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LETTER DATED 17 JULY 1989 FROM THE CHARGE D'AFFAIRES A.I. OF THE
PERMANENT MISSION OF THE ISLAMIC REPUBLIC OF IRAN TO THE UNITED
NATIONS ADDRESSED TO THE SECRETARY-GENERAL

Upon instructions from my Government, I have the honour to attach herewith the text of a note from the Ministry of Foreign Affairs of the Islamic Republic of Iran on the one year marking of the official acceptance of Security Council resolution 598 (1987) by the Islamic Republic of Iran.

It would be highly appreciated if this letter and its annex were circulated as a document of the Security Council.

(Signed) Mahmoud Sadat MADARSHAHI
Ambassador
Chargé d'affaires a.i.

Annex

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

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

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

While in July and August 1988, the Foreign Minister of the Islamic Republic of Iran had nine substantive rounds of consultations with the Secretary-General and accepted the timetable presented by the latter for the implementation of all provisions of resolution 598 (1987), the Foreign Minister of Iraq insisted on having a courtesy visit to the Secretary-General, refused to enter substantive talk with him, did not even consider the timetable presented by the Secretary-General, and insisted on having direct talks between Iran and Iraq before the establishment of a cease-fire. At the same time, and in spite of repeated appeals and demands by the Security Council and the Secretary-General, Iraq intensified its acts of aggression against the territory of the Islamic Republic of Iran, repeatedly resorting to chemical warfare. The failure of Iraq to attain its military objectives owing to the heroic resistance of Muslim people of Iran was the most important factor that compelled Iraq to accept the cease-fire.

The behaviour of Iraq following our acceptance of resolution 598 (1987) revealed the true nature of Iraqi pro-peace propaganda. Had it not been for the heroic resistance of Muslim people of Iran, substantial pressure by the international community, and the refusal of the Islamic Republic of Iran to succumb to Iraqi pre-condition of direct talks before cease-fire, even the first half of the first paragraph of resolution 598 (1987) would not have been implemented to this day. What has occurred since the beginning of direct talks on 25 August 1988 and in the course of 15 rounds of such talks is the best illustration of this contention.

While in July and August 1988, Iraq tried, and miserably failed, to employ military activities as a leverage for political bargaining, since 20 August 1988, it has attempted to exploit its illegal occupation of more than 2,000 square

kilometres of Iranian territory as a tool to attain its illegitimate and expansionist aspirations. While this lawless policy of Iraq is doomed to the same destiny of its militaristic policy of July and August 1988, the fact remains that because of the intransigence of Iraq and its refusal to accept any of the proposals presented by the Secretary-General of the United Nations, even the first mandatory paragraph of resolution 598 (1987) - demanding withdrawal of forces to the internationally recognized boundaries - remains unimplemented.

The principle of respect for territorial integrity of others - for the realization of which withdrawal is indispensable and imperative - has been reiterated in paragraph 4 of Article 2 of the Charter of the United Nations and many other ensuing United Nations and other international instruments so as to be recognized along with the right of States to preserve their territorial integrity as a general principle of international law. It should be noted that according to paragraph (a) of article 3 of the annex to General Assembly resolution 3314 (XXIX) on the definition of aggression, "the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack" qualifies as an act of aggression.

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

However, since the beginning of direct talks on 25 August 1988, Iraq has used every conceivable method to evade its commitment under the resolution as well as those under general principles of international law. The introduction of pre-conditions for the implementation of the resolution started with direct talks as a pre-condition for cease-fire and developed into continuously evolving conditions for implementation of other provisions, the most prominent and urgent of which is withdrawal. The refusal to co-operate with the Secretary-General started with the episodes of July and August 1988 in New York where the Foreign Minister of Iraq refused to talk substance with the Secretary-General and developed into rejection or non-acceptance of every proposal presented by the Secretary-General for the implementation of the resolution. A review of Iraqi procrastination tactics will illustrate the difficulties that have prevented full and rapid implementation of resolution 598 (1987).

One of the stumbling blocks has been Iraq's refusal to accept any procedure presented by the Secretary-General for the implementation of the resolution. In his letter of 5 January 1989 (S/20373), the Foreign Minister of Iraq has claimed:

"We have confirmed to you Iraq's readiness to implement the resolution according to the sequence of its paragraphs or to agree to its implementation as a package deal without fragmentation. It has become evident to you in the

course of the negotiation that Iran refuses to adopt a constant course in applying the resolution and wishes to deal with the resolution selectively ...".

This line of argument, which was more vigorously presented by Iraq in order to block the four-point plan of 1 October 1988 of the Secretary-General, demands that Iran and the United Nations should accept one of the two methods prescribed by Iraq. The sequential approach had been insisted upon by Iraq since the adoption of the resolution, and because of its subjective character was not accepted by the Security Council or the Secretary-General, despite Iraq's extensive diplomatic efforts. The implementation plan of 1 October 1988 of the Secretary-General which was later endorsed by the Security Council is the best illustration of this fact. Furthermore, the fact that, following the acceptance of the resolution by Iran, none of the proposals of the Secretary-General followed a sequential approach is a further illustration that sequential approach is not considered by any pertinent authority as an appropriate procedure for the implementation of resolution 598 (1987).

Following the presentation of the four-point plan of 1 October 1988, and with a view to raising objections to that plan, Iraq insisted that any package must include all elements of the resolution. The real nature of the Iraqi position becomes more clear if one considers that in July and August 1988, indeed such a package was presented by the Secretary-General. The timetable incorporated timing and procedure for the implementation of all paragraphs of the resolution. This timetable was discussed in nine rounds of consultations between the Foreign Minister of Iran and the Secretary-General, leading to the acceptance in principle of the plan by the Islamic Republic of Iran. Iraq, on the other hand, refused to even consider the timetable, and has failed to make its position on that plan known to date. So much for Iraqi insistence on a comprehensive package.

It is evident that procedural objections raised by Iraq have been simply tools to prevent the implementation of the resolution. Since 17 July 1988, Iraq under one pretext or another has followed this basic strategy. On the other hand, the Islamic Republic of Iran has recognized the Secretary-General as the person with a clear mandate from the Security Council to implement resolution 598 (1987). Therefore, it has co-operated with him on form and substance, and has accepted almost everything that he presented to the parties geared to the implementation of resolution 598 (1987). The following is a partial list of the official proposals of the Secretary-General accepted by the Islamic Republic of Iran and not so by Iraq:

- The timetable presented for the implementation of the resolution in July and August 1988;
- The understandings relating to the provisions for observance of cease-fire presented on 16 August 1988;
- The proposal and suggestions of the Secretary-General and his personal representative in the first round of talks;

- The four-point plan of 1 October 1988;
- The timing of the plan of 1 October 1988.

Certainly, the reaction of the parties to the proposals of the Secretary-General can serve as a criterion to determine each party's readiness to adopt a constant course in applying the resolution, and not self-serving procedures proposed by either party. It will be impossible to break the deadlock unless Iraq abandons its self-righteous approach and begins implementing the resolution through the help and guidance of the Secretary-General.

Another issue which has been used by Iraq as a delaying tactic is Iraq's interpretation of the necessity of reaching a common understanding on resolution 598 (1987). In his letter of 8 August 1988, inviting the two Foreign Ministers to direct talks, the Secretary-General stated:

"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 (1987) and the procedure and timing for their implementation".

Using this letter, Iraq has tried to open negotiations on the resolution itself, attempting to redraft and reinterpret that resolution based on its interests and objectives. It has attempted to hide behind the guise of reaching common understanding of the provisions of the resolution in order to incorporate extraneous elements and derail the resolution from its main course. This stems from a basic Iraqi argument - as illustrated in the letter of Iraqi Foreign Minister to the Secretary-General dated 5 January 1989 (S/20373) - that "resolution 598 (1987) is a peace plan which should be implemented by mutual agreement", an approach that contradicts the mandatory nature of resolution 598 (1987).

Since the Secretary-General of the United Nations drafted the letter of 8 August 1988, his conception of what was to take place can be found in what he himself presented prior to and after the drafting of that letter. The timetable of July and August 1988 presented by the Secretary-General and accepted by the Islamic Republic of Iran - and not even considered by Iraq - can be one indication. His proposals in the course of the direct talks, most importantly the plan of 1 October 1988 which was officially presented by the Secretary-General to the two parties - again accepted by the Islamic Republic of Iran and not so by Iraq - also illustrate his intentions. In fact the Islamic Republic of Iran was assured by the Secretary-General both before and even on the day direct talks were inaugurated that direct talks, with the exception of negotiations called for under paragraph 4 of the resolution, would be limited to comments on the dates and procedures suggested by the Secretary-General for the implementation of the provisions of the resolution other than cease-fire. Any other interpretation of this letter would only be a vehicle for opening the Pandora's box of renegotiating and redrafting a carefully balanced resolution adopted unanimously by the Security Council under Chapter VII of the Charter of the United Nations.

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

It is interesting to note that both the Secretary-General in the letter quoted above, and Iraq in the statement of its President dated 6 August 1988, had excluded a cease-fire from the agenda of direct talks. The statement of the President of Iraq is even more direct than that of the Secretary-General in doing so:

"We ... declare our readiness ..., on the condition that Iran declares, clearly, unequivocally and officially, its agreement to enter into direct negotiations with us, in appreciation of this initiative, immediately after the cease-fire, in order that we may discuss, reach agreement and implement all the provisions of Security Council resolution 598 (1987) other than those relating to the cease-fire, beginning with withdrawal to the international boundaries, proceeding through to paragraph 8 and including all operative paragraphs." (S/20092)

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

Let us, for the sake of argument, neglect the fact that the cease-fire and issues relating to it were and continue to be outside the scope of the agenda of direct talks. How can one accept the logic that cleaning a common border river is an element of the cease-fire without which the latter is incomplete? The Secretary-General, in order to satisfy the Iraqi concern regarding the cleaning of Arvand Rood - an issue which is in fact outside the resolution - placed the issue of cleaning Arvand Rood within the framework of paragraph 4, both in his July and August timetable and in the four-point plan of 1 October 1988. However Iraq continues to insist that cleaning is a part of cease-fire, and has refused to accept either of the two plans. This is not an attempt to reach a common understanding; rather it is a manoeuvre to impose an illogical and self-serving interpretation upon Iran and the United Nations.

Not only does Iraq insist on placing the cleaning of Arvand Rood among the regulations of the cease-fire, it has also tried to have the river cleaned in contravention of the existing arrangements contained in the 1975 Treaty of State Frontiers and Neighbourly Relations between Iran and Iraq. In fact, under the disguise of this illogical incorporation, Iraq seeks to undermine a valid international agreement signed and ratified by the present régime in Iraq and duly registered with the Secretary-General of the United Nations. That is, even in peace talks, Iraq continues to espouse the same expansionist aspirations for the attainment of which it launched a war of aggression against a neighbouring country. Clearly Iraq must understand that what it could not achieve in the course

of the war cannot be achieved in peace talks. International treaties are the corner-stones of international law and the stabilizing force in international relations. They can not be unilaterally abrogated when convenient.

Another issue which Iraq introduced as an element of the cease-fire during the first round of direct talks was unimpeded passage for Iraqi vessels in the Persian Gulf and even through the Iranian territorial sea. It did not consider the suggestion made by the Secretary-General, "freedom of navigation in accordance with international law", as sufficient for its purpose and tried to impose - under the guise of reaching a common understanding - its own self-serving interpretation, seeking to deprive the Islamic Republic of Iran of its universally recognized right of search and visit as long as peaceful relations between the two countries are not established. The logic that - in order to reach a common understanding of the cease-fire - Iran must cease exercising its universally known rights during the time of the cease-fire while Iraq continues to occupy parts of Iranian territory is a further illustration of the manner in which Iraq has exploited direct talks to attempt to impose its conditions, thereby pushing the talks into a stalemate.

Furthermore, as the Secretary-General indicated in his statement of 8 August 1988 to the Security Council, some provisions of the resolution do not require implementation by the parties. Rather, the Secretary-General has been given the mandate to implement those provisions of the resolution, and is not in a position to negotiate the terms for their implementation with either Iran or Iraq. Some other provisions of the resolution do not have anything to do with the two parties: paragraph 5 explicitly deals with third parties; and paragraph 8, in addition to Iran and Iraq, deals with other countries with which the Secretary-General is mandated to consult.

In fact, what remains to be implemented by the parties are paragraphs 1, 3 and 4 of the resolution. The four-point plan of 1 October 1988 of the Secretary-General is the implementation mechanism for these paragraphs with due consideration to concerns raised by Iraq outside the framework of the resolution. In order to show its good will and exercising maximum flexibility, the Islamic Republic of Iran accepted the plan on the day it was presented officially by the Secretary-General to the parties. We are prepared to implement that plan and cannot consider it as a new basis for negotiations or "reaching understanding".

While Iraq has failed to comply with the most prominent element of the resolution and withdraw to the internationally recognized boundaries and refused to accept any proposal of the Secretary-General, it has selected one element of the resolution - namely the question of prisoners of war (POWs) - and, with a view to undermining the resolution itself, has called for its implementation outside the framework of the resolution. However, what has actually occurred in the past year proves the lack of good will on the part of Iraq even regarding this issue. The timetable presented by the Secretary-General and accepted by the Islamic Republic of Iran called for the release and repatriation of all prisoners of war within 90 days. Had Iraq accepted that proposal, all POWs would have been released and repatriated by 20 November 1988. Likewise, had Iraq accepted - like the Islamic Republic of Iran - the four point plan of 1 October 1988, all POWs would have been released and repatriated by the end of 1988. It is clear, therefore, that Iraq

does not seek the release and repatriation of POWs; rather it endeavours to undermine and disintegrate resolution 598 (1987) and sabotage the efforts of the Secretary-General.

Another illustration of the real intention of Iraq with regard to POWs is the number of registered Iranian POWs in Iraq. Iraqi officials claimed during the last days of the war that the number of POWs on two sides had become balanced. Recently, the Governor of Basra claimed that only during the last year of the war did Iraq capture more than 25,000 Iranian prisoners. None of these prisoners have been registered. In fact, while close to 50,000 Iraqi POWs have been registered in the Islamic Republic of Iran by the International Committee of the Red Cross, Iraq has allowed the registration of only about 18,000 prisoners. Therefore, if Iraq has any real humanitarian concern for POWs, it has to bring the number of registered prisoners to a balance, since proportionality with regard to POWs has always been the Iraqi line. The International Committee of the Red Cross bears a special responsibility to convince and compel Iraq to register these prisoners and bring the number of registered POWs on the two sides to a balance.

Close to one year after the establishment of the cease-fire, nothing has been achieved in the road to peace between Iran and Iraq. This brief assessment of the underlying reasons behind the stalemate clearly illustrates the fact that Iraq has failed to comply with a mandatory resolution of the Security Council adopted under Articles 39 and 40 of Chapter VII of the Charter. The Security Council has committed itself - under paragraph 10 of resolution 598 (1987) - to take appropriate measures to ensure compliance with the resolution. Failure to do so will not only be a violation of the resolution by its authors, it will also be a violation of the trust the United Nations has placed on the Security Council as the primary organ responsible for maintenance of international peace and security. The institutional implications of political expediency on the part of some members of the Council who have confused bilateral relations with their official function as members of the Security Council are grave, and the precedent it creates is disastrous. If the Security Council fails to take resolute measures to ensure compliance with a resolution it adopted with massive international fanfare, it cannot expect other Member States to entrust to the Council and the United Nations the resolution of conflicts which affect their national security.

