and Iraq took extreme and non-negotiable positions. Iraq reiterated its stringent conditions for a cease-fire, the most important of which was Iranian recognition of Iraqi sovereignty.

74. N.Y. Times, Dec. 30, 1980, at A4, col. 5. The Red Cross noted that only two of the ships in the Shatt al Arab were in the actual area of the fighting. Id. The crew of one ship had already fled and only a skeleton crew remained aboard the other. Id. The other ships had already reached the Iraqi port of Basra, upstream from the fighting. In Basra the ships and their crews were safe, although unable to sail safely for their home ports. Id. Thus, ironically, the Red Cross assisted in exposing the ship-freeing project as a pretext for a cease-fire and played a role in the failure of the project.


79. N.Y. Times, Jan. 26, 1981, at A3, col. 1. Although the peace initiatives of regional organizations are beyond the scope of this Comment, this mission is discussed because it was undertaken at the request of the Secretary-General and because the parties involved were required to clearly state their respective positions.

80. N.Y. Times, Mar. 6, 1981, at A9, col. 1. The plan was later amended to provide for an Islamic court to decide which side started the war. N.Y. Times, Apr. 7, 1981, at A4, col. 3.

over the entire Shatt al Arab waterway.\textsuperscript{82} Iran, for its part, was equally uncooperative. At first, by making conflicting statements of the Iranian position, Iranian officials made negotiation impossible as a practical matter.\textsuperscript{83} Later, Iran placed several additional conditions upon its acceptance of a cease-fire.\textsuperscript{84} In addition to an Iraqi withdrawal,\textsuperscript{85} Iran demanded that Iraq be condemned as the aggressor\textsuperscript{86} and that Iraq agree to share sovereignty over the Shatt al Arab as provided in the 1975 Treaty.\textsuperscript{87} Further, Iran insisted that Iraq pay reparations for damage caused by its aggression.\textsuperscript{88}

During the first half of 1982, the United Nations undertook no new peace initiatives.\textsuperscript{89} Iran's repeated success on the battlefield, however, prompted Iraqi President Hussein to declare on June 20, 1982, that Iraq would withdraw completely from Iranian territory during the next ten days.\textsuperscript{90} Significantly, with Iraq facing a possible Iranian invasion, the Security Council was suddenly quick to respond.\textsuperscript{91} On July 12, 1982, the Security Council adopted Resolution 514, which called for a cease-fire and withdrawal of forces to internationally recognized boundaries under the supervision of a team of United Nations observers.\textsuperscript{92}

\textsuperscript{82} N.Y. Times, Mar. 3, 1981, at A6, col. 1. For a discussion of the Iraqi demands, see supra note 59.

\textsuperscript{83} See N.Y. Times, Mar. 3, 1981, at A6, col. 1. Differences of opinion existed both at the highest levels of the Iranian government and within the military. \textit{Id.} While then President Bani-Sadr favored a comparatively moderate approach, the Islamic Republican Party and Prime Minister Mohammed Ali Rajai vowed to fight until Iraq's President Hussein was overthrown. N.Y. Times, Apr. 5, 1981, at A15, col. 1; N.Y. Times, Mar. 3, 1981, at A6, col. 1. Similarly, while the commander of the Iranian regulars, General Fallahi, stated that a cease-fire to permit the Iraqi withdrawal was acceptable, officers of the Revolutionary Guard Corps opposed peace negotiations until "the Iraqi people have been liberated." \textit{Id.} Thus, at least for a time, even Iran was unsure as to Iran's position on a cease-fire.

\textsuperscript{84} See N.Y. Times, Apr. 7, 1981, at A4, col. 3.

\textsuperscript{85} \textit{Id.} Iran required that the cease-fire and withdrawal of Iraqi troops be carried out simultaneously. \textit{Id.}

\textsuperscript{86} \textit{Id.}

\textsuperscript{87} \textit{Id.} For a discussion of the provisions of the Treaty, see supra notes 32-46 and accompanying text.


\textsuperscript{90} N.Y. Times, June 21, 1982, at A12, col. 3.


\textit{The Security Council,}

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\hfill\hfill
The timing of Resolution 514 was not lost upon Iran. Iran argued, with justification, that the Security Council was biased in favor of Iraq. Iran noted that Resolution 514's call for a withdrawal to internationally recognized boundaries was a courtesy not extended to Iran in Resolution 479, when the Security Council had called for a cease-fire with Iraq still in possession of Iranian territory. Moreover, Iran pointed out that the Security Council had been silent for twenty-two months while the fighting continued on Iranian territory, but acted swiftly to protect Iraq once Iraqi territory was threatened. As a result, Iran rejected Resolution 514 and invaded Iraq the day after the reso-

1. **Calls** for a cease-fire and an immediate end to all military operations;
2. **Calls further** for a withdrawal of forces to internationally recognized boundaries;
3. **Decides** to dispatch a team of United Nations observers to verify, confirm and supervise the cease-fire and withdrawal, and requests the Secretary-General to submit to the Security Council a report on the arrangements required for that purpose;
4. **Urges** that the mediation efforts be continued in a co-ordinated manner through the Secretary-General with a view to achieving a comprehensive, just and honourable settlement, acceptable to both sides, of all the outstanding issues, on the basis of the principles of the Charter of the United Nations, including respect for sovereignty, independence, territorial integrity and non-interference in the internal affairs of States;
5. **Requests** all other States to abstain from all actions that could contribute to the continuation of the conflict and to facilitate the implementation of the present resolution;
6. **Requests** the Secretary-General to report to the Security Council within three months on the implementation of the present resolution.

*Id.*

94. *Id.*
95. *Id.* at 1-2.
96. *Id.* According to Iran, the Security Council waited until . . . Iraq had killed as many Iranians as it wanted and destroyed as much property in Iran as it had wished, before stepping in to create a shield behind which the war criminals who [were] ruling Iraq could be safe from the punishment that awaited them.

*Id.*

97. *Id.* Iran argued that it was legally free to ignore Resolution 514 because by failing to condemn Iraq as the aggressor and to recognize the right of the Iranian people to punish the Iraqi "war criminals," the Security Council had adopted the resolution in violation of article 24 of the Charter. *Id.* Article 24(2) requires the Security Council to "act in accordance with the Purposes and Principles of the United Nations." U.N. CHARTER art. 24, para. 2. Iran's legal argument was questionable, however, because although the Purposes and Principles of the Charter include taking "effective collective measures . . . for the suppression of acts of aggression," they do not explicitly include condemnation of an aggressor. *See id.* arts. 1-2.

Nevertheless, even if Iran's rejection of Resolution 514 was not justifiable under international law, it was at least understandable. The Security Council
solution had been adopted.  

Less than three months later, on October 4, 1982, the Security Council adopted Resolution 522, which basically repeated the Resolution 514 provisions for a cease-fire, withdrawal and military observers. Iraq accepted Resolution 522 and argued that Iran had an explicit obligation under article 25 of the Charter to "accept and carry out" the decision of the Security Council. Iran, however, rejected the

appeared to favor Iraq, and Iran had fought for almost two years to repulse the Iraqi invasion. As Mr. Rajaie Khorassani, the Iranian delegate to the Security Council, put it: "Do you expect us to fight our way to the border, then just shake hands and say goodbye?" N.Y. Times, July 18, 1982, at A13, col. 4.

A less obvious reason— a lack of commitment to peace on the part of at least some members of the United Nations— may also have contributed to the ineffectiveness of Resolution 514. The Soviet Union was supplying arms to both sides, and despite its denials, the United States was apparently doing the same on a more modest scale. N.Y. Times, July 14, 1982, at A1, col. 1. Israel was providing arms to Iran, while Syria, Jordan, Egypt, Saudi Arabia and the Gulf States were providing arms to Iraq. Id. None of these nations, however, had opposed the General Assembly resolution of October 22, 1982, which affirmed the need for a cease-fire and withdrawal. 37 U.N. GAOR Annex 2 (Agenda Item 134) at 3, U.N. Doc. A/37/L.7/Rev. 1 (1982).


100. Id. Resolution 522 provided in pertinent part:

The Security Council,

1. Urgently calls again for an immediate cease-fire and an end to all military operations;
2. Reaffirms its call for a withdrawal of forces to internationally recognized boundaries;
3. Welcomes the fact that one of the parties has already expressed its readiness to co-operate in the implementation of resolution 514 (1982) and calls upon the other to do likewise;
4. Affirms the necessity of implementing without further delay its decision to dispatch United Nations observers to verify, confirm and supervise the cease-fire and withdrawal;
5. Reaffirms the urgency of the continuation of the current mediation efforts;
6. Reaffirms its request to all other States to abstain from all actions which could contribute to the continuation of the conflict and to facilitate the implementation of the present resolution;
7. Further requests the Secretary-General to report to the Security Council on the implementation of the present resolution within seventy-two hours.

Id.

resolution for largely the same reasons it had rejected Resolution 514.\textsuperscript{102} Thus, Resolution 522, like its predecessor, was ineffective.\textsuperscript{103}

In April 1983, Under Secretary-General for Special Political Affairs, Diego Cordovez, attempted to negotiate a partial cease-fire which would have permitted Persian Gulf nations to clean up an oil spill from Iranian offshore oil wells.\textsuperscript{104} United Nations officials hoped that a cease-fire in the area of the oil spill would be a first step toward an overall cease-fire in the war.\textsuperscript{105} The partial cease-fire was not achieved, however, because Iraq refused to accept a cease-fire unless Iran agreed not to use the truce to its military advantage. Iran rejected a cease-fire on those terms.\textsuperscript{106}

In May 1983, in response to an Iranian request, Secretary-General Perez de Cuellar sent a mission to both Iran and Iraq to examine civilian areas damaged by the war.\textsuperscript{107} Diplomats hoped that an objective report by the mission would demonstrate that the United Nations was not biased toward Iraq,\textsuperscript{108} provide international recognition of Iran’s suffering during the war,\textsuperscript{109} and give the Khomeini Government an excuse to call upon the United Nations to oversee peace talks.\textsuperscript{110} The forty-page report was objective. It devoted twenty-six pages to damage in eleven Iranian cities, thirteen pages to damage in seven Iraqi locations, and even found more evidence to support Iranian claims.\textsuperscript{111} Iran’s delegate to the Security Council, Said Rajaie-Khorassani, stated that the possibility of a negotiated settlement would depend on the Security Council’s reaction.\textsuperscript{112}

\textit{Id.} at 683. For a discussion of Iran’s legal rationale for rejecting Security Council resolutions, see \textit{supra} notes 93-97 and accompanying text.


\textsuperscript{103} See 38 U.N. SCOR Supp. (Res. & Dec.) at 6, U.N. Doc. S/15616 (1983) (presidential declaration acknowledging that Resolutions 479, 514, and 522 had not been implemented). As Secretary-General Perez de Cuellar pointed out, the United Nations could not dispatch its observers to the combat zone since they are traditionally deployed only when the combatants consent and a cease-fire is in place. 37 U.N. SCOR (2399th mtg.) at 22, U.N. Doc. S/PV.2399 (1982).

\textsuperscript{104} N.Y. Times, Apr. 6, 1983, at A3, col. 1.

\textit{Id.}

\textsuperscript{105} \textit{Id.}

\textsuperscript{106} \textit{Id.} Iran also rejected Iraq’s demand that Iraqis be included in any Persian Gulf force protecting the cleanup team. N.Y. Times, Apr. 27, 1983, at A7, col. 1.

\textsuperscript{107} N.Y. Times, May 13, 1983, at A11, col. 1. The Iranian request marked the first time during the war in which Iran had turned to the United Nations for any form of political support. \textit{Id.}

\textsuperscript{108} See \textit{id.}

\textsuperscript{109} N.Y. Times, June 22, 1983, at A12, col. 3.

\textsuperscript{110} \textit{Id.}

\textsuperscript{111} \textit{Id.}

\textsuperscript{112} \textit{Id.} Mr. Khorassani nevertheless criticized the Security Council not
On October 31, 1983, by a vote of twelve to zero with three abstentions, Resolution 540 called upon the parties to end all attacks on civilian targets and all hostilities in the Persian Gulf region and asked the Secretary-General to consult with the parties to develop ways to sustain and verify a “cessation of hostilities.” Iraq, as it had with the three prior Security Council resolutions, accepted Resolution 540. Iraq warned, however, that its acceptance was conditioned upon the resolution being treated as an “integrated and indivisible” whole. No partial implementation would be

only for its bias, but because certain members, particularly the United States and the Soviet Union, based their actions upon national self-interest and not upon a principled devotion to peace. N.Y. Times, May 13, 1983, at A11, col. 1.

113. N.Y. Times, Nov. 1, 1983, at A11, col. 1. Nicaragua, Pakistan and Malta abstained. Id. In their view, the resolution would leave Iran as “disenchanted and aggrieved as ever” and would have no effect on the war because such resolutions already existed. 38 U.N. SCOR (2493d mtg.) at 4, U.N. Doc. S/PV.2493 (1983).


115. Id. Resolution 540 provided in pertinent part:

The Security Council,

1. Requests the Secretary-General to continue his mediation efforts with the parties concerned, with a view to achieving a comprehensive, just and honourable settlement acceptable to both sides;

2. Condemns all violations of international humanitarian law, in particular, the provisions of the Geneva Conventions of 1949 in all their aspects, and calls for the immediate cessation of all military operations against civilian targets, including city and residential areas;

3. Affirms the right of free navigation and commerce in international waters, calls on all States to respect this right and also calls upon the belligerents to cease immediately all hostilities in the region of the Gulf, including all sea-lanes, navigable waterways, harbour works, terminals, offshore installations and all ports with direct or indirect access to the sea, and to respect the integrity of the other littoral States;

4. Requests the Secretary-General to consult with the parties concerning ways to sustain and verify the cessation of hostilities, including the possible dispatch of United Nations observers, and to submit a report to the Security Council on the results of these consultations;

5. Calls upon both parties to refrain from any action that may endanger peace and security as well as marine life in the region of the Gulf;

6. Calls once more upon all other States to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict and, thus, to facilitate the implementation of the present resolution;

7. Requests the Secretary-General to consult with the parties regarding immediate and effective implementation of the present resolution.

Id.

accepted. Iran, adamant in its position, rejected the resolution as "yet another exercise by the Council ... in favour of the Iraqi aggressor." Specifically, Iran contended that Iraq should have been the party called upon to stop attacks on civilian targets. Further, Iran argued that the conflict should not be described in terms of "hostilities," since for Iran it was a "painful defensive war of liberation ... [designed] to reverse the consequences of the [Iraqi] aggression." Iran indicated that it remained ready to cooperate with the Secretary-General, but suggested that mediation efforts "would stand a much better chance of positive achievement when the Security Council modifie[d] its biased position ... in favor of Iraq, the aggressor." Thus, the optimism created by the Iranian reaction to the report on damage to civilian areas quickly dissipated.

The United Nations' next involvement with the Iran-Iraq war came on March 8, 1984, when Secretary-General Perez de Cuellar decided to send a team of experts to Iran to investigate charges that Iraq was using chemical weapons. Iraq had previously denied such charges and denounced the United States State Department for concluding that "available evidence" suggested that Iraq had used chemical weapons. Nevertheless, although the experts did not name Iraq in their report, they unanimously concluded that "chemical weapons in the form of aerial bombs have been used in the areas inspected in Iran." In response to the report, the Security Council "strongly condemned the use of chemical weapons" but did so in the weaker form of a presidential

120. Id. at 139. Iran also noted that the provision for free navigation was of no use to Iran, at least in the Shatt al Arab waterway and Iran's major port facilities in Khorramshahr.
121. Id. Actually, Iran was fortunate that Resolution 540 was not even more favorable to Iraq. France and some of the Arab nations had suggested a limited cease-fire that would have enabled Iraq to resume full oil exports. N.Y. Times, Oct. 29, 1983, at A10, col. 9.
122. For a discussion of the mission's report on damage to civilian areas in Iran and Iraq and the favorable climate it created for a settlement, see supra notes 107-12 and accompanying text.
123. N.Y. Times, Mar. 9, 1984, at A8, col. 4.
declaration, rather than a formal resolution, without naming Iraq.\textsuperscript{126} The Security Council's response probably did little to dispel Iran's conviction that the Security Council favored Iraq.

Two months later, the Security Council met again, this time to determine what action should be taken with respect to the attacks against shipping in the Persian Gulf.\textsuperscript{127} During the debate, the six Persian Gulf nations which had requested the meeting cited only the three Iranian attacks on Kuwaiti and Saudi Arabian ships in international waters, failing to discuss any Iraqi actions.\textsuperscript{128} In fact, these Arab nations circulated a draft resolution that would have "strongly condemn[ed] Iran for its unjustified attacks . . . ."\textsuperscript{129} Several third world nations represented at the meeting, however, objected to the unbalanced nature of the draft resolution.\textsuperscript{130} The draft did not mention Iraqi attacks,\textsuperscript{131} even though more than sixty ships, two-thirds of which were neutral commercial vessels, had been attacked up to that point in the war.\textsuperscript{132} Nevertheless, on June 1, 1984, the Security Council adopted Resolution 552.\textsuperscript{133} Although the third world members managed to prevent any mention of Iran,\textsuperscript{134} the resolution "condemn[ed] attacks on commercial ships in the Gulf region and in particular the recent attacks on ships en route to and

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\item The members of the Council:
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\item . . . strongly condemn the use of chemical weapons reported by the mission of specialists;
\item . . . reaffirm the need to abide strictly by the provisions of the Geneva Protocol of 1925 for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare;
\item . . . call on the States concerned scrupulously to adhere to the obligations flowing from their accession to the Geneva Protocol of 1925;
\item . . . condemn all violations of international humanitarian law and urge both parties to observe the generally recognized principles and rules of international humanitarian law which are applicable to armed conflicts and their obligations under international conventions designed to prevent or alleviate the human suffering of warfare;
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\textit{Id.}

\begin{itemize}
\item 128. \textit{Id.} The Arab delegates charged that Iran had bombarded Kuwaiti ships on May 13 and 14, 1984, and had struck a Saudi Arabian tanker with missiles on May 16, 1984. \textit{Id.}
\item 129. \textit{Id.}
\item 134. N.Y. Times, June 2, 1984, at A1, col. 5.
\end{itemize}
from ports of Saudi Arabia and Kuwait.\textsuperscript{135} Predictably, Iran rejected the resolution, calling it the "one-sided" product of a "partial, callous and indifferent" Security Council.\textsuperscript{136}

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The Security Council,

1. \textit{Calls upon} all States to respect, in accordance with international law, the right of free navigation;

2. \textit{Reaffirms} the right of free navigation in international waters and sea lanes for shipping en route to and from all ports and installations of the littoral States that are not parties to the hostilities;

3. \textit{Calls upon} all States to respect the territorial integrity of the States that are not parties to the hostilities and to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict;

4. \textit{Condemns} the recent attacks on commercial ships en route to and from the ports of Kuwait and Saudi Arabia;

5. \textit{Demands} that such attacks should cease forthwith and that there should be no interference with ships en route to and from States that are not parties to the hostilities;

6. \textit{Decides}, in the event of non-compliance with the present resolution, to meet again to consider effective measures that are commensurate with the gravity of the situation in order to ensure the freedom of navigation in the area;

7. \textit{Requests} the Secretary-General to report on the progress of the implementation of the present resolution;

8. \textit{Decides} to remain seized of the matter.
\end{quote}

\textit{Id.}


\textbf{136.} N.Y. Times, June 2, 1984, at A7, col. 1. By implicitly condemning Iran in Resolution 552, the Security Council took action against Iran which was stronger than it had ever taken against Iraq, even in its responses to Iraq's initial aggression and use of chemical weapons. For a discussion of the Security Council's response to the initial invasion of Iraq, see \textit{supra} notes 53-60 and accompanying text. For a discussion of the Security Council's first response to Iraq's use of chemical weapons, see \textit{supra} notes 123-26 and accompanying text.

Furthermore, as an impartial mediator, the Security Council probably should not have condemned Iran's attacks on Kuwaiti and Saudi Arabian ships in international waters without also condemning Iraq's attacks on neutral shipping near the Iranian oil port of Kharg Island. \textit{See} Leckow, \textit{The Iran-Iraq Conflict in the Gulf: The Law of War Zones}, 37 Int'l & Comp. L.Q. 629, 637-40 (1988). While Iran's attacks clearly violated international law, see \textit{id.} at 639-40 ("it is difficult to conceive of arguments in support of this aspect of Iran's tanker war"), Iraq's attacks were equally reprehensible. \textit{Id.} at 638-39. Iraq argued that its attacks on neutral shipping were legal since they took place in a strictly delimited area of the northeastern part of the Persian Gulf which Iraq had publicly declared as a military operations zone. 39 U.N. SCOR Supp. (Apr.-June 1984) at 106, U.N. Doc. S/16590 (1984); \textit{see also} N.Y. Times, June 2, 1984, at A7, col. 1
Even if the Security Council had been impartial in its assessment of blame for attacks on shipping, Iran may still have rejected Resolution 552. By referring exclusively to the protection of shipping, the Security Council resolution seemed implicitly to adopt the Saudi Arabian view that the attacks on shipping were "a matter that [was] independent of the Iraq-Iran war."\(^1\) Iran simply could not be expected to follow a resolution based on such a view, particularly because the six Persian Gulf nations which sought the resolution had supplied thirty-five billion dollars worth of arms to Iraq during the previous three and one-half years.\(^2\)

Despite Iran's rejection of the Security Council's call for an end to attacks on shipping in the Persian Gulf, Secretary-General Perez de Cuellar did succeed in obtaining an agreement with Iran and Iraq to halt all deliberate military attacks on purely civilian centers beginning on June 12, 1984.\(^3\) The Secretary-General dispatched United Nations observers to Iran and Iraq to monitor compliance with the agreement.\(^4\) Notwithstanding occasional allegations of violations,\(^5\) the moratorium remained effective for nine months until reciprocal attacks on civilian targets occurred in March 1985.\(^6\) The Secretary-General was unable to restore the moratorium,\(^7\) and the Security Council failed to agree on the contents of a presidential declaration that would have urged both sides to resume the moratorium.\(^8\)

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\(^1\) United States' conclusion that Iraqi attacks within limits of acceptable conduct for country at war). However, Iraq exceeded the limits of "reasonableness" established for legality under international law. Leckow, \textit{ supra}, at 637. Iraq attacked neutral merchant vessels without prior warning and failed to designate safe passage routes. \textit{Id.} Moreover, the Iraqi attacks could not be justified as reprisals for illegal Iranian action since "[r]eprisals should be directed primarily against the 'guilty' country rather than innocent third parties." \textit{Id.} at 637-88.


\(^3\) N.Y. Times, June 5, 1984, at A3, col. 1; N.Y. Times, May 26, 1984, at A4, col. 1. Iran took the position that "peace and security in the Persian Gulf is indivisible . . . . If there is no security for us, there is no security for anyone in the Persian Gulf." \textit{Id.}

\(^4\) N.Y. Times, June 13, 1984, at A9, col. 1. The agreement marked the first time that both Iran and Iraq responded affirmatively to an international plea for restraint in the war. \textit{Id.}


\(^7\) N.Y. Times, Mar. 15, 1985, at A1, col. 1.

\(^8\) \textit{See} N.Y. Times, Apr. 8, 1985, at A9, col. 1.

\(^9\) N.Y. Times, Mar. 15, 1985, at A11, col. 1. The Council's failure to agree on a statement was probably a positive development. The Council rejected a one-sided proposal by the Soviet Union and France, two important arms suppliers for Iraq, that would have indicated that Iraq's increase in attacks on
The United Nations undertook few peace initiatives in 1985. The Secretary-General did send a United Nations mission to Iran and Iraq to investigate the conditions of prisoners.\textsuperscript{145} The mission reported mistreatment of prisoners by both countries, with physical mistreatment more widespread in Iraq and psychological abuse more common in Iran.\textsuperscript{146} In addition, in April 1985, the Secretary-General made personal visits to both Iran and Iraq.\textsuperscript{147} Although he concluded after his visits that the gap between the combatants was "as wide as ever,”\textsuperscript{148} the Secretary-General kept the lines of communication open and maintained his position as "the only go-between trusted by both sides."\textsuperscript{149}

One final by-product of the mission occurred on April 25, 1985, when a medical specialist appointed by the Secretary-General reported that chemical weapons had again been used against Iranian soldiers.\textsuperscript{150} In response to the report, the Security Council adopted another presidential declaration which "strongly condemn[ed] . . . [the] use of chemical weapons," but which was not particularly satisfactory to either Iran or Iraq.\textsuperscript{151} Iran viewed the declaration as lacking "the required explicitness in its condemnation of . . . Iraq,"\textsuperscript{152} Iraq, on the other hand, chose to emphasize the "inconsistency" of Iran in calling for the Security Council to do more to prohibit the use of chemical weapons, while at the same time ignoring five Security Council resolutions calling for a cease-

civilian targets was largely attributable to a new Iranian offensive in the marshes near Basra, Iraq. \textit{Id.}

146. \textit{Id.}
149. \textit{N.Y. Times}, Apr. 8, 1985, at A9, col. 1. The visits also signaled the Secretary-General's willingness to persist in working for a peaceful resolution of the conflict. \textit{See id.}

The declaration provided in pertinent part:

The members of the Security Council, seized with the continuing conflict between Iran and Iraq, are appalled that chemical weapons have been used against Iranian soldiers, as concluded in the report of the medical specialist appointed by the Secretary-General (S/17127 and Add.1).

. . . They strongly condemn renewed use of chemical weapons in the conflict and any possible future use of such weapons. They again urge the strict observance of the Geneva Protocol of 1925, according to which the use in war of chemical weapons is prohibited and has been justly condemned by the world community.

\textit{Id.}

152. 40 U.N. SCOR Supp. (Apr.-June 1985) at 106, U.N. Doc. S/17217 (1985). Iran also argued that the statement was not sufficient to end the continued use of chemical weapons by Iraq. \textit{Id.}
fire. 153

On February 9, 1986, Iran launched an offensive 154 in which it captured the Fao Peninsula and gained control of about 175 square miles of Iraqi territory. 155 In response, the Security Council unanimously adopted Resolution 582, 156 which one Security Council member described as a "resolution [that] is a little more objective and tries to bring the Council back to the center." 157 In Iran’s favor, the resolution deplored “the initial acts which gave rise to the conflict” and the use of chemical weapons, while in deference to Iraq, it called for an immediate cease-fire and withdrawal to internationally recognized boundaries. 158 Iraq accepted the resolution provided it was interpreted as indivis-

155. N.Y. Times, Feb. 22, 1986, at A5, col. 3. Arab leaders were particularly concerned because Iran had never before held so much Iraqi territory. Id.
158. See S.C. Res. 582, 41 U.N. SCOR Supp. (Res. & Dec.) at 11-12, U.N. Doc. S/RES/582 (1986). The relevant text of the resolution is as follows:

The Security Council,

1. Deplores the initial acts which gave rise to the conflict between the Islamic Republic of Iran and Iraq and deplores the continuation of the conflict;
2. Also deplores the escalation of the conflict, especially territorial incursions, the bombing of purely civilian population centres, attacks on neutral shipping or civilian aircraft, the violation of international humanitarian law and other laws of armed conflict and, in particular, the use of chemical weapons contrary to obligations under the 1925 Geneva Protocol;
3. Calls upon the Islamic Republic of Iran and Iraq to observe an immediate cease-fire, a cessation of all hostilities on land, at sea and in the air and withdrawal of all forces to the internationally recognized boundaries without delay;
4. Urges that a comprehensive exchange of prisoners-of-war be completed within a short period after the cessation of hostilities in cooperation with the International Committee of the Red Cross;
5. Calls upon both parties to submit immediately all aspects of the conflict to mediation or to any other means of peaceful settlement of disputes;
6. Requests the Secretary-General to continue his ongoing efforts, to assist the two parties to give effect to this resolution and to keep the Council informed;
7. Calls upon all other States to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict and, thus, to facilitate the implementation of the present resolution;
8. Decides to remain seized of the matter.

Id.
ble, but Iran rejected the resolution, in large part because it failed to specifically condemn Iraq as the initial aggressor.

During the debate on Resolution 582, Mr. Rabetafika of Madagascar pointed out two weaknesses of the resolution, and of probably all Security Council resolutions up to that point in the war. First, the resolution did not reflect "the [Security Council's] lack of practical means or machinery to enforce [its] decisions and to follow up their implementation." Second, Resolution 582 did not incorporate the Security Council's "obligation to place the present conflict in a historical perspective and its political context—whether it [was] a question of its origins, its development or its outcome." Including these considerations in the resolution would not have changed the basic facts, but it could have provided the climate of trust and credibility essential to any hoped for Security Council role in resolving the Iran-Iraq war.

Unfortunately, despite the relative objectivity of Resolution 582, neither the United States nor Iraq's Arab allies were willing to acknowledge fully that even-handedness required an impartial evaluation of the present conflict in light of antecedent events.

159. 41 U.N. SCOR Supp. (Jan.-Mar. 1986) at 105, U.N. Doc. 2/17897 (1986). Iraq also insisted that the Iranian withdrawal be completed within a clear time-frame, not in excess of a few weeks after the cease-fire, and that a well-defined procedure for the exchange of prisoners be established to prevent any delaying tactics. Id.

160. N.Y. Times, Feb. 25, 1986, at A8, col. 1. The Security Council actually considered a provision that would "condemn the aggressor," but decided to go ahead with a draft more acceptable to Iraq after the Iranian delegate was unable to guarantee that Iran would abide by the resolution. Id.


162. Id.


164. For a discussion of the objectivity of Resolution 582, see supra notes 157-63 and accompanying text.


The Council of the League, . . .

Taking Note of Security Council resolution 582 (1986), which was adopted unanimously on 24 February 1986,

Noting with increasing concern Iran's continued aggression against Iraq, its violation of international boundaries, its occupation of Iraqi territory and its consistent rejection of all international initiatives, ap-
From February 26 to March 3, 1986, a United Nations mission dispatched by the Secretary-General visited Iran to conduct a third investigation into the use of chemical weapons in the war.\textsuperscript{166} The mission unanimously concluded that Iraq had used chemical weapons against Iran\textsuperscript{167} and named Iraq as the offender.\textsuperscript{168} The Security Council responded with a presidential declaration that strongly condemned the use of chemical weapons and, for the first time, named Iraq as the guilty party.\textsuperscript{169} Iraq did not reject the declaration but did criticize it for its lack of balance and for what Iran perceived as its focus on a "secondary issue[ ]" which detracted from United Nations efforts to end the hostilities entirely.\textsuperscript{170} Iran welcomed the condemnation of Iraq but made clear that the Security Council needed to do more than pass a resolution identifying and condemning Iraq as the aggressor responsible for start-

peals and resolutions to halt such aggression and to resolve the conflict by peaceful means in accordance with the principles and rules established by international law and co-operation between States,

\textit{Noting with particularly grave concern} the highly dangerous situation arising from the initiation by Iran of a further large-scale armed attack against the sovereignty and territorial integrity of Iraq in the area to the east of Basra and the area of Shatt al-Arab, together with the real threat posed by Iran to the security, sovereignty and territorial integrity of the States of the Arabian Gulf,

1. \textit{Strongly denounces} the Iranian armed aggression against Iraq, and against its security and territorial integrity;
2. \textit{Condemns} the Iranian threat to the Arabian Gulf region;
3. \textit{Reaffirms} the full solidarity of member States with Iraq in the legitimate defence of its sovereignty, security and territorial integrity;

\ldots

\textit{Id.}


\textsuperscript{168} N.Y. Times, Mar. 15, 1986, at A2, col. 3. Both the United Nations and the U.S. State Department stated that there was no evidence that Iran had used chemical weapons against Iraq. \textit{Id.}


\begin{quote}
Profoundly concerned by the unanimous conclusion of the specialists that chemical weapons on many occasions have been used by Iraqi forces against Iranian forces, most recently in the course of the present Iranian offensive into Iraqi territory, the members of the Council strongly condemn this continued use of chemical weapons in clear violation of the Geneva Protocol of 1925 which prohibits the use in war of chemical weapons.
\end{quote}

\textit{Id.} (citations omitted).

In response to the call of seven Arab countries and in anticipation of a possible offensive by Iran, the Security Council met again in October 1986. The Security Council was beginning to recognize that the war had ramifications extending far beyond Iran and Iraq, and even to the United Nations itself. Still, the Security Council was not quite ready to face this dilemma. As a result, on October 8, 1986, the Security Council unanimously adopted Resolution 588 which simply called upon Iran and Iraq to implement Resolution 582 and requested the Secretary-General to mediate and report his progress to the Security Council. After discussions with Iran and Iraq, however, the Secretary-General concluded that “at present [the positions of the two

171. Id. at 153, U.N. Doc. S/17949 (1986). Iran expressed its appreciation to the Secretary-General for sending the mission which caused Iraq to be condemned for its use of chemical weapons. Id. Nevertheless, Iran was not satisfied with the timing or form of the Security Council’s condemnation. Iran believed that the condemnation should have occurred three years earlier when Iraq began using chemical weapons. Id. In addition, Iran would have preferred the condemnation to be expressed in a resolution rather than a declaration, since a declaration is only the product of a closed, informal debate and does not require members to go on record by voting. Id. at 137, U.N. Doc. S/17925 (1986).


As Mr. Delpech of Argentina noted:

The prolongation of the war between Iran and Iraq has a cost also for the United Nations itself. It contributes to worsening tension and discourages co-operation and progress in a highly sensitive area, an area where there is already conflict. Furthermore, it conspires against the strengthening and credibility of the system of international relations and coexistence that this Organization represents.

Id.

174. See id. at 44-45. Mr. Salah of Jordan perhaps best summarized the stance of the Security Council:

We find ourselves facing a choice: we can either do harm to the credibility and effectiveness of the Security Council or take the necessary effective measures to put an end to aggression and achieve peace in the Gulf region. We must say most sincerely that neither of these options is a first choice. We should like to appeal to Iran once again to respond to international efforts and express its desire to see a just, honourable and comprehensive settlement.

Id.


176. Id. For a discussion of Resolution 582, see supra notes 154-65 and accompanying text.


The Security Council,

1. Calls upon the Islamic Republic of Iran and Iraq to implement fully and without delay resolution 582 (1986) adopted unanimously on 24 February 1986;
2. Requests the Secretary-General to intensify his efforts with the
parties] show no degree of coincidence which would provide a basis for the presentation of specific proposals designed to give effect to resolution 582 . . . .”178

On December 22, 1986, the Security Council reiterated its call for the implementation of Resolutions 582 and 588 in a presidential declaration.179 Iran responded that until the Security Council “muster[ed] the necessary political will to take a clear and unequivocal position” on Iraq’s responsibility for starting the war, the paragraphs of Resolution 582 calling for a cease-fire would remain inoperative.180

More discouraging news followed in early 1987. Disclosures were made that American intelligence agencies had provided deliberately distorted or inaccurate intelligence data to both Iran and Iraq with the apparent goal of preventing either country from winning the war.181 In fact, the United States was responsible for simultaneously selling weapons to Iran, giving covert aid to emigre groups trying to overthrow the Khomeini regime, providing reliable intelligence to Iran on the infiltration of Soviet agents into the Iranian Communist organization, and supplying unreliable or incomplete intelligence information to Iran and Iraq. One American official, when asked to explain how such actions formed a coherent policy, could only conclude, “[y]ou had to have been there.”183

The Security Council, in an apparent response to the disclosure that one of its permanent members had acted in ways which undermined United Nations calls for peace in the Persian Gulf, authorized a presi-

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177. Report of the Secretary-General, U.N. Doc. S/18480 (Oct.-Dec. 1986). In his report, the Secretary-General summarized the positions of the parties. Id. Iraq insisted upon an immediate cease-fire, followed by a withdrawal of troops and an exchange of prisoners of war within a brief time span, but would accept mediation on other aspects of the dispute. Id. Iran refused to accept a cease-fire or sign an agreement with the Hussein regime, because Iraq had abrogated the 1975 Treaty, invaded Iran, and still sought to topple the Khomeini regime. Id. Iran was willing, however, to cooperate in preventing the spread of the war, exchanging prisoners, and conducting the war in accordance with international law. Id.


180. N.Y. Times, Jan. 12, 1987, at A1, col. 6. For example, Iran was given inflated estimates of Soviet troop concentrations on the Iranian border, and Iraq was given satellite photographs that had been cropped to leave out some details. Id.

181. Id.

182. Id.

183. Id. One Reagan Administration official stated that the American strategy had been aimed at countering the Soviet threat without consideration for the nuances of regional problems. Id.
The declaration reiterated the Council's "serious concern over the widening of the conflict" and stated that the Council would "continue to make every effort" to end the war by peaceful means. Iran, however, described the declaration as "insipid" and adhered to its position that condemnation of Iraq as the aggressor responsible for beginning the war "would be the first step towards a just resolution of the war." 

In May 1987, the Secretary-General provided the Security Council with a report by the fourth mission sent to investigate the use of chemical weapons in the Iran-Iraq war. The mission concluded that

"[there ha[d] been repeated use of chemical weapons [, mustard gas and nerve agents,] against Iranian forces by Iraqi forces . . . ; [that] civilians in Iran also ha[d] been injured by chemical weapons; [and that] Iraqi military personnel ha[d] sustained injuries from chemical warfare agents, which [were] mustard gas . . . and a pulmonary irritant, possibly phosgene." 

The Security Council incorporated these conclusions verbatim into its May 14, 1987 presidential declaration demanding an end to the use of chemical weapons. The declaration as drafted was unlikely to be observed, however, because it not only acknowledged the failure of three previous Security Council declarations, but as Iraq argued, suggested that Iran itself, after years of protest, had begun to use chemical weapons.

On May 7, 1987, the United States began an effort to persuade the Security Council to enact a resolution ordering a cease-fire, withdrawal and negotiated peace and imposing an arms embargo on any country refusing to comply with the resolution. Hampered by the disclosure that it secretly had sold arms to Iran, the United States was unable to gain the support of the four other permanent members of the Security

185. Id.
188. Id.
190. See id. ("Recalling the [previous] statements made by the President of the Council . . . [the Council] again emphatically demand[s] . . . [an end to the use of chemical weapons]"). For a discussion of the three previous presidential declarations of the Security Council on the use of chemical weapons in the Iran-Iraq war, see supra notes 123-26, 150-53, 166-71 and accompanying text.
191. See U.N. Doc. S/18870 (Apr.-June 1987). Iraq noted that although it was accused of using mustard gas and nerve gas, Iraqi soldiers had been injured by "pulmonary irritants, possibly phosgene." Id. Thus, Iraq argued that its soldiers could only have been injured by Iranian use of chemical weapons and that the Security Council presidential declaration should have stated this explicitly. Id.
Council for the arms embargo. Nevertheless, on July 20, 1987, the Security Council unanimously adopted its strongest resolution of the war, Resolution 598. The Security Council emphasized its commit-

193. N.Y. Times, June 2, 1987, at A3, col. 1. France argued that an arms embargo would be ineffective because Iran had developed a network of underground suppliers. Id. The United Kingdom doubted that the resolution would end the fighting and feared that the Soviet Union would use it to improve its relations with Iran. Id. The Soviet Union remained vague on its position. Id. China was most strongly opposed to the arms embargo because it was a major arms supplier of Iran, id., particularly of Silkworm shore-based antiship missiles. N.Y. Times, June 22, 1987, at A10, col. 6.


*The Security Council,*

*Reaffirming* its resolution 582 (1986),

*Deeply concerned* that, despite its call for a cease-fire, the conflict between the Islamic Republic of Iran and Iraq continues unabated, with further heavy loss of human life and material destruction,

*Deploring* the initiation and continuation of the conflict,

*Deploring also* the bombing of purely civilian population centres, attacks on neutral shipping or civilian aircraft, the violation of international humanitarian law and other laws of armed conflict, and, in particular, the use of chemical weapons contrary to obligations under the 1925 Geneva Protocol,

*Deeply concerned* that further escalation and widening of the conflict may take place,

*Determined* to bring to an end all military actions between Iran and Iraq,

*Convinced* that a comprehensive, just, honourable and durable settlement should be achieved between Iran and Iraq,

*Recalling* the provisions of the Charter of the United Nations, and in particular the obligation of all Member States to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

*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,

1. *Demands* that, as a first step towards a negotiated settlement, the Islamic Republic of 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 to 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 co-operate 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;
ment to peace between Iran and Iraq in several ways. First, several members sent their highest ranking foreign policy official to the Security Council meetings.\(^{195}\) Second, in Resolution 598, the Security Council stated explicitly that it was demanding a cease-fire and withdrawal under articles 39 and 40 of the Charter,\(^{196}\) thus making the resolution binding upon the parties under international law.\(^{197}\) Third, the resolution left open the possibility of an arms embargo penalty for non-compliance

5. *Calls upon* all other States to exercise the utmost restraint and to refrain from any act which may lead to further escalation and widening of the conflict, and thus to facilitate the implementation of the present resolution;

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 Council as soon as possible;

7. *Recognizes* the magnitude of the damage inflicted during the conflict and the need for reconstruction efforts, with appropriate international assistance, once the conflict is ended and, in this regard, requests the Secretary-General to assign a team of experts to study the question of reconstruction and to report to the Council;

8. *Further requests* the Secretary-General to examine, in consultation with Iran and Iraq and with other States of the region, measures to enhance the security and stability of the region;

9. *Requests* the Secretary-General to keep the Council informed on the implementation of this resolution;

10. *Decides* to meet again as necessary to consider further steps to ensure compliance with this resolution.


195. *See* 42 U.N. SCOR (2750th mtg.) at 2, U.N. Doc. S/PV.2750 (1987). Top officials included: Hans Dietrich Genscher, the West German Vice-Chancellor and Minister for Foreign Affairs; Sir Geoffrey Howe, the British Foreign Secretary; and George Schultz, the American Secretary of State. *Id.*


In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Id. art. 40.

197. *See, e.g.*, 42 U.N. SCOR (2750th mtg.) at 16, U.N. Doc. S/PV.2750 (1987) (Foreign Secretary Sir Geoffrey Howe, United Kingdom, stating that cease-fire is mandatory); *id.* at 21 (Secretary of State Schultz, United States, stating that compliance with resolution is mandatory under international law); *id.* at 27 (Vice-Chancellor and Minster for Foreign Affairs Genscher, Federal Republic of Germany, describing Resolution 598 as first ever mandatory call for cease-fire
with the resolution by including a statement that the Security Council had decided to meet again "to consider further steps to ensure compliance with this resolution." \(^{198}\)

Iran's response to Resolution 598 was ambiguous, \(^{199}\) but was thought to be a ploy to divide Security Council members and avoid an arms embargo. \(^{200}\) Iran's chief delegate to the United Nations, Said Rajaie-Khorassani, described the resolution as a "vicious American diplomatic maneuver" but stopped short of rejecting it outright. \(^{201}\) Later, he stated that Iran "does not reject" Resolution 598. \(^{202}\) Nevertheless, Iran also did not accept the resolution, stating that while it contained "positive aspects," it "cannot . . . be considered a balanced, impartial, comprehensive and practical resolution." \(^{203}\) Iran still contended that a clear-cut pronouncement of Iraq's initial aggression was "the most important element" in resolving the conflict. \(^{204}\)

Iraq, in contrast, stated that it would accept the resolution if Iran did, provided the resolution was treated as indivisible and was implemented quickly. \(^{205}\) Initially, in an effort to produce Iran's acceptance of the resolution, Iraq refrained from attacking Iranian interests on land for twenty-four days and at sea for forty-five days. \(^{206}\) On August 29, 1987, however, Iraq declared that Iran's failure to officially accept Resolution 598 constituted a de facto rejection, \(^{207}\) and Iraq resumed attacks on ships traveling through the Persian Gulf to Iran. \(^{208}\)

Shortly thereafter, Secretary-General Perez de Cuellar embarked

\(^{204}\) Id. Iran was not satisfied with paragraph six of Resolution 598 which referred to the establishment of an impartial body to inquire into responsibility for the war's initiation. N.Y. Times, July 22, 1987, at A10, col. 4. In addition, Iran objected to the United States naval presence in the Persian Gulf. Id. Iran viewed the American escort of Kuwaiti tankers as a violation of paragraph five of the resolution because it was an act which "led to further escalation of tension in the region." U.N. Doc. S/19031 (July-Sept. 1987).
\(^{205}\) U.N. Doc. S/19045 (July-Sept. 1987). Iraq interpreted Resolution 598 as requiring the Iranian withdrawal to be completed within 10 days of the ceasefire and the exchange of prisoners of war to be completed within eight weeks of the ceasefire. Id.
\(^{207}\) Id.
\(^{208}\) N.Y. Times, Aug. 30, 1987, at A1, col. 3. Iran took advantage of the lull in Iraqi attacks to increase its oil exports from 1.6 to 2 million barrels per day. Id. at A14, col. 3. Iraq resumed its attacks to prevent Iran from gaining additional oil revenues with which to finance its war against Iraq. See N.Y. Times, Aug. 27, 1987, at A10, col. 3.
upon a peace mission to Iran and Iraq, seeking to implement Resolution 598.\textsuperscript{209} Iraq urged the United Nations to take “punitive measures” against Iran for failing to accept Resolution 598 and reiterated its own conditional support for the Resolution.\textsuperscript{210} Iran, however, still failed to provide a definitive statement of its position on the resolution.\textsuperscript{211} As a concurrent development, because several permanent members of the Security Council were opposed to an arms ban and perceived a softening in the Iranian position, the permanent members agreed to postpone consideration of an arms embargo until after a speech by Iranian President Ali Khamenei to the General Assembly the following week.\textsuperscript{212}

Unfortunately, President Khamenei took a hard line in his speech, never mentioning the word “cease-fire,” denouncing the Security Council as “a paper factory for issuing worthless and ineffective orders,” and stating that “peace ... can only be established in the light of punishing the aggressor.”\textsuperscript{213} Both the United States and the United Kingdom called for sanctions against Iran after the Khamenei address,\textsuperscript{214} but the other permanent members of the Security Council, France, China, and the Soviet Union, remained opposed to such sanctions.\textsuperscript{215} As a result,

\begin{itemize}
\item \textsuperscript{209} N.Y. Times, Sept. 3, 1987, at A1, col. 6.
\item \textsuperscript{210} N.Y. Times, Sept. 15, 1987, at A3, col. 4. For a discussion of Iraq’s position on Resolution 598, see supra note 205 and accompanying text.
\item \textsuperscript{211} N.Y. Times, Sept. 18, 1987, at A10, col. 3. Iran’s ambiguity on Resolution 598 may have resulted from an actual lack of agreement among Iranian leaders. See N.Y. Times, Sept. 10, 1987, at A3, col. 4. President Ali Khamenei, Speaker of Parliament Hojatolislam Hashemi Rafsanjani, and Foreign Minister Ali Akba Velayati refused to meet jointly with the Secretary-General, apparently because they did not agree on the Security Council plan. Id. Mr. Rafsanjani informed the Secretary-General that Iran would accept a cease-fire if Iraq was named as the aggressor. N.Y. Times, Sept. 14, 1987, at A3, col. 1. President Khamenei, however, insisted that Iraq not only be condemned as the aggressor, but be punished as well. Id.
\item \textsuperscript{212} N.Y. Times, Sept. 18, 1987, at A10, col. 3. Some Security Council members were encouraged by Iranian hints that their country might accept a temporary cease-fire while an international commission investigated how the war began. Id. Iraq, however, was unlikely to accept a temporary cease-fire because Iran would then have the opportunity to replenish its munitions. Id.
\item \textsuperscript{213} N.Y. Times, Sept. 23, 1987, at A14, col. 3. Khamenei did not rule out further United Nations mediation, however, specifically praising the efforts of the Secretary-General. Id.
\item \textsuperscript{214} Id.; see also N.Y. Times, Sept. 24, 1987, at A3, col. 1.
\item \textsuperscript{215} N.Y. Times, Sept. 24, 1987, at A3, col. 1. France believed Secretary-General Perez de Cuellar should have had more time to privately pressure Iran to comply with Resolution 598. Id. The Soviet Union wanted to maintain good relations with Iran, particularly because of Iran’s strategic location and the potential for the spread of Islamic fundamentalism into bordering areas of heavily Moslem Soviet Central Asia. N.Y. Times, July 23, 1987, at A14, col. 2. China’s resistance may have stemmed from an interest in protecting the revenue it derived from the sale of weapons to Iran. See N.Y. Times, July 25, 1987, at A5, col. 6.
\end{itemize}
the permanent members settled on a compromise approach. The Secretary-General would again attempt to gain implementation of Resolution 598 while the Security Council would work on “further steps to insure compliance” with the resolution. In addition, the Security Council gave the Secretary-General more flexibility by agreeing that the provisions of Resolution 598 did not have to be implemented exactly in sequence.

At this point, Iran and Iraq still remained intransigent on the conditions necessary to end the war. Iran demanded that a formal cease-fire be linked with a condemnation of Iraq for starting the war, although Iran was willing to observe an informal cease-fire once the impartial commission was created to investigate how the war began. In addition, Iran conditioned its withdrawal of troops from Iraqi territory on the payment of reparations for war damages by Iraq, and on the redrawing of the boundary between Iran and Iraq in light of Iraq’s repudiation of the 1975 Treaty which had established the previous boundary. Iraq, for its part, stated that a complete cease-fire, withdrawal and installation of United Nations observers must precede any discussion of other elements of Resolution 598, including the formation of the commission. Faced with such inflexible positions, the Secretary-General concluded that there was no possibility for further progress “without a fresh and resolute impulse from the Council.”

On December 24, 1987, the Security Council responded to the Secretary-General’s assessment with a presidential declaration. The declaration reaffirmed the Security Council’s commitment to the implementation of Resolution 598 and its determination to consider further.

216. N.Y. Times, Sept. 26, 1987, at A1, col. 4. The concurrent discussion of possible sanctions was intended to give the Secretary-General some leverage in his dealings with Iran. Id.

217. N.Y. Times, Oct. 9, 1987, at A8, col. 3; N.Y. Times, Sept. 30, 1987, at A10, col. 1. By allowing the Secretary-General to seek the appointment of an impartial commission to investigate the causes of the war before a declaration of a formal cease-fire, the Security Council recognized the importance to Iran of a public condemnation of Iraqi President Hussein as the instigator of the war. See id. Many diplomats viewed such a condemnation as the only way the Iranian leadership could justify ending the war without having achieved their often-declared objective of overthrowing Hussein. Id. For an outline of the sequence of events required by Resolution 598, see supra notes 195-98 and accompanying text.


219. Id.

220. Id.


222. N.Y. Times, Dec. 11, 1987, at A16, col. 1. The Secretary-General did not specify what action the Security Council should take but seemed to imply that the time had come for the Security Council to impose an arms embargo on Iran. Id.

ther steps to ensure compliance.\textsuperscript{224} In fact, the five permanent members agreed to begin drafting an arms embargo against Iran.\textsuperscript{225}

The draft embargo plan which emerged seemed likely to be adopted.\textsuperscript{226} The Soviets had agreed that discussion of the proposed two-year ban on the sale of arms to Iran by any United Nations members should be expanded to include the non-permanent members of the Security Council.\textsuperscript{227} Moreover, American Secretary of State Schultz and Soviet Foreign Minister Shevardnadze had reached a compromise under which the Security Council would pass the arms embargo resolution but delay carrying it out for thirty to sixty days to give Secretary-General Perez de Cuellar another opportunity to end the war through mediation.\textsuperscript{228}

Notwithstanding such efforts, Iran succeeded in avoiding the arms embargo.\textsuperscript{229} In March 1988, Iran's permanent representative to the United Nations, Mohammed Mahallati, presented to the Security Council an unsigned sheet of paper, without a letterhead, which stated that Iran accepted Resolution 598.\textsuperscript{230} This permitted the Soviet Union to conclude that there was no longer any need for an arms embargo resolution.\textsuperscript{231} As a result, on March 16, 1988, the Security Council produced only a presidential declaration unrelated to the arms embargo, calling upon Iran and Iraq to end the "war of the cities" and to cease attacks on civilian targets.\textsuperscript{232}

On March 25, 1988, despite opposition by several Security Council members, Secretary-General Perez de Cuellar agreed to an Iranian demand that he send a medical specialist to the Persian Gulf region to investigate the use of chemical weapons against Iranian civilians by Iraq.\textsuperscript{233} The specialist concluded that both Iranian military personnel

\textsuperscript{225} N.Y. Times, Dec. 25, 1987, at A2, col. 3.
\textsuperscript{226} See N.Y. Times, Mar. 6, 1988, at A1, col. 5.
\textsuperscript{227} N.Y. Times, Feb. 21, 1988, at A4, col. 1.
\textsuperscript{228} N.Y. Times, Mar. 6, 1988, at A1, col. 5.
\textsuperscript{229} See id.
\textsuperscript{230} Id. Iran's move was widely regarded as a ploy motivated by fear that passage of the arms embargo resolution was imminent. Id. at A23, col. 1.
\textsuperscript{231} Id. The Soviet Union welcomed the opportunity to avoid imposing the arms embargo. The Soviets feared that Iran, with its one million Afghan refugees and its links to the more militant Islamic Afghan guerilla factions, could block any agreement for a Soviet withdrawal from Afghanistan if the Soviet Union supported an arms embargo against Iran. Id.
\textsuperscript{232} U.N. Doc. S/19626 (Jan.-Mar. 1988); N.Y. Times, Mar. 17, 1988, at A11, col. 1. American efforts to obtain an arms embargo against Iran continued without success. See N.Y. Times, Apr. 23, 1988, at A1, col. 3. China soon stated its opposition to an embargo, citing clashes between United States naval forces in the Persian Gulf and Iran as the reason. Id. In fact, American officials admitted that they did not have the nine votes necessary to approve an arms embargo resolution even if no permanent member of the Council vetoed it. Id. For a discussion of the "war of the cities," see supra note 2.
\textsuperscript{233} N.Y. Times, Mar. 26, 1988, at A2, col. 3. Several members of the Se-
and civilians had been affected by chemical weapons, while only Iraqi military personnel had been affected. After this fifth investigation of the use of chemical weapons in the Iran-Iraq war, the Security Council adopted its first resolution directed solely to this issue, Resolution 612. Resolution 612 "condemn[ed] vigorously" the use of chemical weapons and stated that both sides were expected to refrain from further use of such weapons. Iran responded strongly against the resolution because it did not single out Iraq for its use of chemical weapons on civilians or for its extensive and long-lasting use of such weapons. Thus, peace still seemed unlikely.

The prospects for peace improved dramatically, however, when on July 18, 1988, Iranian President Khamenei sent a letter to Secretary-General Perez de Cuellar reaffirming Iran's acceptance of Security Council Resolution 598. Most doubts as to Iran's commitment to a cease-fire were dispelled by a subsequent statement by the supreme security Council argued that the visit would divert attention from the peace process. Id. These members, however, may well have feared that the investigation would result in embarrassing disclosures about Iraq's conduct during the war at a time when they were trying to achieve an arms embargo against Iran. See id.

235. For a discussion of the four previous United Nations investigations of chemical weapons use in the Iran-Iraq war, see supra notes 123-26, 150-53, 166-71 & 187-91 and accompanying text.
237. Id. Resolution 612 provided in pertinent part:

The Security Council,
Having considered the report of 25 April 1988 [S/19823] of the Mission dispatched by the Secretary-General to investigate allegations of the use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq,
Dismayed by the mission's conclusions that chemical weapons continue to be used in the conflict and that their use has been on an even more intensive scale than before,
1. Affirms the urgent necessity of strict observance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925;
2. Condemns vigorously the continued use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq contrary to the obligations under the Geneva Protocol;
3. Expects both sides to refrain from the future use of chemical weapons in accordance with their obligations under the Geneva Protocol;
4. Calls upon all States to continue to apply or to establish strict control of the export to the parties to the conflict of chemical products serving for the production of chemical weapons;

Id.

239. N.Y. Times, July 19, 1988, at A1, col. 3. No conditions were attached to Iran's acceptance of the resolution. Id.
leader of Iran, Ayatollah Ruhollah Khomeini. Ayatollah Khomeini stated that “[m]aking this decision [to accept a cease-fire with Iraq] was deadlier than swallowing poison.” It was “based only on the interest of the Islamic republic.” Yet even though outside experts cited many reasons for the Iranian reversal, Iraq remained skeptical of Iran’s commitment to a permanent cease-fire. Thus, Iraq stated that it had no choice but to go on with the war until Iranian intentions became clear.

The Security Council quickly issued a presidential declaration calling upon Iran and Iraq to “exercise maximum restraint,” but the parties initially refused to agree upon a cease-fire plan. Iraq repeated its demand that direct talks with Iran begin before a cease-fire, while Iran refused to accept direct talks until a cease-fire was in effect.

On August 1, 1988, the sixth United Nations mission to investigate the use of chemical weapons in the conflict concluded that Iraq’s use of chemical weapons had become “more intense and frequent.” In fact,

241. Id.
242. Id. Iran offered two more specific reasons for its sudden acceptance of Resolution 598. Hojjatolislam Rafsanjani cited the downing of an Iranian passenger plane with 290 people aboard by an American warship as a “turning point” which indicated that the United States would commit “immense crimes” if Iran continued with the war. N.Y. Times, July 20, 1988, at A6, col. 1. Iran’s military command headquarters pointed to the flood of weapons and other aid to Iraq and the Iraqi use of chemical weapons as the “new circumstances” responsible for the “new policy.” N.Y. Times, July 19, 1988, at A8, col. 4.
243. See N.Y. Times, July 22, 1988, at A6, col. 1. Experts listed the following factors as among those responsible for Iran’s acceptance of Resolution 598: the desire of religious leaders to stop diverting resources away from their efforts to build a model Islamic society, N.Y. Times, July 19, 1988, at A8, col. 1; the struggle to determine who would hold power after the death of Ayatollah Khomeini, id.; the recognition that a cease-fire had to occur while Ayatollah Khomeini was alive so that his successor could not be accused of betraying him, N.Y. Times, July 22, 1988, at A1, col. 1; Iran’s international isolation, id.; Iran’s battered economy which included inflation and unemployment rates of 30%, id.; the financial cost of the war, which was estimated at over $70 billion in direct costs and over $140 billion in indirect costs and wartime damage, id.; division between the Islamic Revolutionary Guards and Iran’s regular armed forces, id.; and the psychological effect of Iraq’s missile attacks on Tehran which deflated expectations of an Iranian victory. Id.
244. N.Y. Times, July 19, 1988, at A1, col. 3. Iraqi President Hussein feared a tactical cease-fire by Iran which would last only long enough for Iran to rebuild its armed forces and renew its economy with unhindered oil production. N.Y. Times, July 22, 1988, at A6, col. 4.
248. Id.
249. N.Y. Times, Aug. 2, 1988, at A9, col. 1. The experts again concluded that Iraq had used mustard gas, but were uncertain if eight injured Iraqi soldiers had been the victims of Iranian or Iraqi chemical weapons use. Id. Western
less than one week later, the Security Council authorized the Secretary-General to send a seventh mission to the border area to investigate another Iranian claim of chemical weapons use by Iraq. The Security Council took no immediate action, however, in an attempt to avoid complicating the Secretary-General's peace negotiations.

For once, the Security Council's reticence paid off. The parties soon accepted a compromise proposed by Secretary-General Perez de Cuellar, calling for direct talks to begin immediately after the start of a truce. On August 8, 1988, the Secretary-General announced that Iran and Iraq had agreed to a cease-fire to take effect on August 20, 1988, with direct talks to follow five days later. Aided by the presence of a 350-member United Nations observer force along the border, the cease-fire went into effect as scheduled.

Despite ongoing negotiations, however, no permanent settlement agreement has been signed. The parties still must overcome their deep mistrust of each other, for as Secretary-General Perez de Cuellar has stated, "[m]istrust is sand, and you can't build on sand."

IV. An Evaluation of the United Nations Performance During the Iran-Iraq War

An evaluation of attempts by the United Nations to achieve a peaceful settlement of the Iran-Iraq war necessarily hinges upon the standard by which those attempts are measured. Further, such an appraisal is probably best undertaken with some appreciation for the difficulty of the task which faced the United Nations. Consequently, before evaluating the United Nations' performance, this Comment identifies an approach-military analysts believe Iran used chemical artillery shells on infrequent occasions. Wash. Post, Aug. 2, 1988, at A17, col. 2.


251. Id. After the cease-fire took effect, however, the Security Council unanimously adopted a resolution which again condemned "the use of chemical weapons in the [Iran-Iraq] conflict" but did not condemn Iraq by name. N.Y. Times, Aug. 27, 1988, at A3, col. 6.

252. See N.Y. Times, Aug. 8, 1988, at A1, col. 6 (Iran's acceptance of compromise); N.Y. Times, Aug. 7, 1988, at A1, col. 6 (Iraq's acceptance of compromise).


254. L.A. Times, Aug. 20, 1988, § 1, at 1, col. 4. The United Nations force on the frontier was officially known as the United Nations Iran-Iraq Military Observers Group ("UNIIIMO"). Id.

255. See Wall St. J., Feb. 10, 1989, at A1, col. 3 (Secretary-General Perez de Cuellar to mediate direct talks between Iran and Iraq in effort to transform cease-fire into permanent settlement).


257. For an evaluation of the United Nations' performance during the Iran-Iraq war, see infra notes 305-24 and accompanying text.
appropriate standard by which to judge the United Nations and considers the factors which complicated United Nations settlement efforts.

A. The Appropriate Standard

Perhaps the most obvious way to judge United Nations attempts to achieve a peaceful settlement of the Iran-Iraq war would be to use "an ideal standard—for example, the expectations of the drafters of the UN Charter." The drafters' plan for peaceful settlement requires "[a]ll Members [to] settle their international disputes by peaceful means" where the continuance of the dispute would be "likely to endanger the maintenance of international peace and security." In addition, the Security Council is given "primary responsibility" for the maintenance of international peace and security. When the maintenance of international peace and security is likely to be endangered, the Security Council may call upon the parties to use peaceful settlement means and may recommend settlement procedures and terms. If the Security Council determines that a "threat to the peace, breach of the peace, or act of aggression" has occurred, it may either make recommendations or mandate collective sanctions. Possible sanctions include eco-

258. For a discussion of the standard by which United Nations settlement efforts should be evaluated, see infra notes 260-85 and accompanying text.

259. For a discussion of the factors which complicated United Nations attempts to achieve a peaceful resolution of the Iran-Iraq war, see infra notes 286-304 and accompanying text.

260. J. Murphy, supra note 58, at 123.

261. U.N. Charter art. 2, para. 3.

262. Id. art. 33, para. 1. The peaceful settlement means of article 33(1) include, but are not limited to, "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, [and] resort to regional agencies or arrangements." Id.

263. Id. art. 24, para. 1.

264. Id. art. 33, para. 2. The obligation of the parties to pursue the peaceful settlement of a dispute was probably intended to apply only during the pre-conflict stage. Arend, The Obligation to Pursue Peaceful Settlement of International Disputes During Hostilities, 24 Va. J. Int'l L. 97, 113 (1983). The Security Council, however, has apparently attempted to extend this obligation into the conflict phase. Id. In Resolution 479 (on the Iran-Iraq conflict) and in Resolution 502 (on the Falkland Islands War), the Security Council called upon states that were in the midst of hostilities to pursue peaceful settlement means. Id. at 114-17.

265. U.N. Charter art. 36, para. 1. The Security Council may be able to mandate, rather than simply recommend, particular settlement terms. J. Murphy, supra note 58, at 14. This possibility exists because the International Court of Justice has stated that "the powers of the Council under Article 24 are not restricted to the specific grants of authority contained in Chapters VI, VII, VIII and XII . . . . The only limitations are the fundamental principles and purposes found in Chapter I of the Charter," one of which is the peaceful settlement of international disputes which might lead to a breach of peace. Id.

266. U.N. Charter art. 39.

267. Id.
nomic or arms embargoes\textsuperscript{268} and the use of armed force by United Nations military units\textsuperscript{269} to restore international peace and security.

During the nearly eight years which had passed before Iran and Iraq agreed to a cease-fire,\textsuperscript{270} however, the United Nations demonstrated again that it cannot operate effectively in the manner envisaged by the drafters of the Charter. The Security Council, charged with the "primary responsibility"\textsuperscript{271} for international peace, repeatedly passed resolutions calling for peace which were ignored, particularly by Iran.\textsuperscript{272} The Security Council was never able to impose collective sanctions on either combatant because its five permanent members could not agree on the need for such action.\textsuperscript{273} Further, the Secretary-General carried much of the burden of bringing peace to Iran and Iraq.\textsuperscript{274} Thus, if United Nations settlement efforts during the Iran-Iraq war are measured against the ideal standard of the Charter's drafters, "there is no question that the United Nations has failed abysmally to cope satisfactorily with [the] violence."\textsuperscript{275}

Before condemning the United Nations for its failure to implement the collective security system fashioned by the drafters of the Charter, one must recognize that collective security is not necessarily the best way to maintain international peace.\textsuperscript{276} Nations considering armed ag-

\textsuperscript{268} See id. art. 41.

\textsuperscript{269} Id. art. 42. Security Council decisions to take action under article 41 or article 42 are binding upon all United Nations members under article 25. Bilder, An Overview of International Dispute Settlement, 1 Emory J. Int'l. Dispute Resolution 1, 10 (1986).

\textsuperscript{270} See N.Y. Times, Aug. 9, 1988, at A1, col. 6. The war began in September 1980, although Iran and Iraq disagree over the precise date. For a discussion of the Iranian and Iraqi accounts of how the war began, see supra notes 16-27 and accompanying text. The war ended on August 20, 1988, when a cease-fire agreement took effect. L.A. Times, Aug. 20, 1988, § 1, at 1, col. 4.

\textsuperscript{271} U.N. Charter art. 24, para. 1.

\textsuperscript{272} For a discussion of Security Council resolutions on the Iran-Iraq conflict and the reactions of the combatants to them, see supra notes 50-256 and accompanying text.

\textsuperscript{273} For a discussion of the Security Council's consideration of an arms embargo against Iran, see supra notes 192-232 and accompanying text.

The veto power held by each of the Security Council's permanent members has made enforcement actions challenging aggression by United Nations members the exception rather than the rule. See Arend, supra note 264, at 106. The Security Council has mandated article 41 sanctions only once. See Chip, A United Nations Role in Ending Civil Wars, 19 Colum. J. Transnat'l L. 15, 16 (1981). In Resolution 232, the Security Council imposed an economic embargo on Rhodesia, prohibiting the importation of a list of key Rhodesian products and the sale to Rhodesia of arms, air craft, motor vehicles and oil. Id. at 18 n.12. Similarly, the Security Council has only once recommended and ordered collective military action under article 42—in Korea. Arend, supra note 264, at 109-10.

\textsuperscript{274} For a discussion of the Secretary-General's efforts toward achieving a peaceful settlement, see supra notes 50-256 and accompanying text.

\textsuperscript{275} J. Murphy, supra note 58, at 123.

\textsuperscript{276} Id. at 123-24.
gressive usually can be confident that the international community will be unable to organize a collective response. Such nations may also be able to rely (as Iraq did) on ambiguity over which nation is the "aggressor" to prevent collective counter-action.

Furthermore, one also must keep in mind that the goal of collective security is probably somewhat unrealistic. The Charter was based upon the more black and white experience of the 1930s and World War II. "Issues have become much more twilight and less certain since that time." The concept of collective security ignores "the infinite variety of circumstances, the flux of contingency, [and] the mutability of situations" that are part of conflicts like the Iran-Iraq war.

As a result, attempts by the United Nations to achieve a peaceful resolution of the Iran-Iraq war probably should be measured against a more modest standard, one that takes into account the economic, political, social and religious context of settlement efforts. This standard recognizes that international law is not "an autonomous force which develops and is applied independently of political and social factors."

278. Id. at 291. For a discussion of the effect on collective action caused by the Security Council's reluctance to name the aggressor in the Iran-Iraq war, see infra note 309 and accompanying text.
279. J. Murphy, supra note 58, at 123. The United Nations is not a supranational agency with the power to act against aggression independently of its member states. Id. Thus, the usefulness of the United Nations as a means of maintaining international peace and security largely depends upon the will of the permanent members of the Security Council. Id.
281. Id. For example, during World War II, Nazi Germany was a much more readily identifiable initial aggressor than either Iran or Iraq was in the Iran-Iraq war. See id.
283. J. Murphy, supra note 58, at 123. As Iran and Iraq demonstrated, "disputants rarely confine themselves to rational argument over a narrow issue." McGinley, Ordering a Savage Society: A Study of International Disputes and a Proposal for Achieving Their Peaceful Resolution, 25 Harv. Int'l L.J. 43, 65 (1984). In addition to argumentation, disputants may employ "psychological attacks in the form of admonitions, abuse, threats, ridicule, or praise." Id. at 65-66 (footnotes omitted). They may take advantage of ideological, religious or political beliefs; manipulate personal, institutional, or national loyalties or enmities; and exaggerate their own strengths and downplay their own weaknesses. Id. at 66. They may apply such pressures themselves or make use of other individuals, institutions, or public opinion. Id.

The result is two-fold. First, the disputants are burdened with psychological and material pressures unrelated to their original positions. Id. at 67. Second, the disputants find it even more difficult to reach a rational solution to their disagreement. See id.

284. Kaladharan Nayar, supra note 52, at 83. In former Secretary-General Hammarskjöld's view, law must be viewed "not as a 'construction of ideal patterns to be imposed upon society,' but in an 'organic sense,' as an institution which grows in response to felt needs and within the limits set by historical conditions and human attitudes." Id. (footnote omitted) (quoting Hammarskjöld,
Moreover, such a standard permits consideration of the factors which further complicated an already problematical border dispute.285

B. Complicating Factors

United Nations attempts to peacefully resolve the Iran-Iraq war were complicated by numerous factors. Some of these factors are characteristic of armed conflict in general. In the Iran-Iraq example, the party with the upper hand in the fighting inevitably attached stringent conditions to any possible cease-fire.286 Indeed, it is probably not coincidental that a cease-fire was reached at a time when the battle lines had returned almost exactly to the original borders.287 In addition, each party used excessive rhetoric, which only served to inflame its opponent.288 Furthermore, Iran was at times unwilling or unable to speak with one voice, leaving Iraq and the world community in doubt as to Iran's position and intentions.289

Many other obstacles to peace in the Iran-Iraq conflict were unique. The conflict included a "clash of races" between the Iraqis, who are Arabs, and the Iranians, who are of Indo-European stock.290 Religious


285. For a discussion of the territorial claims of Iran and Iraq, see supra notes 28-49 and accompanying text.

A territorial dispute between nations tends to be particularly difficult to settle because the combatants tend to adopt the position (which Argentina took on the question of sovereignty over the Falkland (Malvinas) Islands) that "everything is negotiable—except sovereignty." Gravelle, The Falkland (Malvinas) Islands: An International Law Analysis of the Dispute Between Argentina and Great Britain, 107 MIL. L. REV. 5, 65 (1985) (statement of Eduardo Roca, Argentina's Permanent Representative to the Security Council, regarding Argentina's position on question of sovereignty over Falkland (Malvinas) Islands).

286. See, e.g., N.Y. Times, June 21, 1982, at A12, col. 3 (after Iran had forced Iraqi withdrawal, Iran demanded $150 billion in war reparations, free passage across Iraq for Iranian troops who wanted to go to Lebanon to fight Israelis, and overthrow of Iraqi President Hussein); N.Y. Times, Sept. 29, 1980, at A1, col. 6 (after Iraq's successful initial drive into Iran, Iraq demanded that Iran stop interfering in Iraqi domestic affairs, and that Iran accept Iraqi sovereignty over Shatt al Arab waterway and over area of Iranian territory near border to north of waterway).


288. See, e.g., U.N. Doc. S/19805 (Apr.-June 1988) (Iran is "criminal" regime, "spurred on by its sick, expansionist dreams and evil, aggressive intentions," and its troops are "forces of falsehood and evil"); N.Y. Times, Oct. 1, 1980, at A10, col. 1 ("Saddam Hussein . . . is an infidel, a person who is corrupt, a perpetrator of corruption") (quoting speech by Ayatollah Khomeini).

289. See N.Y. Times, Aug. 23, 1987, at E3, col. 1 (attributing Iran's tendency to speak to world with conflicting voices to Iran's attempts to respond simultaneously to both foreign and domestic pressures). For a discussion of two instances in which the Iranian leadership was unable to adopt a single, unified position on an issue, see supra notes 83 & 211 and accompanying text.

290. N.Y. Times, Sept. 25, 1980, at A19, col. 1. In fact, the rivalry between
differences between the Iranian and Iraqi leaderships also contributed to the dispute. Most Iranians, including the leadership, are Shiite, a minority Islamic sect; however, while most Iraqis are also Shiite, Iraq is controlled by Sunni Moslems, who are the majority sect in the Arab world.291 Moreover, Iran's Islamic fundamentalism is in strict contrast to Iraq's socialist secularism.292

Geopolitical and economic considerations further strained settlement efforts. The Shatt al Arab waterway is not only politically significant as a symbol of the balance of power between Iran and Iraq,293 but is a vital means of access to the sea for cities on both sides of the border.294 Iran's inadequate food supply provided added incentive for an Iranian invasion of Iraq's fertile Tigris-Euphrates delta.295

Personal animosity between the leaders of the combatants also hampered United Nations attempts to resolve the dispute. Ayatollah Khomeini, who had lived in exile in Iraq for fifteen years,296 was expelled from that country by President Hussein upon the request of the Shah of Iran, Mohammed Rizi Pahlevi.297

Furthermore, the draconian manner in which Iran and Iraq conducted the war only added to the United Nations' difficulties. The conflict was characterized by brutal fighting methods, including attacks on


291. N.Y. Times, Sept. 25, 1980, at A19, col. 1. The religious affinity between the leadership of Iraq and most other Arab nations may have accounted in part for the bias toward Iraq which these nations exhibited and which Iran found so objectionable. For a discussion of the bias of the League of Arab States against Iran, see supra note 165.

292. N.Y. Times, July 25, 1988, at A10, col. 1. Iran's religious fervor is illustrated by Ayatollah Khomeini's words to the Iranian people: "You are fighting to protect Islam and [Saddam Hussein] is fighting to destroy Islam.... So long as [the Iraqis] have weapons in their hands, our weapon is faith, our armory is Islam and with the weapons of faith and Islam we shall succeed and we will win." N.Y. Times, Oct. 1, 1980, at A10, col. 1.

293. N.Y. Times, Aug. 27, 1988, at A3, col. 5.

294. Amin, supra note 26, at 168. When the Shatt al Arab waterway is closed, Iraq must import all foreign goods over land through Kuwait, Jordan, and Turkey. N.Y. Times, Aug. 27, 1988, at A3, col. 5. As a result, Iraq began considering the development of a new deep water port at Al Zubair, to the west of the Shatt al Arab waterway. N.Y. Times, Oct. 28, 1988, at A3, col. 1. Since Al Zubair has direct access to the Persian Gulf through the Khor Abdallah channel, such development would alleviate the burdens of Iraq caused by closings of the Shatt al Arab waterway. Id.

295. Davis and Gavrielides, Press Iran to Talk Peace, N.Y. Times, May 23, 1984, at A27, col. 1. Only five percent of Iran's arable land can be permanently cultivated. Id. Moreover, Iran's food problem had been exacerbated by the Shah's neglect of agriculture and the economic chaos which surrounded the Shah's overthrow in 1979. Id.


297. Id. Ayatollah Khomeini was expelled from Iraq only four months before his triumphant return to Iran. Id.
civilians. The use of chemical weapons attacks on neutral shipping in the Persian Gulf and the mistreatment of prisoners.

To make matters worse, not only Iran and Iraq, but other members of the world community complicated United Nations attempts to achieve a peaceful resolution of the conflict. Certain countries, including some members of the Security Council, fueled the war by supplying a steady stream of arms to the combatants. Other countries demonstrated a notable lack of commitment to peace, allowing Iran and Iraq to fight on in the hope that they would exhaust each other. Finally, some countries undermined the efforts of the United Nations, an organization which they ostensibly supported, by displaying actual or perceived bias toward Iraq.

C. Evaluation

If United Nations peace initiatives are evaluated in light of the numerous factors which complicated the dispute between Iran and Iraq,

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298. For a discussion of the United Nations' attempt to halt attacks on civilian targets, see supra notes 107-22 & 139-44 and accompanying text.


300. For a discussion of the United Nations effort to end attacks on shipping, see supra notes 127-38 and accompanying text.

301. For a discussion of prisoner mistreatment in the Iran-Iraq war, see supra notes 145-46 and accompanying text.

302. See N.Y. Times, June 22, 1987, at A10, col. 6 (China sold Silkworm shore-based anti-ship missiles to Iran); N.Y. Times, July 14, 1982, at A14, col. 1 (Israel provided arms to Iran; Syria, Jordan, Egypt, Saudi Arabia and Gulf States provided arms to Iraq; and Soviet Union and United States provided arms to both sides).

303. See, e.g., Davis and Gavrielides, supra note 295, at A27, col. 1 (Reagan Administration view during early years of war was that war's continuation was beneficial because it prevented both Iran and Iraq from acting against American interests in region); N.Y. Times, Nov. 5, 1980, at A7, col. 1 (Security Council member stating that "Iran-Iraq war hasn't been too bad. Two unpleasant regimes have both been bloodied, and now there is less chance that either will realize its ambition to take over the region."); N.Y. Times, Oct. 5, 1980, § 4, at 1, col. 3 (statement of senior member of ruling Arab family in Persian Gulf region: "God help us if one of them wins... The most optimistic scenario is that they exhaust each other.").

For a discussion of the United States action of supplying inaccurate intelligence data to both sides in the apparent hope of preventing a victory by either side, see supra notes 181-83 and accompanying text.

304. For a discussion of the actual and perceived bias of the Security Council against Iran, see supra notes 89-103, 113-22 & 127-36 and accompanying text.

For a discussion of the bias of the United States and the League of Arab States against Iran, see supra note 165.

305. For a discussion of the factors which complicated the United Nations task of bringing the Iran-Iraq war to a peaceful conclusion, see supra notes 286-304 and accompanying text.
the achievement of a cease-fire after nearly eight years of war\textsuperscript{306} begins to appear more like a success than a failure. Thus, the temptation to make the United Nations a scapegoat for the length and bitterness of the war must be avoided.\textsuperscript{307}

Of course, the United Nations, and in particular, the Security Council, did not perform flawlessly. The Security Council's effectiveness was limited by its tendency to favor Iraq,\textsuperscript{308} a reluctance to identify the party responsible for conduct condemned by the Security Council,\textsuperscript{309} and a less-than-complete commitment to the peace process on the part of some of its members.\textsuperscript{310} Still, the Security Council did attempt several

\footnotesize{\textsuperscript{306} See N.Y. Times, Aug. 9, 1988, at A1, col. 6. The war began in September 1980, although Iran and Iraq disagree over the precise date. For a discussion of the Iranian and Iraqi accounts of how the war began, see supra notes 16-27 and accompanying text. The war ended on August 20, 1988, when a cease-fire agreement took effect. L.A. Times, Aug. 20, 1988, § 1, at 1, col. 4.

\textsuperscript{307} See Armed Force, supra note 27, at 45 (United Nations too often relegated to role of scapegoat for failure of world community to control unilateral use of armed force, particularly since United Nations is not supranational organization with independent powers) (remarks of Professor John F. Murphy); see also Auma-Osolo, U.N. Peace-Keeping Policy: Some Basic Sources of Its Implementation Problems and Their Implications, 6 CAL. W. INT'L L.J. 323, 350 (1976) (Table 1) (United Nations genuinely settled 29% of major international disputes between 1946 and 1975).

\textsuperscript{308} For a discussion of the bias of the Security Council in favor of Iraq, see supra notes 89-103, 113-22 & 127-36 and accompanying text.


During the Iran-Iraq war, however, such a philosophy may not have been the best approach. Indeed, by failing to condemn Iraq as the aggressor, Security Council members may have been motivated more by their own political concerns than by their desire for a settlement of the conflict. See Higgins, supra, at 17. Moreover, the Security Council's failure to identify Iraq as the aggressor contributed to Iran's conclusion that it was not useful to mediate the conflict through the Security Council, making settlement more difficult to achieve. See id. at 18. Finally, had the Security Council identified Iraq as the aggressor, public opinion might have been mobilized against the Iraqi government and contributed to an early resolution of the war. See id.

\textsuperscript{310} 37 U.N. GAOR (38th plen. mtg.) at 685, U.N. Doc. A/37/PV.38 (1982). Secretary-General Perez de Cuellar described the problem as follows: There is a tendency in the United Nations for Governments to act as though the passage of a resolution absolved them from further responsibility for the subject in question. Nothing could be further from the intention of the Charter. In fact, resolutions, particularly those unanimously adopted by the Security Council, should serve as a spring-
different methods of resolving the Iran-Iraq war: calls for a cease-
fire;\textsuperscript{311} calls for an end to particular fighting methods, such as attacks on
neutral shipping\textsuperscript{312} and the use of chemical weapons;\textsuperscript{313} and an unsuc-
sessful attempt to impose an arms embargo against Iran.\textsuperscript{314}

Moreover, the performance of Secretaries-General Waldheim and
Perez de Cuellar cannot be underestimated. They truly demonstrated
what Hammarskjold called "that combination of steadfastness of pur-
pose and flexibility of approach which alone can guarantee [the best
possibility of success]."\textsuperscript{315} Indeed, the variety of approaches employed
by the Secretaries-General and their representatives included mediation
efforts,\textsuperscript{316} fact-finding missions,\textsuperscript{317} attempts to arrange a partial or tem-
porary cease-fire,\textsuperscript{318} and an effort to limit the scope of the war by ending
board for governmental support and determination and should motiv-
ate their policies outside the United Nations. This indeed is the
essence of the treaty obligation which the Charter imposes on Member
States. In other words the best resolution in the world will have little
practical effect unless Governments of Member States follow it up with
the appropriate support and action.

Very often the Secretary-General is allotted the function of follow-
ing up on the implementation of a resolution. Without the continuing
diplomatic and other support of Member States, the Secretary-Gen-
eral's efforts often have less chance of bearing fruit. Concerted diplo-
matic action is an essential complement to the implementation of
resolutions.

\textit{Id.} For examples of the lack of commitment described by the Secretary-General,
see supra notes 69, 97 & 181-83 and accompanying text.

\textsuperscript{311} For a discussion of the Security Council resolutions and presidential
declarations calling for a cease-fire, see supra notes 50-256 and accompanying
text.

\textsuperscript{312} For a discussion of the Security Council's effort to stop attacks on neu-
tral shipping, see supra notes 127-38 and accompanying text.

\textsuperscript{313} For a discussion of United Nations efforts to halt the use of chemical
weapons, see supra notes 123-26, 150-53, 166-71, 187-91, 233-38 & 249-51 and
accompanying text.

\textsuperscript{314} For a discussion of the failed attempt to impose an arms embargo on
Iran by Security Council resolution, see supra notes 192-232 and accompanying
text.

\textsuperscript{315} Kaladharan Nayar, \textit{supra} note 52, at 81-82 (footnote omitted) (quoting
Hammarskjold, The Development of a Constitutional Framework for Interna-
(address at University of Chicago Law School)). The difficulties of the United
Nations in resolving the conflict were not the result of "inactivity, but rather of
nonreceptivity" on the part of the combatants. \textit{Armed Force}, \textit{supra} note 27, at 49
(remarks of Under Secretary-General for Special Political Affairs, Brian
Urquhart).

\textsuperscript{316} For a discussion of the mediation efforts of the Secretaries-General
and their representatives, see \textit{supra} notes 50-256 and accompanying text.

\textsuperscript{317} For a discussion of United Nations fact-finding missions to Iran and
Iraq, see \textit{supra} notes 50-256 and accompanying text.

\textsuperscript{318} For a discussion of United Nations initiatives aimed at achieving a par-
tial or temporary cease-fire, see \textit{supra} notes 70-78 & 104-06 and accompanying
text.
attacks on cities.\textsuperscript{319}

Thus, despite the shortcomings of the Security Council, the duration of the Iran-Iraq conflict does not represent a failure on the part of the United Nations. Rather, considering the effort of the Secretaries-General\textsuperscript{320} and the obstacles they overcame,\textsuperscript{321} the cease-fire of August 20, 1988\textsuperscript{322} should be regarded as an achievement. This achievement should not be downplayed because the United Nations has thus far been unable to achieve a lasting settlement of the border dispute between Iran and Iraq.\textsuperscript{323} As Inis Claude has noted:

In some cases, the realistic ideal may be not to achieve the permanent settlement of a dispute, but to persuade the parties to settle down permanently with the dispute. The agenda of the Security Council and the General Assembly are liberally sprinkled with items that are beginning to seem like permanent fixtures, quarrels to which the United Nations has managed to subject to peaceful perpetuation rather than peaceful settlement. This is not a cynical comment; many of life's problems are meant to be lived with rather than solved, and the urge to have a showdown, to settle the matter one way or the other, is often an unwise impulse in both personal and international affairs.\textsuperscript{324}

V. The Future Role of the United Nations in the Resolution of Armed Conflict

Ideally, members of the United Nations will come to share former Secretary-General Dag Hammarskjold's view that "[t]he Principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people."\textsuperscript{325} Guided by this view, "the permanent members [of the Security Council] would rise above their national interests and respond to the challenge of being the guardians of

\textsuperscript{319} For a discussion of United Nations efforts to end attacks on cities, see supra notes 107-22 & 159-44 and accompanying text.

\textsuperscript{320} For a brief summary of the effort of the Secretaries-General during the Iran-Iraq war, see supra notes 315-19 and accompanying text.

\textsuperscript{321} For a discussion of the factors which complicated United Nations settlement efforts during the Iran-Iraq war, see supra notes 286-304 and accompanying text.

\textsuperscript{322} L.A. Times, Aug. 20, 1988, § 1, at 1, col. 4.

\textsuperscript{323} See Wall St. J., Feb. 10, 1989, at A1, col. 3 (Secretary-General Perez de Cuellar to mediate direct settlement talks).

\textsuperscript{324} I. Claude, Jr., supra note 282, at 236-37.

world peace."326 As the Iran-Iraq war demonstrates, however, the Security Council has not been able to achieve the level of cooperation necessary to employ the collective security system envisaged by the drafters of the Charter.327 Nations, including the permanent members of the Security Council, still display a strong tendency to act in a self-seeking manner.328 Thus, at least in the immediate future, the United Nations must find ways to contribute effectively to the peace process without relying solely upon the collective security mechanism. Accordingly, this Comment suggests that the United Nations should still seek to implement its collective security system,329 but should review the roles of the Security Council330 and Secretary-General331 in resolving armed conflicts where resort to collective sanctions is not possible.


327. See id. at 99; Auma-Osolo, supra note 307, at 357-58. For a discussion of the collective security system of the Charter, see supra notes 261-69 and accompanying text.

328. Auma-Oslo, supra note 307, at 325. That nations act in a "self-seeking" manner is not unexpected. Id. Nations are no more than the sum total of individuals, and individuals have always tried to maximize their gains in transactions with other individuals. Id.

In fact, at various points during the Iran-Iraq war, each of the five permanent members of the Security Council allowed their own national interests to alter the actions of the Security Council. See, e.g., N.Y. Times, Jul. 23, 1987, at A1, col. 4 (Soviet Union resisted arms embargo against Iran because of fear that Islamic fundamentalism would spread into Moslem areas of Soviet Union); N.Y. Times, June 22, 1987, at A10, col. 6 (China opposed arms embargo against Iran because China was profiting from supplying Silkworm missiles to Iran); N.Y. Times, Nov. 5, 1980, at A7, col. 1 (France and Britain refused to support resolution embodying United States peace plan because of heavy investments in both Iran and Iraq and desire to avoid provoking either combatant); J. Murphy, supra note 58, at 66 (one reason for weakness of Resolution 479, which failed to name Iraq as aggressor, was desire of United States to appear to American public to be dealing firmly with Iran, which then held American hostages).

329. For a discussion of why the United Nations should attempt to implement the collective security system of the Charter, see infra notes 332-38 and accompanying text.

330. For a discussion of the future role of the Security Council in the resolution of armed conflicts, see infra notes 339-51 and accompanying text.

331. For a discussion of the future role of the Secretary-General in the resolution of armed conflicts, see infra notes 399-51 and accompanying text.
A. The Goal of Collective Security

As demonstrated by the Iran-Iraq war, the permanent members of the Security Council should not abandon the goal of effective implementation of the collective security system of the Charter.\(^{332}\) Though such a system may be imperfect,\(^{333}\) it is one means of ending armed conflicts which could otherwise have disastrous results. As Neville Chamberlain noted, "[i]n war... there are no winners, but all are losers."\(^{334}\) Indeed, the costs of the Iran-Iraq war were great not only for the combatants, but for other countries as well.\(^{335}\) Furthermore, a functioning collective security system must include a recognition by states that their self-interest extends to the long-term interest in global order and stability.\(^{336}\) Such an interest has particular value in light of the Iran-Iraq war, where the parties' focus on immediate territorial gains led to a long struggle which ended with the battle lines being located almost exactly where the border had been when the fighting began.\(^{337}\) In fact, a Security Council...
resolution under chapter VII of the Charter, imposing some type of collective sanction, in effect mandates that the goal of the resolution be given priority over the short-term interests of individual nations.338

B. The Role of the Security Council

Until the imposition of collective sanctions becomes a more realistic possibility, the Security Council will have difficulty resolving armed conflicts. Absent a realistic threat of collective sanctions, disputants may not comply with a Security Council resolution even though such a resolution represents not just a simple combination of national interests, but an acknowledgment of international legal norms as well.339 Indeed, Iran ignored no less than seven resolutions during the course of the Iran-Iraq war.340

The United Nations could perhaps avoid non-compliance with Security Council resolutions for the reason cited by Iran—bias on the part of the Security Council.341 By establishing a sufficient United Nations presence throughout the world, not just in perceived trouble spots, the United Nations could quickly determine what happened, and the Security Council could immediately and conclusively identify the aggressor.342 Unfortunately, removing the ambiguity of who started a conflict would not necessarily provide the Security Council with the will to brand the aggressor as such.343 Despite unequivocal statements by United Nations' experts that Iraq had used chemical weapons, the Security Council refused to pass a resolution naming Iraq as a chemical weapons user.344 Moreover, even assuming that the Security Council would eliminate any

achieving a stable, harmonious or otherwise desirable international community”).

338. Legal Responses to the Afghan/Iranian crises, 1980 AM. SOC'Y INT'L. L. PROC. 248, 251 (remarks by Professor Rosalyn Higgins). In the absence of a binding Security Council resolution, governments are free to determine their own priorities, which invariably results in them giving greater weight to short-term considerations of national interest. Id.


340. For a discussion of Iran's refusal to comply with Resolutions 479, 514, 522, 540, 552, 582, and 588, see supra notes 56-60, 90-103, 113-22, 127-38, 154-60 & 175-78 and accompanying text. Iraq did not comply with resolution 612. For a discussion of Resolution 612 and Iraq's continued use of chemical weapons after its adoption, see supra notes 233-38 & 249-51 and accompanying text.

341. For a discussion of the bias of the Security Council in favor of Iraq, see supra notes 89-103, 113-22 & 127-36 and accompanying text.

342. Armed Force, supra note 27, at 42 (remarks of Professor Thomas M. Franck). The only occasion on which the United Nations was able to quickly determine how hostilities began was at the outbreak of the Korean War. Id. A United Nations commission was located in South Korea at the time, and within 24 hours, wired a conclusive description of events to the Secretary-General. Id.

343. For a discussion of the Security Council's habit of not singling out one disputant as the "guilty" party, see supra note 309.

344. For a discussion of the Security Council's attempts to address the
appearance of bias, the risk of noncompliance with its resolutions would still exist.

As a result, in those situations in which the Security Council cannot act, or as in the Iran-Iraq war, acts but is ignored by at least one of the disputants, the Security Council plays a reduced role in resolving the conflict. The Security Council serves primarily as a forum in which the issues are sharpened and foreign opinion is developed and expressed. Such opinion, in the absence of sanctions, is what gives international law its potency. Foreign opinion formulated in the Security Council represents judgments made by the world community which affect "the attitudes of peoples and their political behavior . . . [and] influence the political processes within states as well as the relations of states." Indeed, foreign opinion probably played an important role in Iran's acceptance of Resolution 598 and the subsequent cease-fire because it contributed to Iran's sense of international isolation.

Thus, while the Security Council can still play a role in resolving armed conflict, it probably cannot bear the "primary responsibility for the maintenance of international peace and security" when the collective security system is not effectively implemented. In this event, as the Iran-Iraq war suggests, the Secretary-General takes on added responsibility and becomes almost crucial to the resolution of any conflict.

C. The Role of the Secretary-General

The drafters of the Charter wisely designed the position of Secretary-General to be more than a mere "high level administrative functionary." By giving the Secretary-General explicit political


345. See J. Murphy, supra note 58, at 72.
346. Cf. E. Luard, supra note 277, at 276 (diplomatic contacts and memberships in international organizations have exposed governments to foreign opinion).
347. Id. at 283.
348. Armed Force, supra note 27, at 46 (remarks of Professor Oscar Schachter).
349. Cf. N.Y. Times, July 22, 1988, at A6 (Iran's international isolation was one factor in Iran's acceptance of Resolution 598). Even TASS, the official Soviet news agency, may have contributed to the isolation of the Khomeini regime by condemning its "total incompetence" and noting that its leaders "disrupt all peace initiatives and reject, on various pretexts, all attempts at mediation . . . ." L.A. Times, Dec. 26, 1987, § 1, at 14, col. 3.
351. See Auma-Osolo, supra note 307, at 346 (maintenance of peace is responsibility of all organs of United Nations, not just Security Council).
352. J. Murphy, supra note 58, at 95.
responsibility,\textsuperscript{353} the drafters permitted the Secretary-General to participate in attempts to resolve armed conflict. Under article 99 of the Charter, "[t]he Secretary General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security."\textsuperscript{354} As interpreted, article 99 not only "empowers the Secretary-General to engage in fact-finding or investigations or other tasks of an exploratory nature,"\textsuperscript{355} but authorizes the Secretary-General and his representatives to offer their "good offices" to encourage disputants to negotiate.\textsuperscript{356} During the Iran-Iraq conflict, the Secretary-General made extensive use of both his fact-finding and good offices powers.\textsuperscript{357}

Of course, as the Security Council demonstrated during the Iran-Iraq war, having the power to assist in resolving armed conflict does not mean that the power can be used effectively.\textsuperscript{358} Still, the Secretary-General holds certain advantages which help him to eliminate many of the obstacles to the settlement of a conflict.\textsuperscript{359} The Secretary-General has a variety of resources at his disposal and a special status in the world community.\textsuperscript{360} More importantly, the Secretary-General is a neutral, in-

\textsuperscript{353} Kaladharan Nayar, supra note 52, at 45.
\textsuperscript{354} U.N. CHARTER art. 99. In addition, under article 98, the Security Council, General Assembly, and other Councils can entrust the Secretary-General with unspecified "other functions." Kaladharan Nayar, supra note 52, at 43.
\textsuperscript{355} Kaladharan Nayar, supra note 52, at 53. For a brief discussion of the manner in which article 99 is interpreted by several scholars and two Secretaries-General—Trygve Lie and Dag Hammarskjold—see id. at 50-53.
\textsuperscript{356} Id. at 53-54. For a discussion of the scope of the Secretary-General’s good offices, see supra note 52.
\textsuperscript{357} For a discussion of the Secretary-General’s efforts during the Iran-Iraq war, see supra notes 50-256 and accompanying text.
\textsuperscript{358} For a discussion of the Security Council’s limited effectiveness in resolving the Iran-Iraq conflict, see supra notes 339-51 and accompanying text.
\textsuperscript{359} Kaladharan Nayar, supra note 52, at 55. Negotiations carried out with the assistance of the Secretary-General have the following advantages over traditional diplomatic negotiation:

[A]n objective settlement [can be attempted] because the negotiators will act within the framework of the UN Charter and its principles; their bargaining discretion will be reduced by a multilateral approach to problems in which all members of the Organization have a direct or indirect influence; the unfavorable position of weaker states can be improved by bargaining against the background of wider United Nations interests; the danger of a deadlock can be overcome with the help of the Secretary-General, sometimes by providing a needed face-saving device; and the complexity of problems can be reduced with the assistance of the Secretariat which can put its expert knowledge at the disposal of the negotiating parties.

\textsuperscript{356} Id. at 55-56.
\textsuperscript{360} Id. at 63-64. The Secretary-General’s resources include a knowledgeable staff, a developed relationship with the other organs of the United Nations and access to the political views of the member nations. Id. The Secretary-General’s status stems from the success of past Secretaries-General as well as the
dependent, international civil servant. The Secretary-General’s neutrality is mandated by the Charter and recognized by both the holders of the office and the members of the world community.\footnote{361} Indeed, while criticizing the Security Council for its bias toward Iraq, Iran nevertheless emphasized its willingness to cooperate with the Secretary-General.\footnote{365}

Finally, and perhaps most importantly, the Secretary-General can take “smooth and fast action, which might otherwise not [be] open to the Organization.”\footnote{366} Action by the Secretary-General enables the United Nations to act without forcing members to make an explicit, formal and public commitment to an undertaking.\footnote{367} During the Iran-Iraq war, for example, the Secretary-General successfully arranged the cease-fire agreement between Iran and Iraq;\footnote{368} the Secretary-General successfully arranged an agreement to halt attacks on civilian targets;\footnote{369} the Secretary-General and his representative, Olaf Palme, attempted to arrange a limited cease-fire to permit merchant ships to leave the Shatt al Arab waterway;\footnote{370} and Under Secretary-General Diego Cordovez attempted to arrange a partial cease-fire to allow the clean-up of an oil

Secretary-General’s structural position as one of the central figures in the international system. \textit{Id.} at 64.

\footnote{361} Id. at 76-77.

\footnote{362} U.N. \textsc{charter} art. 100, para. 1.

In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

\textit{Id.}

\footnote{363} Kaladharan Nayar, \textit{supra} note 52, at 77. As former Secretary-General Dag Hammarskjold stated, “[u]se whatever words you like, independence, impartiality, objectivity—they all describe essential aspects of what, without exception, must be the attitude of the Secretary-General.” \textit{Id.}

\footnote{364} \textit{See} U.N. \textsc{charter} art. 100, para. 2 (obligating member nations to “respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities”).


\footnote{367} \textit{Id.} For a brief discussion of the degree of public commitment which a nation must display for Security Council resolutions and presidential declaration, see \textit{supra} note 53.

\footnote{368} For a discussion of the cease-fire, see \textit{supra} notes 252-56 and accompanying text.

\footnote{369} For a discussion of the moratorium on attacks on civilian targets, see \textit{supra} notes 139-44 and accompanying text.

\footnote{370} For a discussion of the attempted cease-fire for merchant ships, see \textit{supra} notes 72-78 and accompanying text.
spill in the Persian Gulf. Thus, because the unique position of Secretaries-General sometimes enables them to succeed when the Security Council has been unable to act effectively, Secretaries-General may well be essential to the resolution of future armed conflicts.

VI. Conclusion

Despite the special qualifications and best efforts of the Secretary-General, and the efforts of the Security Council and others, the Iran-Iraq war lasted almost eight years at a great cost to all concerned. In light of the loss of human life and economic damage incurred by the combatants and the resources expended by the world community in attempting to resolve this conflict, perhaps what is really needed is more preventive action by the United Nations. Secretaries-General, unlike in the case of Iran and Iraq, must be able to initiate fact-finding and offer their good-offices in an effort to preempt hostilities. For such preventive action to be possible, however, the United Nations must first be aware that a conflict is developing.

Secretary-General Perez de Cuellar recently took a “major step toward establishing an institutional framework that would provide him with early warning of threats to international peace and security.” On March 1, 1987, the Secretary-General created the Office for Research and Collection of Information. This office, which is headed by an Assistant Secretary-General, is “responsible for research, the collection and dissemination within the Secretariat of political news and information[,] and for drafting related to the responsibilities of the Secretary-General.” One of the specific duties of the office is “to provide early warning of developing situations requiring the Secretary-General’s attention.”

Still, United Nations members could take further steps to enhance the opportunity for United Nations preventive action. First, the United Nations should establish a worldwide presence. Such a presence

371. For a discussion of the attempted cease-fire to contain an oil spill, see supra notes 104-06 and accompanying text.
372. For a discussion of the costs of the Iran-Iraq war, see supra note 335 and accompanying text.
373. Armed Force, supra note 27, at 44 (remarks of Professor John F. Murphy).
374. Id. In the case of Iran and Iraq, then-Secretary-General Kurt Waldheim initially offered his good offices on September 22, 1980, only after the Iraqi air raid which is generally agreed to have begun the war. 35 U.N. SCOR Supp. (July-Sept. 1980) at 115, U.N. Doc. S/14193 (1980).
377. Id.
378. Id.
379. See Auma-Osolo, supra note 307, at 358-59 (advocating establishment of one United Nations supervisory military unit on each continent to collect in-
would enable the Secretary-General to receive an immediate first-hand
evaluation of a dispute between nations. As a result, the Secretary-
General would more frequently have the opportunity to resolve the dis-
pute before an outbreak of hostilities.

Second, United Nations members should consider giving the
United Nations greater access to information gathered by satellite tech-
nology than it presently has. The United Nations members should reexamine the concept of an International Satellite Monitoring Agency
(“ISMA”), such as that proposed by former French President Giscard
de'Estaing. The satellite photography collected by an agency like
ISMA could serve several important functions: “(1) early warning of po-
tential military conflict by spotting unusual military buildup; (2) moni-
toring of cease-fire agreements and providing information to UN peace-
keeping forces; [and] (3) monitoring of conflict spots to prevent the
spread of conflicts.”

Thus, the Office for Research and Collection of Information, supplemented by the establishment of a worldwide United Nations pres-
telligence and inform Secretary-General of situations threatening world peace; see also Armed Force, supra note 27, at 42 (sufficient United Nations presence
needed everywhere, not just in troubled areas, to determine cause of violence
when it occurs) (remarks of Professor Thomas M. Franck).

See Rendell, supra note 375, at 5-6 (describing current access of United
Nations to satellite technology). The United Nations currently leases satellite
facilities from the International Telecommunications Satellite Organization (IN-
TELSAT). Id. at 5. Because INTELSAT rules prohibit the use of satellite moni-
toring for “preventive diplomacy,” these satellites can only be used to monitor
United Nations peacekeeping forces, not to locate situations where the threat
of violence exists. Id. at 6.

Id. at 8. As originally proposed, ISMA would have assisted the United
Nations in verifying bilateral arms control agreements and in monitoring crises.

The General Assembly considered creating ISMA in 1981 but took no ac-
tion. Id. at 9. Both the United States and the Soviet Union opposed the estab-
lishment of ISMA. Id. at 10. The United States viewed the establishment of
decision-making procedures regarding the information gathered as probably in-
soluble. Id. The Soviet Union believed that if the creation of ISMA was not
connected to the implementation of concrete disarmament measures, ISMA
would only give the appearance of progress on disarmament and might even
increase mutual suspicion among states. Id. Improved relations between
the United States and the Soviet Union, however, may mean that these objections
are no longer insurmountable obstacles to the establishment of ISMA. More-
over, both superpowers may not have given enough weight to the potential ben-
efit of increased United Nations preventive action.

See Rendell, supra note 375, at 5 (citing J. Swahn, An International
Satellite Monitoring Agency (ISMA) for Arms Control Verification, Con-
flict Resolution and Crisis Control 6 (1986)).

For a discussion of the Office for Research and Collection of Information,
see supra notes 375-78 and accompanying text.
ence\textsuperscript{384} and perhaps even ISMA,\textsuperscript{385} would enhance the ability of the United Nations to take preventive action. Preventive action, in turn, would help the United Nations avoid the complications associated with the outbreak of a conflict like the Iran-Iraq war.\textsuperscript{386} Indeed, although it is comforting to know that if necessary the United Nations can peacefully resolve an armed conflict such as the Iran-Iraq war, the United Nations can be most effective in stopping armed conflict by never allowing it to begin.

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\textsuperscript{384}. For a discussion of the possibility of a worldwide United Nations presence, see \textit{supra} note 379 and accompanying text.
\textsuperscript{385}. For a discussion of ISMA, see \textit{supra} note 381 and accompanying text.
\textsuperscript{386}. For a discussion of the factors which complicated United Nations settlement efforts during the Iran-Iraq war, see \textit{supra} notes 286-304 and accompanying text.