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THE UNITED NATIONS' DIFFERENT APPROACHES TO COMPENSATION FOR WAR CRIMES: THE IRAQ-KUWAIT AND ARMENIA-AZERBAIJAN CONFLICTS

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Abstract

This article draws a parallel between the Armenia-Azerbaijan and Iraq-Kuwait conflicts and analyzes the differences between the resolutions adopted by the United Nations and the measures taken in these conflicts. The adoption of more resolutions by the United Nations on the Iraq-Kuwait conflict, which began at about the same time and was marked by the crime of aggression, the assessment of this conflict as a "violation of international peace and security", the recognition of Iraq as an aggressor, the imposition of sanctions against it, the appointment of a special rapporteur on human rights violations in the Iraq-Kuwait conflict, and the authorization of the deployment of troops by a coalition of 26 United Nations member states led by the United States, and the absence of these measures in the Armenia-Azerbaijan conflict, are considered indicators of the United Nations' different approach to similar conflicts. The article focuses on the activities of the United Nations Compensation Commission established by the United Nations on the Iraq-Kuwait conflict. This Commission, which operates as a subsidiary body of the United Nations Security Council, has identified 30% of Iraq's oil and oil product exports as the source of the compensation fund. In total, the Commission has paid compensation of US \$52.4 billion to more than 1.5 million claimants. The Commission's experience in determining compensation for individuals and legal entities affected by this conflict is being closely studied.

Keywords: Armenia-Azerbaijan conflict, Iraq-Kuwait, compensation, United Nations, Karabakh, human rights.

I. Introduction

The United Nations and its Security Council have not always adopted the same approach in the activities they have carried out and the decisions they have taken in accordance with their mandates. The adoption of documents that differ substantially in content with respect to war crimes and gross and systematic violations of human rights committed during various conflicts - due either to the positions of Security Council members or to certain "invisible" reasons - has itself cast doubt on the effectiveness of the United Nations as a guarantor of peace and security. The application of double standards by the United Nations and its Security Council to conflicts of a similar nature between different states and the need for reform have been repeatedly emphasized [1].

This article comparatively analyzes the resolutions adopted by the United Nations during the Armenia-Azerbaijan and Iraq-Kuwait conflicts, as well as the measures implemented for the assessment and payment of compensation for damages.

It is an undeniable fact that the Armenia-Azerbaijan conflict was brought to an end only through the strength and determination of the Azerbaijani army. However, the international legal basis of those actions was equally important. The confirmation in international documents that the occupied territories belonged to Azerbaijan, and the international recognition that Armenia and its supporters had unlawfully entered Azerbaijani territory by the use of force and exercised effective control over it for a prolonged period, significantly strengthened Azerbaijan's position in the conflict.

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Although the four resolutions adopted by the United Nations Security Council regarding the Armenia–Azerbaijan conflict are typical documents issued by the body in similar situations, their content, terminology, and the actions taken by the United Nations on their basis differ considerably. Although the Iraq–Kuwait conflict occurred at approximately the same time as the Armenia – Azerbaijan conflict and both involved acts of aggression, the United Nations' response to the Iraq–Kuwait conflict differed fundamentally from its response to the Armenia – Azerbaijan conflict.

II. Number and Legal Content of the Resolutions

The UN Security Council adopted four resolutions concerning the Armenia–Azerbaijan conflict and fourteen resolutions concerning the Iraq–Kuwait conflict [7]. Resolution 661 determined that there had been an “occupation of Kuwait by Iraqi military forces” and assessed it as a breach of international peace and security [5]. Consequently, Iraq was recognized by the Security Council as an aggressor state, whereas Armenia was not identified as an aggressor state or even as a party to the conflict; instead, expressions such as “local Armenian forces” and “the parties” were used.

III. Appointment of a Special Rapporteur by the UN

In Resolution 1991/67, the Commission on Human Rights requested its Chairperson to appoint a Special Rapporteur “with a mandate to investigate human rights violations committed in Kuwait by the Iraqi occupying forces”. On 31 May, the Economic and Social Council adopted Resolution 1991/251 approving the Commission's resolution. As a result, within less than four months the Special Rapporteur prepared and submitted a report to the United Nations. The Rapporteur was authorized to obtain relevant information from “the Government of Kuwait, specialized agencies, and intergovernmental and non-governmental organizations”.

The Special Rapporteur characterized arbitrary executions, widespread and systematic torture, the deportation of large numbers of civilians to Iraq, the use of third-country nationals as “human shields” and the large-scale destruction of significant parts of Kuwait's infrastructure, including health and educational institutions, as grave breaches of the Geneva Conventions [11].

During two visits to Kuwait, the Special Rapporteur interviewed more than eighty victims and witnesses of alleged human rights violations committed by the Iraqi occupying forces. He visited former detention sites, looted and destroyed buildings, cemeteries, the camp for displaced persons in Abdali, and burned oil fields.

The report presented facts, statistics, and analyses regarding the treatment of prisoners of war, torture, detention, deportations, and other human rights issues. It reported the detention of 4,129 prisoners of war and 935 civilians, and approximately 2,000 persons were recorded as missing.

By confirming gross and systematic violations of human rights and the fact of aggression, the report provided a serious basis for United Nations military intervention. No comparable development occurred in the Armenia–Azerbaijan conflict.

IV. Sanctions

The United Nations imposed no sanctions on Armenia, whereas a range of sanctions was imposed on Iraq. Resolutions 661 and 670 introduced sanctions in the areas of trade, financial transfers, and transportation, particularly air transport. Resolution 661

prohibited the import of products originating in Iraq or Kuwait, commercial financial transfers to Iraq and Kuwait, the sale of goods - including arms and military equipment-except for medical and humanitarian purposes, and investment activities. Some researchers described these sanctions as “unprecedented” in scale [6]. According to general estimates, Iraq’s imports declined from USD 10.3 billion in 1988 to USD 0.4 billion by 1991 [6, p. 14], inflation reached extremely high levels, and whereas one U.S. dollar had been equivalent to approximately four Iraqi dinars before Iraq’s attack on Kuwait, by December 1995 one U.S. dollar was equal to 3,000 Iraqi dinars [6, p. 15].

Resolution 678 imposed additional obligations on Iraq, including the conclusion of a disarmament agreement, the destruction of all chemical and biological weapons and certain ballistic missiles, and the establishment of a Compensation Commission.

V. UN Armed Intervention

While the Armenia–Azerbaijan conflict was addressed mainly through diplomatic negotiations, Security Council Resolution 678 with respect to Kuwait authorized the use of “all necessary means” [8]. Azerbaijan itself implemented the Security Council resolutions concerning the Armenia–Azerbaijan conflict twenty-seven years later, whereas the United Nations ensured the implementation of the resolutions concerning Iraq within a few months. This approach was based on the principle of “collective security enforcement”. With the support of a coalition of twenty-six UN member states led by the United States [11, p. 30], Iraqi forces were expelled from Kuwait. The legal basis was Chapter VII of the United Nations Charter. According to Fassbender, the Kuwait issue provided the Security Council with an opportunity to prove wrong those who had called it “dead”, since after Korea (1950) the United Nations had not authorized member states to wage war under its banner [2]. Although many states opposed the occupation of Kuwait, the resolution was proposed and adopted at the initiative of the United States, which undoubtedly pursued its own interests. One explanation for the absence of a similar initiative in the Armenia–Azerbaijan conflict may be the reluctance of the United States to deploy troops near Russia’s southern borders so as not to increase regional tensions.

Consequently, coalition forces led by the United States carried out air operations for several weeks and subsequently liberated Kuwait through a ground intervention. This outcome was viewed not only as the outcome of U.S.-led military action but also as the implementation of Security Council resolutions.

VI. Establishment of a Special United Nations Compensation Commission and Enforcement of Compensation Payments

The establishment by the United Nations of a Compensation Commission in relation to the Iraq–Kuwait conflict has been described as creating “new law and procedures for reparations relating to mass violations during armed conflict” [3].

Resolution 674 stated that Iraq bore responsibility for the damage resulting from the occupation of Kuwait and emphasized that this responsibility covered “all losses, damages, or injuries suffered by Kuwait and third states”[3]. Resolution 687 further clarified the scope of such damage, including “any direct loss, damage, including environmental damage and depletion of natural resources, and damage to foreign governments, nationals, and corporations” [9].

The Commission functioned as a subsidiary organ of the Security Council. The source of the compensation fund consisted of 30 percent of Iraq’s exports of oil and

petroleum products. Although the conflict occurred in 1991, the Commission set 1 January 1995 as the deadline for individual compensation claims and 1 January 1996 for claims by companies, states, and international organizations.

Compensation of USD 2,500 per displaced person and USD 5,000 per family was established. In cases of injury or death, compensation ranged from USD 2,500 to USD 10,000 per family. Compensation for property damage and moral injury was set at up to USD 100,000. In total, the Commission paid USD 52.4 billion in compensation to more than 1.5 million successful claimants [10].

VII. Conclusion

Twenty-seven years later, Azerbaijan itself implemented the United Nations resolutions concerning the Armenia–Azerbaijan conflict [4]. By contrast, in relation to Iraq the United Nations took more determined and consistent steps and resolved the conflict within a few months through the principle of collective security enforcement. The identification of Iraq as an aggressor state, the characterization of its actions as a threat to international peace, the imposition of sanctions, the appointment of a Special Rapporteur, the investigation of damages, the establishment of a special commission for compensation, and the authorization granted to United Nations member states to use “all necessary means”, including armed force, may all be regarded as rare response measures in United Nations practice.

Apart from adopting four resolutions, the United Nations in practice provided Azerbaijan with little additional assistance in the Armenia–Azerbaijan conflict. Nevertheless, Azerbaijan's continued respect for the United Nations is reflected in the Shusha Declaration of 15 June 2021, signed by President Ilham Aliyev of the Republic of Azerbaijan and President Recep Tayyip Erdoğan of the Republic of Türkiye. Under the Declaration, if either party considers that its independence, sovereignty, territorial integrity, inviolability of internationally recognized borders, or security is threatened or subjected to aggression by a third state or states, the parties shall hold joint consultations and undertake initiatives consistent with the purposes and principles of the United Nations Charter and provide one another with the necessary assistance in accordance with the Charter.

The United Nations' different approaches to the two conflicts once again demonstrate the decisive role of geopolitical factors in its decision-making. The positions of the permanent members of the Security Council, the prevailing regional and international situation, and the specific interests of major powers appear to be more decisive factors than human rights considerations or even violations of the fundamental principles of the United Nations.

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