The Process of Peace-Making Following Operation 'Desert Storm'

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The Process of Peace-Making following Operation "Desert Storm"*

By

Sompong Sucharitkul, San Francisco**

I. Introduction

On August 2, 1990, the whole world witnessed an unprecedented event in modern history, the unprovoked invasion of Kuwait by Iraqi armed forces. The invasion itself was historic in the sense that in this day and age it was still possible for one militarily powerful Asian Arab State to invade and overrun its relatively weaker sister State and to proceed to declare its annexation without fear of adverse reactions from the international community. That the Iraqi leaders miscalculated United States reactions and subsequent world-wide repercussions no one could today gainsay. Nor indeed could anybody deny Iraq's overestimation of

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its own military might. But what actually transpired went well beyond Iraq's nightmare. The series of continuing counter-measures in the form of corrective, punitive and remedial sanctions, adopted by the Security Council of the United Nations from the earliest stage of hostilities until today could not have been foreseen by any nation, Iraq included.

In attempting an analytical exploration of the legal aspects the operations taken under the authority of the Security Council and the inevitable peace-making process, it would appear highly practical and useful to take into account the resurgence in this "Decade of International Law"1 of a new "International Legal Order" curiously resembling the new "World Legal Order" as envisaged by the framers of the San Francisco Charter in 1945, whose dreams were shared by many. We have come a long way since.

The preceding decade of the eighties had witnessed a paradoxical transition, a change or rather exchange of positions and attitudes between the West and the Socialist countries. As the latter began to show greater respect for and reliance on the United Nations2 with the overwhelming support from the so-called third world or the Group of 77 and the non-aligned nations, the West, most of all the United States and its closest Western allies, appear to have grown more disenchanted with, if not altogether disillusioned by, the stand taken by some Specialized Agencies of the United Nations as well as the World Organization itself3.

II. Multi-national Military Operations Past, Present and Future

A. World War II (1939–1945)

Before embarking on the study of the United Nations experience in collective peace-keeping, it is useful to catch a glimpse of an earlier

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2 This change of attitude on the part of China and the Soviet Union coincided with a transitional period not only in the field of economic theories but more so in their increasing respect for and reliance on international organizations such as the United Nations and its specialized agencies.

3 This culminated in the U.S. withdrawal from UNESCO followed by the United Kingdom and Singapore. Parallel reactions occurred in other agencies such as ILO and FAO. The United States under the Reagan Administration threatened to suspend contribution to the United Nations and remained isolated in the world-wide endeavours to retain the United States within the framework of the United Nations Convention on the Law of the Sea.

The latest attempt to unify Europe by force was undertaken by no lesser Power than the Third Reich under the now admittedly insane and inhumane Führer Hitler with his supporting Axis in Southern Europe under Il Duce Mussolini and the militarist Empire of Japan under Prime Minister Tojo. Apart from European Unification, the Asian flank of the Axis also planned to establish its hegemony under the guise of “CO-PROSPERITY SPHERE”, under which Japan was to enjoy the dominant position in the areas overlapping the zones of influence of the United States, the United Kingdom, the U.S.S.R., China, France, the Netherlands and Portugal. Opposing domination and aggression by the Axis Powers were the Allied Forces, led originally by the United Kingdom and the Commonwealth of Nations including Canada, Australia and New Zealand, China, France and the U.S.S.R. and ultimately since Pearl Harbor by the United States and her Allies in the Pacific Rim.

The Allies constituted themselves as the United Nations. Hence, the Charter contains reference to former enemies of the United Nations, now long forgotten. They included Germany, Italy and Japan.

B. The United Nations Charter (1945)

As originally conceived, the United Nations as the World Organization was to have as one of its principal organs a Security Council, empowered to impose sanctions and to secure and restore peace by whatever means necessary for the maintenance of international peace and security. Having learned from the bitter experience and repeated failures of the League of Nations, an organization devoid of enforcement machinery, the members of the United Nations were determined to add an effective and meaningful Chapter to the Charter of the United Nations, namely, Chapter VII.

This Chapter contains provisions from Articles 39 to 51 contemplating actions with respect to threats to the peace, breaches of the peace and acts of aggression. It is the primary responsibility of the Security Council to maintain international peace and security, in particular to determine the existence of any act of aggression, to make recommendations or to decide what measures to be taken to restore and maintain international peace and security in accordance with Articles 41 and 42. Article 41 covers measures including “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. Article 42 further permits the taking
of such action by sea, air or land forces as may be necessary to maintain
or restore international peace and security" should the Security Council
consider measures under Article 41 inadequate. Actions under Article
42 may include "demonstrations, blockade and other operation by air,
sea or land forces of Members of the United Nations".

In the practice of the United Nations, sanctions and actions
envisaged in Chapter VII of the Charter have rarely been used due to an
inherent defect contained in Article 27 of the Charter requiring
decisions of the Security Council on non-procedural matters to be made
by an affirmative vote of nine members including the concurring votes
of the permanent members. Even with a strict interpretation adopted in
the subsequent practice of the Security Council treating the expression
"concurring votes" as "non-negative votes" which include abstention
or possible absence or non-participation as opposed to a "veto" or
"negative votes", the use of air, sea and land forces has only been
authorized once in the Korean Conflict in 1950 owing to the absence of
the Soviet delegate boycotting the Council for not seating the
representative of the People's Republic of China. Subsequent action
needed to be approved through an anomalous procedure of "Uniting
for Peace Resolution".

Other sanctions as envisaged in Article 41 have only been applied
against South Africa and in respect of the purported setting up of a
Government in Rhodesia by the Ian Smith régime in 1965.

C. Operation Desert Storm

1. Self-Defence or Action under Chapter VII

A practical question raised in the discussions by commentators on the
measures taken by multi-national coalition forces was whether the
measures authorized by the Security Council precluded the exercise of
individual or collective self-defence by Kuwait. Different views can be
found regarding the pre-emptive role of the Security Council seized of
an item on its agenda as a threat or breach of the peace or the
determination of an act of aggression. The language of Article 51 is

4 See Resolution of July 7, 1950, on Korean Conflict, authorizing State
members of the United Nations to facilitate military assistance to accomplish the
objectives of Security Council Resolution.
5 See Resolution 217/65 of November 20, 1965, Resolution 232/66 of
December 16, 1966, and Resolutions 213/68, 277/70, 418/77 and 421/77 and
commentary by Diez de Velasco, Instituciones de Derecho Internacional
Publico, Tomo II, Organizaciones Internacionales, septima edicion 1990,
6 See, e.g., Agora: The Gulf Crisis in International and Foreign Relations
Law: U.N. Police Action in Lieu of War "The Old Order Changeth",
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crystal clear: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”.

In the Gulf Crisis, the Security Council was apprised of the situation from the very start. It adopted its first Resolution on August 2, 1990, Resolution 660 (1990), acting under Articles 39 and 40, condemning the Iraqi invasion of Kuwait, demanding Iraq to withdraw all its forces, calling upon Iraq and Kuwait to begin intensive negotiations, and deciding to meet again as necessary to consider further steps to ensure compliance with the present resolution.

In the second resolution, Resolution 661 (1990) on August 6, 1990, the Security Council was more specific in its operative paragraphs.


Acting under Chapter VII of the Charter of the United Nations,

1. Determines that Iraq so far has failed to comply with paragraph 2 of Resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait;

2. Decides, as a consequence, to take the following measures to secure compliance of Iraq with paragraph 2 of Resolution 660 (1990) and to restore the authority of the legitimate Government of Kuwait;

3. Decides that all States shall prevent: . . .

6. Decides to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations: . . .

9. Decides that, notwithstanding paragraphs 4 through 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait, and calls upon all States:

(a) To take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies;

(b) Not to recognize any régime set up by the occupying Power.

In its penultimate preambular paragraph, Resolution 660 (1990) expressly affirms “the inherent right of individual or collective self-

defence, in response to the armed attack by Iraq against Kuwait in accordance with Article 51 of the Charter.

The inherent right of self-defence, individual as well as collective, is thus distinctly reserved and preserved by Security Council Resolution 660 (1990).

However, "measures necessary to maintain international peace and security" were not yet taken by the Security Council until ten or eleven resolutions later.

In Resolution 662 (1990) on August 9, 1990, the Security Council gravely alarmed by the Declaration by Iraq of a "comprehensive and eternal merger with Kuwait, decides that the annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void, and inter alia, calls upon all States, international organizations and specialized agencies not to recognize that annexation ..." This was reaffirmed in operative paragraph 3 of Resolution 664 (1990) on August 18, 1990.

Subsequently, Resolutions 664, 665, 666, 667, 669, 670, 674 and 677 were all adopted by the Security Council acting under Chapter VII of the Charter.

It was not until Resolution 678 (1990) on November 29, 1990, that, again acting under Chapter VII of the Charter, the Security Council authorized member States cooperating with the Government of Kuwait, to use all necessary means including the use of force to uphold and implement Resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area". The use of all necessary means is authorized "unless Iraq on or before 15 January 1991 fully implements ... the foregoing resolutions", i.e., Resolutions 660–667.

In fact, no such measures were taken until 45 days after Security Council Resolution 678 of November 29, 1990 was adopted, i.e., until the day after January 15, 1991 being the ultimate deadline imposed by the Security Council. It is still very difficult to determine with absolute precision the date at which "measures" were in fact taken by the Security Council "necessary to maintain international peace and security". Was it January 16, 1991 or rather March 2, 1991, upon the suspension of combat operations, marking the end of "Operation Desert Storm" when it could really be said that the Security Council had not only authorized certain measures to be taken by January 16, 1991, but also the measures thus authorized were successfully taken to restore and maintain international peace and security? Depending on the interpretation and determination of the date at which international peace and security could be considered restored and maintained, until such date the inherent right of individual and collective self defence
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must continue to be exercisable. The right is by no means "dormant". It was emphatically reaffirmed from the outset.

But clearly the inherent right of self-defence in any particular instance may continue to exist only until such time as it becomes too late to exercise. Just as "restitution stops where repayment begins". The "Operation Desert Shield" must stop where "Operation Desert Storm" begins. If "Desert Shield" was an exercise of collective self-defence, it was designed for the defence of Saudi Arabia and not Kuwait. Measures designed to "retake" or "restore sovereignty of Kuwait" were reflected in "Operation Desert Storm", distinguishable from the exercise of any inherent right of self-defence.

In point of fact, Kuwait's inherent right of individual and collective self-defence existed when the armed attack by Iraq occurred on August 2, 1990, but that right did not survive the complete take-over of Kuwait by Iraq. Kuwait had to rely on the United Nations Security Council measures under Chapter VII not only for its self-defence but more essentially for the restoration of its sovereignty and the return and maintenance of international peace and security.

It should be recalled that "Operation Desert Storm" was preceded by "Operation Desert Shield", undertaken initially as a defence mechanism to contain further aggression by Iraq against Saudi Arabia and yonder, and not as an effort to retake Kuwait. It was not until Resolution 678 of November 29, 1990 that the possibility and prospect of "retaking of Kuwait" became imminent upon repeated Iraqi refusals to withdraw from Kuwait. At that moment when the ultimatum imposed by the Security Council expired, operation "Desert Shield" could be transformed into operation "Desert Storm".

Without entering too deeply into the controversy whether the execution of operation "Desert Storm" by the coalition forces of 29 nations was an exercise of the inherent right of collective self-defence which has been preserved unimpaired by Article 51 of the Charter or rather an operation pursuant to Security Council Resolution 678 (1990) on November 29, 1990, the following opinion may be ventured.

There appears to be no apparent necessity to preclude the right of self-defence from any action authorized by the Security Council acting under Chapter VII of the Charter. In point of fact, Article 51 is placed

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at the end of Chapter VII precisely to preserve unimpaired the inherent right of individual or collective self-defence. To say that the right of self-defence is dormant once the Security Council is seized of the situation is not to say that it is not exercisable. The truth is that the Security Council can affirm and has in fact repeatedly reaffirmed the possibility of self-defence for as long as the need and the opportunity continue to exist.

It is at this juncture that a quick glance may be taken at the right of self-defence, individual and collective. Whichever the case, it cannot be taken outside the purview of Chapter VII or unreported to the Security Council. It is clear that it remains unimpaired “until the Security Council has taken measures necessary to maintain international peace and security”. There are thus two crucial questions to be answered. First is the question of the time at which it could be said that the Security Council “has taken measures necessary to maintain international peace and security”. Secondly, once that moment materializes, how and to what extent is the inherent right of self-defence, individual and collective, impaired. Is it temporarily suspended? Or is it no longer exercisable?

Let us take as a starting point the notion of self-defence in the practice of States before the advent of the United Nations. It is not uncommon to hear greater cry for self-defence from a bigger and more resourceful military power, both in time and in the scope and extent of its exercise. On the other hand, it is not unusual for a less powerful nation to be more conservative and restrictive in regard to the scope, extent as well as duration. Thus, in a classic case concerning The Caroline in 1838, Mr. Webster on behalf of the United States wrote to Mr. Fox of the United Kingdom in a dispute relating to the necessity of self-defence:

“It will be for . . . [Her Majesty’s] Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means and, no moment of deliberation. It will be for it to show, also that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable and excessive; since the act, justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it . . . A necessity for all this, the Government of the United States cannot believe to have existed”.

Lord Ashburton replied to Mr. Webster’s note in 1842, expressing satisfaction “to perceive that we are perfectly agreed as to the general

8 29 BFSP 1137–1138, 30 BFSP 195–196.
9 April 24, 1841, in 29 BFSP 1137–1138; see Jennings in 32 AJIL 82 (1938).
principles of international law applicable to this unfortunate case. Respect for the inviolable character of the territory of independent nations is the most essential foundation of civilization. A report made to the League of Nations in 1927 confirmed the principle of proportionality in the exercise of legitimate defence. Only measures proportionate to the seriousness of the attack and justified by the seriousness of the danger may be adopted.

As Article 2, paragraph 4, of the Charter prohibits the use of force without impairing the inherent right of self-defence under Article 51 of the Charter, attempts have been made on the part of stronger States to expand the notion of self-defence. To cite but a few examples, the quarantine imposed by the United States during the Missiles Crisis of 1962 was partially based on the necessity of self-defence. The abortive rescue attempts pending the proceedings in the Hostages Case between the United States and Iran (April 24-25, 1980) were inspired by humanitarian considerations and claimed by the United States to be in exercise of its inherent right of self-defence. So were also the military and para-military activities conducted by the United States in and against Nicaragua. In neither case could the International Court find its way to treating the use of force by the United States as an exercise of the inherent right of self-defence, individual or collective.

The question under review in the Gulf Crisis is not whether Kuwait had the inherent right to self-defence when the armed attack occurred on August 2, 1990. This was clearly confirmed by the Security Council in Resolution 660 (1990). Nor was there any doubt regarding the legitimacy of measures taken by States in response to the various Security Council Resolutions whether as sanctions to induce compliance by Iraq or as enforcement measures including the use of force authorized by the Security Council, acting under Chapter VII (Articles 41 and 42) to restore and maintain international peace and security.

10 July 28, 1842, 30 BFSP 195-196, Lord Ashburton made an effort to justify the British action in accordance with the test formulated by Mr. Webster, which has commonly been accepted as indicating the circumstances precluding wrongfulness in the exercise of self-defence.


12 Dean Acheson thought every nation had the right to survive and that survival of States is not a matter of law. Dean Acheson, 57 ASIL Proc. 14 (1963).

13 While the rescue attempts were close to self-help which the Court did not take so kindly as they tended "to undermine" respect for the judicial process in international relations while the activities against Nicaragua were held to be unlawful intervention and not justified by any necessity of collective self-defence. See ICJ Reports 1980, Judgement of May 24, 1980, paras 32 and 93-94, and ibid., 1986, Judgement of June 27, 1986, para 293 (2).
The question that may still be validly asked is whether the action taken by the Security Council or measures taken by States in response to its resolutions by way of sanction, prevention or enforcement necessarily preclude the exercise of self-defence, individual or collective. The answer is clearly in the negative. The two notions or actions are not mutually exclusive. They are never intended to be mutually exclusive. In fact, measures taken with the authorization of the Security Council under Chapter VII could overlap or overshadow all measures of self-defence, individual or collective.

It was apparent on the other hand that after Iraq's declared merger with Kuwait, the exercise of Kuwait's inherent right of individual self-defence was almost irretrievably lost. The deposed Kuwaiti Government had no possibility of defending itself single-handed. Collective self-defence was still conceivable if actions were taken under the League of Arab States.

A question may be raised as to the duration of the lapse of time needed for the waning right of self-defence to be revived. The sooner sovereignty is restored to the victim of aggression, the earlier the revival of the inherent right of self-defence in actual fact. It is useful to note, however, that in point of law, the Security Council has declared the purported annexation of Kuwait by Iraq to be null and void, thereby preventing the lapse of time or extinctive prescription from running against the rights and interests of Kuwait to recover its sovereignty.

Once the Security Council has decided to adopt measures effectively to restore and maintain the peace and security in Kuwait, the possibility of Kuwait exercising its inherent right of self-defence has become academic, whether individual or collective, within or without the United Nations. In any event, self-defence has been well overreached if not overtaken by United Nations action authorized under Chapter VII.

2. The Borderline between Self-Defence and Counter-Measures

The second question that has been raised in connection with operation "Desert Storm" is whether the operation is to be considered as an independent exercise of collective self-defence or as forming part and parcel of the series of counter-measures taken by States and international organizations, including the multi-national coalition forces against Iraq.

Among the sanctions in the form of counter-measures authorized by Security Council resolutions against Iraq may be mentioned, the deployment of maritime forces and the use of such measures commensurate to the specific circumstances to halt all inward and
outward maritime shipping (Resolution 665), the placement of an embargo on import and export to and from Iraq or Kuwait by air or by sea (Resolution 670) and ultimately the use of all necessary means to restore and maintain international peace and security (Resolution 678).

Counter-measures and self-defence are both relevant as distinct sets of circumstances precluding wrongfulness. They are distinguishable in more than one respects. Counter-measures in the form of punitive, preventive or enforcement measures may be applicable as consequences of an internationally wrongful act and not simply as circumstances precluding wrongfulness. Thus, the International Law Commission considers legitimate counter-measure against a State which has committed an internationally wrongful act under Article 30 of the draft articles on State Responsibility 14. This may include different types of reaction to an internationally wrongful act, such as retorsion, reprisal and other forms of retaliation which could be compensatory, remedial or even punitive in nature and can be viewed as sanctions or enforcement measures.

On the other hand, Article 34 provides in the same context that a lawful measure of self-defence taken in conformity with the Charter of the United Nations equally precludes the wrongfulness of an act of a State not in conformity with an international obligation of that State. Admittedly, a State acting in self-defence acts in response to an imminent danger or peril, which, not unlike the case of state of necessity, must be serious, immediate and incapable of being countered by other means. It is doubtful whether operation "Desert Storm" was undertaken "without any choice of means or any moment of deliberation". Furthermore, self-defence and counter-measures (sanctions or enforcement measures) are reactions which relate to different points in time and above all are logically distinct. Action in self-defence is action taken by a State to defend its territorial integrity or its independence against violent attack. It is action whereby "defensive" means are used to resist an "offensive" use of armed force, with the object of preventing another wrongful action from proceeding and achieving its purpose. Action taking the form of a sanction or counter-measure on the other hand consists in the application ex post facto, to a State committing a wrongful act of one of the possible consequences that international law attaches to the commission of such an act. In other words, self-defence is a reaction to the commission of a specific kind of internationally wrongful act such as an armed attack, whereas counter-measures, including sanctions and even reprisals are reactions...

that fall within the context of the operation of the consequences of the internationally wrongful act in terms of international responsibility. Nowadays, however, only sanctions referred to in Chapter VII of the Charter can entail a lawful use of force.\textsuperscript{15}

As for operation "Desert Storm", inasmuch as it was well within the measures authorized by Resolution 678 (1990), the question is more purely academic whether the use of force by the coalition forces in response to Iraqi armed attack exceeded the limits of self-defence in scope or in time, or the rule of proportionality. They are nonetheless sanctions authorized by the United Nations to restore peace and security in the area. Since operation "Desert Storm" involved the use of force, it can only be justified either as an act of self-defence or as lawful counter-measures. It would serve no useful purpose to determine whether such legitimate measures were exclusively collective self-defence which could have been taken outside the framework of the United Nations, while in the actual occurrence, they were specifically authorized as sanction by the United Nations to ensure compliance of its resolutions by Iraq.


A more fundamental and general challenge relates to the future role of multi-national coalition of the unprecedented kind against Iraqi aggression contributed by no fewer than 29 nations including Kuwait and authorized by a principal political organ of the United Nations. A practical lesson may be learned from the steps taken in the discharge of the primary responsibility of the Security Council which could be followed in future cases of aggression. Assurances should be given that in future peace will be kept by resorting to the same procedure for the peace-restoring operation authorized by the Security Council. The facts of the Iraqi aggression are not likely to be repeated in future events involving another oil rich country attacked by another neighbouring State. The question is whether the positive elements within the Security Council will continue to be present to pre-empt the recurrence of future acts of aggression. The United States would in all likelihood be prepared to come to the rescue of a country like Grenada if attacked by another country like Cuba. But would the same answer be given if an invasion occurred outside its traditional spheres of influence, say in Eastern Europe? It is difficult to predict in advance how nations will behave or react in like circumstances. Furthermore, other key roles are

played by all the other permanent members of the Security Council. If only one of them said no to any proposal or any draft Resolution, the whole coalition would be aborted or still-born. China could veto such a move. The Soviet Union would have vetoed such a coalition, had the event occurred prior to the adoption of Perestroika and Glasnost, and before the Soviet Enlightenment. At least, we have the coincidence of these occurrences to be thankful for in the current situation. The question remains whether these changes of attitude, and changes of heart, are here to stay. Can we depend on the whims of the leaders and on the winds and currents of international politics?

The so-called New World Legal Order is not at all new. It is but a recent show of its inner character of its true self, as we created it in 1945. Only we have become more true to the commitments and to the goals to which we had earlier pledged ourselves. The future really depends on our continued sincerity and determination to uphold the Rule of Law irrespective of short-term national interests. The Rule of Law must be resuscitated and further reinforced by the *jus cogens* principle of non-use of force. The use of force is forever illicit except for individual or collective self-defence against an armed attack. Unfortunately, superior force can only be repelled by the legitimate, deliberate, measured and collective use of multi-national forces which in the event of a complete take-over could only be authorized by the Security Council, as the primarily responsible organ of the World Legal Order. Operation "Desert Storm" is a classic example of legitimate, limited and proportionate use of force authorized by the Security Council in conformity with the Charter as a counter-measure to undo the consequences of an act of aggression and to redeem the sovereign rights of an independent nation when self-defence, individual or collective has been of no avail.

This is by no means an endorsement of the equation of the current World Legal Order with the "partnership" between "the Rule of Law" and "the Responsible Application of Force". It should be emphasized that under contemporary international law, there is no room for the use of force by States except in self-defence or as authorized by the United Nations. The notion of "responsible application of force" will open the door to endless abuses by providing an unwarranted excuse for resort to the use of force otherwise absolutely prohibited by law. It is not

\[16\] See, e. g., Ambassador Thomas Pickering’s statement in the Security Council on March 2, 1991. President Bush is reported to have referred to the "New World Order" where there is the right of everyone to say "No" to aggression, and enforceability is reflected in the power to enforce the Rule of Law.
enough that force is applied responsibly. The application of force is not at all possible without prior authorization, and even when authorized it has to be applied responsibly.

III. The Process of Peace-Making

The present is still vivid in the mind of the world, thanks to the exposure of modern techniques in telecommunication and the complete coverage given by news media of the combat operations of the coalition forces conducted by the United States and 28 other nations to secure implementation of Resolution 660\textsuperscript{17} and 10 other resolutions\textsuperscript{18} as authorized by Resolution 678\textsuperscript{19} of the Security Council with the resulting casualties of more than one hundred thousand Iraqi troops and civilians. The multi-national peace-keeping operation has been successful in its primary objectives of restoration of peace and security and in the return of the legitimate government of Kuwait to its homeland. Much remains however to be done by way of reconstruction, rehabilitation and normalization of the conditions existing prior to August 2, 1990.

The environmental aspects of the ruins and remnants of the embattled theatre in Kuwait and the general pollution of the air and water throughout Kuwait and over the entire region of the Persian Gulf will take years and billions of dollars to recuperate. The restoration of environmental conditions fit for human habitation presents a real challenge to the scientists, hydrologists and ecologists of all times.

It was not until April 3, 1991 that the Security Council adopted its fourteenth Resolution\textsuperscript{20} defining strict conditions for a permanent cease-fire between the Iraqi forces and the multi-national coalition forces authorized by its Resolution 678. It remains to be seen whether the measures envisaged by this longest Resolution ever will be accepted and implemented by Iraq. If so this would mark the termination of hostilities in a more permanent and formal manner\textsuperscript{21}.

Questions of reparation and restitution of private property have yet to be heard, considered and resolved. The exchange of prisoners of war

\textsuperscript{17} UNSC Resolution 660, August 2, 1990, 29 I.L.M. 1323 (1990).
\textsuperscript{18} UNSC Resolutions 661, 662, 664, 665, 667, 669, 670, 674, 677 (1990).
\textsuperscript{19} Dietrich Schindler also lists 15 Security Council Resolutions in Revue suisse de droit international et de droit européen, 1/1991, p. 3 at pp. 4–5.
\textsuperscript{20} UNSC Resolution 678, November 29, 1990, 29 I.L.M. 1565 (1990); see also UNSC Resolution 686 of March 2, 1991.
\textsuperscript{21} For further details of the conditions for permanent cease-fire set by the Security Council and its future implementation, see Section III, B below.
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may have got off on the right footing. The military personnel of the
coalition forces held by Iraq have all been released, although the return
of civilian detainees is still being monitored. Casualties of the campaign
have been extraordinarily light on the side of the coalition forces, except
for the accident of a friendly fire and the fortuitous event of one scud
missile in Saudi Arabia. In any case of casualties, death or injuries, the
Law of State Responsibility applies to all Parties, be it Iraq or the
unintended errors of a friendly fire.

At present evidence is being gathered and collated to substantiate
the various claims, private as well as governmental, as the victims of
Iraqi acts of aggression spread far and wide throughout Kuwait, Saudi
Arabia, United Arab Emirates and the countries bordering the Persian
Gulf as well as other members of the League of Arab States, and even
Israel in connection with resulting damage and loss of lives and
properties following the scud missiles attacks by Iraq.

Eventually, international claims commissions will be set up to
consider and settle such claims. The real challenge to the world is where
and how to retrieve the hidden resources of Iraq to satisfy the awards
rendered. The ultimate responsibility will unfairly have to be borne by
innocent subsequent generations of Iraqi civilians. The only comfort
that is plausible may consist in the harsh reality of international life that
each people has to account for the imperfections of its own government.
The lesson to be drawn from this challenge is that there is also reverse
vicarious liability or imputability of residual liability to the people.
Whether or not and to whatever extent a régime may be democratic, the
people must also answer for the acts of aggression and for the cruel and
inhuman treatment attributable to the government they have chosen or
tolerated. If the innocent Iraqi people have to pay for the wrongs
committed by Iraqi officials, it is because they have been too
complacent and have failed to perform their civic duties in choosing
their own government and in tolerating or acquiescing in the nefarious
activities of the despotic government. No people can escape the ultimate
international responsibility by pleading complacency, ignorance or
inaction. Every people ought to be active and to control the actions of
the government. That is why the General Assembly repeatedly
recognized the permanent sovereignty of each people over natural
resources within national boundary.

It does not follow that the Government, its agencies and leaders can
escape their primary liability or their official and personal responsi-
bilities with regard to all these claims nor for that matter for the offences
against the peace and security of mankind. International tribunals may
be established on the models of the Nuremberg and Tokyo Tribunals to
prosecute and adjudge the offences against international law and to
punish those found guilty of such offences and violations of international law. There can be no doubt that the State of Iraq, its Government and agents are officially and personally accountable for the various breaches of international obligations, specifically contained in the Vienna Conventions on Diplomatic and on Consular Relations and in the Geneva Conventions of 1949 on the Treatment of Civilians in Non-National Armed Conflict, and the Treatment of Prisoners of War.

Students of modern international law will recall that war is normally terminated by the conclusion of a peace treaty. War may break out by the start of hostilities or by a declaration of war. Before the state of war or the existence of an armed conflict can be said to have come to an end, a number of significant events may occur.

Combat operations may stop and hostilities may terminate altogether. Thus, an end may be put to the shooting war by the adoption of a ceasefire which is a military arrangement reached between the opposing commanders in the field. A cease-fire which is initially provisional or temporary can become more permanent upon further negotiations and conclusion of a formal cease-fire agreement, specifying in greater details the conditions to be observed by the parties to the cease-fire.

From the moment of cessation of hostilities as evidenced by the formal cease-fire agreement to the end of the state of war, there may be an extended period of relative peace without combat operations and without formal restoration of peaceful conditions or the return of peace as signalled by the conclusion of a treaty of peace to end the state of war or terminate the legal existence of an armed conflict.

The practice of States indicates that major wars especially global wars have been terminated by the conclusion of a collective peace treaty such as the Treaty of Versailles after World War I\textsuperscript{22} or a series of bilateral and multilateral peace treaties such as the Peace Treaty between the United States and Japan terminating the state of war between the two States in 1951\textsuperscript{23}. The process of peace-making generally takes a long time to complete after the conclusion of a cease-fire agreement. It is thus an indispensable final phase of ending the state of war or the return to normalcy after terminating the armed conflict.

In the current armed conflict between Iraq and Kuwait which has subsided since the suspension of combat operation by the coalition forces and the retreat and subsequent withdrawal of Iraqi troops from Kuwait, a more permanent cease-fire agreement is yet to be


\textsuperscript{23} Peace Treaty with Japan, 1951, TIAS No. 2490, 136 UNTS. 45.
The procedure adopted is unprecedented as the Security Council has for the first time in its 45 years' history taken the initiative not only to authorize by Resolution 678 the use of all measures required to enforce compliance with its 11 previous resolutions from Resolution 660 onwards, but has now proposed conditions to be observed by Iraq for terminating the status of the existing armed conflict. What appears to have created a precedent is the direct involvement of the Security Council in the proposal, approval and virtually in the negotiation of the terms and conditions for terminating the armed conflict initiated by Iraq. This part of the peace-making process is popularly known as the Cease-Fire Resolution.

The terms and conditions of the Cease-Fire Resolution to be accepted and implemented by Iraq are obviously designed to restore peace and order and to normalize relations between Iraq and its neighbours. To ensure peaceful transition from the state of war to the state of peace, or from the status of armed conflict to that of peaceful coexistence and cooperation, the principles of friendly relations and good-neighbourliness have guided the Security Council to prescribe certain conditions.

For students of International Law, the process can be seen as the adoption of measures to redress the wrongs committed by Iraq and to make sure that no such wrongs could recur in the future. Thus we are passing from the law regulating the use of force to the law of the State Responsibility.

A. The Law of State Responsibility

In terms of the Law of State Responsibility, the Security Council has clearly determined the existence of acts of aggression by Iraq in the Gulf Crisis and has made many recommendations regarding such matters as non-recognition of its annexation of Kuwait. It also imposed a succession of economic sanctions and blockade against Iraq. There are legal consequences attached to these as well as other decisions, determinations and recommendations of the Security Council for all States, international organizations and NGOs.

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24 Thus, UNSC Resolution 688 on humanitarian assistance was not yet accepted by Iraq as of April 18, 1991 when a Memorandum of Understanding was signed between the Government of Iraq and the Secretary-General of the United Nations following the two UN Missions, one led by Eric Suy (April 13–18, 1991) as Personal Representative of the UN Secretary-General, and the other UN Inter-Agency Mission led by Prince Sadruddin Aga Khan, Executive Delegate of the UN Secretary-General of the UN Humanitarian Programme for Iraq, Kuwait and the Iraq/Iran and Iraq/Turkey Border Areas (April 16–18, 1991) 30 ILM., 860–862 (1991).
Iraq has been found responsible for each and all its internationally wrongful acts against various injured States, principally Kuwait, Saudi Arabia and others. The Law of State Responsibility prescribes three steps or tiers of remedial measures.

EX NUNC, as the first step, the State responsible for the internationally wrongful acts is bound to cease and desist forthwith from all acts found to be internationally wrongful. Thus, invasion must be stopped and occupying forces withdrawn from Kuwait. The annexation declared by Iraq must be annulled by appropriate legislative enactment equivalent to the proclamation of annexation itself. All prisoners of war and detainees including civilian hostages must be released and repatriated.

EX TUNC, as the next step, the State committing the internationally wrongful act is required to make the reparation required of it by international law. This may be achieved by “restitutio in integrum stricto sensu” consisting of restitution or return of every object or property taken in violation of international law and restoration in full of the rights deprived or curtailed. For property lost or damaged and for death and personal injuries, where restitution is not an appropriate redress, a substitute obligation needs to be fulfilled by way of appropriate compensation. The amount of monetary compensation is assessed in accordance with the standard laid down by the Permanent Court of International Justice in the Chorzow Factory Case and should serve “to wipe out all the consequences of the illegal act” including pecuniary compensation even if it is materially impossible to wipe out the injurious consequences. Where pecuniary compensation is awarded as a counterpart of an irreparable loss, it might resemble a “penalty”. Yet in many national legal systems such compensation is awarded as “damages” rather than as “punishment”.

EX ANTE signifies the final step in the implementation of measures of redress available to the injured State. Monetary compensation by the author State may not wholly make good the damage suffered by the injured State as the result of the internationally wrongful act. Some other satisfaction may be required, as indeed is often given by the author State in the form of “apologies” and “guarantees” that the author State will see to it that such wrongful acts will not be repeated in the future. Such measures of satisfaction may be regarded as examples of ex ante secondary obligations to be performed by the author State,

involving the credibility of the primary rule itself, and not as a penalty to which the author State is made liable\textsuperscript{26}.

\textbf{B. Implementation of Obligations Resulting from State Responsibility}

As part and parcel of the peace-making process\textsuperscript{27}, the three steps or three phases of measures to be undertaken by Iraq correspond to the right of the injured State or States to present international claims in respect of the wrongful acts committed by Iraq, engaging its State responsibility. The preceding outline of steps and measures EX \textsc{Nunc}, EX \textsc{Tunc} and EX \textsc{Ante} appear to have been adequately taken into consideration by the Security Council in its debate and decision-making, as evidenced by the adoption of the Cease-Fire Resolution of April 3, 1991. Without commenting on all the conditions and obligations to be undertaken and complied with by Iraq in the process of peace-making as prescribed by the longest ever Security Council Resolution 687 (3900 words)\textsuperscript{28}, the following basic assurances, undertakings and acceptances on the part of Iraq need to be outlined.

1. \textit{The First Series of Steps: EX \textsc{Nunc}} – For immediate action apart from the cessation of hostilities against Kuwait and the coalition forces, Iraq is required to disengage its troops by completely withdrawing its armed forces and military equipment from Kuwait and away from the security zone set up by the coalition forces to ensure the security and safety of Kuwait and Saudi Arabia.

A separate United Nations peace-keeping force is contemplated for the task of overseeing completion of compliance with the Cease-Fire Resolution in regard to each and every step in the process of peace-making. The tasks undertaken by the United Nations as an international organization are unequalled in the history of the World Organization. The United Nations forces which will not include troops from the States contributing to the multi-national coalition forces will

\textsuperscript{26} See Preliminary Report by the same Special Rapporteur, Document A/CN. 4/330, Yearbook of the International Law Commission 1980, Vol. II (Part One), p. 113. This does not imply that there could never be an element of vengeance in a “satisfaction” claimed by an injured State, as may be the case when Israel presents her claims against Iraq for damage to property and personal injury suffered as the consequence of the various Scud Missiles attacks by Iraq.

\textsuperscript{27} The actual settlement of war claims or peace settlements could take much longer than the process of peace-making. The principles of peace settlement could be included in the peace treaties to be observed and performed long after actual termination of the state of war. See, e. g., \textit{Vignes}, La Commission de Conciliation Franco-Italienne, 1955 \textit{Annuaire français de droit international} 212.

be sent to help demarcate the boundary in the troubled border area between Iraq and Kuwait.

*a. Boundary Demarcation and Guarantee of Inviolability of Kuwait-Iraq Boundary*

As part of the initial steps to be taken immediately to facilitate the supervision of the withdrawal and exchange of prisoners of war across the Iraq-Kuwait boundary, it is necessary to re-establish the boundary line between the two countries. Thus, Part A. of the United Nations Security Council Resolution 687 (1991) requires both Iraq and Kuwait to respect the “inviolability of the international boundary and the allocation of islands set out in the ‘Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the Restoration of Friendly Relations, Recognition and Related Matters’, signed by them in the exercise of their sovereignty at Baghdad on October 4, 1963.”

For this purpose, the United Nations Secretary-General is called upon to “lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait drawing on appropriate material, including the map transmitted by Security Council document S/22412.” The Security Council itself guarantees the inviolability of this international boundary, which its demands Iraq and Kuwait to respect and proceeded to take necessary measure as appropriate to that end.

*b. Deployment of a United Nations Observer Unit to Monitor the Demilitarized Zone*

To monitor the Khor Adbullah and a demilitarized zone, extending ten kilometres into Iraq and five kilometres into Kuwait from the above-mentioned international boundary to be demarcated, the Secretary-General submitted within 3 days a plan for immediate deployment of a United Nations Observer Unit, to deter violation of the boundary through its presence in and surveillance of the demilitarized zone.

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29 Paragraph 2 of the operative Part A. The “Agreed Minutes” were registered with the UN and published in Document 7063, UNTS, 1964, reproduced in 30 ILM 855 (1991).

30 Paragraph 3 of the operative Part A.

31 Dr. Mochtar Kusuma-Atmadja of Indonesia was sent to head a UN demarcation team.

32 Paragraphs 5 and 6 of Part B. of the UNSC Resolution 687. The unit will also observe any hostile action mounted from the territory of one State to the other, and for the Secretary-General to report to the Council immediately if there are serious violations of the zone or potential threats to peace. As soon as deployment was completed, Member States cooperating with Kuwait would bring their military presence in Iraq to an end consistent with Resolution 686 (1991).
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c. Obligations to Cease and Desist from Acts of International Terrorism

Operative Part H. of the Resolution contains a provision requiring Iraq to refrain from "committing or supporting" any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to stop and discontinue unequivocally all acts, methods and practices of terrorism. In this particular connection, Iraq is also bound over (EX ANTE) to condemn and renounce all such acts.33

Peace-keeping operation by the independent United Nations Observer Unit will also serve to oversee compliance by Iraq with other aspects of the cease-fire agreement. In particular, Iraq must cease and desist from further aggravating the environmental holocaust attributable to its forces in the explosion of the oil wells in flame that continue to burn, and the oil-spills into the Persian Gulf resulting in considerable damage to the marine environment as well as marine life and other wildlife. Extinction of the fires and restoration to safe conditions will be conducted at the ultimate expense of Iraq as part of its EX TUNC obligation.

2. The Second Series of Steps: EX TUNC – For the damage caused, there must be restitutio in integrum or pecuniary compensation. Iraq is held responsible for the death, physical injury, loss of property and damage, including environmental havoc resulting from her invasion and occupation of Kuwait.

a. Repatriation of all Kuwaiti and third Country Nationals

As part of “restitutio in integrum” in respect of displaced persons as a consequence of Iraq invasion and occupation of Kuwait, United Nations Security Council Resolution 687 (1991) Part G 34 imposes additional duties on Iraq to extend all necessary cooperation to the International Committee of the Red Cross, providing lists of such persons, facilitating the access of the International Committee of the Red Cross to all such persons wherever located or detained and facilitating the search by the International Committee for those Kuwaiti and third country nationals still unaccounted for. The Red Cross is invited to keep the Secretary-General apprised of all activities undertaken in this regard.

33 See Paragraph 32.
b. Return of All Kuwaiti Property Seized by Iraq

The Cease-Fire Resolution appears to have taken for granted the obligation to return all Kuwaiti property seized by Iraq since its invasion and during its occupation of Kuwaiti territory. Property seized by Iraq in Kuwait as well as elsewhere, must be returned to the original owner.

For this purpose, Paragraph 15 of the Security Council Resolution 687 (1991) requests the Secretary-General to report to the Security Council “on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact”. For the latter category of property not returned intact, a separate treatment is provided in operative Part E.

c. Obligation to Make Reparation for Loss, Damage and Depletion of Natural Resources and Other Forms of Injury

Paragraph 16 in operative Part E of Security Council Resolution 687 (1991) reaffirms Iraq's liability “under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations as a result of Iraq's unlawful invasion and occupation of Kuwait36. This obligation to make reparation is without prejudice to the debts and obligations of Iraq existing or arising prior to August 2, 1990. Repudiations by Iraq since August 2, 1990, of its foreign debt are declared to be null and void and Iraq is required to fulfill all of its obligations concerning servicing and repayment of its foreign debts37.

d. Mechanism and Procedure for Settlement of Claims

To give effect to the need to pay compensation for the claims envisaged in Paragraph 16, the Security Council decides to create a fund and a Commission that will administer the fund38. The Secretary-General has been directed to develop and present to the Security-Council recommendations for the fund to meet the requirements for the payment of claims and a programme to implement its decisions that Iraq fulfill all obligations to make reparation in this regard.

The Secretary-General submitted his report on May 2, 199139, containing the requested recommendations. A United Nations Com-

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35 See operative Part D. of the Resolution.
36 See Paragraph 16.
37 See Paragraph 17.
38 See Paragraph 18.
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A Compensation Fund is to be created to be administered by a Governing Council composed of representatives of the fifteen Members of the Security Council in Geneva, Switzerland. The Governing Council serves as the appointing authority to nominate members of the Commission to administer the fund and to adjudicate the claims. Policy decisions would be taken by a majority of no fewer than nine of the members of the Council, without any one country having a veto power. If consensus is not attainable, questions could be referred to the Security Council on the request of any member of the Governing Council.

The report also recommends “mechanisms for determining the appropriate level of Iraq’s contribution to the fund based on a percentage of the value of the exports of petroleum products from Iraq not to exceed a figure” as suggested by the Secretary-General, “taking into account the requirements of the people of Iraq, Iraq’s payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy.”

The report recommends arrangements for payments to be made to the fund and the process whereby funds will be allocated for satisfaction of awards on the claims. The report covers claims from various parties. The Secretary-General recommends that the injured States file claims on their own behalf as well as on behalf of their nationals and corporations. Claims concerning individuals could be disposed of first. The report suggests that each injured State decide for itself the procedures to be followed internally in respect of the consolidation of the claims having regard to its own system, practice and procedure.

In line with this suggestion, a number of far-sighted injured States have already paved the way for such procedures. In particular, President Bush at a Press Conference on January 12, 1991 emphasized, in no uncertain terms, that one of the United Nations Security Council Resolutions “relates to reparations” and that it was a very important part of what the United Nations did. Even prior to that date, the Chairman of the House Foreign Affairs Committee already introduced a bill entitled Iraq claims of 1990, authorizing the Foreign Claims

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40 This is in keeping with Paragraph 19 of UNSC Resolution 687 (1991).
41 This is consistent with UNSC Resolution 687 (1991), Paragraph 19.
45 Congressman Dante B. Fascell introduced an unnumbered bill on October 24, 1990, Paragraph 2.
Settlement Commission to receive and evaluate "claims against Iraq resulting from Iraq's invasion of Kuwait relating either to losses directly resulting from Iraq's action or indirectly from steps taken to comply with sanctions imposed in compliance with the United Nations. Such claims may include compensation for increased security efforts required by State and local governments and corporations to counter possible terrorist activities in Iraq. The Settlement Commission is further authorized to pay assistance from Iraqi funds now frozen to the families of hostages held in Iraq, such sums as may be necessary to permit dependents of such hostage to continue to have funds subject to approval by the President.

Other Western coalition partners have been equally alert in anticipating the collation of claims and evidence of injuries suffered by their nationals and companies in Kuwait and Iraq. Thus, United Kingdom nationals and companies were encouraged to notify the losses, damage and injuries suffered.

Not unmindful of the danger of simultaneous pursuits of overlapping claims before domestic as well as the United Nations Claims Commission, the Secretary-General proposes certain guidelines to coordinate such claims. According to the procedure adopted, the United Nations Secretariat would make a preliminary assessment to determine whether the claims meet the requirements established by the Governing Council. Panels of three commissioners would conduct hearings and render recommendations or awards that are final in accordance with the procedures for evaluating losses and verifying their validity, subject only to the approval of the Governing Council. With an indeterminate amount of claims which in all likelihood will exceed available resources, criteria are being established for allocating funds, giving some measure of priority to Kuwait as the prime victim of Iraq's illegal acts.

A United Nations Compensation Fund drawing from Iraqi oil revenues will thus be created to pay the amounts of claims adjudged and

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46 Ibid., Paragraph 3; see also Paragraph 6 approving efforts of the President to seek UN actions to establish an international claims régime.
48 As observed by Glod, "the task of sorting out, processing and eventually paying war reparations in the aftermath of the Gulf War will indeed involve a herculean effort", ibid., 25 The International Lawyer, at p. 721 (1991). Others have proposed more drastic measures such as the lifting of foreign sovereign immunities, suggested by David Caron in "Iraq and the Force of Law: Why Give a Shield of Immunity?" 85 AJIL 89 (1991).
awarded to Kuwait and other injured States as well as their citizens and corporations. The Secretary-General of the United Nations is directed to supervise the establishment of this fund.

Although liability to pay compensation for the injury suffered is not disputed by Iraq, the task of the United Nations extends to the enforcement of the awards against Iraq. Parts of Iraqi assets seized or frozen outside Iraq will be made available as part of the fund to be allocated for payment of compensation, so as to ensure actual implementation of the cease-fire agreement in regard to enforcement measures and to give effect to the Cease-Fire Resolution specifying Iraqi obligation to make reparation for the consequences of its internationally wrongful acts.

In the field of environmental damage in respect of pollution of the air, the sea and damage to wildlife and to the earth which has been scorched by the burning fire from more than 600 oil wells, Iraq is also held responsible, not only to Kuwait and other injured States for the loss, injury and damage suffered, but also for the costs of cleaning up smokes and pollution in the air by putting out the oil well fires, of removing the oil spills in the Persian Gulf and of purifying the soil. The United Nations Compensation Fund will also be available for satisfaction of this category of claims.

The task of identifying financial sources to supplement the fund set up for this purpose will be monumental. The work of sifting and adjudicating the claims presented by various injured parties and victims of Iraq’s internationally wrongful acts associated with the invasion and occupation of Kuwait as well as the landing of scud missiles on several injured States will be assigned to an independent body under the supervision of the United Nations. The work of the Commission may be expected to continue for years and decades to come.

3. The Final Series of Steps: EX ANTE – To provide satisfaction beyond monetary compensation, verbal apologies and unsecured assurances, Iraq will be required to give more than oral pledges. The United Nations must insist on a firm guarantee that Iraq is committed to refrain from certain threats or acts of aggression or other internationally wrongful acts of the most serious character. The Security Council has assumed its institutional responsibility to make sure that humanity will never again suffer from the recurrence of nefarious activities by Iraq.

Based on past experience and upon clear and convincing evidence, the Security Council must ensure that Iraq is denied the possibility and deprived of the capacity to restage its acts of aggression against Iraq’s immediate and distant neighbours, and that weapons of mass destruction such as nuclear, chemical and biological weapons must be totally
destroyed without foundation to regain production capabilities. The Security Council must supervise and monitor the elimination of all chemical and biological weapons as well as the total destruction of ballistic missile system with a range of more than 95 miles and prevent future development or acquisition of such arms or of nuclear arms. Iraq’s nuclear materials that could be used for the production of weapons must be destroyed or removed by the International Atomic Energy Agency.

*a. Obligations under the Geneva Protocol (1925) and Prohibition of Biological and Toxin Weapons*

Part C of the Cease-Fire Resolution "invites Iraq to reaffirm unconditionally its obligations under the Geneva 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, and to ratify the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10 April 1972"49. The Security Council also decides to impose on Iraq the obligation to destroy, remove or render harmless, under international supervision

(i) All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;

(ii) All ballistic missiles with a range of greater than 150 kilometres and related major parts, and repair and production facilities.

To this end, Iraq is required to submit a declaration of locations, amounts and types of all items and agree to urgent on-site inspection. The Secretary-General has developed a plan to accomplish this task in consultation with appropriate Governments and with the Director of World Health Organization (WHO)50, including

(i) The forming of a *Special Commission* to carry out immediate on-site inspection of Iraq’s biological, chemical and missiles capabilities, based on Iraq’s declarations and designations of additional locations by the Special Commission itself;

(ii) The surrender by Iraq of possession to the Special Commission for destruction, removal or rendering harmless, of all chemical and


\[50\] *Ibid.*, Paragraph 9. Iraq is further required (Paragraph 10.) to undertake not to use, develop, construct or acquire any of the items above specified subject to on-going monitoring and verification of Iraq’s compliance with this obligation.
biological weapons, etc., and the destruction by Iraq under the
supervision of the Special Commission of all missiles capabilities, etc.;
(iii) The provision by the Special Commission of the assistance and
cooperation of the International Atomic Energy Agency (IAEA) in
regard to Iraq's obligations under (b) below.

b. Obligation under the Treaty on the Non-Proliferation of Nuclear
Weapons (1968)

Iraq is also invited to reaffirm unconditionally its obligations under the
Non-Proliferation of Nuclear Weapons Treaty of July 1, 1968. In
particular, Iraq shall unconditionally agree not to acquire or develop
nuclear weapons or nuclear-weapons-usable materials or any sub-
systems or components or any research, development, support or
manufacturing facilities related to the above.

For this purpose, the Specialized Agency concerned is the
International Atomic Energy Agency (IAEA), whose Director General
and the Secretary-General of the United Nations will receive from Iraq
a declaration of the locations, amounts and types of all items so
specified, which will be placed under the exclusive control for custody
and removal of the IAEA with the assistance of the Special Commis-
sion. Iraq is further required to accept urgent on-site inspection and the
destruction, removal and rendering harmless, as appropriate, of all items
related to nuclear weapons or usable materials for future on-going
monitoring and verification of Iraq's compliance with these
undertakings. However, due to Iraq's reluctance to accept unconditio-
nally most of these undertakings, monitoring and verification by the
IAEA Inspection Team have encountered some major obstacles. During
the week of September 23–27, 1991, an Inspection Team of 44 members
were detained in the parking lot of a nuclear facility, due to the
reluctance of Iraqi personnel to surrender items related to the
production of nuclear weapons. A compromise was not achieved until
the Inspection Team agreed to draw up an inventory of the items
removed.

Avowedly, denuclearization represents a step towards the goal of
establishing in the Middle East a zone free from weapons of mass
destruction and all missiles for their delivery and towards the object of a
global ban on chemical weapons.

51 Ibid., Paragraph 11.
52 These are obligations required by Paragraph 12. of UNSC Resolution
687 (1991)
53 Ibid., Paragraph 13.
c. Prohibition of Sale of Arms and Material

Security Council Resolution 661 (1990)\(^{56}\) establishing a Security Council Committee will continue in force until further notice. The Cease-Fire Resolution\(^{57}\) requires continuing prohibition of all sales or supplies to Iraq by nationals of all States or from their territories or using their flag vessels or aircraft of

(i) Arms and related \textit{matériel} of all types, including specifically all forms of conventional military equipment, for paramilitary forces, and spare parts and components and the means of production for such equipment;

(ii) Items identified as chemical and biological weapons as well as nuclear weapons and usable materials;

(iii) Technology under licensing or other transfer arrangements, used for the production, utilization or stockpiling of items specified in (i) and (ii);

(iv) Personnel and materials for training and technical support services relating to the design, development, manufacture, use, maintenance or support of the above items.

In other words, a total ban of all sales of any material or technology which could conceivably enhance Iraq’s war-making capabilities. States and international organizations are called upon to observe this prohibition, “notwithstanding the existence of any contracts, agreements, licenses or any other arrangements”\(^{58}\).

d. Easing of Prohibition against the Sale or Supply of Commodities or Products other than Medicine or Health Supplies

The general ban on the sale or supply of commodities or products other than medicine and health supplies as contained in Security Council Resolution 661 (1990) including prohibitions against financial transactions related thereto shall cease immediately with regard to “foodstuffs notified to the Security Council Committee” or with the approval of that Committee, “under the simplified and accelerated ‘no objection’ procedure, to materials and supplies for essential civilian needs as identified in the report of the Secretary-General dated 20 March 1991, and in any further findings of humanitarian need by the Committee”\(^{59}\).

Such prohibitions as continue to apply are subject to periodic review for further reduction or lifting\(^{60}\). As and when Iraq has

\(^{57}\) UNSC Resolution 687 (1991), Paragraph 24.
\(^{58}\) \textit{Ibid.}, Paragraph 25.
\(^{60}\) \textit{Ibid.}, Paragraph 21.
completed all actions contemplated in connection with biological and nuclear weapons, prohibitions against import of commodities and products originating in Iraq and against financial transactions related thereto shall have no further force and effect. The Security Council Committee is further empowered to approve, when required to assure adequate financial resources on the part of Iraq to carry out the purchase or acquisitions of foodstuffs, materials and supplies for essential civilian needs, exempted from the prohibition against the import of commodities and products originating in Iraq. Thus, on August 15, 1991, the Security Council allowed Iraq to sell US$ 1.6 billion worth of crude oil to be used exclusively for the purchase of foodstuffs and other essential civilian needs for the survival of Iraq’s populace for the following six months’ period. Iraq has complained that it has lost US$ 17 billion as the result of the continuing ban on import and export.

e. Obligation not to Support International Terrorism

As noted earlier, Iraq is also required to undertake not to support any act of international terrorism and to renounce all acts, methods and practices of terrorism.

In addition, Iraq must give the fullest satisfaction to the whole world by declaring that Iraq will not “commit or support” international terrorism or allow any terrorist group to operate from its territory. This restraint is consistent with the conduct of peace-loving States and constitutes a minimum standard of good-neighbourliness.

The measures thus outlined in the form of obligations ex ante on the part of Iraq are indispensable to the peace and security of mankind in the region. They constitute minimal precautionary steps to prevent the recurrence of further injurious consequences to neighbouring States and the environment which constitutes the common heritage of mankind.

IV. Conclusion

The United Nations have come a long way since its inception in San Francisco. It should be observed with a sense of guarded optimism that for once, and not by accident, the principal organ of the United Nations primarily responsible for the maintenance of international peace and security has been able to perform its functions as efficiently as could be expected. For once the Organization is able and willing to fulfill its primary aims and purposes.

61 Ibid., Paragraph 22.
The requirement of periodic review of the status of compliance with the cease-fire conditions by Iraq under the supervision of the Security Council and monitored by the United Nations peace-keeping operations, including the various observation missions, units, teams and guard contingents, will in fact enable the United Nations eventually to lift most if not all of the economic and other sanctions imposed on Iraq commensurate with the progress and complete satisfaction of compliance with each of the terms and conditions of the cease-fire agreement. Slowly but surely, after convalescence and rehabilitation, Iraq will be able to rejoin the peaceful community of nations of which it once used to form part.

The World Organization, like any other international bodies, can only be as strong and as effective as its members are willing to allow it to be. In this particular connection, it is the will of the five permanent members of the Security Council occupying the crucial and critical position that is determinative of its strength and destiny. If only one of the five should fail to play its responsible role, the whole mechanism of the Organization is paralyzed.

Having come this far, the United Nations should be able to maintain a steady and consistent course in the role it has learned to play with patience and in good conscience to safeguard international peace and security as well as to uphold human rights and dignity in a safe, sane, viable and livable human environment.

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