



Security Council

Distr.
GENERAL

S/20443
2 February 1989
ENGLISH
ORIGINAL: ARABIC

LETTER DATED 2 FEBRUARY 1989 FROM THE PERMANENT REPRESENTATIVE OF
IRAQ TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

On instructions from my Government, I have the honour to transmit to you a letter dated 2 February 1989 from Mr. Tariq Aziz, Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Iraq.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Ismat KITTANI
Permanent Representative

Annex

Letter dated 2 February 1989 from the Deputy Prime Minister
and Minister for Foreign Affairs of Iraq addressed to the
Secretary-General

Now that some six months have passed since the agreement of 8 August 1988, whereby Iraq and Iran agreed, under your sponsorship, to observe a cease-fire and to initiate direct negotiations under your auspices, and in order to mark the occasion of the visit by your personal representative, Mr. Jan Eliasson, during which we held constructive and fruitful talks with him, I should like to submit you our assessment of the situation with regard to the implementation of Security Council resolution 598 (1987).

As is well known, the Iranian side refused to accept resolution 598 (1987) immediately after it was adopted and instead continued the war, its operations of aggression and invasions of Iraqi territory throughout the subsequent period. It accepted the resolution - approximately one year after it was adopted - on 18 July 1988 in circumstances of which you and the international community are aware. Those circumstances were a result of Iraq's success in liberating occupied territory which the Iranian side had persisted in holding for a number of years and had used as a base for further incursions and the pursuit of the expansionist objectives to which they openly subscribed.

Despite our knowledge of all these facts, Iraq approached Iran's acceptance of resolution 598 (1987) in a realistic and responsible manner. We immediately began to investigate the best means by which to initiate the implementation of the resolution as a peace plan. On 20 July 1988 we addressed a letter to you in which we called for the holding of direct official talks between authorized representatives of the two parties, under the auspices of the Secretary-General, to discuss the implementation of resolution 598 (1987). This proposal was based on a sincere desire to ascertain the true intentions of Iranian officials in accepting resolution 598 (1987) and on the practical need directly to verify the Iranian understanding of the resolution. Such an approach, moreover, is both practical and logical in the solution of international disputes, particularly given the fact that the statements emanating from Iranian officials concerning acceptance of the resolution made constant reference to pressing circumstances, to a need to take into account the circumstances of and reasons for which they were unable to reveal and to the sadness and disappointment caused by that need. The officials also advanced strange interpretations of the letter and the spirit of the resolution which were inconsistent with the precepts of international law and with the rules governing relations between States in the modern era.

Iraq's request to hold direct negotiations was not a pre-condition, as claimed by Iran at the time, because this approach to the process does not ensure a unilateral advantage for Iraq at the expense of Iran.

As an expression of our sincere desire for peace, Mr. Saddam Hussein, President of the Republic of Iraq, announced on 6 August 1988 that Iraq was prepared to observe the cease-fire on the condition that Iran declared, clearly,

unequivocally and officially, its agreement to enter into direct negotiations after the cease-fire, in order that we might discuss, reach agreement on and implement the Security Council resolution.

Intensive contacts with you were held following this historic announcement, and agreement was reached on 8 August 1988 to announce the date of the cease-fire. Agreement was also reached on the schedule, basis and objectives of the direct negotiations between the two parties under the auspices of the Secretary-General of the United Nations. You addressed a letter on the same date to the Permanent Representatives of the two countries. I quote that letter in full in view of its importance in relation to subsequent events.

The letter reads as follows:

"In pursuance of the official contacts I had with Iraq and the Islamic Republic of Iran, I should like to inform you that both Governments have agreed that direct talks between their Foreign Ministers shall be held under my auspices, immediately after the establishment of the cease-fire, in order to reach a common understanding of the other provisions of Security Council resolution 598 and the procedures and timings for their implementation."

It is clear from this review of the sequence of events that an agreement was reached between the two parties, through the Secretary-General of the United Nations, to fix the date of the cease-fire before agreement was reached on all the related provisions. The cease-fire actually took effect on 20 August in the form of abstention from shooting, and the United Nations observers took up their positions before the detailed legal provisions and undertakings relating to the cease-fire were settled by means of an agreement between the two parties and the Secretary-General. Such an agreement was essential in order to consolidate the cease-fire. It was natural that the Geneva negotiations should begin by addressing this important subject with a view to consolidating the cease-fire through a clear and specific agreement between the two parties under the auspices of the United Nations, before moving on to discussion of the other provisions of resolution 598 (1987).

When direct negotiations began at Geneva on 25 August 1988, Iraq requested at the very first session that the provisions and undertakings of the cease-fire arrangements should be clear and unequivocal in order to prevent any divergence in interpretations thereof at the time of implementation in the future and in order that the cease-fire should be of a permanent nature and should constitute a definite step towards comprehensive and lasting peace. Iraq also requested that the said provisions and undertakings should, when implemented on land, in the air and at sea, produce equivalent benefits for both parties, thus constituting a firm guarantee for consolidation of the cease-fire.

In this context and on the basis of those general principles and of the ultimate objectives of resolution 598 (1987) - namely, the achievement of a peaceful, comprehensive, just and durable settlement of the conflict - Iraq requested that two basic issues be settled within the framework of the cease-fire provisions and undertakings.

The first issue is the need clearly to stipulate the principle of freedom for shipping in the international waters of the Arabian Gulf and the Strait of Hormuz for all vessels without any impediment. We have based our position with respect to this issue on the text of the Security Council resolution, which provides for a cease-fire and discontinuation of all military actions on land, at sea and in the air as a first step towards a negotiated settlement. We also based our position on the principle of equivalent benefits. It is inadmissible that the provisions and undertakings on land and in the air should be of a detailed nature and ensure equivalent advantages for both parties when the provisions and undertakings at sea are subject to a disgraceful defect which would yield an advantage to Iraq, by virtue of its geographical position in the Arabian Gulf and the Strait of Hormuz, at Iraq's expense.

The second issue concerns the assignment to the United Nations of the task of clearing the Shatt al-Arab and of making it fit and safe for shipping without jeopardy to the legal status of the waterway, which may be discussed at a subsequent stage of the negotiations. In making this proposal, we have recognized the fact that the Shatt al-Arab is Iraq's principal outlet to the high seas and that the quantity of obstacles to shipping which have accumulated over the years of the war will make the process of clearing the waterway a lengthy one and will require international expertise and expenditure. Since the negotiations to achieve comprehensive and lasting peace and the solution of all outstanding issues between the two parties may be protracted, it is logical that the time should be used to make the Shatt al-Arab fit for shipping. The principle of ensuring equivalent benefit from the cease-fire at sea would then be observed for both parties - Iraq and Iran.

It is most regrettable that the Iranian side did not respond to these two legitimate and logical requests, which serve to strengthen the cease-fire, in a manner compatible with a sincere desire to bring about peace. Iran resorted to methods of prevarication and the avoidance of commitment to any legal or logical basis on which to address the issues raised in the negotiations and insisted on a selective approach in which it emphasized whatever aspect appealed to it rather than undertaking to comply with the obligations imposed upon it.

With regard to the freedom of shipping in the international waters of the Arabian Gulf and the Strait of Hormuz, the Iranian delegation laid claim to an unfounded right to control the free movement of shipping by alleging a right to inspection on the basis of interpretations which are entirely inconsistent with the provisions of international law relating to the system of collective security enshrined in the Charter of the United Nations and are also incompatible with the letter and the spirit of resolution 598 (1987), the objective of which is to bring about a comprehensive and lasting peace. It was clear that the Iranian side's interpretation of the cease-fire was based on the truce arrangements prevailing before the establishment of the United Nations and the adoption of its Charter rather than on a recognition of the cease-fire as a first step towards a settlement, as specified in paragraph 1 of the resolution.

The Iranian delegation then further developed its position by insisting on provisions which would in effect impose an arms embargo on Iraq at sea. It began to spread false accusations that Iraq was calling for the free movement of shipping

in Iranian territorial waters when in fact Iraq was clearly calling for the free movement of shipping in international waters and through the Strait of Hormuz.

With regard to clearing the Shatt al-Arab, the Iranian delegation rejected Iraq's realistic and logical proposal. It then attempted to establish a direct link between the clearing process and the imposition of pre-conditions on Iraq with respect to recognition of the Treaty of 1975, which is no longer in effect after having been violated by Iran, both in word and in deed, since 1979. There is, moreover, no connection whatsoever between this issue and the clearing process, which is a technical arrangement under the cease-fire whereby the free movement of shipping for both countries is established at sea.

In addition, the Iranian delegation asserted that the two aforementioned proposals by Iraq were strange requests.

Iraq's request to stipulate free movement for shipping and clearing of the Shatt al-Arab within the context of the cease-fire arrangements is neither a new request nor one that is unrelated to the letter and spirit of resolution 598 (1987). Both are fundamental elements at the heart of the cease-fire process, which constitutes a first step towards a negotiated settlement, as stated in paragraph 1 of the resolution. Iraq had already emphasized these two issues on a number of occasions since the date on which it accepted resolution 598 (1987). We made that request in our letter accepting the resolution on 22 July 1987 and we confirmed it in the letter from Mr. Saddam Hussein, President of the Republic of Iraq, on 6 August 1988, which was the prelude to the cease-fire agreement. We also emphasized it in the two letters which I addressed to the Secretary-General on 20 July 1988, following Iran's acceptance of the resolution, and on 11 August 1988, following the fixing of the cease-fire date and before the Geneva negotiations.

Furthermore, the Secretary-General's plan for the implementation of resolution 598 (1987), as submitted to the two parties on 15 October 1987, which according to the Iranian delegation constitutes one of the corner-stones of the negotiation framework, clearly stipulated free movement for shipping and clearing of the Shatt al-Arab under the provisions for the cease-fire at sea.

The first round of negotiations at Geneva ended in a failure to reach agreement on the specific provisions of the cease-fire and the mutual obligations of the two parties by virtue of that cease-fire, due to Iran's obstinate and illogical position.

On 1 October 1988, a meeting was held between the two delegations at New York in the course of which the Secretary-General presented a set of ideas relating to the implementation of a number of the provisions of resolution 598 (1987).

Agreement was reached at that time to resume the negotiations at Geneva for the purpose of studying these and other ideas in the hope of accelerating the achievement of a settlement.

When the second round of talks began at Geneva, we stated, with the greatest sense of responsibility and determination to ensure the success of the negotiations, that it was necessary to agree on a specific procedure for the

implementation of resolution 598 (1987), with a view to ensuring balance and equivalence and the achievement of the ultimate desired result. We proposed the adoption of either the "sequence" procedure, which had been our original position, or the "package" procedure, if the Iranian delegation so desired. If the "sequence" procedure was to be adopted, agreement would first have to be reached on all the arrangements relating to the cease-fire, including the free movement of shipping and clearing of the Shatt al-Arab, before moving on to discussion of the other provisions of resolution 598 (1987). If the "package" procedure was adopted, the package must be complete to the extent of including - following agreement on requirements for consolidating the cease-fire - the other provisions of the resolution and not simply certain paragraphs thereof.

We also indicated that an essential condition for the "package" would be the establishment of balance among the elements of paragraph 1, on the one hand, and in the relationship between the various paragraphs, on the other.

However, the Iranian delegation once again regrettably resorted to the same tactics which it had adopted at the first session. It was quite clearly not prepared to commit itself to the agreement of 8 August 1988 or to adopt a fixed procedure for the implementation of the resolution. The Iranian delegation began to declare priorities for the implementation of the resolution in a manner which was not consistent either with the "sequence" procedure or with the complete "package" procedure. It reverted once again to its well-known selective approach. It chooses one procedure for one issue and a different procedure for another one, in such a way as to ensure that it benefits without accepting any commitment to logic or a single procedure in implementing the resolution. It urges the accomplishment of an immediate withdrawal on the grounds that the cease-fire has been implemented, while at the same time refusing to agree on the completion of its arrangements and provisions. Meanwhile, it states that current operations are not yet complete in order to justify its refusal to carry out the exchange of prisoners provided for in paragraph 3 of the resolution and in article 118 of the third Geneva Convention. It has also attempted to link the issues of free movement for shipping and clearing the Shatt al-Arab to other aspects of the resolution, in the absence of any logical basis for such linkage.

We thus spent many days during this session in vain attempts to agree with the Iranian side on a clear basis or a specific procedure for the implementation of the provisions of resolution 598 (1987) in a manner which ensures balance and equivalence and leads to comprehensive and lasting peace.

The Iranian delegation insisted on the selective approach, on jumping from one subject to another and on refusing to be bound by any norm of international law. Its position on the question of the exchange of prisoners, of which we shall give details below, is a blatant proof of this strange, insincere and unserious approach to the implementation of the resolution.

Before the resumption of the second round of negotiations at Geneva, the International Committee of the Red Cross (ICRC) sent a memorandum on 4 October 1988 to the Ministries of Foreign Affairs of the two countries calling upon them to begin the exchange of prisoners of war immediately, in implementation of the provision contained in article 118 of the 1949 Geneva Convention relative to the

Treatment of Prisoners of War, which states that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities, since hostilities had ceased on 20 August 1988 with the entry into effect of the cease-fire between the two parties. ICRC urged that the two parties make a careful study together of the implementation of this binding commitment on their two States on the basis of the paper of principles and practical measures relating to the matter which ICRC submitted to them on 23 August 1988.

Iraq agreed to the ICRC proposal by its letter of 17 October 1988.

At the time of the convening of the second round of the Geneva negotiations, from 31 October to 11 November 1988, the Iranian side had not yet replied to the ICRC memorandum.

During the second round of negotiations, the Iranian delegation insisted on a strange interpretation of the meaning of "cessation of active hostilities", regarding them as not yet having ceased as long as the question of withdrawal remained unsettled. It therefore does not agree to begin the exchange now, after the cease-fire, in accordance with the provision contained in paragraph 3 concerning the necessity of exchanging prisoners without delay after the cessation of active hostilities, as proposed to the two parties by ICRC on 4 October 1988.

At the official negotiating session and in the presence of the Secretary-General and his personal representative, we proposed that we seek a decision regarding the interpretation of the third Geneva Convention and article 118 thereof from the International Committee of the Red Cross, which is the competent authority, and that we act in accordance with the Committee's ruling. The Iranian side refused that and persisted in refusing to carry out the release of the prisoners. Because of Iraq's desire to facilitate matters, we agreed to the Committee's proposal that prisoners identified by ICRC as sick or wounded should be released on the basis of the principle of reciprocity and even-handedness. There are 1,158 such Iraqi prisoners, as against 411 Iranian prisoners.

It was stipulated in the agreement that the repatriation operation should be concluded within a 10-day period beginning on 22 November 1988. ICRC set daily repatriation quotas at 115 Iraqis, as against 41 Iranians. At the beginning of the implementation of this agreement, the Iranian authorities resorted to a piece of obvious trickery with the aim of reducing the real figures agreed on for each contingent of wounded and sick prisoners whose repatriation was required under the agreement, inventing for that purpose excuses that were absolutely illegitimate.

On 24, 26 and 27 November 1988, three contingents of 52, 51 and 52 prisoners respectively were repatriated successively, and ICRC reported to us that the Iranian side had given the following strange explanations for the non-repatriation of the others as agreed. The explanations of the Iranian side were:

20 prisoners had refused repatriation;

61 prisoners were recuperating;

There were 28 prisoners about whom no decision had been taken;

68 prisoners had already been released by the Iranian authorities without the knowledge of ICRC and without repatriation to us;

There were two prisoners whose identity was unknown;

Eight prisoners were not in the camp;

There were two deceased prisoners;

There was one Egyptian prisoner about whom no decision had yet been taken.

It is obvious from these figures and from the Iranian excuses proffered in that connection that the deceitful conduct of the Iranian authorities was designed to ensure the repatriation of a number of Iraqi prisoners approximately equal to the numbers of Iranian prisoners, contrary to what was agreed on in accordance with the ICRC proposals, whereby all registered sick and wounded prisoners would be repatriated. It should be recalled that the excuses proffered by the Iranian authorities were not supported by ICRC and that no documents were presented to authenticate the Iranian authorities' claims. We all know that documentation regarding the fate of the prisoners is an essential matter, for legal and humanitarian reasons and because there are many provisions of the Islamic Shariah that are binding in such cases.

Your Excellency, in view of this failure to arrive at a mutual understanding with the Iranian side regarding the method of implementing the resolution, we stated during the talks that the agreement of 8 August 1988 arrived at by the two sides through the Secretary-General must be observed in the negotiations for the implementation of resolution 598 (1987) as a peace plan.

We emphasized this last-mentioned concept, i.e. the concept of resolution 598 (1987) as a peace plan, while the Iranian régime, at the two rounds of negotiations held at Geneva and at the meeting held at New York on 1 October, was behaving as though resolution 598 (1987) were an arena for political dispute in which the Iranian régime is waging a political war after failing in the arena of military war. In spite of this failure, we encouraged the initiatives undertaken by your personal representative, Mr. Jan Eliasson, in the last days of the second round of the Geneva negotiations with a view to creating a positive climate conducive to the constructive continuation of the negotiations, and we agreed to all his proposals in this regard.

Thus the second round of the Geneva talks was concluded without tangible progress. We had hoped, after a reasonable pause for consideration, to resume the negotiations in order to proceed with fruitful work.

However, the Iranian side returned to Teheran in order to begin a series of statements full of fabrications and threats of the resumption of aggression and the use of force to resolve the issues outstanding in the negotiations. I set forth some examples of those statements in the letter dated 11 December 1988 which I addressed to the Secretary-General of the United Nations (S/20319). The Iranian Minister for Foreign Affairs then followed this up with the dispatch of two letters to the Secretary-General on 15 and 29 December 1988 (S/20350 and S/20363), in which

he affirmed the above-mentioned Iranian position. That strengthened our impression that the Iranian Government still remained unwilling to proceed on the basis that resolution 598 (1987) is a peace plan which should be implemented through mutual understanding under the auspices of the Secretary-General, on the basis of the norms of international law, in the manner in which disputes between States are resolved in the modern age and in accordance with the agreement of 8 August 1988. The Iranian Government has evidently embarked on a new pattern of war instead of the old pattern, which it was forced to abandon because of the defeats suffered by its armed forces and the pressure it encountered from international public opinion and public opinion inside Iran, following the exposure of its hopeless policy of aggression and expansion.

I replied to the two Iranian letters by my letter dated 5 January 1989 in order to set forth clearly once again all the Iranian sophistries and claims that have no basis in truth.

Nevertheless, Iran continued to behave in the same way. The Minister for Foreign Affairs of Iran addressed another letter (S/20413) to the Secretary-General on 23 January 1989, the day on which the Secretary-General's personal representative, Mr. Jan Eliasson, arrived in Teheran in the course of his trip to the two countries for the purpose of advancing the peace negotiations. That letter constituted a clear attempt on the part of the Iranian Minister to mislead regarding the central points to be agreed on for the achievement of the basic objective of the trip. It should be mentioned that this time the Iranian Minister was not content with reiterating his Government's sophistries and calumnies but arrogated to himself, in addition, competence to speak on behalf of the Secretary-General, claiming that his Government had, before agreeing to the direct negotiations, received assurances that the said negotiations would be held for the purpose of implementing paragraph 4 of resolution 598 (1987) and that, for the rest, it would confine itself to fixing the timings for the implementation of the other paragraphs. Stranger yet, the Iranian Minister for Foreign Affairs was explicit in his exclusion of the cease-fire provisions from the negotiating framework. This underscores the selective approach of the Iranian Government and its lack of faith in the concept of the peace plan, which embodies the letter and spirit of the resolution and constitutes the sole sound framework for its implementation, to the respective benefit and in the respective interest of the two parties, with a view to achieving a peaceful, comprehensive and lasting settlement of the dispute.

An objective appraisal of the practical facts of the peace negotiations and the positions of the two parties with respect to them, as set forth by us above, leads to a set of conclusions.

First of all, it is absolutely clear that the Iranian position on the resolutions of the Security Council, including resolution 598 (1987), and on international law is a selective position that affirms that portion in which the Iranian side sees an advantage for itself and disavows that portion which gives rise to obligations.

In contrast, the position of Iraq, which it has affirmed throughout the term of the dispute, both before and after the adoption of resolution 598 (1987),

stresses the necessity of compliance with the provisions of Security Council resolutions, including the above-mentioned resolution, and with international law in a comprehensive, coherent and balanced manner. The Security Council must be fully aware of this fact. It suffices for anyone who has any doubts in this regard to scrutinize the Iranian positions and to compare them one with the other in the period prior to the adoption of resolution 598 (1987) and the period subsequent thereto, on the one hand, and, on the other hand, to compare all that with the Iranian positions presented to date since Iran's acceptance of the resolution.

It is absolutely clear that resolution 598 (1987) is not merely a plan consisting of procedures and timings but a "peace plan" as described by the Secretary-General on numerous occasions and as everyone conceives it. The Iraqi Government shares this view with the Secretary-General and believes that the resolution, in accordance with this conception, must be implemented through arriving at a common understanding of its provisions, by negotiation between the two parties under the auspices and with the assistance of the Secretary-General, with a view to arriving at the establishment of a comprehensive and lasting peace between them based on the sanctioned principles and norms that govern international relations under the Charter of the United Nations and international law.

Concentrating on one point among the provisions of resolution 598 (1987), as the Iranian Government does, without explaining its position on the other provisions of the resolution cannot be a genuine and responsible approach to a comprehensive, balanced and lasting peace but is a position that raises many doubts concerning the seriousness of the Iranian side about fulfilling its commitments pursuant to the resolution. Accordingly, the true guarantee of faithful implementation of resolution 598 (1987) is action without hesitation or prevarication to strengthen and consolidate the cease-fire through agreement on its provisions and on reciprocal obligations thereunder, followed by achievement of a common understanding of the other provisions of the resolution with a view to their implementation in a way that will bring about peace as stipulated in the agreement of 8 August 1988. During the visit of your representative Mr. Eliasson, we, desiring to promote the peace process, agreed, on the basis of his proposal, to the establishment of the Mixed Military Working Group, to deal with any difficulties which might arise in the implementation of the cease-fire, and to the lifting of the ban on air transport to Iran. We had also already released 255 Iranian prisoners unilaterally on our own initiative without prior discussion or negotiation.

In conclusion, I wish to affirm to you that the Iraqi Government greatly appreciates the efforts being made by you and by your personal representative Mr. Jan Eliasson in sponsoring the negotiations and your sustained endeavour to advance them. The Iraqi Government will spare no effort in co-operating with you constructively for the achievement of a comprehensive and lasting peace between Iraq and Iran and in the region. We believe that the continuation of the negotiations on the basis of the agreement of 8 August 1988 is the only way to achieve success. We also wish to state that Iraq categorically rejects any pre-conditions set by the Iranian side for the resumption of negotiations.

Lastly, I wish to inform you that the Iraqi Government is prepared to accede to the invitation to resume direct negotiations on the date set by you.

(Signed) Tariq AZIZ
Deputy Prime Minister and
Minister for Foreign Affairs
of the Republic of Iraq

