

THE UNITED NATIONS AND THE IRAQ-KUWAIT CONFLICT

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Certificate

This is to certify that the dissertation entitled "The United Nations And The Iraq-Kuwait Conflict" submitted by Mr. DIGVIJAI NATH SINGH in partial fulfilment of the requirements for the degree of Master of Philosophy of this University is, to the best of my knowledge, his own work and has not been presented for any degree or diploma in any other University. It may be placed before the examiner for evaluation.


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Preface

This dissertation seeks to examine the role of the United Nations in the developments associated with Iraq-Kuwait conflict, 1990-91.

The overnight invasion of Kuwait by its mighty neighbour Iraq on 2nd August and related developments subsequently are considered to have opened a new era in international relations. The Iraqi invasion on Kuwait was unique in several respects. This was the first case after the Second World War, where the invasion was sudden and the occupation complete. Secondly, the Iraqi action was notable for the timing of its occurrence - the world was ushering in what is widely regarded as the post-cold war era. In other words, in the Gulf crisis, the first major conflict situation the world body had to respond to in the new environment. Viewed through the prism of the United Nations Charter, the Iraqi action and the associated crisis constituted the most blatant violation of the letter and spirit of its principle. It was, it is true, not the first instance of blatant violation of the Charter¹, but what was noteworthy was that because of the new climate the United Nations came closest ever

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Earlier some example of such violations are Korean war (1950), crisis in Guatemala (1954), Hungary and Suez (1956), Afghanistan (1979-80), Grenada (1983) and recently Panama (1989).

to implement the Charter framework for collective enforcement of international peace and security. In other words, international community's response to the Gulf events was unprecedented.

In the present study, an attempt has been made to examine the following issues - what are the historical and immediate causes of the conflict? To what extent the Gulf developments posed a qualitative challenge to the United Nations framework in the peace and security? What has been the nature of the United Nations' response? To what extent the United Nations' response compliments with or departs from the Charter and also from the past practice? What are the consequences of the United Nations' response on the world body's role and relevance in the maintaining peace and security. It is these and other questions the present study attempts to examine.

The chapterization of the study is as follows - The first chapter attempts to provide a historical perspective, viz. historical geographical, economical, political etc. A framework related to the United Nations in the maintenance of international peace and security is the subject matter of the next chapter. The Charter framework, powers of the organs of the United Nations and the heritage of the United Nations in the maintenance of peace and security have been discussed in this chapter. The third chapter deals with the United Nations' response to the Iraqi invasion manifested in the Security Council's deliberations in the series of resolutions and diplomatic initiatives to defuse

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the situation by peaceful means. The fourth chapter deals with the authorization by the Security Council, for what is widely understood as military action, the war and the arrangement of ceasefire and related developments. The last and the fifth chapter embodies an overall assessment and concluding observations.

Historical, descriptive and analytical methods have been put to use in the course of study. It involved consultation of a range of primary and secondary source materials including United Nations documents, scholarly notes (both books and articles), press clipping and periodicals.

In the last, I acknowledge the responsibility of all errors and omissions in this dissertation; if any.

CHAPTER - I

A BACKGROUNDER

Political, economic, strategic factors lie behind what occurred to Kuwait during August 1990-April 1991. An understanding of these factors would put the Gulf crisis in perspective. What follows is an attempt in this direction.

IRAQI CLAIM OVER KUWAIT

In the 19th century Kuwait was administered, as a part of Ottoman province of Basra, by the Sabah dynasty of Anaiza tribe of Bedouin which got in 1871 the title of "Qaim Maqam" (Deputy Governor, Prefect) by Midhat Pasha, the Turkish Governor of Baghdad. This acceptance of title by the Sheikh of Kuwait has been interpreted as his "acknowledgement of sovereignty", but actually Kuwait had never been under any effective control of Turks, and in 1896 Sheikh Mubarak, the Great, seized power in Kuwait. Killing his pro-Turkish half brother, Sheikh Muhammad proclaimed Kuwait's independence from Ottoman empire. To make his throne safe Sheikh Mubarak sought protection from British which was also interested owing to increasing Russian and German threats. This resultant convergence of interests led to the signing of a secret Exclusive Agreement on 23, January, 1899 between Britain and Kuwait, binding the Shiekh not to cede, sell, lease, or mortgage, or give for occupation, or for any other purpose, any portion of his territory to the government or subject of any other power and not to accept representatives of

foreign countries without the previous consent of the British Government. In return British assured the Sheikh of their protection.¹

These arrangements were recognised by Germany, Russian (Anglo-Russian Agreement, 1907) and Turks [Anglo Ottoman Draft Convention on the Persian Gulf Area 29 July, 1913]. In 1914, on the outbreak of the World War, British established its protectorate over Kuwait, a status which continued till 19 June, 1961, when Britain and Kuwait decided to terminate the 1899 agreement and a new agreement was signed envisaging bilateral relations based on a "spirit of close friendship consulting on matters of mutual concern and British assistance if desired by Kuwait."²

Iraq was also under the rule of Ottoman empire since 16th century. When Ottoman empire was dissolved in 1918, it was decided that Iraq should form a self-governing state. In April 1920, the Allied powers at San Remo gifted Iraq (formed after amalgamation of three erstwhile Vilayats of Mosul, Baghdad and Basra) to Britain as Mandate, which created a monarchy in 1921 and installed Faisal, son of sharif Hussain of Mecca, as a King of Iraq. Britain relinquished sovereign state on October 3 of that year. The British installed monarchy ended on July 14, 1958 after a coup

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A.H.H. Abidi, "Backgrounder" in AHH Abidii and KR Singh (ed.), The Gulf Crisis (Delhi, 1991), p.6.

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Keesings Contemporary Archives, 1961-62, p.18159.

d'etat by army and a republic was proclaimed in its place.

Border Dispute

The border between Iraq and Kuwait (160 km long) was defined in April 1923 in an agreement between Sheikh Ahmad al Sabah of Kuwait and Major General Sir Percy Cox, British High Commissioner for Iraq. Again in July and August 1932, Sheikh Ahmad and the then Iraqi Prime Minister Nuri al Said recognized the existing boundary as defined in the Anglo-Ottoman Convention of 1913. This "imposed" arrangement on a mandate country, Iraq, was declared invalid by Iraq.

With this background Iraqi Prime Minister General Abdul Karim Qasim, in a broadcast over radio Baghdad on 25 June 1961 - just six days after Kuwait gained independence - challenged Kuwaiti independence and claimed Iraqi sovereignty over it. He asserted it on two grounds; first, that Kuwait had been a part of Basra province of the Ottoman Empire, and second, that Britain and other powers had recognized Ottoman sovereignty over Kuwait both before and after the signature of 1899 Agreement. He also referred to the decree issued by him, appointing the Sheikh of Kuwait as "Qaim³ Maqam" of Kuwait (repeating Midhat pasha's action of 1871).

On the next day Iraqi government in a memorandum to all the diplomatic missions in Baghdad, upheld its claim also on the basis of ancient Mesopotamian connections. Kuwait rejected the Iraqi arguments asserting that it had never been subjected to

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AHH Abidi, "Backgrounder" in Abidi and Singh, n.1, P.9

Turkish sovereignty and pointed out that the Sabah dynasty has been ruling Kuwait since 1756 without direct Turkish interference and without the title of Qaim Maqam.

Anticipating Iraq's possible moves, Kuwait sought military assistance from Britain under clause 'D' of the new agreement: and from Saudi Arabia. Both countries despatched their forces in July 1961 to help Kuwait. The issue was referred to the UN. The Security Council met on the British request on July 25, 1961 to consider Kuwait's complaint against Iraq's threat. The British delegation stated at the meeting that Britain responded to the request of Kuwait for assistance under the provisions of new agreement and its troops would be withdrawn immediately after their resolution of the crisis. Iraq rejected any dispute between Kuwait and itself and complained over the "illegal and forceful separation between Iraq and Kuwait". The Kuwait delegation rejected the Iraqi arguments and emphasized that Kuwait's independence was supported by Iraq itself in many forms. The British resolution, however, failed to be adopted due to the Soviet veto. The counter draft of the UAR met with the similar fate. But owing to the international pressure, Britain started to pull out its forces within three weeks of their arrival.

Meanwhile, the Arab League was also engaged in consultation and mediation with the states involved. But its extraordinary

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SCOR, Sixteenth year, 958 mtg. 2 July 1961, p.11.

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DOC S/14855.

meeting convened on July 4, 1961 at Cairo, was vetoed by Iraq. On July 20, Arab League Ministerial Council reached a decision under which Kuwait was admitted in the Arab League. Iraq did not participate in the voting. The government of Kuwait "undertook to all for the withdrawal of the British force", and the Government of Iraq "pledged not to resort to force in annexing Kuwait."

The league was to support any "desire on the part of Kuwait for union or merger with any membership of the UN. Kuwait became member of the UN on May 14, 1963. The Arab States "pledged to provide active help for guaranteeing the independence of Kuwait". On August 12, 1961, a formal agreement between the Arab League and the Government of Kuwait provided the legal and operational framework for the joint Arab League force. The joint Arab force reached Kuwait on September 10, and the British forces began to withdraw. This was communicated to the Secretary General of the UN. These forces remained in Kuwait until 1963 when the Kuwaiti crisis was ended.

The overthrow of General Qasim on February 3, 1963, led to an easing of the friction between Iraq and Kuwait. Under President Arif, the new regime entered into an agreement with Kuwaiti regime under which Iraq recognized the independence and complete sovereignty of Kuwait with boundaries as specified in 1932. The two countries also decided to cooperate at all levels and to establish diplomatic relations. Notwithstanding the agreement, Iraq repeated its

its claim, in the following years, to certain part of Kuwait's border territory, particularly to the islands of Warba and Bubiyan which were necessary for free access to the Gulf, particularly after the development of Rumeilah oil field and the expansion of its ports of Umm Quasar.

Thus when the joint Kuwait-Iraq Committee began in 1964 to discuss, the demarcation of the border, the Iraqi for the first time raised the question of legality of previous agreements on the ground that those were signed at the time when Iraq was under an alien rule and it was not free to negotiate. The committee talks however, ended in a stalemate in 1967 when Kuwait raised the question of competence of Joint Committee.

After the coming of the Ba'ath party in power in Iraq in 1968, Kuwait agreed under severe pressure in 1969 to the stationing of Iraqi troops on its soil in order to protect the port of Umm-Quasar, which was, in Iraqi opinion, necessary due to Iraq-Iran tensions. At this time Iraq even offered that Kuwait could send its forces for deployment near Basra or in any other places in Iraq. In early 1970 Iraq desired Kuwait to cede Bubiyan and Warbah islands to Iraq where the latter wanted to construct an oil terminal and a naval base. Iraq offered, in return, to provide fresh water from Shatt-al-Arab to Kuwait through a pipe line, but Kuwait turned down the proposal.

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European Intelligence Unit, the Gulf War: A Survey of Political Issues and Economic Consequences (London, 1984), quoted in Abidi and Singh, n.i. p.11.

In March 1973, with a view to forcing the issue, Iraqi forces occupied a border in the "Disputed area". The Iraqi Government replied to the Kuwait's protest that the frontiers of the two countries had not yet settled and it refused any mediation from the Arab League on any other third country. In spite of such an attitude Iraq withdrew its forces which was interpreted by many as the result of Saudi Arabian and Iranian pressure.

On 28 April 1973 Iraq sent a proposal to restart the border-issue discussion on the basis of previous documents referring to them as 'indications' and not agreements, but Kuwait in its reply of 5 May adhered to the previous agreements. On 20-22 August 1973, Kuwaiti Crown prince Sheikh Jaber -al- Ahmad-al-Sabah, paid a visit to Iraq to show a positive gesture on border problems, but Iraqi leaders insisted to cede or lease Warbah and Bubiyan islands. This threat on the two islands on the pretext of Iranian hostilities was apparently removed in 1975 when both countries (Iran and Iraq) signed a comprehensive border and peace treaty. But by this time,

Iraq discovered a new excuse, that is defense of Umm-al-Quasar port. Iraq wanted half of the Bubiyan island on lease for 99 years and cessation of Warbah islands by Kuwait. As before, Kuwait again turned down the Iraqi proposals.

Iraqi aggressive gestures continued in the following years. Iraq mobilised troops to occupy a small area in the northern Kuwait after the dissolution of Kuwaiti National Assembly in

September 1976. Negotiations on border problems again started in 1977 and both the countries agreed to appoint a Committee "to follow up and resolve such border problems as smuggling and encroachment". Iraq indicated its readiness to withdraw its forces from Kuwait after nine years.⁸ The talks ended in a stalemate.

A great metamorphosis in the equations in the Arab politics came with the Iranian revolution in 1979 and with the outbreak of the Iraq-Iran war in the following Year. Kuwait like many other countries sided with Iraq and provided financial, political and logistic support to Iraq. In November 1979, Iraq even acquired, under an agreement with Kuwait, the right of using the facilities in the Kuwaiti port of Mina Shuweikh.⁹ But in return to these Kuwaiti concession,

Iraq raised the demands of Warbah and Bubiyan islands on the pretext of its strategic and national security. The Kuwaiti Government again rejected the demands. In 1984, Iraq again started its demands after facing the reverses in the war. The Kuwaiti Government relented this time and during the visit of Kuwaiti Prime Minister to Baghdad, Kuwait agreed to give three islands - Warbah, Bubiyan and Faylaka - to Iraqi control.

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Arab Report and Memo (Paris) No. 15, 1 August 1977, quoted in Abidi & Singh. n.1, p.14

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Middle East Economic Digest (London), 9 November 1979.

After havinjg these gains, Iraq began to evade to discuss the border problems with Kuwait. After the war, Kuwait revived the question during the visit of Kuwait's Interior Minister , Shamir Abdul Razzaq, in August 1988, and a joint Committee was constituted to undertake the issue,. Due to Iraqi insistence on the transfer of Bubiyan to it and flat Kuwaiti rejection, talks ended in failure. In October 1988, Iraq sent its troops to the interior of Kuwait to pressurize it, but wihtdrew after talks. This state of affairs continued till the recent episode that started on 2 August 1990 even after the visits of the Prime Minister and the Crown Prince to Baghdad in 1989. In fact, Iraq's prassure on Kuwait, thereafter, intensified and Saddam Hussein's attituded became "more sanguine".

This background of territorial dispute between Iraq and Kuwait constitutes a very important aspect of the war of 2 August 1990. But this was not the only reason. The other reasons are not far to seek.

OIL FACTOR

One of the chief grievances Iraq had against Kuwait was that the latter exceeded the petroleum production quota fixed by the OPEC which has resulted in the lowering of the 'spot market price' of crude oil to 13-14 dollar per barrel against OPEC bench mark price of \$18.72. This, according to Iraq, reduced the Iraqi revenue and hampered its post-war reconstruction programme. But informed analysts dismiss these charges and pointed out that hardly any OPEC countries, except Qatar and Indonesia, could be

absolved of the charge, including even Iraq.

With OPEC crude price falling to \$14 a barrel, Iraq would have to sell 2.02 million b/d to earn enough to pay \$11.2 million per annum. If the annual liability was \$14.34 billion, the figure would go upto 2.6 million b/d. With more than 90% of export earnings dependent on oil, the margin to meet the normal import requirements of the country would thus practically vanish or become so small as to be of little real value. The end result Iraqi economy would be cataclysmal and the Iraqi President's 'war grind to a halt'.

Economic factor was one of these reasons. Eighty-year Iran-Iraq war ended with a huge debt of about \$8 billion over Iraq as estimated by Economic Intelligence Unit, London. At the time of the end of the war, rate of inflation was about 45% in Iraq and its debt servicing obligation was mounting. It has been estimated that on that day of invasion every man, woman and child in Iraq owed \$ 4824 to the outside world.

By annexing Kuwait, Iraq would write off Kuwaiti loans to Iraq which is estimated to be around 15-20 million dollars. And control over Kuwaiti assets abroad - estimated around \$ 150 billion - would also give Iraq an opportunity to pay off its debts to others and feed its other ambitions with financial funds.

Struggle for the ARAB Leadership

Leadership of the Arab world served another reason for this crisis. Other competitors to Iraq are Saudi Arabia, Egypt,

Syria. Iraqi ambitions are not new, they had just been cold stored for a decade, as the Gulf war raged. After the disappearance of Shah of Iran from the scene, Iraq attempted to realise its dreams in the name of prevention of Islamic Islamic fundamentalism of Iranian style. The war left behind a large beetle - hardened armed forces in Iraq. Support to christian General Michel Aoun in Lebanon could also be cited as a piece of assumed expanded role of Saddam Hussain in Arab politics. Saudi Arabia as well as Kuwait further tried to isolate Iraq by forming the Gulf Cooperation Council and by their attempt to thwart the Iraqi desire to enter in the Council.

Iraq joined, in 1989, Egypt, Jordan and North Yemen - bordering states of Saudi Arabia - in setting up a Arab cooperation Council. In 1990, in none too-well publicised move at ACC summit, Saddam lashed out at those having ties with the US, without spelling out who he was referring to. Iraq, also called for the withdrawal from the Gulf of the US navy, the force that had saved Iraq and the Gulf from Iranian sway and control of the oil routes. Hanging over a free lance journalist of British Sunday paper 'The Observer' was another message of Saddam to Arabs and to the rest of the world.

Western Interests

The region carries economic, political and strategic significance to the western countries led by the United States [some of them former colonial masters]. The oil reserves have for long become the engine for industrial growth in the Western Europe and East Asia. The mid 1980s estimates show that these

reserves exceed 396 billion barrel, around 56 percent of the world total proven reserves - Saudi Arabia with more than 170 billion barrels had largest proven reserves, followed by Kuwait [92.7] billion barrels], Iran [48.5 billion barrels] and Iraq [44.5 billion barrels]. It was estimated in 1979 tht with the production of around 14 million barrels a day at that time, Gulf oil reserves ae expected to last almost until the end of the next century

Explortation of these oil reserves brought unthought of riches to the regimes of the region which consequently emerged as a key variable in the world political economy, for instance, the Gulf countries had, as of 1986, a total import/export flow of some \$168 billion. They generally have a larger enough trade surplus to make substantial overseas investments, and virtually all of these investments occur in the West. They invested about \$ 9 billion per year in the United State along during 1980-84, and private investment totalled billions more. This investments represent a major sourse of foreign investment in the West [in spite of its sharp decline during 1984-88, due to the fall in oil revenues], and is far lower than all other Middle Eastern and Afrcan investment combined.

For the Western and industrially advanced countries, therefore, maintenance of status quo in the are is of utmost importance. It should be noted that that Western Investment were safeguarded by traditionally friendly regimes in the Gulf even in

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Economic Intelligence Unit, Oil in the Middle East Annual [London], 1980] p. 2-3

Iran upto the fall of the Shah of Iran in 1978. Indeed, the Islamic revolution in Iran spelled a watershed in the contemporary history of the whole region, in as much as Arab countries saw in the both a threat to their own socio-potential systems and an opportunity to take an advantage of an unstable Iran. The result was the eight year war between Iraq and Iran. The Western countries' response to the war was characterized by their desire to see that neither of the warring countries emerged strong to undermine the western interests. Notwithstanding their outward neutrality their antipathy towards the Islamic "fundamentalist" regime of Ayatollah Khomeini necessitated moral and occasionally material support to Iraq.

Moreover, the region is a geo-political extension of the Middle East - a zone of long standing conflict involving Palestinian, Israel and the Arab countries that flared up once a while into armed confrontation of disturbing dimension to world peace and security. Further, interplay between interest outside powers (on the both sides of the cold war divide) and that of regional rivals complicated the situation enormously.

IMMEDIATE BACKGROUND

One of the real indication tht Iraq was approaching the breaking point of frustration over the production discipline issue was in the new diplomatic tone emanating from Baghdad in the Foregin Minister Tariq Aziz's 3 May statement (without mentioning any name) put the long-term over producers - Kuwait and the UAE - on frontal notice. He said that "this is very serious issue ... we warn them against continuing with this

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irresponsible game. The statement was undoubtedly timed to coincide with the ongoing OPEC meeting of 2-3 May.

More objectionable to the Iraq's was the quick qualification of the May agreement by Kuwaiti Sheikh Ali who noted that 'If we believe the agreement is not being taken seriously then obviously we will act to protect our national interest'.¹²

On 16 July 1990, Tariq Aziz sent a letter to the Arab League accusing Kuwait and the UAE for carrying out part of an "imperial Zionist plan against Iraq" and Arab nations and condemned "what the Government of Kuwait and the UAE have done as a direct aggression against Iraq as well as a "direct aggression against the Arab nations." In the letter, the main target was Kuwait which was charged with encroachment on Iraqi territory, oil theft and excessive oil production. The letter asserted Iraq's right to regain that part of its wealth which was stolen and its right to demand from those concerned a "correctin of this transgression" and "recompensate for the damage" it suffered.

On the next day, 17 April, Saddam Hussein, in a speech, indicated his intentin to enforce production discipline within OPEC as a mulilateral initiative. with threatening prophecies of Iraqi determination, He stressed on the exploitation of the Arabs by the Zionists and imperialists and said that Zionism and

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Quoted by Peter D.Carlin, "Iraq's New War", Petroleum Economist [London] Vol.57, no. 9, September 1990, pp.5-7.

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Ibid.

imperialism having failed to "cut our necks" have taken recourse to a new technique and are now trying to "cut off our livelihood". He also asserted Iraqi sovereignty over oil in the Rumeila oil field and demanded financial compensation amounting to \$12 billion from Kuwait.

Kuwaiti response to these allegations was on the expected lines. Kuwait decided to send, with the approval of its national Assembly, high officials to Arab capitals to explain Kuwaiti position. It sent a "troika of ministers" on 18 July 1990 to GCC and on 19 July Kuwait Foreign Minister sent a letter to the Arab League with a request of League arbitration. In the letter Kuwait said that Iraqi accusations as 'a falsification of facts' and the reverse of the truth since Iraq has a "long record of encroachment" of Kuwaiti lands. Kuwait offered to pay \$1 billion as compensation but refused to write off war-time loan.

Kuwait also sent a letter to the UN Secretary General Perez de Cuellar on 19 July drawing his attention to the "unmistakable threatening" note against Kuwait. This Kuwaiti move infuriated Iraq and on 23 July Iraqi Government charged that Kuwait "has been further exposed" as a US agent when it abandoned the Arab choice and sent its message to the international forum to take the issue out of the Arab League. Kuwait, then, refused the Iraqi charge of internationalizing the issue and stressed for Arab solution.

The Arab leaders also tried to defuse the crisis. The lead was taken by the Egyptian President Hosni Mubarak and the Jordan

King Shah Hussein who had consultations with Saddam Hussein. Mubarak travelled to Baghdad and proposed a meeting of the Arab Foreign Ministers in Cairo. On 23 July, Iraq moved about 300,000 troops to Iraq-Kuwait border which was proved by the US satellite intelligence. But Saddam Hussein assured Mubarak that Iraq did not plan to attack Kuwait and agreed to withdraw troops from the borders prior to the direct talks.

The United States asserted "no place for coercion and intimidation in a civilized world" and stressed on free navigation and free flow of oil through the strait of Hormuz. The US also arranged military exercise with the UAE. The Baghdad spokesman observed this US move as a proof of the credibility of Iraqi statement presented to the Arab League. On 27 July, Senate of the US voted for the cut in the farm credits to Iraq.

In the OPEC ambassabor's meeting held in Geneva on 25 July, Iraq was supported by Iran, Lybia, Ecuador, and Gabon. The meeting supported Iraqi contention on the crude oil price at \$21 per barrel. This militarization of OPEC politics produced an uncharacteristically quick agreement which has a great repurcussions on the Arab politics.

Thus the Geneva meeting of the OPEC might be considered as a major victory, for Iraq. Then the Iraqis moved to Jeddah on 31 July for another conference (originally scheduled to be held at 28-30 July). Iraq demanded the cessation of Rumeila oil-fields, \$2.4 billion as compensation and writing off the debts by Kuwait; while Kuwait insisted on a favourable border treaty. So due to

resilience on both sides, the talks collapsed and on 2 August 1990, Iraq invaded Kuwait.

CHAPTER-II
ROLE OF THE UNITED NATIONS IN MAINTENANCE
OF PEACE AND SECURITY

The United Nations has come into being to "save succeeding generations from the scourge of the war" and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law. Further, the purposes and principles of the United Nations are enshrined in Article 1 of the Charter as to "maintain international peace and security and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace".

The maintenance of peace and security could be viewed as the primary purpose and function of the new organization. The intention of the founders of the UN was aptly reflected in the Franklin Roosevelt's view when he stated "It spells..... the end of the system of unilateral actions exclusive alliances, and spheres of influence, and balance of power and all other exp¹endents which have been tried for centuries and always failed". In other words, peace was perceived as the salient characteristic of the new international order.

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Quoted in Brian Urquhart "The Role of UN in Maintaining and Improving International Security" [Alastair Memorial Lecture], Survival [London] 28 September-October 1986, p.338.

At this juncture, it would be pertinent to discuss that what are the Charter provisions [concerning organs of the UN] to ensure, rather enforce, peace in international relations? And, how far the organization has been able to realize the promises made in the Charter?

Charter Framework for Maintenance of Peace and Security:

By a close analysis, it would appear that for the problem of international peace and security the Charter adheres to two-pronged approach.² First, it requires members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations".³ At another level the Charter requires that "all members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered".⁴

These are the basic postulates which are elaborated in several provisions of the Charter. The Charter endows the task of ~~the~~ maintenance of peace and security broadly to the three- the Security Council, the General Assembly and the Secretary-General.

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Leland M. Goodrich, The United Nations (New York, 1959), p.160.

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Article, 2, para 4,

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Article 2, para 3.

(a). Power of the Security Council

Among these, it is the Security Council which, of course, is endowed with the primary responsibility for the maintenance of peace and security. The UN Charter serves as "a guiding cannon" of the Security Council.⁵ Two main functions of the Security Council, as outlined in the Chapter VI and VII of the Charter, are to settle disputes peacefully and to meet threats to peace breach of peace and acts of aggression with concerted action on behalf of the organization.

As far as pacific settlement of disputes is concerned, its basic premises and procedures are contained in Article 2 [mentioned above] and Article 33 of the Charter. Here the emphasis in the phrase "pacific settlement of disputes" is on the word "peaceful" rather than on "settle". To put in another way, while the Security Council as a policeman is endowed with the authority to enforce peace in case of its breach, its role as a "settler of disputes" is only recommendatory in nature, "even if an ignored recommendation means a grave risk of war".

The Charter provides various techniques for peaceful settlement of disputes. These techniques catalogued in Article 33, para 1, of the Charter, are "negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements". These techniques are not new but were well established in the international law before the

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Davidson Nicol, The United Nations Security Council: Toward Greater Effectiveness [New York, 1982], p.1.

birth of the UN. The Charter has only reinforced and elaborated them. These techniques will be discussed later in detail, but, here, some aspects are worthy to be emphasized. First, except for negotiation, all other modes required the "assistance of third parties" and except for arbitration and judicial settlement, all other techniques are "political" rather than "judicial". These procedures are only suggestive and are not exhaustive. Secondly, it has been left to the parties concerned to choose any method, with or without involving the UN. If the parties concerned donot succeed in peaceful resolutions of the issue, they are obliged, under Article 37, to refer the matter to the Security Council. In one respect, the Charter's flexible approach is evident when it allows a state, no matter whether it is a party to a dispute or not, to refer a problem to the UN [Article 35]. Even the Secretary-General, who is non-territorial actor may bring to the attention of the Security Council any matter which may threaten the international peace and security [Article 99].

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When an issue is brought before the Security Council, it can resort to a number of courses of action. In other words, the Charter gives the Council very wide descretion in the evaluation of circumstances, the choice of means and the timing of actions.

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For details see H.G. Nicholas, The United Nations as a Political Institution, 5 ed., [London, 1976], p.91.

7

CSR Murthy, "Conflict Resolution and the United Nations" in Alokesh Barua, ed, Global Order Recent changes and responses, [New Delhi, 1992], p.295.

8

Leland M. Goodrich, n.2, p.161.

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After due deliberations, it can investigate a dispute [Article 34], it can recommend appropriate procedure or methods of settlement [Article 36], or it can recommend "such terms of settlement as it may consider appropriate". [Article 37].

Notably, the above referred provisions are not binding on any parties. They carry only moral weight. Without resolving a dispute peacefully, in case resort to force by any party has actually been made or is likely to be made, the Charter envisages mandatory provisions under the purview of Chapter VII. These are referred to as measures to be taken in case of a threat to peace, breach of the peace or acts of aggression. Only the Security Council has as the prerogatives to act under these provisions. Under Article 39, the Security Council can determine the existence of a "breach of peace" or an "act of aggression", as the case may be, and may call for necessary measures for restoration of peace and security. Under Article 40, it may call upon the parties to comply with provisional measures intended to prevent an aggravation of the situation. Furthermore, the Charter authorizes under Article 41, diplomatic, economic and commercial measures as may be necessary to restore international peace and security. Depending on the gravity of a situation, the Security Council can also take steps, under Article 42, in the nature of military measures which refers to "demonstration, blockade and other operations by air, sea or land forces" of Member States of the United Nations.

In Article 43 to 47, advance preparation of such military action is envisaged, through a military staff committee which consist of the chiefs of staffs of the permanent members. But

owing to the differences among the permanent members in the early years of the UN's life, over the size of the force, balance of the force, location of the force in peace time and the question of bases and supplies--this scheme could not be implemented. As an analyst has observed: "This failure left the Security Council with a central part of its "system of peace - enforcement totally in-operative".⁹

The operability of the above scheme in respect of action against aggression is notable. Unlike the scheme of pacific settlement of disputes the Security Council actions and decisions under chapter VII [Concerning Article 39-51] are binding not only on the countries directly concerned, but on every member of the organization [Article 25] Secondly, the decision-making procedure laid down in the charter. Article 27 makes the concurrent vote of the five permanent members essential for arriving at any decision. It is otherwise, known as the "veto" power which has been described as antithesis to the philosophy of sovereign equality. Decisions on the procedural matters, however, excluded from the purview of this veto power. The framers of the Charter provided in the UN an instrument which can be used as an overwhelming force, with authority and power to preserve peace, if the great powers so desire, and also an instrument that can be employed as a firebrigade rushing to the troubled spots before they escalate into consuming conflagration.¹⁰

well known scholar "Looked at _____"

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H.G. Nicholas, n.6, p.81.

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R.Khan, Implied Powers of the United Nation [New Delhi, 1970], p.49.

negatively, this rule is a veto provision, enabling a great power to prevent the launching of organizational action, looked at positively, it is a unanimity provision, providing a guarantee that whatever action is undertaken will be supported by the states which control the bulk of the world's economic, military and political power, and that its success will therefore be almost a forgone conclusion".¹¹ Though intended to safeguard the interests of the permanent members, veto has seldom prevented UN actions in a situation where effective UN action was possible.¹²

[B] Powers of the General Assembly

Sharing the Security Council's responsibility, the General Assembly is another major deliberative organ for the maintenance of international peace and security. Although the size of the General Assembly presents problems for providing a framework for negotiations, its debates and decisions are better adapted to legitimizing the position of one side or another.¹³

Under the Charter provisions, the General Assembly can discuss any dispute or question and may make recommendations to the members of the UN or to the Security Council or both, on any such questions or matters [Article 10] The Assembly may consider and make recommendations as regards "the general principles

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. Inis L. Claude, Jr., Swords into Ploughshares: The Problem and Progress of International Organization (New York, 1971), 4th ed., p. 146-147

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. R.E. Riggs and J.C. Plano, The United Nations: International Organization and World Politics [Chicago, Ill, 1988], p.77.

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. Ibid, p.192.

of cooperation in the maintenance of international peace and security, including principles governing disarmament and the regulation of armaments", can discuss and make recommendations on any specific questions relating to the maintenance of peace and security [Article 11.2], can refer to the Security Council any situation which could endanger international peace and security [Article 11.3]. General Assembly also recommends methods to promote peace, international cooperation in the political field and encourages the progressive development of international law [Article 13.]. There is one notable limitation on its powers. The General Assembly cannot make recommendation with regard to a dispute or situation, which is being dealt with in the Security Council. It can do so only when the Security Council so requests [Article 12].

[C] Secretary General

While giving shape to the post-war institutional arrangement for peace, the Charter framers appear to have been guided by the basic weaknesses of the League system. As a result of it, the Secretary-General of the UN was given more politically active role, than what his predecessors under the League of Nations had played.

The Charter gives to the Secretary-General important executive, administrative, political and representational functions to perform. The political functions of the Secretary-General are defined in Article 98 and 99. Article 98 requires him to do two functions. First is related to "perform such other functions as are entrusted to him" by the Security Council, General Assembly, etc. Under this provision he has been, for

example, designated as a potential rapporteur, that is to say, mediator by the Security Council. On the basis of mandates given to him by the General Assembly and the Security Council, he organizes peace-keeping operations and conducts negotiations on behalf of the Organization. At times, he signs treaties and agreements with member countries, for example, UN headquarters agreement.

Secondly, Article 98 also envisages that the Secretary General "shall make an annual report to the General Assembly on the work of the organization". It includes, but is not confined to, whatever the organization has done, or has failed to do, or is required to do. Submission of reports is one of the ways in which the Secretary-General can act as an initiator and can galvanize the efforts of the other parts of the United Nations".¹⁴

Article 99 authorizes the Secretary General to "bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security". This authority contains the "three elements of right, responsibility and discretion". The Secretary-General's right is apparent from the wording and has never been in controversy. The other two elements are interrelated. It must be noted in this regard that when the Charter was being drafted "a proposal to amend the Article so as to make its innovation a duty of the secretary-General had to be withdrawn.¹⁵ It may be recalled here that this

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Javier Perez de Ceullar, "The Role of the Secretary-General" in Roberds, and Kingsbury, B. [ed.], United Nations, Divided World [Oxford, 1989], pp.64-5.

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Ibid, p.65.

authority of the Secretary General was first used in the Congo crisis. [1960]

The political role of the Secretary-General is very much dependent upon the personality factor and political climate. This role began to gain more and more importance with the advent of Dag Hammerskjald. His period saw highest watermark of the role of the Secretary-General, particularly in the Congo crisis, when he was authorized to undertake unspecified steps to restore peace. He used the technique of quiet diplomacy and preventive diplomacy to achieve success.

The UN at Work:

A description of various provisions concerning the maintenance of international peace and security does not essentially provide a clear picture of the UN's role in this regard. The high sounding vision of 1945 was not "facilitated by the growing complexity of international relations and, in fact, suffered a decisive setback with the appearance of the cold war".¹⁶ The frequent use of veto, in those hey day of the cold war, and non-implementation of the Article 43 seriously handicapped the organization. The obligations to the Charter were brushed aside by the permanent members and all the the issues in the Security Council came to be evaluated not in terms of their

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Diego Cardovez, "Strengthening UN Diplomacy for Peace : The Role of the Secretary-General", in A.H. Dordrecht and Nithen Lands [ed], The United Nations and he Maintenance of peace and security [New York, 1987], p.161.

merit but in terms of the interests of their allies or potential allies. As a result the Security Council became unable to take decisions on important issues while weakened its image and produced an increasing unwillingness on the part of government to use the Council.

The failure of the Security Council was somehow balanced by the General Assembly which began to be perceived by the countries, particularly Western countries, as a suitable forum within the UN which would compensate for the decline of the Security Council. The Western countries began to prefer the Assembly also because they commanded those year two-third majority in that organ.

This attitude became evident since 1947 when a Special General Assembly session was called to consider Palestine question. The second development took place in the same year when an Interim Committee, also known as the Little Assembly, was established. It was created to substitute the Security Council which was to be available at any time between two sessions, if any need arose. But this innovation rarely came into practice. Finally, the most important development was the "uniting for peace resolution. [1950]

The uniting for peace resolution was adopted in November 1950 during the course of the Korean crisis. This resolution was

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Davidson Nicol. n.5, p.13.

introduced in the Assembly by the US when the Soviet Union resumed its seat in the Security Council after ending its boycott on the issue of representation of People's Republic of China. The resolution, called "Uniting for Peace Resolution"¹⁸ created a new role for the General Assembly. Under the terms of the resolution, the General Assembly asserted its competence, in case the Council because of the veto failed to discharge its responsibility for the maintenance of peace and security in respect to threat, or breach of peace. Provision was made for an emergency special session of the Assembly to meet within 24 hours or the failure of the Council to act. It also established a Peace Observer Commission consisting of 14 nations to monitor critical situations in any part of the world and asked all member states to maintain armed forces which could be available for service when requested by the General Assembly. The Assembly dealt with several issues on the strength of this provision, as, Korean War [1950], the Suez Crisis [1956], Lebanon crisis [1959], etc.

The decade of 1950s was the heyday of the General Assembly. But from 1960s the role of the Assembly in the maintenance of international peace and security witnessed a downward trend.¹⁹ Several factors contributed to it.

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General Assembly Resolution 377[V], 3 November 1950.

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E. Luard, The United Nations: How it works and what it Does [London Ltd. 1979], pp.46-7.

Firstly, with the membership explosion, the General Assembly became less attractive for the U.S. and its friends, because they could not be sure of support from the Afro-Asian members.

Secondly, prolonged financial crisis and problem of financing the peacekeeping operations [discussed separately] authorized by the Assembly, particularly due to the opposition of the Soviet Union and to some extent France, forced the major powers to be cautious in mobilizing the Assembly.

Thirdly, with time, the Soviet Union had fewer occasions to use its veto power in the Council and finally, the Security Council appeared to regain its primacy and gradually signified the growing convergence of interest between the cold war rivals, especially between the United States and the Soviet Union.

The decade of 1970's witnessed fuller effects of detente on the functioning of the United Nations. The super powers tended to resolve their disputes outside the United Nations. The Arab-Israel²⁰ war [1973] was one of the most glaring examples of this trend. Soon, the detente ended and after Soviet intervention in Afghanistan in 1979 a period of neo-cold war started which posed some challenges of the cold war to the UN. Several regional crises erupted [for example, development in Afghanistan, Kampuchea, Angola, Nicaragua etc.] and the UN became unable to restore peace and security. This state of affairs continued till

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See for analysis K.P. Saksena, The United Nations and Collective Security [New Delhi, 1974], pp.

1987 when the easing of tension between the Soviet Union and the United State gave a new boost to the role of the UN in the maintenance of international peace and security which was manifested in the recent Gulf Crisis [1990].

Heritage of the United Nations

The above analysis presents major trends of the history of four decades of the UN's role in the maintenance of peace and security. If one closely examines the important cases in which the UN was involved, we would find that the UN has over the years been less and less inclined to be tied to the text book approach. The history of the UN has been characterized by a striking discrepancy between some of the most idealistic presumptions of the Charter and the more pragmatic requirements of international conflict. "The UN has to fit the needs it is meant to serve, and that means a capacity to adapt itself to conditions that are endlessly changing".²¹ As a result, it has shown considerable flexibility in the methods it has used. For example, the requirement under Article 33 about the utilization of various bilateral measures before the involvement of the UN is rarely fulfilled and there is a growing tendency to bring the matter to the UN from its very beginning. Similarly, the procedure for investigation has rarely been used. And it is often

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Kenneth Twitchett (ed.), Evolving United Nations: Prospect for peace [London, 1971], p.157.

a matter of debate that whether passing of resolutions by the Security Council without mentioning relevant Article is a violation of the Charter or a proof of its flexibility under the name of prudence.

[a] Political Use :-

The various responses/works shown by the United Nations may be dealt with in three ways. First the "UN role as a forum meant for free and open debate". Second, various techniques used by the UN for peaceful resolution of disputes; and thirdly, various measures usually referred as collective punitive measures.²²

First, the United Nations has provided a viable forum for the member-countries. Now with a membership of 178 countries, it has given place within it to almost every country in the world. It is a unique forum where all problems/conflicts can be raised and debated. The United Nations also serves as a forum for dialogue between various conflicting groups as East and West, North and South etc. The United Nations also serves as an instrument for collective legitimization for various claims, policies and actions of the member-states on a given question. For example, India hardly expected a quick solution, when it brought the question of treatment of Indians in Sough Africa before the General Assembly, but sought and secured international endorsement its stand. Similarly there are innumerable in instances when the cases were brought before the UN for collective legitimization. Upto 1960, the American led Western

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. This section is based on the discussion in Murthy, n.7, pp.298-99.

group successfully utilized the UN to endorse their position against their rival—the Soviet Union and East European countries. The United Nations not only serves as an instrument of collective legitimization, it also demands the Member—States to be accountable, for their conduct in international relations.

(b) Peaceful Techniques Employed

Peaceful resolution of international conflicts is major task of the world body. The United Nations fulfils this obligation by employing a number of diplomatic and political techniques/
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procedures mainly required by letter and spirit of the Charter .

The commonest of all is the appeal which is issued for the observance of a ceasefire, or for the withdrawal of forces or for refraining from doing anything that might deteriorate the situation. In many instances, this has been complied with as in the case of the Suez crisis [1956] and the Indo—Pakistan war [1965] though not due solely to the appeal made by the Security Council.

Investigation is another technique of the United Nations in which a Committee is sent simply to verify the facts. This has been done by the Security Council and the General Assembly. For example, the General Assembly despatched a team, called the United Nations Special Committee on Palestine [UNSCOP], in 1947 to investigate the facts regarding the question of Palestine. The Security Council has done it several times. For example, the United Nations Special Committee on Balkans was instituted to report about the infiltrations into Greece from Bulgaria in 1948.

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. For detail see, H.G. Nicholas, n.6, pp.91—93.

Recently, this technique of investigation and fact finding was resorted in Iran-Iraq war [to investigate the use of chemical weapons] in 1984 and against South Africa when an Air-India flight was hijacked in Sychelles in 1981.

In various cases, the council attempts a form of conciliation by appointing a single mediator, or a team, or facilitating designation of a special representative of the Secretary General. In the dispute between the Netherlands and Indonesian forces in 1948, a Good Offices Committee and later an Commission for Indonesia was set up to arrive at a settlement. This has been resorted in several cases, as in Pleestine [1948], Kashmir [1950], Cyprus [1964] etc. There are several occasions when technique became successful in averting escalation of crisis and the peaceful settlement of dispute. One can cite the example of the United State-China dispute over the hostage of eleven American crewmen on the charge of spying by China, when the Secretary Gnearal Dag Hammerakjold visit to China in 1954 helped in the resolution of the crisis. And in the Afghanistan, the Secretary-General had to hold to "proximity talks" which resulted in the Geneva Accord of 1988.

Recommendation is another technique which is resorted in the case of clarity of facts and oftenly is followed by investigation. This was done in the Suez Canal dispute of 1956 when the Security Council unanimously adopted a resolution recommending the terms of settlement.

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. Murthy, n .7, p.300.

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. E.Luard n. 19, p.22

In some cases, the Security Council resorts not only to investigation but also to interposition which means the placing of some kind of barrier or presence between two conflicting parties. The recent form of this technique is the creation of peace keeping forces. Start in respect to interposition can be traced back to the creation of UNTSO for Palestine. Trygve Lie, the first Secretary-General, called for a United Nations guard force to maintain security in disputed areas such as Trieste and Jerusalem. Observers and time supervision forces were set up to patrol in Kashmir and in other areas. But a full-fledged peacekeeping force was established in 1956 in Suez Crisis, which was made up of the contribution of a dozen countries. Thus the idea of peacekeeping force was not new in 1956.²⁶

One scholar has emphasized the difference between the two words "peacekeeping" and "keeping the peace". The latter, according to him, "implies a more aggressive action than 'peacekeeping' which denotes the more impartial role in conflict of a referee".²⁷ Anyway, peacekeeping forces in the form in which they have developed, were not envisaged in the Charter. Failure in respect to the implementation of Article 43 led to the realization of the need for a practical acceptable alternative and since 1956, with the deployment of the United Nations Emergency Force at the end of the Suez war, "Such forces have

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. See K.P. Saksena, n.20, p.198.

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. I.J. Rikhye, et.al, The Blue Line: International Peacekeeping and its Future [London, 1974], p.10.

become a regular part of international life: perhaps the most conspicuous single physical manifestation of the United Nations role in the world.²⁸ Dag Hammerskjold once described peacekeeping chapter six and a half of the Charter because it has characteristics of both the Chapter VI and the Chapter VII.²⁹ It is non-coercive and related to the peaceful measures [Chapter VI] but at the same time it implies the sending of 'force' to the region concerned [Chapter VII]. In essence, however, these forces were non-fighting, non-enforcing non-partisan in nature.

More than twenty peacekeeping operations have been launched by the United Nations to observe adherence to ceasefire, supervise troop withdrawal to international frontiers, to separate fighting forces and prevent recurrence of hostilities to arrange the repatriation of refugees, conduct elections and host of other functions. But it must be stressed that peacekeeping activity itself does not provide solutions to the roots of a conflict it only strives to create an environment within which a peaceful settlement could be reached.

Also it must be noted here the United Nations peacekeeping is associated with a set of unique, important characteristics. The United Nations studiously repeated the principle of sanctity of state sovereignty. It never imposed a peacekeeping force on an unwilling country. Secondly, the United Nations peacekeeping

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A Robert, and B.Kingsburry, "The United Nations in a Divided World" in Roberts and Kingsburry [ed.], n.14. p.23.

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United Nations Blue Helmets [New York 1985], p.3.

activity was mainly a manifestation of the cooperative spirit showed by a large number of neutral non-aligned countries. In other words, since 1956, United Nations peacekeeping forces with a few exceptions like UNFICYP or UNIFIL, excluded military contingents from any of the five permanent members. The purpose was to preserve the credibility of these activities. However, saying so did not imply that the views of the permanent members had no bearing on launching of a peacekeeping force. Experience during 1960's showed that an effective peacekeeping would depend on these states' goodwill—rather concurrence.

C. Enforcement action

The third aspect of the role of the United Nations in this field is related to measures, known as collective security which is a term not used in the Charter. These measures are related to the Chapter VII of the Charter which refers to non-military and military sanctions. Although the Security Council is the only organ empowered to launch enforcement action, the General Assembly, also bravely attempted a foray into the area. The first ever mandatory sanctions imposed by the Security Council but partial, was in 1966 against Rhodesia which was not exactly successful. Later a mandatory sanction of army embargo imposed was South Africa [1978]. It also created tremendous pressure on the recent White regime in South Africa. Of late there has been a more frequent resort to sanction as Yugoslavia, Libya, Somalia, etc.

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Michael Howard, "The UN and International Security," in Roberts and Kings burry [ed.], n.28, p.34.

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. For instance the assembly authorised deplomatic sanction against Spain [1946], and economic sanction against China [1951].

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As has been discussed above, the United Nations approach to the maintenance of international peace and security has been very pragmatic. It may also be said that enforcement actions were taken very selectively and probably in those cases where they were practicable. For example, the Security Council ordered for ceasefire under Chapter VII in Palestinian crisis in 1948, it met with success. It called for ceasefire under chapter VII in Iran-Iraq war which was complied one year later and it did nothing in the interregression.

The specific question ---- the Gulf conflict, which is being discussed in this dissertation, provides the only case where collective measures were taken closely according to the Chapter VII. To what extent the United Nations response constitutes continuity or a change from the past heritage is a purpose of this dissertation.

CHAPTER III

IRAQI INVASION AND THE UN'S RESPONSE

CONDEMNATION OF IRAQI AGGRESSION

On 2nd August, 1990, the Iraqi army overran Kuwait and within hours seized the ruler's palace and other government buildings. The Kuwaiti ruler whose palace was bombed by Iraqi jet fighters fled to neighbouring Saudi Arabia. The Kuwait radio broadcasted the call for the Arab help but Iraq warned against any intervention by saying that "we will turn Kuwait into a graveyard"¹. And it was impractical to arrange help from Kuwait's far way allies in Western Europe and North America. In view of these considerations, it was necessary to marshall all moral, legal and political forces to set right the wrong committed by Iraq - viz. forcible deprivation to a Member State of its right to exist as an independent territorial entity. To serve this purpose, what better forum other than the United Nations is conceivable, for it is this body which underwrites every Member States' right to sovereignty, territorial integrity and political independence and makes any involuntary infringement suitably punishable.

The need of the hour was to secure a decisive immediate response from the United Nations. Suited to these requirements is the limited membership principal organ - the Security Council².

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International Herald Tribune (Kualalampur) 3 August 1990.

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Besides the five permanent members, the ten non-permanent members serving in 1990 were Canada, Colombia, Cote d'Ivoire, Cuba, Ethiopia, Finland, Malaysia, Romania, Yemen and Zaire.

It is organized in such a manner that it could meet without delay and is entrusted with the primary responsibility for the maintenance of international peace & security. A meeting of the Security Council³ was convened within hours at the request of Kuwait and the United States⁴ to discuss "the question between Iraq and Kuwait".

Kuwait condemned Iraq for its unwarranted invasion and called for immediate halt to the invasion. It warned that if Iraq were not deterred in a decisive manner by the council "the security, sovereignty and territorial integrity of every state will be jeopardised".⁵ Countering Kuwait, the Iraqi representative termed the events as internal matter and insisted that Iraqi troops were in Kuwait on the invitation of the "Free and Provisional Government" of Kuwait to restore peace and security and the troops would be withdrawn as soon as "order has been restored."⁶

The effort to concoct defence of Baghdad's action convinced no one. The US representative charged Iraq for staging the coup d'etat in a blatant and deceitful effort to justify their action. Strongly condemning the Iraqi action he called for an end to "this heinous act of the use of military force."⁷ The United Kingdom termed that Iraqi alleged coup d'etat as "phony" and said

³ Security Council official Records (Provisional) Verbatim, 2932 mtg., 2nd August 1990.

⁴ Security Council DOC S/21223 and S/21224.

⁵ ibid., pp. 11-12.

⁶ ibid. pp. 3-10

⁷ ibid., pp. 12-15.

that the plot was hatched because "timing was back to the front".⁸ A similar response of condemnation, coupled with the demand for negotiations, was clearly discernible in the statements of the other countries. In fact, Columbia's expression of "disgust and dismay" at Iraq mirrored the mood of the meeting.

A draft resolution was sponsored and swiftly adopted⁹ as Security Council resolution 660 (1990) under the mandatory provisions Articles 39 and 40 of Chapter VII of the chapter. The resolution. Determining that there existed a "breach of international peace and security as regards the Iraqi invasion of Kuwait";

Condemned "the Iraqi invasion of Kuwait"; demanding Iraq withdraw immediately and unconditionally all its forces "to the positions in which they were located on 1st August 1990" and called upon Iraq and Kuwait "to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States.

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ibid., pp 19-21.

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The nine-power draft resolution (S/21425) was adopted by 14-0-1 (Yemen). The Yemen representative informed the delegation will not participate in voting on the draft because it had no instructions from its capital.

A near unanimous support especially the "yes" vote by five permanent members including that of the Soviet Union - is worthy of mention what is significant was that the Soviet Union with whom Iraq traditionally enjoyed close political equations did not come to Iraq's rescue. In other words the era of safeguarding an erring ally's interests by all means gave way to what is by now lauded as the "collegial spirit" among the five permanent members - the very fundamental first requirement for any effective action by the UN to resist aggression. In other words, the Iraqi action provided the first major occasion for the United Nations Security Council to experience the end of the cold war.

It may also be noted that the Security Council has rarely used its power under Chapter VII. Only on two occasions - in Palestinian Conflict (1948) and in Iran-Iraq war (1987). The Council adopted resolutions under the Chapter VII- non-compliance to which could lead to imposition of various punitive measures under Article 41 and 42 of the Charter. It also may be noted that the use of such words as "determine", "condemn", "demand" is uncommon and that is why the resolution has been referred as 'strongly worded' resolution.¹⁰

But unlike on the earlier occasion, this resolution 660 (1990) failed to be heeded by Iraq. The appeal of the Secretary-General on 3rd August also went in vain. Iraq rejected the resolution as "iniquitous and unjust".

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K.P. Saksena and CSR Murthy, the United Nations and the Crises", in A.H. Abidi and K.R. Singh (ed.) The Gulf Crisis (Lancer, N. Delhi) 1991, p. 24.

The International Community reacted to Iraqi intrasigience angrily. President Bush of the United States sent his Secretary of Defence, Richard Chaney to Saudi Arabia, where king Fahd after much persuasion, took a "truamatic" decision and requested for the US troops to be deployed to the kingdom [under the Article 51 of the UN Chapter¹¹] which was promptly provided. Simultaneously, the United States froze all Iraqi assests in the US - a move which was followed by Britain and France. The Soviet Union announced the stoppage of arms supplies to Iraq. On 3rd August, the Arab League in a resolution, rejected "any consequences resulting from such aggression"¹². The effect of this crisis fell on the oil prices which jumped to a soaring height of \$ 22 a barrel immediately. Kuwait accused Iraq of indulging in inhuman practices against Kuwaitis and demanded in a communication to the Secretary-General for further action against Iraq.

Sanctions

As per the Charter scheme the next course of action was to impose sanctions. The initiative for such resolution was taken by the United States, which, in concert with its close allies and some members of the Council produced before the Security Council a ten-power¹³ text of draft resolution for discussion on 6 August 1990.

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H.F. Eitts, "The Persian Gulf Crisis: Perspective and Prospects", Middle East Journal (Washington, D.C.) vol. 45, No. 1, Winter, 1991, pp. 8-12.

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For detail see AHH Abid, 'Arab Islamic Response to the Gulf Crisis' in Abidi & Singh (ed.), The Gulf Crisis (Lancer, New Delhi), 1991, pp 71-105.

13

Canada Colombia, Cote d'Ivoire, Ethopia, Finland, France, Malaysia, The UK, The US and Zaire DOC. S/21441.

In the course of discussion on the draft in the Council Kuwait claimed support of its people to government and charged Iraq for threatening the strategic interests of all countries of the world.¹⁴ Deploring the emerging UN's role as foreign ministries of the superpowers, Iraq pointed to the potentials of the draft for escalation of the crisis.¹⁵

Cuba warned that the proposed sanctions would further complicate the situation and it would approve already imposed sanction by the superpowers. Yemén cautioned against any action that might hamper peaceful resolution of the conflict.

The result was the resolution¹⁶ 661 (1990), which noted the Iraqi failure of compliance of the resolution 660 (1990). It referred measures to "secure compliance of Iraq and to restore the authority of the legitimate Government of Kuwait". These measures were that all "states shall prevent" -

a) "The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefore after the date of this resolution,

b) "Any activities ... which would promote the export or transshipment of any commodities or products from Iraq or Kuwait and any dealings by their national or their flag vessels or in their territories in any commodities or products ... including, in particular, any transfer of funds to Iraq or Kuwait;

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SCOR (Prov.), Verbatim, 2933 mtg. 6 August 1990, pp.4-11

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ibid., pp. 11-15.

16

The resolution was passed by 13-0-2 (Cuba & Yemen)

c) The sale or supply (of) weapons or any other military equipment ... but not including the supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq and Kuwait."

The resolution further decided that "all states shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources".

The resolution was extraordinary in the sense under it was passed Chapter VII of the Charter, without mentioning the relevant article. It was for the first time the UN clamped such a sweeping set of sanctions. The United States justified the action noting that the resolution would give effect to the resolution 660 (1990). And the British delegation clarified that the economic sanctions should not be regarded as a presude to anything else but they wee designed to avoid the circumstances leading to military action.

Iraqi attitude had now become more and intransigent. It rejected the call for extraordinary Arab Summit Conference of 10th August for withdrawal as "legally void" as it was opposed and not fully endorsed by nine Arab States.

Upto this time, all members were agreed on the withdrawal of Iraqi troops, but they had some differences on the means to

pursue that objective. The differences were concerned with the question of supply of foodstuffs to foreign nationals, economic problems forcing upon those countries implementing economic sanctions and the need to further righten the modalities of implementation of the sanctions.¹⁷

Measures to Ensure Effective Implementation of Sanctions

The question of effective implementation of trade embargo was taken first. Since oil accounted for 95 percent of Iraqi total exports and its two-third was imported goods, economic sanctions became an effective instrument for the US to punish Iraq. President Bush's personal intervention changed the hearts' of western countries and Turkey for implementation of sanctions regarding oil in order to plug all loopholes. But too much strict adherence on sanctions raised controversies and many countries objected to self-appointed police role of the US. Thus, for the US, a UN endorsement of its action (such as interdiction of ships for verification) was necessary and it was done on 25th August 1990.¹⁸

On 25 August 1990, the resolution 665 (1990) called on - "those member states which are deploying maritime forces to the area to use such measures commensurate to the specific

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K.P. Saksena and CSR Murthy, n . 11, p. 27.

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Draft Resolution submitted by Canada, Cote d'Ivoire, Finland, France, UK, US and Zaire. Doc. S/21640. The resolution was adopted by 13-0-2 votes; Cuba and Yemen voted against it.

circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations" and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990).

The resolution also invited states "to cooperate as may be necessary to ensure compliance with the provisions of resolution 661 (1990) with maximum use of political and diplomatic measures...."

During debate, Yemen complained over steady movement towards the use of force and advised restraint till the reports of the Secretary-General and by the Sanctions Committee were available. Colombia also regretted over "undue haste".¹⁹ Likewise Cuba and Iraq pointed out that use of force could only be under Article 42 of the Charter, and hence, in this way, in their view, the resolution was illegal.

France cautioned that embargo of this type must be resorted to only as a last resort. The representative of the US clarified that the resolution was adopted when Iraq showed no intention to abide by the decisions taken by the Council. Defining the phrase of the resolution ("deploying maritime forces to the area under the authority of the Security Council to halt all inward and outward maritime shipping") he stated that the US naval

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SCOR (Prov.) Verbatim, 2938 mtg., 25th August 1990 pp 7-11.

forces in the area, would use "such minimum forces only as necessary to accomplish that purpose".²⁰ The representative of the Soviet Union called on Iraq to make a serious change in its current policies. The United Kingdom observed that reaction of the Council showed a creature approach of the international community.

The Resolution 661 (1990) had allowed the supply of foodstuffs and medicines on humanitarian grounds which was very problematic to define. The Resolution fell short of the modalities for supplies of foodstuffs and medicines. This created such problems particularly due to alleged US interdiction of ships loaded with such things without proper authorization under the pretext of Article - 51.²¹ Moreover, there was no way to ensure that such goods would reach to targeted population. Kuwait also reported to the Secretary-General²² that Iraqis were removing contents of houses, stores, factories, hospitals etc. and they had seized the medical equipments used in intensive care units.

This issue of hunger and sufferings of the peoples was taken on 13 September by the Security Council. Two drafts were presented. The first draft (sponsored by Cuba) disallowed any action that might hinder access of the civilian population and the foreign nationals in Iraq and Kuwait to foodstuffs and

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ibid. pp 26-31.

21

Article 51 of the Charter says that 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 UN until the Security Council has taken measures to maintain international peace and security.

22

DOCs S/21694 and S/21713.

medical supplies, notwithstanding any action taken under the
Security Council resolution on Sanctions. ²³ As expected the draft
could not be adopted; only China, Cuba and Yemen supported it.

The other draft adopted as resolution 666 (1990) ²⁴
emphasized that only the Security Council and the Sanction
Committee had the sole authority to determine the existence of
humanitarian circumstances. It requested the Secretary-General
"to seek information from relevant United Nations' and other
appropriate humanitarian agencies and all other sources on the
availability of food in Iraq and Kuwait." After determining the
existence of humanitarian circumstances, the Committee would
report to the Council for appropriate action and authorization.
After such authorization, foodstuffs would be provided through
the UN in cooperation with the humanitarian agencies "to ensure
that they reach the intended beneficiaries". It also requested
the Secretary-General "to use his good offices to facilitate the
delivery and distribution of foodstuffs to Kuwait and Iraq."

In the course of discussion, Iraq stated that the resolution
was meant to humiliate and tighten the stronghold on the Iraqi
people who were proud of its humanitarian heritage. Cuba objected
to the lengthy process of information collection in the Sanctions
Committee and joined other countries (like China, Colombia,
Malaysia) to criticise the Sanctions Committee for delaying its
response to a request from India and the Philippines about the
question for shipment of food to their Nationals stranded in Iraq

23

Doc. S/21742/Rev. 1, 14 september 1990.

24

Draft Resolution sponsored by Canada, Finland, France, the
USSR, the UK and the US. It was adopted by 13-2-0 votes. Cuba
and Yemen voted against it.

and Kuwait. But, the US denied any shortage of food in Iraq. By and large, however, members were agreed that civilian population was suffering in that region.

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The other problem was concerned with "special economic problems" of the countries as a result of implementation of sanctions which was more acute for the economically weaker countries. Countries like India, Sri Lanka etc. faced severe economic crisis. The oil dependent Third World Countries, which were already suffering from sharp rise in the oil prices, were forced to suffer under the West sponsored and the Council agreed sanctions. In the wake of the crisis, Sri Lanka, for example, which exported a significant part of its tea to Iraq announced that it would not stop its export. Exploiting the sentiments of the Third World, Saddam Hussein offered free oil to these countries and said that it would escape the UN Trade embargo because "it does not involve buying or selling and therefore it is not trade."

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By the first week of September 1990, 106 countries had informed the Secretary-General about their implementation of Sanctions. They also communicated various executive measures taken to bring into effect the economic sanctions against Iraq and occupied Kuwait. Several countries among them informed the Secretary-General about their 'Special economic problems' due to

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SCOR (Prov.), Verbatim 2939 mtg. 14 September 1990.

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Times (London) 11 September 1990.

27

Report of the Secretary-General, 6 September 1990.

28

United Nations Newsletter (New Delhi) 27 October 1990.

economic sanctions and demanded relief under Article 50 of the Charter.²⁹ The Sanction Committee established under Resolution 661(1990) was too slow in its work due to lack of necessary mandate which came from the Security Council on 24 September.³⁰ The Council adopted the draft as 669 (1990) unanimously. The resolution entrusted the Sanctions Committee with the task of examining requests for assistance under the provisions of Article 50 of the Charter and of making recommendations to the Security Council President for "appropriate action".

Here again the question of priority remained unresolved, that is, which of the countries were more in need of such relief. Acting under this resolution the sanctions Committee first took the plight of Jordan (18 September).

Air traffic was brought under the ambit of sanctions on 25 September by the Security Council. The preliminary draft³¹ reportedly contained a call to all countries to close their air space for all planes (to and from Iraq and Kuwait) unless the aircraft had been inspected to ensure that it was not violating

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Article 50 of the Charter says that if preventive or enforcement measures against any state are taken by the Security Council any other state whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from carrying out those members shall have the right to consult the Security Council with regard to a solution of those problems.

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SCOR (Prov.) Verbatim, 2942 mtg. 24 september 1990.

31

New York Times, 17 September 1990.

trade sanctions. Further consultations led to a milder, draft³² which brought before the Council on 25 September. The session was attended by the foreign ministers - third such session in the history of the Council.

The Resolution 670 (1990)³³ extended the sanctions against Iraq to include air embargo. It decided that (a) all states "notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the date of present resolution, shall deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq and Kuwait other than food in humanitarian ground or supplies intended strictly for medical purposes or solely for UNIIMOG." (b) It further decided that "all states shall deny permission to any aircraft destined to land in Iraq or Kuwait, whatever its state of registration." Also, the resolution called upon all states to take necessary steps consistent with the Chicago Convention for the effective implementation of the present resolution.

Explaining its stand, the representative of Cuba said that it could not vote for the Resolution, because it would bring the world closer to a military outbreak. Had a separate vote been held on paragraph 13, setting forth the need for Iraq to comply fully with the Fourth Geneva Convention, Cuba would have voted in favour of that paragraph.

32

DOC. S/21816.

33

It was adopted by 14-0-1 (Cuba).

China explained that it had voted in favour of resolutions in the belief that they were aimed at promoting a political settlement of the Gulf Crisis by peaceful means and called for all countries to exercise maximum restraint and not to use force for any reason. Colombia emphasized the need for an Arab solution to the crisis - a view also shared by France. Malaysia accused the Council of double standards and urged the Council to take mandatory action against Israel on similar grounds. The Soviet Union also urged the Council to take action first to heal the age-old wounds, on Palestine and Lebanon. The United States applauded the re-birth of the United Nation and said that the more effective and the enforcement of sanctions were, the more likely would be peaceful solution. It also warned Iraq that further actions (under Chapter VII) would follow, if Iraq continued violations of resolutions.

Escalation of the Situation: Action and Reaction

Apart from the resolutions concerning sanctions, the Security Council also adopted six other resolutions before the outbreak of the war. Most of these resolutions had "cause-effect relationship" with events³⁴. The responsibility of these resolutions for aggravation of the crisis, as has been referred above, can not be under estimated.

34

K.P Saksena and CSR Murthy, n. 11, p. 33.

Annexation of Kuwait

On 6th August, the Security Council adopted another Resolution 661 (1990) just four days after the first - which imposed comprehensive economic sanctions under Chapter VII of the Charter. On 9th August, the United States, reported to the Security Council about the deployment of its forces to the Gulf region under Article 51 - a step which was followed by other countries too. The US interpretation of the Article 51 regarding deploying of forces on the ground of self defence was misleading. The charter specifies that such actions can be taken only til the Security Council takes the matter for action. Three days later Iraq, contrary to its promise about the withdrawl, announced that Kuwait was part of the Iraq and called for the "full unity between Kuwait and Iraq". It announced the merger of Iraq and Kuwait as³⁵ "comprehensive and eternal". The interesting communique said -

"The Free Provisional Kuwait Government had decided to appeal to kinfolk in Iraq led by the rights of Arabs and leaders of their march, President Field Marshal Saddam Hussein, to agree that sons should return to their large family, that Kuwait should return to the Great Iraq - the mother homeland - and to achieve³⁶ complete merger unity between Kuwait and Iraq.

In response to this move, the Security Council on 9th August met and unanimously adopted the esolution 662 (1990).³⁷ The

35

International Herald Tribune 9th August 1990.

36

ibid.

37

Draft Resolution S/21471, SCOR (Prov.) Verbatim, 2934, mtg. 9th August 1990.

resolution decided that "annexation of Kuwait by Iraq "under any form and whatever pretext has no legal validity" and declared it "null and void". It also called upon "all states, international organizations and specialized agencies not to recognize that annexation".

During the debate on the draft Iraq tried to justify its action as an attempt to undo the wrongs of colonialism. Disclaiming any responsibility for the ills of colonialism, the United States rejected the Iraqi action and categorically stated that "we can not allow sovereign state members of the United Nations to be swallowed up".³⁸ Kuwait questioned the credibility of Iraqi statement about not to annex other country further. Cuba supported the resolution but registered its objection about unilateral (reflecting the American design) actions by powers in the region.

On 12th August, Iraq showed some signs of its receptiveness to pressures of resolutions, but at the same time, it linked the issue with "immediate and unconditional withdrawal" of Israel³⁹ from occupied Arab territories as well as the withdrawal of Syria from Lebanon. Kuwait responded that Iraq in its statement had lost its credibility of its pledge and that Iraqi⁴⁰ action resembles Israel's occupation of Arab territories.

38 ibid. p. 47

39 S/21494.

40 S/21505.

Problems of Foreign Nationals

Making foreign nationals in Iraq and Kuwait as hostage was another Iraqi move which was in violation of international law. It was, of course, a cruel game dealing with the emotions of innocent human beings. On 16th August, Iraq ordered all Britons and Americans to assemble in hotels and on 17th August, the Speaker of Iraqi Parliament, Sadi Mahdi announced that citizens of "aggressive nations" could not be released until the threat of war ended. Later Saddam Hussein stated that the nationals of Western countries in Iraq and Kuwait were held for the "good cause" of preventing a war in the Gulf but they would be free to go if he received a United Nations backed American pledge to withdraw⁴¹ from the Gulf, end the blockade and desist from attacking Iraq. This step is supposed to be taken in retaliation of Bush's hitting speech that "I will hold the Government of Iraq responsible for the safety and security of American citizen held⁴² against their will."

On the question of the safety and well being of third-state nationals, the Security Council met to discuss the issue on 18th⁴³ August. The draft resolution 664 (1990) recalled the Iraqi obligation "for safety and well-being" of third-state nationals under international law, demanding Iraq to permit and facilitate

41 Times of India (New Delhi) 21st August 1990.

42 ibid.

43 Draft Resolution Doc. S/21562

the immediate departure of third-state nationals and to grant access of consular officials to such nationals. It also welcomed the efforts of the Secretary-General who was requested on 17th August to initiate humanitarian efforts on behalf of such nationals.

In the course of debate Iraq complained against the US for twisting the interpretation of Article 51 and described the US and the UK actions as "aggression against Iraq". Promising guarantee to the safety of foreign nationals in Iraq, the Iraqi representative stated that their departure depended upon cessation of armed acts of the US and the UK and unhindered supply of food and medicines. He went on to say that "Iraqi people as a whole are the hostage of American terrorism."⁴⁴

Supporting the draft, the US welcomed the Secretary-General's move to send a special mission and emphasized the right to leave of such persons under international law. Romania referred to Article 12 of International Covenant of Civil and Political Rights of 16 December 1966 and Geneva Convention Relative to the Protection of Civilian Persons in Times of War of 12 August 1949 in support of the draft.

The representative of Yemen suggested lifting the embargo on humanitarian ground⁴⁵. Cuba supported the resolution but recalled treatment to Japanese in the concentration camps in the US and

44

SCOR (Prov.) Verbetim 2937, mtg. 18th August 1990 pp.42-51

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ibid. .pp - 3-7.

treatment to diplomats leaving Panama. it asserted that the Palestinians should also be permitted and assisted to live on their region. In its reply, the US reiterated its stand on the ground of Article 51. But Cuba asked whether Article 51 could be construed to allow actions which have not been allowed by the Security Council

On 19th August Iraqi President proposed⁴⁶ some conditions relating to the release of hostages. According to him, the Security Council should undertake to ensure that the US would withdraw its forces from the region or, alternatively, the Council should undertake to guarantee peace and security throughout the region and the foreign forces should withdraw from the "sacred territories in Hijaz and Nejd". If either of these was fulfilled, Iraqi President said that "Foreigners would be permitted to leave immediately, freely and in accordance with their wishes". He was ready to do it even if the US President give assurance "clearly; unequivocally and in writing" - about his commitment to withdraw his forces and that of his allies.⁴⁸

Violation of Diplomatic Immunities

On 14th September, Iraqi troops raided several embassies in Kuwait city. Iraq justified its action by saying the there could be "no diplomatic missions in a country that did not exist"

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ibid. pp 26 - 36

47

S/21651

48

United Nation chronicle (New Delhi) December 1999, p. 16

(implying Kuwait). On the same day, Iraqi troops forcibly entered the residence of French Ambassador in Kuwait. The Security Council, on 16 September, unanimously expressed its outrage at the Iraqi transgression⁴⁹. Recalling the Vienna Convention of 18th April 1961, the Council condemned aggressive acts perpetrated by Iraq against diplomatic premises and personnel in Kuwait - including the foreign nationals who were present in those premises. It demanded the immediate release of those foreign nationals, as well as all nationals, mentioned in⁵⁰ Resolution 664 (1990).

In his statement, the US representative observed that once again Iraq had violated international law and this act was not isolated, as Canadians, Belgium and American diplomats were also attacked. The British representative regretted over cutting off basic facilities to foreign diplomats and surrounding of some embassies with troops and tanks. Cuban representative pointed that his country's affirmative vote to the draft resolution should not be interpreted as modification of its position on Resolution 665 and 666. Iraq stated that these reports concerning the French diplomats were false, but France replied that the facts spoke for themselves and could not be comouflaged by Iraq.

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SCOR (Prov.) Verbatim, 2940 mtg. 16 September 1990.
Resolution 667 (1990).

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The General Assembly on 28th November also passed a Resolution by 181-1- votes condemning Iraqi act.

But there came no indications of alterations of Iraqi attitude. Though some hostages were released as a result of heavy pressure of diplomatic efforts, majority of foreign nationals were still as hostages living under inhumane conditions. Kuwaiti people were equally being oppressed by Iraqi troops. On the strength of the Security Council resolutions, the Secretary-General sent Prince Sadruddin Agha Khan as his emissary, on 16 September, to take charge of humanitarian aid in the Gulf. But he had to leave mission because Iraq denied him permission to enter in the area. On 24 October, UNESCO accused Iraq for destroying educational, cultural and scientific institutions in Kuwait.

To strengthen the Council Resolution 667 (1990) and to demonstrate the firmness of international community on this issue, the Security Council again met on 29th October.⁵¹ The text of draft⁵² was in two parts, one reportedly prepared by the US, UK and other permanent members and other by the Non-aligned countries. This resolution 674 (1990) demanded that Iraq immediately stop taking third state nationals in Iraq and Kuwait as hostage, it stop mistreating and oppressing nationals of Kuwait. The states were invited to supply information regarding substantiated cases of mistreatment of their nationals. It reminded Iraq that under international law it was liable for any loss, damage or injury in regard to Kuwait and third states, and

51

SCOR (Prov.) Verbatim 2957mtg. 29 October 1990.

52

It was adopted by 13-0-2 (Cuba and Yemen).

their nationals. The Secretary-General was asked to seek provision of food, water and basic services of Kuwaiti nationals and top diplomatic and consular missions in Kuwait and the evacuation of third state nationals. It was also said that if Iraq did not comply with the resolution 674 (1990) and previous resolutions further measures under the Charter would be taken.

During the course of debate Iraq accused, the US and UK for their opposition to the idea of resolving all problems (including Palestine) on the same footing. But Kuwait said that the Iraqi regime did not want any resolution other than the solution that "keeps the international community silent" as regards its annexation of Kuwait.

Iraq paid no heed to these resolutions. Its troops continued to commit atrocities on Iraqi people. On 27 November, Kuwait presented to the Council, testimonies⁵³ both live and video-taped - to demonstrate plundering medical and hospital equipments, use of hospitals as barracks, death of new born infants due to their removal from circubatories by soldiers and molestations of women and girls.

Moreover, Iraq now adopted a new but shrewd move. It began its attempt to alter the demographic structure of Kuwait. It promoted Iraqi people to settle in Kuwait. This was taken serious note by the interanational community. As early as 6th September 1990, foreign ministers of the Gulf Cooperation Council

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SCOR (Prov.) Verbatim, 2959 mtg. 27 November 1990.

requested Iraq not to temper with the demographic structure of
the Kuwaiti territories. In the Security Council, a draft⁵⁴ was
presented⁵⁵ on 28th November which was adopted unanimously.

In the resolution 677 (1990), the Council condemned Iraqi
designs and mandated the Secretary-General to take custody of a
copy of the population register of Kuwait the authenticity of which
has been certified by the legitimate Government of Kuwait and
which covers the registration of population upto 1st August 1990.
Condemning the Iraqi attempt. It also requested the Secretary-
General to establish, in cooperation with the legitimate
Government of Kuwait, an order of Rules and Regulations governing
access to the use of the said copy of the population register.

In the debate, the UK representative, citing, the report of
the Amnesty International, noted that it was the duty of the
international community to demonstrate to Iraq the "aggression
does not pay".⁵⁶ The United Arab Emirate said that this Iraqi act⁵⁷
"has stabbed every Arab values, moral principles and concept".⁵⁷
Citing the observation and reports of the United Nations Sub-
commission on Prevention of Discrimination and Protection of
Minorities and reports of the Amnesty International, the US said⁵⁸
that the "plunder of Kuwait is now far beyond our fear."

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Draft resolution Doc. S/21966.

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Draft Sponsored by Canda, Cote d'Ivoire, Ethiopia, Finland,
Kuwait, Romania, The UK and Zaire.

56

SCOR (Prov.) Verbatim, 2962, mtg. 28th November 1990 pp 3-9

57

ibid. pp. 10-13.

58

ibid. pp. 18-22.

In view of no sign of Iraq's compliance with the United Nations Security Council's resolutions calling for vocation of aggression of Kuwait, it remained to be seen what more options were open to the Security Council to restore Kuwaiti states as an independent nation. This is the subject matter of the next chapter.

CHAPTER - IV

AUTHORIZATION OF MILITARY ACTION AND AFTERMATH

By 28 November 1990 , the security council adapted with an unprecedented swiftness eleven resolutions on "the question between Iraq and Kuwait" mostly under the mandatory provisions of chapter VII of the Charter yet ironically, Iraq refused to accept its obligation to unconditionally, peacefully vacate Kuwait.

Although the comprehensive range of sanctions seemed to have crippled Iraq. It might take an indefinite time to ensure fullest impact on recalcitrant Iraq. Was Kuwait prepared to wait for long ? How long were member countries complying with the United Nation imposed sanctions could be expected to tolerate serious effects on their economies ? To the United States and allies of Kuwait it was not only the question of restoration of rule of law but a question of making an example of a humbled Iraq. Moreover, the United States already indicated once in the Security Council that if Iraq failed to heed the combined voice of the international community more measures would follow under chapter VII of the Charter Accordingly especially when the international opinion was still in favour of Kuwait and in view of the apprehensions that Iraq might tight its hold over Kuwait as time passed out, it was incumbent to examine what more under Chapter VII could be contemplated.

All these considerations presumably contributed to drafting of a text which authorized military action against

Iraq. A refined , revised text was adopted as resolution 678
(1990) on 29 November by the Council ¹ under Chapter VII. It

a) Demanded Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions and decided, to allow Iraq " One final opportunity, as a pause of goodwill" to do so;

b) Authorised Member states unless Iraq on before 15 January 1991 fully implemented the foregoing resolutions, to "use all necessary means" to uphold and implement Security Council resolution 660 (1990) and all subsequent relevant resolutions and restore international peace and security in the area;

c) Requested all States to provide appropriate support for the action undertaken in pursuance of paragraph 2 of this resolution;

In the debate on the draft , Iraq complaining both against the US imperialism and the Security Council's overshooting its jurisdiction, stated that if the US Imposed war upon us "our people will not kneel down " and measure up to their responsibilities, in defense of rights against injustice and tyranny. ² Kuwaiti representative observed that multinational force is a complete translation of the

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SCOR (Prov) Verbatim 2963 mtg., 29 November 1990. Draft resolution S/21969 sponsored by Canada, the USSR, the UK and the US. Romania and France also joined to sponsor the draft. It was adopted by 12-2 (Cuba and Yemen) - 1 (China).

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ibid, pp.19-31.

will of international community, that "aggression stands to lose" and that the use of force availed nothing but destruction.³

Yemen, which voted against the resolution dubbed the draft resolution as war resolution and went on to say that it did not exclude use of force and was so "broad and vague" that it was not limited to the purpose of enforcing implementation of other resolution.⁴ It also complained over not citing any specific Article of the Charter and predicted that the Council would have no control over the forces. Cuba regretted that the UN was supporting an "unwanted conflict" and thus it was a violation of the Charter. It also clarified that due to this reason, Cuba was not "willing to assume the historical responsibility". The representative of China stated that the draft "runs counter to the consistent position of the Chinese Government, namely to try our utmost to seek a peaceful solution".⁵

In his statement, the representative of France emphasized that the resolution was "one last invitation" to implement Council's resolutions and it was consistent with the logic of the attitude displayed by Iraq. He further stated that if Iraq chose to remain "locked into the use of

3 *ibid.*, pp. 7-18.

4 *ibid.*, pp. 31-38

5 *ibid.*, pp. 61-3.

6

force" thge Council had no other choice. Canada admitted that the choice between peace and war " is in Iraq's hand". In the words of the UK representative, "the resolution goes the last mile in search for peace" and that "military option is reality, not bluff" and " no one can accuse the council for impotance"⁷. The Soviet Union hoped that this " pause of goodwill " would usher in a transition to a political settlement and that Iraqi leaders would recognize their responsibility to their people and history . The representative of the US warned that the international community's " just and human demands could not be ignored". He went on to say that " we can take the high road towards Peace and the rule of law or we can take Saddam Hussein's path of brutal aggression and the law of jungle"⁸.

The other members of the Council expressed similar views . Zaire questioned if a country that was colonised and that denounced and fought against colonialism, is today committing the same errors as those that were committed in the past"⁹. Ethopia warned that if "justice delayed", could "very well be justice denied". While Finland termed the resolution as " warning", Cote d' Ivoire described it as a

6
ibid,pp.66-8.

7
ibid,pp.69-74.

8
ibid,pp.101-5.

9
ibid,pp.43-48.

"logical outcome". Malaysia clarified that the resolution was not a "blank cheque" but the countries are fully accountable for their action.

The Secretary-General, who also spoke during the course of the debate, expressed the hope that the time (pause of goodwill) would be used for the most constructive purpose and the UN "seeks not surrender" but the most honourable way of resolving the crisis.

The resolution 678 (1990) was a historic resolution and adoption of it for authorizing use of all necessary means had two precedents - in the Korean crisis and in Congo. But in the earlier cases, the resolutions were moderate, and authorization was not without some brake, which was not with the present crisis. A notable aspect of the resolution was that it was passed under chapter VII of the Charter, but without mentioning the relevant Article, which might be interpreted as a deliberate move for ulterior motives. Interestingly, the US officials interpreted the phrase "all necessary means" to include "military means",¹⁰ although it was not specified in the resolution. The phrase "use of all necessary means" included both diplomatic and military

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The Hindustan Times (New Delhi), 1 December 1990
Reportedly the vague formulation "all necessary means" was used rather than explicit authorization of military action to obviate Chinese veto.

measures, but the diplomatic aspect was not much emphasized and powers tended to give a little heed to this aspect.

The Interregnum : Diplomatic Efforts

After the authorization of use of "all necessary means", diplomatic efforts at several fronts were initiated and tried, but they went in vain. In a surprise reversal of the US policy against having talks with Iraq, President Bush, on 30 November, announced his decision to have a 'direct dialogue' with Baghdad to avert the possibility of war in the Gulf,¹¹ and on 1 December, he proposed to send James Baker, the Secretary of state, for "face to face" talk with Saddam.¹² This offer was accepted by Baghdad "in principle" but it was added that the discussion should be widened to include other regional issues.¹³ President Saddam Hussein later announced that he could not receive Baker earlier than 12 January. Bush reacted to this announcement as "manipulation" and told Saddam Hussein that there would be no talks with him on Gulf situation if he did not agree to hold them by 3 January. Iraq was also reported¹⁴ to have sought French intervention to get the deadline of 15 January extended or revoked. But it was outrightly rejected by the United States.

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ibid.

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Times of India (New Delhi), 1 December 1990.

13

Indian Expresss (New Delhi), 2 December 1990.

14

ibid, 8 January 1991.

Baker-Aziz talks were held in Geneva on 9 January 1991, on the eve of the talk. Foreign Minister of Iraq Tariq Aziz stated that "we are not going to yield under pressure ... We would like to avoid war and reach a peaceful settlement".¹⁵ It was negotiation only in name. Both sides reiterated their known positions but took six hours to do it, generating false hopes that some thing was in work . After the talk, James Baker told that he had failed to persuade Iraq to withdraw from Kuwait.

He also went on to say that " there may be a way that the Secretary- General of the UN could use his good offices here in the remaining six or so days".¹⁶

Despite dim prospects (diplomatic), the Secretary-General undertook a two-day peace-mission to Iraq on 12 and 13 January. In the meeting with Saddam Hussein he " urged him to comply fully with the relevant resolutions".¹⁷

He also told that progress in this direction would facilitate the undertaking of measures with respect to " stability and security in the region". Saddam Hussein replied that it would not be possible. in a single meeting to find " ready solution to

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New Strait Times (kualalampur) , 8 January 1991

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Times of India (New Delhi),10 Jaanuary 1990.

17

Perez de Ceullar's Report to the Securty Council.14 January 1990. in Times of India , 11 Febuary 1991.

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such a complicated solution ". Saddam emphasized " Arab solution" for the crisis and said that " Iraqi people today regard Kuwait as the province of Iraq " ¹⁹ gave the indications of dialogue and showed the preference for " package deal". In his report, the Secretary - General admitted that despite the " near universal yearning for peace and the intense efforts of many, including myself, to secure compliance by Iraq, the relevant resolution of the Security Council remain unimplemented". ²⁰ He also urged that the members of the Council must once again consider whether there are any diplomatic measures to secure full implementation by peaceful means. The Secretary . General left Baghdad with the words that " only God knows" whether war can be averted in the Persian Gulf. ²¹ Returning to New York just before the 15 January deadline , he reported sadly that the talks were " polite but unfortunately unsuccessful". He also assured the Iraqi leader, on the basis of understanding he had received from governments at highest level, that neither Iraq nor its forces would be attacked by those who arrayed in the international coalition against his country and that with the resolution of the crisis, other problems like Arab - Israel conflict including

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ibid

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ibid

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ibid.

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Times (London), 14 January 1991.

the Palestinian question would also be taken for the solution.

There were other initiatives specially by France ²² and the nonaligned movement ²³ which met with similar fate.

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The French proposal including an appeal to Iraq for announcement immediately its time table for its pulling out of Kuwait; verification of Iraqi withdrawal by the Secretary-General with despatch of a multinational observer force and the deployment of an Arab-observer force; non-aggression guarantee for Iraq and effort to solve Arab-Israel conflict and more specifically of the Palestinian problem through an international conference. It was the last point that appeared to upset the US. Mr Peckring at the UN, while making it clear that he was opposed to any new peace initiative, said that any effort now should come from Saddam Hussein. ---- The Hindu (Madras) 16 January 1991.

23

The efforts of the Non-aligned countries also went in vain. On 5 December, four Non-aligned members of the Security Council—Colombia, Cuba, Malaysia and Yemen submitted to the Council a peace plan suggesting peace-keeping force to oversee withdrawal of Iraq from Kuwait. Pleading for end of the sanctions and withdrawal of foreign troops from the region after Iraqi withdrawal, these countries urged the Secretary-General to oversee diplomatic efforts for peaceful solution of the crisis. The leader of the movement, Yugoslavia, sent its foreign minister, Berdimir Loucar, to Baghdad and Riyadh for talks. But, it has to be admitted here that the role of the Non-aligned Movement was, on the whole, desperately ineffective.

The main stumbling block in the all efforts of negotiations was Iraq's refusal to pull out of Kuwait. Though Iraq had never specifically said that it would withdraw even if other problems of the region remain unresolved, the country apparently insisted on linkage with some specific committment on Palestine. It would be difficult here to exonerate Iraq for taking too hard position despite several, and some of them genuine, opportunities were provided to indicate positive gestures.

While analysing this complex situation, we find some possible options after the resolution 678 (1990) to both parties²⁴ led by the US and Iraq. The first option was Iraq's unilateral withdrawal and a Middle-East conference under the auspices of the French proposal. The second option was the partial withdrawal from Kuwait. This would have been taken as a beginning in the direction of compliance of the UN resolutions. In both cases, it would have been very difficult for the US to launch any punitive move. The third option " would have involved the main actors from the Arab world - Saudi Arabia, UAE, Egypt and Syria - who may have tried to come to an understanding with Iraq independently"²⁵.

24

Sreedhar, War for Kuwait (New Delhi, 1991), pp.59-62.

25

Ibid.

But as it turned out, Iraq refused to weigh the advantages of opting any of the options given and as a consequence the deadline of 15 January for the withdrawal of Iraqi forces was not observed and the war broke out soon after.

The War :

Shortly after 7.00 p.m. (New York Time) on 16 January, hostilities began in the area of the Persian Gulf. The Secretary-General was informed an hour before. Kuwait intimated the Security Council that it was "exercising its right to self-defense and to restoration of its rights"; and in this respect it was cooperating with the "forces of fraternal and friendly states which were equally determined to end the obdurate Iraqi occupation". Saudi Arabia, which had provided bases for the coalition forces, stated that the use of force had started only after outright refusal by Saddam Hussein regarding all peace initiatives and appeals. The United States said that it was necessary to stop further sufferings of Iraqi people. Later in the evening in a television address, the US President clarified that military action was taken in accordance to the UN resolutions and after months of constant and endless diplomatic efforts.

Coalition forces bursted off on Iraq with lethal weapon which caused incalculable damage to Iraq. Iraq accused the US and its allies for attackiinig civilian establishments and also accused the Secretary-General of personal responsibility for the "heinous crimes being committed against Iraq".²⁷ In this reply, the Secretarty-General, rejected the Iraqi accusation and reiterated the 15 January appeal.²⁸ Iraq also sent a series of letters to the UN accusing the US that it had bombed a factory (letter dated 21 January) and a shelter of civilian (letter dated 13 February). The United States, in its reply, stated that the first had been manufacturing bacteriological weapons while the latter was a "military command and control centre", and gave its utmost assurance that the coalition forces were taking every precaution in this regard.²⁹

During the course of war, the Security Council continued to hold informal meetings/consultations.³⁰ Demand for urgent formal session of Arab-Maghreb Union-Algeria, Lybia, Mauritania,

27 Un Chronicle (New Delhi), June 1991.

28 Ibid, 2nd February 1991.

29 Un Newsletter, 9th February 1991.

30 The composition of non-permanent of the Security Council members for 1991 was as follows - Austria, Belguim, Cote d' Ivoire, Cuba, Ecuador, India, Romania, Yemen, Zaire and Zimbabwe.

Morocco and Tunisia as well as Yemen and Cuba could not materialize. On 8th February in such informal consultation,³¹ the Secretary-General stated that although diplomatic efforts failed to avert the war, this did not mean that these efforts should be abandoned. Admitting that this crisis was a "testing moment for the organization", he argued that the UN should facilitate whatever humanitarian assistance it could, both to refugees and displaced person, and to the civilian population in the area. On 13 February, it was decided in the Council to hold formal but private meeting which were convened as many as six times, upto 2 March, but no formal action could be taken.³² The Soviet representative, on 14 February in the meeting of the Council informed about the meeting between Iraq's Foreign Minister and President Gorbachev in which Gorbachev presented a proposal for the end of the war. His Government, he said, was expecting very soon a reaction from Baghdad.

On 15 February, Iraq informed the Security Council of its readiness to discuss "honourable and acceptable political solution" under Resolution 660 (1990).

31

Ibid, 16 February 1991.

32

The meeting took place at a time when there were indications that Iraq was yielding the ground.

The negotiation proposed was to include withdrawal from Kuwait, subject to a number of conditions, viz. complete and comprehensive ceasefire, annulment of other 11 resolutions on this situation, withdrawal of Middle East force "participating in the aggression" and withdrawal of Israel³³ from Palestine and other Arab occupied territories. Kuwait and its Western allies described the Iraqi statement as hollow and reiterated the need for full and unconditional withdrawal from Kuwait, while Gulf Cooperation Council described the Iraqi proposals as "unacceptable".

With the launch of the ground war, Iraqi attitude became more amenable for talks and on 24 February, it endorsed the Soviet peace proposals which included: compliance with resolution 660; beginning of the troop withdrawal the day after a ceasefire in all military operations; the troop withdrawal to be completed within 21 days, including a pull-out from Kuwait city within four days; all UN Security Council resolutions to lose their force after the withdrawal; all prisoners of war to be freed and repatriated within three days after a ceasefire and the end of military operations; and monitoring of the ceasefire and withdrawal to be carried out by observers or peace-³⁴keeping forces as determined by the Security Council. But these proposals were unacceptable to the US and its allies.

33

Doc. S/22229.

34

Times of India(New Delhi), 23 February 1991.

The Security Council in its consultations on 25,26 and 27 February demanded a clear, formal and written acceptance of all resolutions which came on 27 February. In his letter³⁵ to the UN Secretary-General the Iraqi Foreign Minister informed about the Iraqi acceptance of Security Council resolutions "although the American and other forces are continuing their attacks against the Iraqi armed forces in the course of their withdrawal process". Iraqi message also included the promise for the release of all prisoners of war immediately after the war. AT the midnight on 28 February (EST) coalition forces were ordered to suspend offensive combat operations.

The conduct of the war raised criticism from various quarters. It was alleged that the US utilised the UN organ to legitimize its plans in the Middle East. After securing the required legitimization the UN was thrown to the back seat. This aspect was also raised by the Secretary General when he said that "we can not consider it as a UN war in the sense that there is no UN flag' with blue uniforms. "There is no UN control over military operations, we are informed through the Security Council about military operations but after they have taken³⁶ place." He further said that efforts were continuing to bring to end the war and it would be wrong to think that no efforts were being made just because the UN was not publicizing them.

35

Ibid, 28 February 1991.

36

The Hindu (Madras) 6 February 1991.

End of the War and the Ceasefire :

After the receipt of Iraqi message regarding the acceptance of the Security Council's resolutions, the Security Council met on 2 March and adopted a resolution³⁷ .

Which imposed eight conditions on Iraq for a ceasefire to take effect in the Gulf. The resolution demanded that Iraq

- a) rescind immediately its actions purporting to annex Kuwait;
- b) accept in principle its liability under international law for any loss damage, or injury.....as a result of invasion and illegation occupation of kuwait by Iraq;
- c) immediately release all kuwaiti and third country nationals detained by Iraq;
- d) immediately begin to return all Kuwaiti property seized by Iraq, to be completed in the shortest possible period ;
- e) cease hostile or provocative action by its forces against all member states ;
- f) designate military commanders to meet with counterparts from the forces of Kuwait and the Member States ... to arrange military aspects of a cessation of hostilities ;
- g) arrange for immediate access to and release of prisoners of war....
- ; and h) Provide all information and assistance in identifying Iraqi mines, body traps and other explosives as well as any chemical and biological weapons and material in Kuwait, in areas of Iraq.

37

The resolution 686 (1991) was adopted by 11-1 (Cuba)-3 (Chine, India and Yemen).

During the course of debate³⁸ on the draft resolution,³⁹ Cuba proposed a series of amendments to adjust the language of the draft with a view to regain a sense of "tolerance and moderation". But none of the amendments⁴⁰ could secure the required support. Cuba emphasized that it was the Council's obligation to preserve international peace and security. It could not authorize others to do so without any monitoring, without authority and without supervision of some kind by it. Yemen welcomed the humanitarian aspect of the draft but objected to not mentioning about the end of embargo against Iraq and about non reference regarding the withdrawal of coalition forces.

China regretted the inability of the Council to play important role in monitoring the ceasefire. India, which abstained from voting, like Yemen, highlighted the humanitarian aspect and also pointed out that the draft did not mention the releae of POW's as applicabale to both

38

SCOR (Prov.) Verbatim, 2978 mtg., 3 March 1991.

39

Draft resolution (S/22298) by the US and sponsored by Belgium, France, Romania, the USSR, the UK and Zaire.

40

Cuba presented .17 amendments. Among other things, those included to deploy peace-keeping force and humanitarian assistance by all member-states.

sides. It also objected the continuance of sanctions and noted that the procedure to verify Iraqi compliance was vague.⁴¹

The US representative warned that until the conditions of the resolution were met fully, resolution 678(1990) will remain in effect. The Soviet Union stated that the culmination of the military conflict in the Persian Gulf was "the result of the collective efforts of all states", and the Council must completely exclude the resumption of any type of military activities. The representative of France said that, without the Council's determination over the past seven months, the "liberation of Kuwait would not have been possible". The representative of Belgium called for a conference for all issues in the region. Britain wished that the World Organization could now turn to the more difficult task of helping to create a durable system of peace and security in the Gulf region and more widely in the Middle East. In the last, Kuwaiti representative expressed gratitude to coalition states and NAM countries.

The resolution removed sanctions on Kuwait but kept them in place for Iraq and envisaged virtually no role for the United Nations or the Security Council. The diplomats at the UN privately described the resolution as more of a "surrender than a ceasefire" document.⁴² The resolution did not meet the Non-aligned demand for lifting of economic

41

SCOR (Prov.), Verbatim 2978 mtg., 3 march 1991, pp. 72-8

42

Times (London), 4 March 1991.

sanctions, nor mentioned peace-keeping arrangements, nor gave the Secretary-General any supervisory role.

And finally, the resolution did not give any explicit, authorization originally sought by the US for the coalition forces to resume military operations if Iraq was seen as not abiding by the ceasefire conditions.

Iraq, in two identical letters,⁴³ to the Security Council President and the Secretary-General on 3 March agreed to fulfil its obligations under Resolution 686 (1991). And on 6 March, the Kuwaiti Amir informed the Secretary General that the Government of Kuwait was resuming the functions of State and "directing the affairs of the nation from Kuwait". The Security Council adopted a formal ceasefire resolution on 3 April after prolonged consultations.

Formal Ceasefire

The Security Council adopted a formal ceasefire resolution⁴⁴ on 3 April⁴⁵ which provided a formal truce only after Iraqi

43

Docs S/22320 and S/22321

44

Draft resolution sponsored by the UK, France, Romania and the US. It was adopted as resolution 687 (1991) by 12-1 (Cuba) - 2 (Yemen and Ecuador).

45

SCOR (Prov.), Verbatim, 2981 mtg., 3 April 1991.

President Saddam Hussein agreed to be bound by all its provisions. Regarding the demarcation of boundary, the resolution demanded that Iraq and Kuwait respect the "inviolability of international boundary and allocation of islands", as set out in an agreement signed between the two countries with exercise of their sovereignty at Bagdad in 1963. The Secretary-General was required to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait. The resolution also provided for "For the immediate deployment of a UN observer unit to monitor Khor Abdullah and a demilitarized zone, which is hereby established, extending to kilometers into Iraq and 5 kms into Kuwaits." As for disarmament of Iraq, the Council required Iraq to unconditionally accept the destruction removal, or rendering harmless, under international supervision, of :

a) "All chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities".

b) "All ballistics missiles with range greater than 150 kilometers and related major parts, and repair and production facilities".

It also called for a continued ban on all arms sales and military technology for the indenfinite future, and an unconditional agreement by Iraq that will not acquire or develop nor clear weapons or materials for their production.

The resolution requested the Secretary General to report to the council on the step taken to facilitate the return all Kuwaiti property seized by Iraq. It called on Iraq to let a portion of its future oil earnings to be used to compensate Kuwaiti damage and also called for the creation of compensation fund and the establishment of a commission to monitor the fund.

The resolution offered lifting of embargo on humanitarian ground against Iraq. It also decided that Iraq in furtherance of its commitment should facilitate the repatriation of all Kuwaiti and third country nationals and "Iraq shall extend all necessary cooperation to the International committee of the Red Cross ... (in its) search unaccounted for". And finally, Iraq was required that - "It will not commit or support any act of international terrorism or allow any organisation directed towards commission of such acts to operate within its territory and the condemn unequivocally and renounce all acts, methods and practices to terrorism."

In the Security Council session, the representative of Iraq raised several objections to the draft. For instance, he reminded that the Security Council had never before imposed disputed international boundary on member-states. Accusing the economic blockade as a economic aggression he emphasized that Iraq reserved its rights to request reparation for all losses that it has incurred

through any excess in the use of force as authorized by the resolution 678(1911).⁴⁶ Branding the ceasefire as harsh, Yemen pleaded for the removal of sanctions. Cuba, finding the draft "impossible to accept", opposed the use of the Security Council for the ends of one state. The representative of Ecuador clarified that his country would have supported the resolution only if voting had been taken separately. The representative of India pleaded that the Council should lift the sanctions against the supply of all essential commodities listed in Under Secretary General Ahtasaari, report. India supported the modified draft resolution which removed the impression that the boundary line was imposed by the UN.⁴⁷

Hailing the draft as an epitome of all resolutions, the representative of Kuwait stated that the organization⁴⁸ became an "effective instrument for collective security". The US emphasized that the resolution laid the "groundwork⁴⁹ for the formal ceasefire". It also assured that after Iraqi acceptance the sanction required would be modified. France welcomed the resolution and noted that the draft aimed to achieve the objective of consolidating the end of hostilities in a durable manner. The representative of

46.

SCOR (Prov.) , 2891 3 April 1991, pp. 21 - 25

47.

Ibid, pp.72-80.

48.

Ibid, pp. 7-21.

49.

Ibid, pp. 82-91.

China remarked that the draft failed to provide an explicit framework for the withdrawal of foreign military forces and included unnecessary restriction of economic sanctions against Iraq. The Soviet representative noted that the "crux of the resolution is to turn the temporary cessation of hostilities into a permanent ceasefire".⁵⁰ Finally, the UK remarked that the resolution marked "an important milestone", both the crisis and in the overall development of the UN.

The Iraqi parliament voted to accept the resolution 687(1991) for a formal ceasefire, though it lodged its protest against the terms regarding boundary and disarmament. The Security Council on 11 April announced a formal ceasefire in the Gulf war receiving Iraqi acceptance of the Resolution.

Follow-up of resolution 687

The Security Council also took some more actions for the effective implementation of resolution 687(1991). The Secretary-General after consultations with Iraq and Kuwait submitted his plan for a "United Nations Iraq-Kuwait Observation Mission" (UNI KOM) on 6 April for the supervision of the demilitarized zone created under paragraph 5 of the Resolution 687(1991).⁵¹ On 9 April, the Security Council approved the plan and decided by

50.

Ibid. pp. 98-105.

51.

UN Newsletter (New Delhi), 2 May 1991.

resolution 689(1991) to set up UNIKOM for the initial period of six months. UNIKOM was set up to ensure that no military personnel and equipment were within the demilitarized zone (DMZ). To that end it was to monitor the withdrawal of any armed forces in the zone, operate observation posts on the main roads to monitor traffic, operate such posts at selected locations within the zone, conduct land and air patrols through out DMZ, and carryout investigations.

52

Following the report of the Secretary-General of 3 May, Iraq-Kuwait Boundary Demarcation Commission was established on 17 May, pursuant to Resolution 687(1991). It was created to set-up markers to denote the border which will follow the 1963 demarcation line agreed to by both Iraq and Kuwait and registered with the UN.

Regarding arms embargo, the Council adopted resolution 699(1991) on 17 June which decided that the full cost of the destruction of prescribed weapons within Iraq, as outlined in resolution 687, should be borne by Iraq. The Secretary-General was to recommend the most effective means by which Iraq might meet those objections. Maximum assistance, in cash and kind was sought from all members states to ensure fast and effective destruction of those weapons. On the same day the council

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52

Ibid, September 1991.

53

UN chronicle (New Delhi), September 1991.

passed another resolution 700(1991) which approved a set of guidelines for full international implementation of the arms embargo. The sanctions Committee was asked to monitor the arms embargo. The committee was to report to the Council every three months. A 21-member special commission on Iraq disarmament was established by the Secretary-General for the implementation of the provisions regarding destruction of Weapons. Iraq created a lot of obstacles in the work of this commission. The Council adopted resolution 707(1991) on 15 August which condemned "non-compliance by the Government of Iraq with its obligations under its safeguards agreement with the International Atomic Energy Agency (IAEA). It demanded from Iraq to provide full, final and complete disclosure of all aspects of its programmes to develop weapons of mass destruction, to provide immediate, unconditional and unrestricted access to all areas of inspection. ⁵⁴ By another resolution 715(1991) of 11 October the Council approved the plans submitted by the Secretary-General and the Director-General of IAEA for further ongoing monitoring and verification and requested the Director-General of IAEA to carry out the plan with the assistance of the Special Commission.

Another intriguing aspect of the post-war scene was related to compensation. The Security Council on 20 May 1991, adopted resolution 692(1991) which formally created a Fund, called Compensation Fund, for the payment of

compensation for claims against Iraq arising from its invasion and occupation of Kuwait. On 15 August the Council adopted resolution 705(1991) which decided that Iraq's contribution to the Compensation Fund should not exceed 30 percent of its annual export of petroleum and petroleum products. On the same day, it adopted another resolution 706(1991) which outlined a complex formula for a limited sale of Iraq's petroleum export in order to allow it to fund humanitarian necessities and required compensation.

The Security Council by its resolution 687 had authorised a special one-time sale of \$ 1600 million worth of oil, subject to stringest restrictions. Purpose and distribution of the humanitarian supplies was also subjected under supervision by the UN to ensure that Baghdad does not divert the money to military uses. The Security Council on 19 September passed resolution 712 which set out the legal basis for the oil sale. Stipulating that the oil and oil products sold under the current authorization are immune from any other legal actions or garnishment and asking states to take steps necessary to ensure the profits are not diverted. It reaffirmed that the escrow account, as well as inspectors and experts engaged in the implementation of the resolution, enjoyed UN privileges and immunities. The Council also instructed that the escrow funds be made immediately available to buy food, medicine and other humanitarian supplies.

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Restrictions such as sales to be approved by its sanctions committee, and money go directly into a UN administered escrow account.

This is the description of course of events and the United Nations' actions from 29 November 1990 onwards that is, from the formal adoption of resolution 678(1990). Kuwait was restored after the war and its legitimate Government started to function. But the manner by which these all occurred, is a subject of close scrutiny which has been done in concluding remarks in the next chapter.

CHAPTER V

Conclusion

The preceding chapters examine, in detail, the United Nations in general and the Security Council in particular, actions taken both in the wake of Iraqi invasion and subsequent annexation of Kuwait, as also those taken with a view to restoring independence of Kuwait by peaceful and other means. What follows in the next few pages is an overall assessment of United Nations role in the conflict situation.

Iraqi difference in regard to borders, oil production and prices/foreign debt with Kuwait are in a way typical of problems that beset any two neighbouring countries. In fact, differences, disagreements are natural part of relations among countries. It is with a view to harmonising those contentions relations for mutual and larger benefit that international organizations like the United Nations have come into existence and continue to strive for. Membership of the United Nations entails a legal, moral and political obligations to settle all such differences by peaceful means (like negotiation, mediation etc.) either bilaterally or by a third party means. Without trying these means, unilateral use of force as a means to settle disputes is considered impermissible and illegal. For, members have an obligation under the Charter not to violate sovereignty territorial integrity and political independence (Article 2, para 4). Of course, Iraq resorted to bilateral and other means to settle its differences with Kuwait in a half-hearted way, but it

remains incontrovertible that its massive use of force for swift and overnight occupation of the whole of Kuwait was certainly unwarranted and, therefore, a blatant violation of the United Nation Charter.

It is not the argument here that Iraqi actions were the first blatant violation of the United Nations charter. Indeed, as pointed out elsewhere, many violations had occurred in the past and they could be defended under one provision or the other of the charter, obviating the prospect of any United Nations punitive action. What was unique about Iraq-Kuwait conflict was, first, it was the first case in the history of the United Nations where one member country had forcibly denied in entirety another member country its right to exist; and secondly, this violation had occurred at a time when the United Nations was ushering in an era of what is widely called as post cold war period characterized by harmonious relationship among the permanent members, thereby heightening prospects of an effective United Nations to maintain peace and security. In sum, Iraq committed a wrong act at a wrong time.

It is in this light, one should see the unprecedented United Nations' response to Iraqi aggression of unprecedented proportions. The United Nations Security Council promptly met to voice the outrage of the world community as a whole over 2nd August 1990, developments in its deliberations. The Council made a series of swift and decisive responses - condemnation of Iraqi aggression and the call for immediate unconditional withdrawal;

imposition of widest set of economic sanctions against Iraq for its unwillingness to comply with the demand of withdrawal from Kuwait; declaration of Iraqi annexation of Kuwait as null and void; authorization of the use of "all necessary means" to ensure Iraqi vacation of Kuwait voluntarily before 15 January 1991 or involuntarily afterwards. In all upto the end of November 1990, the Security Council adopted twelve resolutions in as many meetings - all with one exception explicitly invoking mandatory chapter VII of the Charter which deals with the Security Council's power to take enforcement action against an aggressor on behalf of whole of the membership. Thus, it turned out that the Gulf crisis of August 1990, provided the United Nations the first ever opportunity to come closest in implementing the Charter framework for collective enforcement of international peace and security - thanks to the collegial spirit demonstrated by the permanent members coupled with the consistent cooperation extended by the nonpermanent members.

True, it is not denying that the most of the resolutions were the initiative of the US and its western allies sympathetic to the cause of Kuwait. In the process, the Security Council had essentially collectively legitimized the United States policies. One need not see any harm in this, for in this case the United States' interests converged with the United Nations' interests.

The logical observation that can be made here is that there is a unanimous international condemnation (including by Cuba) of Iraq's action. Also worthnoting are the determination to put the Charter principles and provisions as a touchstone of

What should worry the students of World Organizations is that in a case where the United Nations was widely seen to be active and effective in undertaking or organizing various moves, it actually seemed to be increasingly marginalised in influencing the events. The point of emphasis needs elaboration. First, the Security Council which authorized military action in oblique language, remained mere spectator to the consequences of the utilization of the authorizations after the expiry of the deadline.

During the entire course of six-week war, the United Nations was not informed about the military strategy and command and control matters. It could not hold even a formal meeting till completely defeated Iraq agree to vacate Kuwait. Even in the negotiations for ceasefire, the United Nations had not role. In other words, the allied military action, though authorized by the United Nations, could not be described as a United Nations war. Secondly, in effect, the Security Council appear to play a subordinate role in furthering American and Western views without much resistance from other permanent members like the Soviet Union or China, thereby raising the dangerous prospects of United Nations losing its independent identity, distinct from that the single country or a single group of powerful countries.

It seemed, that the United Nations in its responses departed disturbingly from positive trends in the role of maintaining

international behaviour and the apparent political will on the part of the US and other countries to uphold the United Nations Charter.

One would wish the United Nations Security Council upheld Charter principles consistently.¹ In this context Iraq, Cuba and various other countries referred to double standards, the United Nations has tended to apply against Iraq, while turning a blind eye to Israel's continued occupation of huge territories belonging to Syria, Lebanon and Jordan. What is pertinent to be asked here is : Is it that the United Nations asserting its legal authority at the expense of its moral authority?

It is intriguing to note that the Security Council resolutions appeared to adhere strictly to the letters of the Charter framework. A close scrutiny of these resolutions will show that most of them do not refer any specific, relevant Article of Chapter VII of the Charter. This observation is applicable also to resolution 678 (1990) of 29 November which virtually authorized use of force under Chapter VII against Iraq without invoking relevant Article of the Chapter.²

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As the Secretary-General observed - "Principles must be consistently applied and the Councils's action must be based on equity and justice and perceived to be so." Secretary - General statemtn, SCOR (Prov.), Verbatim, 2943 mtg. 25 September 1990, p.7.

2

For detail see CSR Murthy "Gulf War and Beyond : The United Nations" proceeding of the National Seminar on "Post War Gulf" in School of International studies, J.N.U., 1992.

peace and security. The organization appeared to be involved to in a cycle of inescapable actions/reactions process. True Iraq's behaviours was provocative, abrasive and unacceptable, but, equally unfortunate is the hasty pace at which the United Nations adopted some resolutions which in retrospect brought the situation closer to conflict rather than peace.

First, without fully exploring the possibilities for persuading Iraq to withdraw the Security Council rushed to impose sanctions (without anticipating adequately the adverse effects on the sanction imposing countries) which made Iraq more stubborn. That explains the failure of belated moves of the Secretary General mediations early in January 1991.

Second, without waiting for the economic sanctions to show fullest impact on Iraq, military action was authorized.

Third, it may be recalled that the United Nations traditionally called for unconditional ceasefire on past occasions, but in the present case *the* Security Council made a departure by insisting on a series of conditions to be accepted by Iraq before ceasefire came into effect (resolutions 686 and 687).

Fourth, provisions of resolution 687(1991) - the longest and certainly most controversial resolution in four decade - plus history of the world body - marked clear departure from the past. For, without being freely negotiated, the resolution was drafted

and sponsored by victorious side and then imposed on the vanquished - the first instance of a "dictated peace" after the Versailles example (1919). The unfortunate, unilateral and avoidable provisions include those on frozen boundaries between Iraq and Kuwait, the modalities for payment of compensation for war damage and sweeping disarmament measures against Iraq.

Next aspect concerns the establishment of the United Nations Iraq-Kuwait Observertion Mission (UNIKOM) in April 1991. It remains worthnoting that here is a peace keeping operation established by a resolution under Chapter VII provisions for enforcement action, whereas peacekeeping activity hitherto undertaken under the auspices of the United Nations was an non-enforcement activity outside the scope of chapter VII. Ironically a peacekeeping operation was "imposed" on Iraq which was all the more voluntarily willing to invite such a peacekeeping mission.

The implication of all these departures from the United Nations' past heritage to respect to the principle of state sovereignty are ominous. One may wonder if the United Nations could for the right purposes of restoring one country's (Kuwait's) sovereignty and in the process undercut another country's sovereignty.

In conclusion, one may take satisfaction from the United Nations becoming an instrument for restoration of Kuwait's

sovereign stathood. But at the same time, one could not help but worry about the larger questions like soverign equality, consistent application of international rule of law, judicious priorities between letter and spirit of the Charter provisions, and progressive, positive evolution of the United Nations as a force for peace rather than for war. Answers to these questions may determine the nature of the postcold war, post-Gulf war, new world order.

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