

Iraq-Iran War

The war in the Gulf continues to dominate the news. A number of questions which ought to be decided in accordance with the principles of international law are involved.

First, there is the question of aggression. Iraq rescinded the 1975 agreement with Iran governing the Shatt-al-Arab waterway and invaded Iran in 1980. Second, if Iran exercised her right of self defence in 1980, are there limits to that right? Is Iran now under a duty to negotiate a reasonable peace, as the US President suggests? It is well known that Iran insists on the overthrow of President Saddam Hussain as a pre-requisite for peace. Can this be justified as portion of Iran's right of self defence for the violation of her frontier? The Allies insistence on unconditional surrender during the second world war could be advanced as a precedent by Iran. If the Allies policy was justified under international law, are the essential differences between the two wars sufficient to question the validity of Iran's present policy? These issues deserve close scrutiny by international lawyers.

Third, there is the question of the use of chemical weapons in the war, which has been the subject of a report noted in [1984] Australian I.L. News 237-239.

Fourth, there is the extension of hostilities against shipping in the Gulf. Shortly after the invasion in 1980, Iraq lost a large share of its oil production as a result of Iranian bombing raids. For many months, Iraq has threatened to attack vessels using Iran's oil exporting facility at Kharg Island. This is within the maritime exclusion zone proclaimed by Iraq. Reports indicate that Iraq has now made good her threat using Super Etendard fighters, and possibly Exocet missiles. For example, in the House of Commons on 8 March 1984, the Minister of State, Foreign and Commonwealth Office, Mr. Richard Luce stated:

"We learnt on 7 March that a British registered ship, The Charming, which formed part of a convoy under Iranian protection, was hit in an Iraqi attack in the northern Gulf on 1 March. The attack took place within Iranian territorial waters in the approaches to Bandar Khomeini.

The ship, which was carrying a cargo of alumina ore, is reported to be substantially damaged and aground outside Bandar Khomeini. I am glad to say that none of the crew was seriously hurt and I understand that most of them have now left Iran. It has been reported that Turkish and Indian ships forming part of the same convoy were also hit.

The Charming, like other ships in the convoy, had been and was required to maintain radio silence. Her owners did not subsequently inform Her Majesty's Government about the attack on their ship, and have requested no assistance.

Her Majesty's Government deplore this incident and, indeed, all attacks on shipping in the Gulf area. We

have summoned the Iraqi ambassador to protest at his Government's action and to demand an explanation of it

Her Majesty's Government remain deeply concerned to see an early end to the wasteful and destructive conflict which is continuing between Iraq and Iran. We are working vigorously with the international community to that end."

Iran had replied to the Iraqi threats that it would respond, and "... no oil tankers would be safe in the waterway as long as Iraqi warplanes continued to strike ships loaded with Iranian petroleum exports" : The Australian 17 May 1984 at 4. Iran commenced to attack shipping outside of Iraq's maritime exclusion zone in late May. While both Iran and Iraq are attacking the shipping of neutral countries, Iran has extended the area in which she reserves the right to attack to the whole Gulf. Is she entitled to extend her zone beyond her territorial waters and those of Iraq and beyond the area of hostilities between the two powers? Is the legality of this decision affected by her claim that she is exercising her right of self defence? The Gulf Co-operation Council (Saudi Arabia, Kuwait, Bahrain, Qatar, Oman and the United Arab Emirates) have condemned the Iranian attacks and the Security Council has called for peace, without condemning either side. On 22 May 1984, President Reagan offered US help to protect Gulf shipping provided a formal request were made and bases provided. This was not taken up by the member states of the Gulf Co-operation Council.

If there is, and continues to be an aggressor in the war, then participation in these hostilities would compound the offence. If Iran is still acting in self defence, is she entitled to widen the area of hostilities to the whole Gulf, and threaten the exports of neutral powers in the Gulf, many of whom are giving financial assistance to her adversary. German actions against shipping in the Atlantic in the first and second world wars may present something of an analogy here.

Fifth, there is the question of the role of neutrals in the war. Not only are some neutral powers giving financial assistance, this has extended to the sale of arms. The British view was expressed by the Minister, Mr. Luce in the House of Commons on 1 March 1984 in response to a question:

"On the use of weapons, all I can say is that we believe very strongly that our policy of not selling lethal weapons to either side is a policy that every other country should follow".

It is reported that the USSR and France are supplying arms to Iraq, and that Iran is obtaining spares for her essentially US made arms from arms dealers, and from Israel. The old rules as to neutrality proscribed such actions : [1984] Australian I.L. News 47. An issue worthy of deeper examination is that if one belligerent is an aggressor, does responsibility attach to those who arm or otherwise aid that state? As we know, apart from calling for an end to hostilities, the Security Council has avoided the question of ascribing responsibility.

Sixth, there is the question of outside intervention perhaps by the United States, the UK and France. If this once could have been justified on economic need, if that is a justification for armed intervention, this could no longer be the case now. The West is no longer so dependent on the Gulf for oil supplies. In fact, the Western powers have shown considerable reserve as to the possibility of intervention, and the Gulf states have insisted that they do not request it.

Finally, it is sad to again note that Chapter VII of the UN Charter provides the machinery for the ending of this conflict. Apart from calling for peace, the Security Council has taken no action with respect to threats to the peace, breaches of the peace, and acts of aggression in the Iraq-Iran war. However an agreement not to bomb civilian targets has been achieved under U. N. auspices.