

38. LETTER DATED 5 JULY 1988 FROM THE ACTING PERMANENT REPRESENTATIVE OF THE ISLAMIC REPUBLIC OF IRAN TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

INITIAL PROCEEDINGS

On 4 July 1988, the representative of the Islamic Republic of Iran transmitted a letter¹ from the Iranian Minister for Foreign Affairs informing the Secretary-General that, on 3 July 1988, the United States had shot down an Iranian civilian airliner over international waters, killing all 290 people on board. The following day, the Iranian representative addressed a letter² to the President of the Security Council requesting a meeting of the Council to consider the matter.

Decision of 20 July 1988 (2821st meeting): resolution 616 (1988)

The Council considered the matter at its 2818th to 2821st meetings, from 14 to 20 July 1988. At its 2818th meeting, the Council invited, at their request and in accordance with rule 37 of the provisional rules of procedure, the representatives of India, the Islamic Republic of Iran, the Libyan Arab Jamahiriya, Pakistan and the Syrian Arab Republic. The Council subsequently invited, at the 2819th meeting, the representatives of Cuba, Gabon and the United Arab Emirates; and at the 2820th meeting, the representatives of Nicaragua and Romania.

The first speaker at the 2818th meeting was the Minister for Foreign Affairs of the Islamic Republic of Iran,³ who noted that some might wonder why the Islamic Republic of Iran chose to take part in the Council's deliberations when it had always criticized and opposed the Council in the past. He explained that, despite the series of irresponsible, partial and unjust positions taken by the Council, his Government had been moved by the effect of the recent tragedy on public opinion to bring the current matter to the Council, for the sake of humanity and to safeguard international law.

He recounted that, on 3 July 1988, an Iranian civil airliner on a scheduled flight from Bandar-Abbas to Dubai had been shot down by two surface-to-air missiles from a United States naval ship. The plane, when shot down, had been at the centre of an internationally established and published airway, over Iranian territorial water, and in an area outside the declared war zone. The Iranian Minister read a transcript of communications between the pilot and the ground which, he stated, showed full respect for the appropriate civilian code during all phases of the flight; it also provided the exact altitude and coordinates of the aircraft, as well as its ascent.

United States political and military leaders had offered four reasons which, added to an earlier involvement of the same United States ship and its helicopters with Iranian patrol boats, were supposed to justify shooting down the plane in self-defence: (a) the aircraft had been descending towards the American warship; (b) it had been off course;

(c) it had not been transmitting appropriate signals; and (d) it had not responded to warnings.

The Foreign Minister of the Islamic Republic of Iran claimed that each of those arguments could be refuted: (a) according to *The Washington Post* of 5 July 1988, another ship in the region had reported that the Iranian aircraft had been ascending before it was hit; (b) *The Washington Post* of 6 July 1988 reported that American leaders had admitted that their story on the plane's deviation from its corridor was a fabrication; (c) *The New York Times* of 6 July 1988 reported that Pentagon officials had admitted that it was possible that the military signal allegedly picked up from the aircraft had come from another plane; and (d) all available evidence, including the transcripts read earlier, showed that the pilot had not received any warning, and moreover, there was no reason that the airliner should have been monitoring the emergency civilian frequency on which the warning supposedly had been transmitted.

American officials had also claimed that the shooting down of the airliner had occurred in the course of hostilities initiated by Iranian patrol boats. In fact, he stated, it was the American forces which had initiated hostilities against Iranian patrol boats operating within Iranian territorial waters.

He argued that attempts by the United States to justify its action as self-defence flew in the face of international law, particularly Article 51 of the Charter, which provided that only a State which is subjected to an armed attack may resort to force to defend itself. Pre-emptive measures could not be justified as acts of self-defence, particularly in the case of a civilian airliner which did not even have the potential to launch an attack. The Council must reject that argument, not only because of the evidence, but also out of respect for Article 51 and out of concern for the freedom of civil aviation, since to do otherwise would open the door for others to resort to the same justification in similar incidents.

Contrary to Article 51, the rules of engagement prescribed by the United States to its forces in the Gulf called for taking so-called defensive measures against "hostile" targets before being attacked. Given the broad authorization granted to United States officers in the Gulf and the volatile situation caused by their presence there, a tragedy such as that which had occurred was inevitable, as American political and military leaders had known. Similar incidents could occur much more often in future, especially if one believed the United States arguments; for if the most sophisticated United States warship had mistaken a civil airliner for a fighter jet, less-sophisticated warships could be expected to make even more extreme mistakes.

The Foreign Minister further stated that the United States presence in the Gulf was contrary to its declared neutrality. Universally accepted principles of customary international law recognized a belligerent State's right to search and visit ships belonging to a neutral State, and obliged a neutral State not to act in a manner considered to be siding with one of the belligerent parties. Despite the declared objective of the United States presence in the Gulf, the United States policy actually aimed at allowing

¹S/19979.

²S/19981.

³The Minister for Foreign Affairs of the Islamic Republic of Iran spoke in Persian; an English text was provided by the Iranian delegation.

one side to the conflict to carry out attacks against merchant shipping while preventing the other party from taking legitimate action to defend its vital interests.

He stated that the United States naval presence also violated respect for the sovereignty, political independence and territorial integrity, and sovereign equality of States, under Articles 1 and 2. More than once, in contravention of the United Nations Convention on the Law of the Sea, United States ships had entered Iranian territorial waters and had warned planes to remain 10 miles distant from United States warships near or even in Iranian territorial seas. Furthermore, United States planes had often violated Iranian airspace to warn the Islamic Republic of Iran's planes to change course.

The Foreign Minister of the Islamic Republic of Iran further claimed that the United States action against the civilian airliner violated the principle of the non-use of force in international relations embodied in Article 2 (4). It was, moreover, an example of aggression as stipulated in Article 3 (b) of the Definition of Aggression adopted by the Assembly in 1974,⁴ under which the use of armed force by a State against the territorial integrity of another State is an act of aggression. Paragraph 4 of the same resolution provided that the Council should take account of the Definition in accordance with the Charter.

The United States action also violated the 1944 Chicago Convention, which guarantees the security of international civil aviation, the safety and regularity of flights and the safety of passengers and crew. Article 44 of the Convention, among other things, emphasized the importance of enhancing flight safety as well as facilitating international aviation. Annex II of the Convention underlined the imperative of safeguarding the safety of international civil aviation and the absolute prohibition of recourse to force against it. An additional amendment, article 3 (*bis*), in the form of a separate protocol, stipulated that States must refrain from the use of weapons against civil aircraft in flight, and, in case of interception, the lives of persons on board and the safety of the aircraft must not be endangered.

The reaction of the international community to such incidents had established a strong precedent, according to which the United States action was a criminal act and a violation of the rules and principles of international law.

The Iranian Foreign Minister declared that the Council should compel the United States and other foreign forces to leave the Persian Gulf, and that anything less would be an evasion of its responsibilities. He recalled a proposal for regional security submitted by the Islamic Republic of Iran in May 1986, based on the principle that security in the Gulf region depended on mutual understanding between the countries of the region and should be achieved by those countries without foreign interference. He further recalled that the Islamic Republic of Iran had responded positively to proposals for the prevention of acts of hostility in the Gulf made by the Secretary-General and others. Such efforts should be continued independently of the Secretary-General's efforts to achieve the implementation of his plan.

The Minister for Foreign Affairs of the Islamic Republic of Iran suggested that the current deliberations might show whether the Council could fulfil its responsibility under the Charter free from and regardless of the influence of a super-Power. He expressed doubt as to whether the Council was prepared to deal objectively with the matter, and noted that the Council had never investigated United States actions. He declared that the Council must pronounce itself on this occasion in the clearest, most unequivocal terms and warned that if the Council and other international bodies failed to respond adequately, the price would be an ever-increasing threat to civil air traffic everywhere.⁵

The following speaker was the Vice-President of the United States, who claimed that the critical issue confronting the Council was the continuing refusal of the Government of the Islamic Republic of Iran to comply with resolution 598 (1987), to negotiate an end to the war with Iraq and to cease its acts of aggression against neutral shipping in the Gulf. His Government respected the Islamic Republic of Iran's right to air its grievances, but it could not have it both ways, simultaneously complaining to the Council and defying it.

He accused the Islamic Republic of Iran of sowing mines and attacking non-belligerent merchant ships in the Gulf, in violation of international law and of the Charter, and in contradiction to the Islamic Republic of Iran's claim of support for freedom of navigation. Noting that the Gulf region was of vital importance to the United States and to the economy of the world, he stated that American and European forces were present with the support of the States of the area in order to help ensure the unimpeded flow of oil and to keep neutral commerce moving. That was their legal right. The United States was determined to keep the Persian Gulf open and would not alter its course.

Regarding the destruction of the Iranian airliner, he allowed that many of the circumstances surrounding the matter remained unclear and noted that his country's military investigation was under way. The United States would cooperate with any investigation conducted by the International Civil Aviation Organization (ICAO), and hoped that the Islamic Republic of Iran would do the same, because it wanted all the facts brought to light as quickly as possible.

He declared that the United States had never wilfully acted to endanger innocent civilians, nor would it ever do so. The Iranian allegation that the attack on the airliner had been premeditated was offensive and absurd. The United States ship had clearly acted in self-defence: information available to the captain had indicated that a military aircraft was approaching his ship with hostile intentions and, after seven unanswered warnings, he had acted in accordance with his primary duty to protect his ship and the lives of his crew.

The accident had occurred against a backdrop of repeated unprovoked and unlawful Iranian attacks against United States merchant shipping and armed forces, in the midst of a naval attack initiated by Iranian vessels against a neutral vessel, and subsequently against the United States warship when it had come to the aid of the neutral vessel. It had been irresponsible of the Iranian authorities to allow a civilian aircraft to proceed on a path over a war-

⁴General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

⁵S/PV.2818, pp. 6-48.

ship engaged in active battle. The Islamic Republic of Iran could prevent such tragedies in the future by keeping airliners away from combat, by ceasing its attacks against innocent ships and, best of all, by accepting peace.

The United States shared in the grief of the families of the victims and had decided to provide a voluntary, *ex gratia* compensation to the families of those who had died. This offer was made strictly as a humanitarian gesture, not as a matter of legal obligation, and measures would be taken to ensure that the money went to the families of the victims, not to the Iranian Government.

While remaining neutral in the war, the United States would continue to defend its interests and to support its friends in the Gulf. Until the implementation of resolution 598 (1987) allowed the United States to return to the modest presence that it had maintained, with the support of the Gulf States, for more than 40 years, it would do whatever was required to maintain freedom of navigation and to protect its forces.⁶

At the 2819th meeting, on 15 July 1988, the representative of the United Kingdom of Great Britain and Northern Ireland stated, among other things, that the Council would not have had to consider the current matter if resolution 598 (1987) had been complied with; but instead, the fighting continued and, contrary to international law, merchant shipping was frequently attacked. The United Kingdom, like other members of the Council, exercised its right to protect its shipping from attack. While the role of British forces was strictly non-confrontational, the United Kingdom considered it entirely appropriate for such forces to exercise the right to self-protection confirmed by Article 51 of the Charter.⁷

The representative of Nepal stated that his Government's sense of outrage over the incident had been somewhat muted by the growing perception that the aircraft had been shot down as a result of mistaken identity, rather than as a premeditated act of punishment or provocation. It took note of the prompt United States acknowledgement of responsibility and expression of regret, and the decision to offer compensation to the families of the victims on an *ex gratia* basis, but it would have preferred to see an unqualified apology and the granting of full compensation to the Government of the Islamic Republic of Iran and to the members of the bereaved families.

In order for the Council to take an appropriate decision to prevent a recurrence of this kind of incident and to ensure respect for the international norms protecting civil aviation, it must have all the facts before it; therefore, Nepal fully supported the ICAO Council's decision to conduct an inquiry following the request of the Islamic Republic of Iran, and noted with satisfaction that the United States had agreed to cooperate with such an inquiry.

The delegation of Nepal was convinced that the full implementation of resolution 598 (1987) was the only viable avenue to the restoration of peace and normality in the Gulf, and urged all concerned to cooperate with the Secretary-General in his efforts in that direction.⁸

The representative of the Union of Soviet Socialist Republics questioned how the destruction of a passenger

airliner thousands of kilometres from the borders of the Power that shot it down could be considered self-defence, and noted that competent Western sources had expressed doubts over the technical data cited. He asserted that responsibility for the incident lay wholly with the United States Command and that what had happened was a direct corollary of the United States increased military presence in the Gulf. In order to reduce tension, the United States fleet must withdraw immediately. Security in the waterway could be dealt with by replacing all warships of non-littoral States with naval forces under the United Nations flag.

The delegation of the Soviet Union supported the efforts of the Secretary-General for the implementation of resolution 598 (1987). It considered that the Council must duly respond to the Islamic Republic of Iran's appeal in connection with the crash of the Iranian airliner, that it must properly assess the incident and that it must take measures to bring about the immediate normalization of the situation.⁹

The representative of France remarked that the international community must better understand the circumstances of the tragedy so that it could draw the proper conclusions and see to it that such occurrences were not repeated. A process of inquiry was under way in ICAO, but France remained open to any proposal that might be brought before the Council.

The war was at the root of the many clashes between naval and air forces. Freedom and security of navigation were threatened in the Gulf, and many countries had had to take special measures. He noted that it had been a year since the Council had adopted resolution 598 (1987), and asserted that the United Nations must reaffirm with particular gravity its determination to secure a just and lasting peace settlement.¹⁰

The representative of China declared that the United States Government had unshirkable responsibility for the incident under consideration. China shared the view expressed by the Secretary-General in his statement that the question of responsibility should not be ignored if a repetition of such a tragedy was to be avoided. China favoured an investigation into the incident by the relevant international bodies to establish the facts and take measures to guarantee the safety of international civil aviation.

The Government of China remained opposed to big-Power military involvement in the Gulf region and called for their withdrawal. Such involvement only further complicated the situation and could exacerbate the conflict, as proved by the latest developments. Gulf affairs should be handled by the Gulf countries themselves through consultations. The Government of China appealed to the Islamic Republic of Iran and Iraq to cooperate with the Secretary-General and the Council in order to reach a settlement of their conflict on the basis of resolution 598 (1987).¹¹

The representative of the United Arab Emirates denied any possible justification for making a civil airliner a military target, and concluded that the United States bore full responsibility for the tragedy. Noting that some of the warships in the area had interfered with the airspace used by United Arab Emirates civil airlines and had come close to

⁶Ibid., pp. 49-61.

⁷S/PV.2819, pp. 49-61.

⁸Ibid., pp. 7-11.

⁹Ibid., pp. 16-21.

¹⁰Ibid., pp. 26-28.

¹¹Ibid., pp. 28-31.

causing several air incidents, he declared that countries whose navies were interfering with international aviation would be responsible for any future consequences of such interference, particularly since some airliners did not have the equipment necessary to receive warning messages from warships.

He stated that, although the airliner tragedy was unjustified, it could not be denied that the Persian Gulf had been in recent years subjected to tension and insecurity, particularly because of mining of the waterway and attacks on neutral shipping. He concluded that both the tension in the Gulf and the presence of foreign military and naval forces there were connected with the continuation of the Iran-Iraq war and stated that, without a peaceful end to the war, his delegation could not conceive of any possible lessening of tensions in the Gulf.¹²

At the outset of the 2820th meeting, the President drew the Council's attention to a letter¹³ from the representative of the Islamic Republic of Iran dated 18 July 1988 which stated, *inter alia*, that, because of the importance the Islamic Republic of Iran attached to saving human lives and establishing justice, peace and security, it had decided to accept Security Council resolution 598 (1987).

At the same meeting, the representative of the Libyan Arab Jamahiriya welcomed the acceptance by the Islamic Republic of Iran of resolution 598 (1987) and expressed hopes for the success of the Secretary-General's efforts towards establishing peace and security among the countries of the region. He stated, among other things, that foreign naval fleets in the Arabian Gulf and Mediterranean directly threatened the security, independence and sovereignty of the countries of the region, jeopardized civil aviation and navigation, and were the main reason for the escalation of tension and destabilization of peace in the area.

The Libyan Arab Jamahiriya demanded the withdrawal of all foreign fleets from the Arabian Gulf and Mediterranean and called upon the Council to assume its full responsibility for the maintenance of international peace and security in the area. The Council should not stand idle before provocative acts that would lead to the escalation of tension and expansion of war, but should take all measures that would lead to the immediate withdrawal of foreign troops from the area.¹⁴

At the 2821st meeting, the Council had before it a draft resolution¹⁵ that had been prepared in consultations.

Prior to the vote on the draft resolution, the representative of the Islamic Republic of Iran stated that the statements in the Council had shown that a better explanation was required for the destruction of a civilian airliner and its 290 passengers than the American Administration had provided. Under the circumstances, a responsible Government ought to (a) apologize to the families of the victims and to the peoples and Governments concerned; (b) accept full responsibility for its action and offer reparation on the basis of its legal and moral liability; and (c) reassess and

revise policies which had led to the incident. The United States Government had done none of these.

The Islamic Republic of Iran believed that the United States aimed to fan the fire of conflict in the Gulf. The United States had purposely ignored the fact that the Islamic Republic of Iran had not started the war in the Gulf and stood to gain the most from the restoration of peace.

He noted that the draft resolution before the Council failed to condemn the culprit and was peculiarly lacking in emphasis on the Islamic Republic of Iran's right to dress and full reparation under international law, which was essential to a position of principle by the Council. The Islamic Republic of Iran had no illusions about the decision-making process in the Council, and thus its expectations with regard to the degree of justice to be reflected in the Council's decision were limited. Nonetheless, it had chosen to resort to the Council, guided by the principle of upholding the norms of civilized behaviour, which precluded the shooting down of civilian airliners.

The Islamic Republic of Iran was ready to comply with the draft resolution notwithstanding its problems. It welcomed the Council's decision to stress the obligation of all parties to observe the rules of international law concerning the safety of civil aviation, particularly those of the annexes to the Chicago Convention, and looked forward to cooperating with the ICAO fact-finding investigation. The Islamic Republic of Iran hoped that the other parties concerned, especially the United States, would comply with the draft resolution so as to restore safety to civil aviation and freedom of navigation to commercial shipping in the Gulf. Now that the Islamic Republic of Iran had removed the last excuse for impeding the efforts of the Secretary-General to bring peace and security to the Gulf and the entire region, it was high time that all States concerned adopted policies conducive to achieving a permanent, just and honourable solution to the war. To that end, the Islamic Republic of Iran accepted the proposal of the Secretary-General, was ready to receive his technical team, and was prepared to extend its fullest cooperation to the Secretary-General's efforts.¹⁶

The representative of the United Kingdom remarked briefly that earlier draft texts had referred to freedom of navigation in the Gulf, and he reaffirmed the importance his Government attached to freedom of navigation in international waters.¹⁷

The Council proceeded to vote upon the draft resolution, which was adopted unanimously as resolution 616 (1988).

The resolution reads as follows:

The Security Council,

Having considered the letter dated 5 July 1988 from the Acting Permanent Representative of the Islamic Republic of Iran addressed to the President of the Security Council,

Having heard the statement of the representative of the Islamic Republic of Iran, Minister for Foreign Affairs Ali Akbar Velayati, and the statement of the representative of the United States of America, Vice-President George Bush,

Deeply distressed that a civil aircraft of Iran Air—scheduled international flight 655—was destroyed in flight over the Strait of Hormuz by a missile fired from the United States warship *USS Vincennes*,

¹²*Ibid.*, pp. 56-58.

¹³S/20020.

¹⁴S/PV.2820, pp. 16-20. Similar views, in various forms, were expressed at the 2820th meeting by the representatives of the Syrian Arab Republic (pp. 18-22), India (pp. 23-25), Cuba (pp. 26-28), Romania (pp. 28-31) and Nicaragua (pp. 32-37).

¹⁵S/20038, adopted without change as resolution 616 (1988).

¹⁶S/PV.2821, pp. 2-10.

¹⁷*Ibid.*, pp. 9-10.

Stressing the need for a full explanation of the facts of the incident based upon impartial investigation,

Gravely disturbed at the increasing exacerbation of tension in the Gulf region,

1. *Expresses its deep distress* at the downing of an Iranian civil aircraft by a missile fired from a United States warship and profound regret over the tragic loss of innocent lives;

2. *Expresses its sincere condolences* to the families of the victims of the tragic incident and to the peoples and Governments of their countries of origin;

3. *Welcomes* the decision of the International Civil Aviation Organization, in response to the request of the Islamic Republic of Iran, "to institute an immediate fact-finding investigation to determine all relevant facts and technical aspects of the chain of events relating to the flight and destruction of the aircraft" and welcomes the announcements by the United States of America and by the Islamic Republic of Iran of their decisions to cooperate with the International Civil Aviation Organization investigation;

4. *Urges* all parties to the Convention on International Civil Aviation, signed at Chicago in 1944, to observe to the fullest extent, in all circumstances, the international rules and practices concerning the safety of civil aviation, in particular those of the annexes to that Convention, in order to prevent the recurrence of incidents of the same nature;

5. *Stresses* the need for a full and rapid implementation of its resolution 598 (1987) of 20 July 1987, as the only basis for a comprehensive, just, honourable and durable settlement of the conflict between the Islamic Republic of Iran and Iraq, and reaffirms its support to the efforts of the Secretary-General to implement that resolution, committing itself to work with him in the development of his implementation plan.

Following the vote, the representative of the United States observed that the Islamic Republic of Iran's formal acceptance of resolution 598 (1987), coupled with Iraq's recent reaffirmation of its long-standing agreement to accept that resolution, laid the basis for an urgent and concerted effort towards its implementation. The United States welcomed the Secretary-General's announcement of his intention to send a team to the area for urgent talks with the parties.

The resolution just adopted did not in any way change the context or scope of current international law on free navigation or on the rights of belligerents or neutrals. The United States and five allied countries had expanded the Western naval presence in the Gulf, in accordance with international law, in order to ensure the right of neutral shipping to free navigation. He declared that the legitimacy of the Western naval presence was not subject to question, and the United States would maintain its Gulf policy.

The United States had expressed its regret over the loss of life and had conveyed its condolences to relatives of the victims. It had offered to pay *ex gratia* compensation to the families of the victims as a humanitarian gesture, but it did not apologize for the action of its warship, which had been taken in justifiable self-defence in the context of unprovoked attacks from Iranian forces.

The United States endorsed the actions taken by the Council of ICAO to investigate the incident, and looked forward to cooperating in that investigation and in the efforts that the President of the ICAO Council and the ICAO Secretary-General would be undertaking to improve civil aviation safety and to study possible improvements in ICAO Standards and Recommended Practices. In that context, the United States had supported the resolution just adopted, in the belief that it put the events of 3 July in proper perspective, and in the hope that it would remind the international community that it could not permit the conflict in the Gulf to continue.¹⁸

The representative of the Soviet Union stated, *inter alia*, that the majority of delegations had accurately assessed what had occurred in the Gulf and favoured measures to normalize the situation and ensure security in the region, as was reflected, to some extent, in the resolution just adopted.¹⁹

¹⁸*Ibid.*, pp. 11-15.

¹⁹*Ibid.*, p. 16.

39. THE SITUATION CONCERNING WESTERN SAHARA

Decision of 20 September 1988 (2826th meeting): resolution 621 (1988)

At the 2826th meeting, on 20 September 1988, the item was included in the agenda. The President indicated that the Security Council was meeting in accordance with the understanding reached in the Council's prior consultations.

The Secretary-General of the United Nations made a statement in which he informed the Council that the Kingdom of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro had, on 30 August 1988, in Geneva, given their agreement to proposals for a peaceful settlement by the Chairman of the Organization of African Unity (OAU) and himself within the framework of the mission of good offices. Those proposals were aimed at the promotion of a definitive solution of the question of Western Sahara in accordance with General Assembly resolution 1514 (XV) under the mandate conferred upon the Secretary-General by General Assembly resolution 40/50. The proposals called for providing a framework for the conclusion of a ceasefire and to establish conditions

for the organization of a credible referendum that would make it possible for the people of Western Sahara to exercise their inalienable right to self-determination. The referendum would be monitored by the United Nations in cooperation with OAU under the guidance of a Special Representative of the Secretary-General. The speaker outlined the plan for the period of preparation of and conduct of the referendum, as well as for the transition period. He requested Security Council authorization to appoint a Special Representative for Western Sahara and proposed that he should return to the Council at a subsequent stage for adoption of further necessary measures.¹

At the same meeting, the President put to the vote a draft resolution; it was adopted unanimously as resolution 621 (1988).

The resolution reads as follows:

The Security Council,

¹S/PV.2826, pp. 6-8.