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LETTER DATED 18 APRIL 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 herewith a letter from Mr. Tariq Aziz, Deputy Prime Minister and Minister for Foreign Affairs of the Republic of Iraq, on the subject of prisoners taken during the Iran-Iraq war.

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

(Signed) Ismat KITTANI
Permanent Representative

Annex

Letter dated 18 April 1989 from the Deputy Prime Minister
and Minister for Foreign Affairs of Iraq addressed to the
Secretary-General

I have the honour to refer to the two Iranian letters dated 14 and 16 March 1989 (documents S/20529 and S/20531) and the letter from the Minister for Foreign Affairs of Iran dated 17 March 1989 (document S/20532), which addressed the subject of prisoners taken during the Iran-Iraq war. It is my intention in doing so to recall once again some of the facts, which have been established before you and of which the international community is aware, so as to demonstrate the legal provisions which apply to this subject.

With respect to the facts, it is not at all hard to discern the basic objective of the aforementioned Iranian letters. They all endeavour to link the subject of prisoners of war to the process of political talks held under your auspices for the purpose of implementing Security Council resolution 598 (1987), and thus to turn tens of thousands of Iraqi and Iranian prisoners into the pawns of political intrigues.

In this connection, I should like to recall the facts set out for you in detail in my letter dated 2 February 1989 (document S/20443), in which I presented our assessment of the situation with regard to the implementation of Security Council resolution 598 (1987). In that letter, I explained that, judging by the course of the talks held under your auspices over the course of the past months, the basic reason why the desired progress had not been achieved lay in Iran's disavowal of the agreement of 8 August 1988, which provided for direct talks under your 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 (1987) and the procedures and timings for their implementation, in the Iranian delegation's refusal to treat the matters under consideration in a manner such as would indicate a sincere desire to achieve comprehensive and lasting peace, in its recourse to tactics of prevarication and evasion of commitment to any legal or logical rule for treatment of the issues, in its insistence on a selective approach, in its arbitrary imposition of priorities and in its jumping from one subject to another for the purpose of securing some advantage for itself rather than observing the obligations incumbent upon it.

I went on to explain in detail the Iranian Government's position with respect to the exchange of prisoners, which constitutes a blatant example of its strange, insincere and unserious approach to the implementation of resolution 598 (1987).

A close examination of the aforementioned Iranian letters once again demonstrates the attitude of the Iranian Government, to which I have already made reference, and indisputably proves that its position, with respect to the implementation of resolution 598 (1987) in general and to the subject of the prisoner exchange in particular, has not changed.

While the Iranian letters assert that Iran has, "based on the precepts of Islam and certainly beyond the standards of the Geneva Conventions, adopted some measures" in connection with the treatment of prisoners, there has been no concurrent proof of such allegations in documents of the International Committee of the Red Cross (ICRC). In fact, both ICRC documents and accounts by released prisoners state that the Iranian régime has subjected and continues to subject prisoners of war to the most savage forms of treatment, including killing, persecution and psychological terrorism.

While one of the Iranian letters refers to "the internationally recognized rules and principles, particularly those of the four Geneva Conventions" to support its allegations concerning the incident in which Iranian soldiers violated the cease-fire after it came into effect and the military authorities were obliged to detain them, it chooses to ignore those international rules and principles, which we shall discuss below, when it seeks to link paragraph 3 of resolution 598 (1987), relating to the exchange of prisoners of war, to conditions of a political nature.

With respect to the Iranian allegation concerning the capture of Iranian military personnel and civilians after the inception of the cease-fire, the fact is that a group of Iranian fighters rushed towards Iraqi military positions in the central sector, after the cease-fire came into effect, on 22 August 1988. Members of the United Nations Iran-Iraq Military Observer Group (UNIIMOG) attempted to return them to their former positions at the request of the competent Iraqi authorities. However, the Iranian fighters refused to return and Iraqi forces were then obliged to detain them on 23 August 1988.

While these facts prove beyond any shadow of doubt that the Iranian Government's position on the subject of the prisoner exchange is based on linkage to political aspects of the talks held under your auspices for the purpose of implementing resolution 598 (1987), there is no substantive or procedural legal basis in the provisions of the resolution for this attitude, which constitutes a flagrant violation of the provisions of the (third) 1949 Geneva Convention relative to the Treatment of Prisoners of War.

With regard to the substantive aspect of resolution 598 (1987), it is clear that paragraph 3, which addresses the issue of prisoners of war, is the only paragraph to specify which substantive provisions relate to its implementation. The paragraph reads as follows:

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

Two irrefutable points emerge in this connection. The first is the statement, in this paragraph, that its implementation is governed by the provisions of the Geneva Convention of 1949. The second point is that the wording of the paragraph is exactly the same as that of article 118 of the aforementioned Convention.

With regard to the procedural aspect of resolution 598 (1987), it is also clear, from the reference in paragraph 3 of the resolution to the application of

the Geneva Convention, that such application cannot be made dependent upon the sequential position of the paragraph with respect to the other paragraphs of the resolution, and that the application of any individual paragraph cannot be made dependent upon the degree of progress accomplished at the talks.

The most convincing evidence of the truth of our assertions, apart from my comments in my letter of 2 February 1989, to which I have already referred, is the fact that ICRC sent both parties a paper of principles and practical measures governing the exchange of prisoners on 23 August 1988, i.e., only three days after the cease-fire came into effect. That list drew, for its legal basis, on the text of article 118 of the Geneva Convention, which is binding on the two parties. ICRC also affirmed this approach in its note of 4 October 1988 addressed to the two parties, in which it called upon both of them to begin the exchange of prisoners of war immediately, in accordance with the provisions of article 118 and on the basis of the aforementioned paper of principles and practical measures, because effective hostilities had ceased when the cease-fire came into effect on 20 August 1988. Iraq accepted this invitation in its letter of 17 October 1988.

Further confirmation of the correctness of the ICRC position, which is entirely shared by Iraq, is the fact that ICRC recently, in its note of 31 March 1989, called upon both parties to exchange prisoners of war. In that note, it affirmed that, for purely humanitarian reasons, all prisoners should be repatriated as soon as possible after the cessation of hostilities without awaiting a political settlement of the conflict, since the international community had enshrined this principle in article 118 of the third Geneva Convention, which is binding on both parties.

While we accept, in accordance with the agreement of 8 August 1988, a further round of talks under your auspices for the purpose of attaining a comprehensive and durable peace, the question of respect for the precepts of international law, and particularly those relating to humanitarian issues, assumes particular importance. Failure to respect international law and its interpretation in such an arbitrary manner as that of the Iranian régime on the question of prisoners undermines the foundations which must serve as a basis for the application of resolution 598 (1987) and for fulfilment of the noble objective of bringing about a comprehensive and durable peace.

I request that you kindly have this letter circulated as a document of the Security Council.

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