COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES PLATES-FORMES PÉTROLIÈRES

(RÉPUBLIQUE ISLAMIQUE D'IRAN c. ÉTATS-UNIS D'AMÉRIQUE)

EXCEPTION PRÉLIMINAIRE

ARRÊT DU 12 DÉCEMBRE 1996

1996

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING OIL PLATFORMS

(ISLAMIC REPUBLIC OF IRAN *v.* UNITED STATES OF AMERICA)

PRELIMINARY OBJECTION

JUDGMENT OF 12 DECEMBER 1996

Mode officiel de citation:

Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique), exception préliminaire, arrêt, C.I.J. Recueil 1996, p. 803

Official citation:

Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996, p. 803

ISSN 0074-4441
ISBN 92-1-070748-6

N° de vente:
Sales number **683**

INTERNATIONAL COURT OF JUSTICE

YEAR 1996

1996
12 December
General List
No. 90

12 December 1996

CASE CONCERNING OIL PLATFORMS

(ISLAMIC REPUBLIC OF IRAN *v.* UNITED STATES OF AMERICA)

PRELIMINARY OBJECTION

Jurisdiction of the Court — Treaty of Amity, Economic Relations and Consular Rights of 15 August 1955 — Treaty in force.

Article XXI, paragraph 2 — Dispute not satisfactorily adjusted by diplomacy — Lack of agreement to settle it by "other pacific means" — Dispute "as to the interpretation or application" of the Treaty.

Contention that the Treaty cannot apply to questions concerning the use of force — Lack of any provision expressly excluding certain matters from the jurisdiction of the Court — Article XX, paragraph 1 (d), *as a defence on the merits — Unlawfulness of actions incompatible with the obligations flowing from the Treaty, whatever the means employed.*

Contention that the claims of Iran cannot be founded on Article I of the Treaty — Interpretation in the light of the object and purpose of the Treaty — Object and purpose not concerned with the general regulation of peaceful and friendly relations between the parties — Documents produced and practice followed by the Parties — Provision not without legal significance for the interpretation of the other provisions but unable, taken in isolation, to be a basis for the jurisdiction of the Court.

Contention that the claims of Iran cannot be founded on Article IV, paragraph 1, of the Treaty — Provision not including any territorial limitation — Provision aimed at the treatment by each of the parties of the nationals and companies of the other — Inapplicability of Article IV, paragraph 1, to the particular case.

Contention that the claims of Iran cannot be founded on Article X, paragraph 1, of the Treaty — Meaning of the word "commerce" in that provision — Scope not limited to maritime commerce — Scope not limited to activities of purchase and sale — Provision protecting "freedom of commerce" — Freedom that might in fact be impeded by acts entailing the destruction of goods destined

to be exported or capable of affecting their transport and storage with a view to export — Destruction capable of having an effect upon the export trade in Iranian oil and of having an adverse effect upon freedom of commerce as guaranteed by the provision in question — Lawfulness can be evaluated in relation to that provision.

Subsidiary submissions no longer having any object.

JUDGMENT

Present: *President* BEDJAOUI; *Vice-President* SCHWEBEL; *Judges* ODA, GUILLAUME, SHAHABUDDEEN, WEERAMANTRY, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, FERRARI BRAVO, HIGGINS, PARRA-ARANGUREN; *Judge* ad hoc RIGAUX; *Registrar* VALENCIA-OSPINA.

In the case concerning oil platforms,

between

the Islamic Republic of Iran,

represented by

Mr. M. H. Zahedin-Labbaf, Agent of the Islamic Republic of Iran to the Iran-United States Claims Tribunal,

as Agent;

Dr. S. M. Zeinoddin, Head of Legal Affairs, National Iranian Oil Company,

Mr. James R. Crawford, Whewell Professor of International Law, University of Cambridge, Member of the International Law Commission,

Mr. Luigi Condorelli, Professor of International Law, University of Geneva,

Mr. Rodman R. Bundy, avocat à la cour d'appel de Paris, Member of the New York Bar, Frere Cholmeley, Paris,

as Counsel and Advocates;

Mr. Derek W. Bowett, C.B.E., Q.C., F.B.A., Whewell Professor Emeritus, University of Cambridge,

Dr. N. A. Mansourian, Legal Adviser, Bureau of International Legal Services of the Islamic Republic of Iran,

Dr. M. A. Movahed, Senior Legal Adviser, National Iranian Oil Company,

Dr. H. Omid, Legal Adviser, National Iranian Oil Company,

Dr. A. A. Mahrokhzad, Legal Adviser, National Iranian Oil Company,

Mr. David S. Sellers, Solicitor, Frere Cholmeley, Paris,

Ms Loretta Malintoppi, avocat à la Cour, Frere Cholmeley, Paris,

as Counsel,

and

the United States of America,

represented by

Mr. Michael J. Matheson, Acting Legal Adviser, United States Department of State,

as Agent;

Dr. John H. McNeill, Senior Deputy General Counsel, United States Department of Defense,

Professor Andreas F. Lowenfeld, Rubin Professor of International Law, New York University School of Law,

Mr. John R. Crook, Assistant Legal Adviser for United Nations Affairs, United States Department of State,

Dr. Sean Murphy, Counselor for Legal Affairs, United States Embassy, The Hague,

Mr. Jack Chorowsky, Special Assistant to the Legal Adviser, United States Department of State,

Commander Ronald D. Neubauer, Judge Advocate General's Corps, United States Navy,

as Counsel and Advocates;

Mr. Allen Weiner, Attaché (Office of the Legal Counselor), United States Embassy, The Hague,

as Counsel,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 2 November 1992, the Government of the Islamic Republic of Iran (hereinafter called "Iran") filed in the Registry of the Court an Application instituting proceedings against the Government of the United States of America (hereinafter called "the United States") in respect of a dispute

> "aris[ing] out of the attack [on] and destruction of three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, by several warships of the United States Navy on 19 October 1987 and 18 April 1988, respectively".

In its Application, Iran contended that these acts constituted a "fundamental breach" of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter called "the Treaty of 1955"), as well as of international law. The Application invokes, as a basis for the Court's jurisdiction, Article XXI, paragraph 2, of the Treaty of 1955.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of the United States by the Registrar; and, pursuant to paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. By an Order dated 4 December 1992, the President of the Court fixed 31 May 1993 as the time-limit for the filing of the Memorial of Iran and 30 November 1993 as the time-limit for the filing of the Counter-Memorial of the United States.

4. By an Order of 3 June 1993, the President of the Court, at the request of Iran, extended to 8 June 1993 the time-limit for the filing of the Memorial; the time-limit for the filing of the Counter-Memorial was extended, by the same Order, to 16 December 1993. Iran duly filed its Memorial within the time-limit thus extended.

5. Within the extended time-limit fixed for the filing of the Counter-Memorial, the United States raised a preliminary objection to the jurisdiction of the Court pursuant to Article 79, paragraph 1, of the Rules of Court. Consequently, by an Order dated 18 January 1994, the President of the Court, noting that by virtue of Article 79, paragraph 3, of the Rules of Court the proceedings on the merits were suspended, fixed 1 July 1994 as the time-limit within which Iran might present a written statement of its observations and submissions on the preliminary objection raised by the United States. Iran filed such a statement within the time-limit so fixed, and the case became ready for hearing in respect of the preliminary objection.

6. Since the Court included upon the Bench no judge of Iranian nationality, Iran availed itself of its right under Article 31, paragraph 2, of the Statute of the Court to choose a judge *ad hoc* to sit in the case: it chose Mr. François Rigaux.

7. Pursuant to Article 53, paragraph 2, of the Rules of Court, the pleadings and annexed documents filed in the case were made accessible to the public by the Court as from the date of opening of the oral proceedings on the preliminary objection.

8. Public hearings were held between 16 and 24 September 1996, at which the Court heard the oral arguments and replies of:

For the United States: Mr. Michael J. Matheson,
Commander Ronald D. Neubauer,
Mr. Andreas F. Lowenfeld,
Mr. John R. Crook,
Mr. Sean Murphy,
Mr. Jack Chorowsky.

For Iran: Mr. M. H. Zahedin-Labbaf,
Dr. S. M. Zeinoddin,
Mr. Rodman R. Bundy,
Mr. Luigi Condorelli,
Mr. James R. Crawford.

At the hearings, judges put questions to the Parties who answered in writing after the close of the oral proceedings. Referring to the provisions of Article 72 of the Rules of Court, Iran communicated to the Court its observations on the replies given by the United States to one of those questions.

*

9. In the Application, the following requests were made by Iran:

"On the basis of the foregoing, and while reserving the right to supplement and amend these submissions as appropriate in the course of further

proceedings in the case, the Islamic Republic respectfully requests the Court to adjudge and declare as follows:

(a) that the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;

(b) that in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, *inter alia*, under Articles I and X (1) of the Treaty of Amity and international law;

(c) that in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including Articles I and X (1), and international law;

(d) that the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

(e) any other remedy the Court may deem appropriate."

10. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Iran,

in the Memorial:

"In the light of the facts and arguments set out above, the Government of the Islamic Republic of Iran requests the Court *to adjudge and declare:*

1. That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by Iran;
2. That in attacking and destroying the oil platforms referred to in Iran's Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to Iran, *inter alia*, under Articles I, IV (1) and X (1) of the Treaty of Amity and international law, and that the United States bears responsibility for the attacks; and
3. That the United States is accordingly under an obligation to make full reparation to Iran for the violation of its international legal obligations and the injury thus caused in a form and amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to introduce and present to the Court in due course a precise evaluation of the reparation owed by the United States; and
4. Any other remedy the Court may deem appropriate."

On behalf of the Government of the United States,

in the Preliminary Objection:

"The United States of America requests that the Court uphold the

objection of the United States to the jurisdiction of the Court and decline to entertain the case."

On behalf of the Government of Iran,

in the Written Statement of its Observations and Submissions on the Preliminary Objection:

"In the light of the facts and arguments set out above, the Government of the Islamic Republic of Iran requests the Court to adjudge and declare:

1. That the preliminary objection of the United States is rejected in its entirety;
2. That, consequently, the Court has jurisdiction under Article XXI (2) of the Treaty of Amity to entertain the claims submitted by the Islamic Republic of Iran in its Application and Memorial as they relate to a dispute between the Parties as to the interpretation or application of the Treaty;
3. That, on a subsidiary basis in the event the preliminary objection is not rejected outright, it does not possess, in the circumstances of the case, an exclusively preliminary character within the meaning of Article 79 (7) of the Rules of Court; and
4. Any other remedy the Court may deem appropriate."

11. In the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the United States,

at the hearing of 23 September 1996:

"The United States of America requests that the Court uphold the objection of the United States to the jurisdiction of the Court in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America).*"

On behalf of the Government of Iran,

at the hearing of 24 September 1996:

The submissions read at the hearing were identical to those presented by Iran in the Written Statement of its Observations and Submissions on the Preliminary Objection.

* * *

12. In its Application instituting proceedings, Iran states that, on 19 October 1987 and 18 April 1988, certain oil platforms located on the Iranian continental shelf and belonging to the National Iranian Oil Company were attacked and destroyed by naval forces of the United States. Iran maintains that, by proceeding in this manner, the United States "breached its obligations to the Islamic Republic, *inter alia*, under Articles I and X (1) of the Treaty of Amity". Iran further claims that those actions of the United States "breached the object and purpose of the Treaty . . ., and international law". Iran concludes by saying that it falls to the Court, in accordance with Article XXI, paragraph 2, of the Treaty

of 1955, to settle the dispute that has thus come into being between the two States.

13. In the course of subsequent proceedings, Iran developed those arguments more specifically, maintaining, in its Memorial, that the United States had also breached the provisions of Article IV, paragraph 1, of the Treaty of 1955. During the hearings, it stated that "its claim is strictly based on three very specific provisions of the 1955 Treaty of Amity and that the Court can settle the dispute which is submitted to it on the basis of that Treaty alone". It further stated that Iran's Application was based on those three provisions and "not on the violation of the object and purpose of the Treaty as a whole". As for general international law, this is not invoked by Iran as such, but rather "in order to identify the content and scope of the obligations arising from the Treaty". Accordingly, in the most recent presentation of its arguments, Iran claims only that Article I, Article IV, paragraph 1, and Article X, paragraph 1, of the Treaty of 1955 have been infringed by the United States. The dispute thus brought into being is said to fall within the jurisdiction of the Court pursuant to Article XXI, paragraph 2, of the same Treaty.

14. The United States for its part maintains that the Application of Iran bears no relation to the Treaty of 1955. It stresses that, as a consequence, the dispute that has arisen between itself and Iran does not fall within the provisions of Article XXI, paragraph 2, of the Treaty and deduces from this that the Court must find that it lacks jurisdiction to deal with it.

* * *

15. The Court points out, to begin with, that the Parties do not contest that the Treaty of 1955 was in force at the date of the filing of the Application of Iran and is moreover still in force. The Court recalls that it had decided in 1980 that the Treaty of 1955 was applicable at that time (*United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980,* p. 28, para. 54); none of the circumstances brought to its knowledge in the present case would cause it now to depart from that view.

By the terms of Article XXI, paragraph 2, of that Treaty:

> "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

16. It is not contested that several of the conditions laid down by this text have been met in the present case: a dispute has arisen between Iran and the United States; it has not been possible to adjust that dispute by

diplomacy and the two States have not agreed "to settlement by some other pacific means" as contemplated by Article XXI. On the other hand, the Parties differ on the question whether the dispute between the two States with respect to the lawfulness of the actions carried out by the United States against the Iranian oil platforms is a dispute "as to the interpretation or application" of the Treaty of 1955. In order to answer that question, the Court cannot limit itself to noting that one of the Parties maintains that such a dispute exists, and the other denies it. It must ascertain whether the violations of the Treaty of 1955 pleaded by Iran do or do not fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain, pursuant to Article XXI, paragraph 2.

* * *

17. The objection to jurisdiction raised by the United States comprises two facets. One concerns the applicability of the Treaty of 1955 in the event of the use of force; the other relates to the scope of various articles of that Treaty.

* *

18. The Court will deal initially with the Respondent's argument that the Treaty of 1955 does not apply to questions concerning the use of force. In this perspective, the United States contends that the attack and destruction of the oil platforms

> "occurred . . . in the context of a long series of attacks by Iranian military and paramilitary forces on US and other neutral vessels engaged in peaceful commerce in the Persian Gulf".

According to the Respondent, "it does not matter . . . how these incidents of armed conflict are characterized"; essentially, the dispute relates to the lawfulness of actions by naval forces of the United States that "involved combat operations". Further, Treaties of Friendship, Commerce and Navigation aim to provide

> "protection for the property and interests of American citizens and companies in the territory of the other party and to assure fair and nondiscriminatory treatment with respect to engaging in commercial, industrial and financial activities in those countries, in return for like assurances for the nationals of those other parties in the territory of the United States. There is simply no relationship between these wholly commercial and consular provisions of the Treaty and Iran's Application and Memorial, which focus exclusively on allegations of unlawful uses of armed force."

In effect, according to the United States, Iran's claims raise issues rela-

ting to the use of force, and these issues do not fall within the ambit of the Treaty of 1955. For this reason, the Court is said to lack jurisdiction to entertain the submissions of the Applicant.

19. In its Observations and Submissions on the Preliminary Objection of the United States, Iran maintains that the dispute that has arisen between the Parties concerns the interpretation or application of the Treaty of 1955. It therefore requests that the preliminary objection be rejected, or, on a subsidiary basis, if it is not rejected outright, that it should be regarded as not having an exclusively preliminary character within the meaning of Article 79, paragraph 7, of the Rules of Court.

20. The Court notes in the first place that the Treaty of 1955 contains no provision expressly excluding certain matters from the jurisdiction of the Court. Indeed, Article XX, paragraph 1 *(d)*, provides that:

> "1. The present Treaty shall not preclude the application of measures:
>
> . . . . . .
>
> *(d)* necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests."

This text could be interpreted as excluding certain measures from the actual scope of the Treaty and, consequently, as excluding the jurisdiction of the Court to test the lawfulness of such measures. It could also be understood as affording only a defence on the merits. The Court, in its Judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, adopted the latter interpretation for the application of an identical clause included in the Treaty of Friendship, Commerce and Navigation concluded between the United States and Nicaragua on 21 January 1956 (*I.C.J. Reports 1986,* p. 116, para. 222, and p. 136, para. 271). Iran argues, in this case, that the Court should give the same interpretation to Article XX, paragraph 1 *(d)*. The United States, for its part, in the most recent presentation of its arguments, stated that "consideration of the interpretation and application of Article XX, paragraph 1 *(d)*, was a merits issue". The Court sees no reason to vary the conclusions it arrived at in 1986. It accordingly takes the view that Article XX, paragraph 1 *(d)*, does not restrict its jurisdiction in the present case, but is confined to affording the Parties a possible defence on the merits to be used should the occasion arise.

21. The Treaty of 1955 imposes on each of the Parties various obligations on a variety of matters. Any action by one of the Parties that is incompatible with those obligations is unlawful, regardless of the means by which it is brought about. A violation of the rights of one party under the Treaty by means of the use of force is as unlawful as would be a vio-

lation by administrative decision or by any other means. Matters relating to the use of force are therefore not *per se* excluded from the reach of the Treaty of 1955. The arguments put forward on this point by the United States must therefore be rejected.

* *

22. In the second place, the Parties differ as to the interpretation to be given to Article I, Article IV, paragraph 1, and Article X, paragraph 1, of the Treaty of 1955. According to Iran, the actions which it alleges against the United States are such as to constitute a breach of those provisions and the Court consequently has jurisdiction *ratione materiae* to entertain the Application. According to the United States, this is not the case.

23. The Court recalls that, according to customary international law as expressed in Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Under Article 32, recourse may be had to supplementary means of interpretation such as the preparatory work and the circumstances in which the treaty was concluded.

*

24. Article I of the Treaty of 1955 provides that: "There shall be firm and enduring peace and sincere friendship between the United States . . . and Iran."

25. Iran contends that this provision

> "does not merely formulate a recommendation or desire . . ., but imposes actual obligations on the Contracting Parties, obliging them to maintain long-lasting peaceful and friendly relations".

This interpretation is said to be required by the context, and to be reinforced by the circumstances in which the Treaty was concluded. It is described as the only interpretation which would enable "effectiveness" to be imparted to Article I. That Article would, then, impose upon the Parties

> "the minimum requirement . . . to conduct themselves with regard to the other in accordance with the principles and rules of general international law in the domain of peaceful and friendly relations"

and, particularly, in accordance with the relevant provisions of the Charter of the United Nations and of customary law governing the use of force, as well as with General Assembly resolution 2625 (XXV) concerning friendly relations among States. For Iran,

> "any violation by one party at the expense of the other of the rules of international law pertaining to the threat and use of force, as well

as pertaining to friendly relations between States, must at the same time be considered as a violation of the Treaty of Amity".

The Court is accordingly said to have jurisdiction to evaluate the lawfulness of the armed actions of the United States in relation to the provisions of Article I of the Treaty of 1955 and, accordingly, in relation to the rules of general international law thus "incorporated" into the Treaty.

26. The United States considers, on the contrary, that Iran "reads far too much into Article I". That text, according to the Respondent, "contains no standards", but only constitutes a "statement of aspiration". That interpretation is called for in the context and on account of the "purely commercial and consular" character of the Treaty. It is said to correspond to the common intention of the Parties, and to be confirmed by the circumstances in which the Treaty was concluded and by the practice of the Parties. It follows that the conduct of the United States cannot, in this case, be evaluated in relation to the provisions of Article I. The Court is said to lack jurisdiction to entertain the submissions of Iran based on that Article.

27. Article I states that "There shall be firm and enduring peace and sincere friendship" between the two contracting States. The Court considers that such a general formulation cannot be interpreted in isolation from the object and purpose of the Treaty in which it is inserted.

There are some Treaties of Friendship which contain not only a provision on the lines of that found in Article I but, in addition, clauses aimed at clarifying the conditions of application: an explicit reference to certain provisions of the Charter of the United Nations; consultation between the parties in certain circumstances, in particular in the event of an armed conflict with a third State; or co-operation in the event of problems with neighbouring States. Such, for instance, was the case of the Treaty of Friendship and Good Neighbourliness between the French Republic and the United Kingdom of Libya of 10 August 1955, which the Court had occasion to interpret in its Judgment of 3 February 1994 in the case concerning the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* (*I.C.J. Reports 1994*, p. 6). However, this does not apply to the present case.

Article I is in fact inserted not into a treaty of that type, but into a treaty of "Amity, Economic Relations and Consular Rights" whose object is, according to the terms of the Preamble, the "encouraging [of] mutually beneficial trade and investments and closer economic intercourse generally" as well as "regulating consular relations" between the two States. The Treaty regulates the conditions of residence of nationals of one of the parties on the territory of the other (Art. II), the status of companies and access to the courts and arbitration (Art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), the conditions for the purchase and sale of real property and protection of intellectual property (Art. V), the tax system (Art. VI), the system of transfers (Art. VII), customs duties and other import restrictions (Arts. VIII and IX), freedom of

commerce and navigation (Arts. X and XI), and the rights and duties of Consuls (Arts. XII-XIX).

28. It follows that the object and purpose of the Treaty of 1955 was not to regulate peaceful and friendly relations between the two States in a general sense. Consequently, Article I cannot be interpreted as incorporating into the Treaty all of the provisions of international law concerning such relations. Rather, by incorporating into the body of the Treaty the form of words used in Article I, the two States intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations and that such a development would in turn reinforce that peace and that friendship. It follows that Article I must be regarded as fixing an objective, in the light of which the other Treaty provisions are to be interpreted and applied.

This conclusion is in conformity with that reached by the Court in 1986, when, on the occasion of its interpretation of the Treaty of Friendship of 1956 between the United States and Nicaragua, it stated in general terms that:

> "There must be a distinction . . . in the case of a treaty of friendship, between the broad category of unfriendly acts, and the narrower category of acts tending to defeat the object and purpose of the Treaty. That object and purpose is the effective implementation of friendship in the specific fields provided for in the Treaty, not friendship in a vague general sense." (*I.C.J. Reports 1986,* p. 137, para. 273.)

29. The Court must now turn its attention to the documents produced by the Parties in support of their respective positions concerning the meaning to be given to Article I. In this regard, it may be thought that, if that Article had the scope that Iran gives it, the Parties would have been led to point out its importance during the negotiations or the process of ratification. However, the Court does not have before it any Iranian document in support of this argument. As for the United States documents introduced by the two Parties, they show that at no time did the United States regard Article I as having the meaning now given to it by the Applicant.

A clause of this type was inserted after the end of the Second World War into four of the Treaties of Friendship and Commerce or Economic Relations concluded by the United States, i.e., those concluded with China, Ethiopia and Iran as well as with Oman and Muscat. Indeed, during the negotiation of the treaty with China, the United States Department of State had indicated, in a memorandum addressed to its embassy in Chongqing, that if such a clause was not customary in treaties of this kind concluded by the United States, its inclusion was nonetheless justified in that case "in view of the close political relations between China and the United States". But, during the discussions in the United States Senate that preceded the ratification of the four Treaties, the clause does

not, according to the material submitted to the Court, appear to have been given any particular attention. Only in the message from the Secretary of State whereby he transmitted the Treaty with Ethiopia to the Senate, after referring to the provisions in question, was it pointed out that:

> "Such provisions, though not included in recent treaties of friendship, commerce and navigation, are in keeping with the character of such instruments and serve to emphasize the essentially friendly character of the treaty."

As for the clause on dispute settlement that was included in most of the treaties of friendship and commerce concluded by the United States after 1945, it appears to have been consistently referred to by the Department of State as being "limited to differences arising immediately from the specific treaty concerned", as such treaties deal with "familiar subject matter" in relation to which "an established body of interpretation already exists".

30. The practice followed by the Parties in regard to the application of the Treaty does not lead to any different conclusions. The United States has never relied upon that Article in proceedings involving Iran and, more particularly, did not invoke that text in the case concerning *United States Diplomatic and Consular Staff in Tehran*. Neither did Iran rely on that Article, for example in the proceedings before this Court in the case concerning the *Aerial Incident of 3 July 1988*.

31. In the light of the foregoing, the Court considers that the objective of peace and friendship proclaimed in Article I of the Treaty of 1955 is such as to throw light on the interpretation of the other Treaty provisions, and in particular of Articles IV and X. Article I is thus not without legal significance for such an interpretation, but cannot, taken in isolation, be a basis for the jurisdiction of the Court.

*

32. Article IV, paragraph 1, of the Treaty of 1955 provides that:

> "Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws."

33. Iran contends that this text places each of the Parties under an obligation to accord "fair and equitable treatment" to nationals and property of the other Party and to refrain from applying any "unreasonable or discriminatory measures" to them, wherever those nationals or that property may be. It submits that it falls to the Court to evaluate the

lawfulness of the armed actions of the United States in relation to those provisions.

34. The United States considers on the contrary that

> "Article IV, paragraph 1, deals with the treatment by one Party of nationals and companies of the other Party that come within its territory for commercial or private purposes".

It submits that that text

> "cannot be read as a wholesale warranty by each Party to avoid all injury to the nationals and companies of the other Party, regardless of location of those nationals and companies".

The United States recalls that the actions allegedly committed by it do not concern Iranian nationals or companies that come within the territory of the United States. This means, in the view of the United States, that its conduct cannot be evaluated in this case in relation to Article IV, paragraph 1. The Court is thus said to lack jurisdiction to entertain the submissions of Iran based on this text.

35. The Court observes in the first place that Article IV, paragraph 1, unlike the other paragraphs of the same Article, does not include any territorial limitation. The general guarantee made available by paragraph 1 has, on that account, a wider scope than the particular obligations laid down by the other paragraphs in relation to expropriation, or acts of interference with property or in relation to the management of enterprises. It follows that the Court cannot accept the arguments of the United States on this point.

36. However, the Court is no more able to uphold the argument of Iran. Article IV, paragraph 1, states that the nationals and companies of one of the contracting parties, as well as their property and enterprises, must be treated by the other party in a "fair and equitable" manner. This text prohibits unreasonable or discriminatory measures that would impair certain rights and interests of those nationals and companies. It concludes by specifying that their legitimately acquired contractual rights must be afforded effective means of enforcement. The whole of these provisions is aimed at the way in which the natural persons and legal entities in question are, in the exercise of their private or professional activities, to be treated by the State concerned. In other words, these detailed provisions concern the treatment by each party of the nationals and companies of the other party, as well as their property and enterprises. Such provisions do not cover the actions carried out in this case by the United States against Iran. Article IV, paragraph 1, thus does not lay down any norms applicable to this particular case. This Article cannot therefore form the basis of the Court's jurisdiction.

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37. It remains to consider what consequences, in terms of the jurisdiction of the Court, can be drawn from Article X, paragraph 1, of the Treaty of 1955.

That paragraph reads as follows: "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

38. It has not been alleged by the Applicant that any military action has affected its freedom of navigation. Therefore, the question the Court must decide, in order to determine its jurisdiction, is whether the actions of the United States complained of by Iran had the potential to affect "freedom of commerce" as guaranteed by the provision quoted above.

39. Iran has argued that Article X, paragraph 1, does not contemplate only maritime commerce, but commerce in general; that it protects this without territorial restriction; and that, apart from the activities of purchase and sale of goods, it covers those which, at a prior stage, enable the goods to be made ready for exchange. As a result, the Court is said to have jurisdiction to evaluate the lawfulness of the armed actions of the United States in the light of this provision.

40. The United States, for its part, maintained that this was not the case, and put forward in support of that argument a more restrictive interpretation of the word "commerce" in the provision in question. According to the United States, that word must be understood as being confined to maritime commerce; as being confined to commerce between the United States and Iran; and as referring solely to the actual sale or exchange of goods.

41. The Court must indeed give due weight to the fact that, after Article X, paragraph 1, in which the word "commerce" appears, the rest of the Article clearly deals with maritime commerce. Yet this factor is not, in the view of the Court, sufficient to restrict the scope of the word to maritime commerce, having regard to other indications in the Treaty of an intention of the parties to deal with trade and commerce in general. The Court also takes note in this connection of the recital in Article XXII of the Treaty which states that the Treaty was to replace, *inter alia*, a provisional agreement relating to commercial and other relations, concluded at Tehran on 14 May 1928. The Treaty of 1955 is thus a Treaty relating to trade and commerce in general, and not one restricted purely to maritime commerce.

42. Also to be considered is the entire range of activities dealt with in the Treaty — as, for example, the reference in Article IV to the freedom of companies to conduct their activities, to enjoy the right to continued control and management of their enterprises, and "to do all other things necessary or incidental to the effective conduct of their affairs".

43. In these circumstances, the view that the word "commerce" in Article X, paragraph 1, is confined to maritime commerce does not commend itself to the Court.

44. The Court does not have to enter into the question whether this provision is restricted to commerce "between" the Parties. It is not con-

tested between them that oil exports from Iran to the United States were — to some degree — ongoing at least until after the destruction of the first set of oil platforms.

45. The Court must now consider the interpretation according to which the word "commerce" in Article X, paragraph 1, is restricted to acts of purchase and sale. According to this interpretation, the protection afforded by this provision does not cover the antecedent activities which are essential to maintain commerce as, for example, the procurement of goods with a view to using them for commerce.

In the view of the Court, there is nothing to indicate that the parties to the Treaty intended to use the word "commerce" in any sense different from that which it generally bears. The word "commerce" is not restricted in ordinary usage to the mere act of purchase and sale; it has connotations that extend beyond mere purchase and sale to include "the whole of the transactions, arrangements, etc., therein involved" (*Oxford English Dictionary*, 1989, Vol. 3, p. 552).

In legal language, likewise, this term is not restricted to mere purchase and sale because it can refer to

> "not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and transportation of persons as well as of goods, both by land and sea" (*Black's Law Dictionary,* 1990, p. 269).

Similarly, the expression "international commerce" designates, in its true sense, "all transactions of import and export, relationships of exchange, purchase, sale, transport, and financial operations between nations" and sometimes even "all economic, political, intellectual relations between States and between their nationals" (*Dictionnaire de la terminologie du droit international* (produced under the authority of President Basdevant), 1960, p. 126 *[translation by the Registry]*).

Thus, whether the word "commerce" is taken in its ordinary sense or in its legal meaning, at the domestic or international level, it has a broader meaning than the mere reference to purchase and sale.

46. Treaties dealing with trade and commerce cover a vast range of matters ancillary to trade and commerce, such as shipping, transit of goods and persons, the right to establish and operate businesses, protection from molestation, freedom of communication, acquisition and tenure of property. Furthermore, in his Report entitled "Progressive Development of the Law of International Trade", the Secretary-General of the United Nations cites, among a number of items falling within the scope of the Law of International Trade, the conduct of business activities pertaining to international trade, insurance, transportation, and other matters (United Nations, *Official Records of the General Assembly, Twenty-*

first Session, Annexes, Agenda item 88, doc. A/6396; also in *Basic Documents on International Trade Law*, Chia-Jui Cheng (ed.), 2nd rev. ed., p. 3).

The Court notes that the Treaty of 1955 also deals, in its general articles, with a wide variety of matters ancillary to trade and commerce.

47. It should also be noted that, in the original English version, the actual title of the Treaty of 1955 — contrary to that of most similar treaties concluded by the United States at that time, such as the Treaty of 1956 between the United States and Nicaragua — refers, besides "Amity" and "Consular Rights", not to "Commerce" but, more broadly, to "Economic Relations".

48. The Court also notes that, in the decision in the *Oscar Chinn* case (*P.C.I.J., Series A/B, No. 63*, p. 65), the Permanent Court of International Justice had occasion to consider the concept of freedom of trade under Article I of the Convention of Saint-Germain. The dispute before the Court arose in the context of measures taken by the Belgian Government in relation to river traffic in the waterways of the Congo. The Permanent Court observed:

> "Freedom of trade, as established by the Convention, consists in the right — in principle unrestricted — to engage in any commercial activity, whether it be concerned with trading properly so-called, that is the purchase and sale of goods, or whether it be concerned with industry, and in particular the transport business; or, finally, whether it is carried on inside the country or, by the exchange of imports and exports, with other countries." (*Ibid.*, p. 84.)

The expression "freedom of trade" was thus seen by the Permanent Court as contemplating not only the purchase and sale of goods, but also industry, and in particular the transport business.

49. The Court concludes from all of the foregoing that it would be a natural interpretation of the word "commerce" in Article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general — not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce.

50. The Court should not in any event overlook that Article X, paragraph 1, of the Treaty of 1955 does not strictly speaking protect "commerce" but "*freedom* of commerce". Any act which would impede that "freedom" is thereby prohibited. Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and their storage with a view to export.

The Court points out in this respect that the oil pumped from the platforms attacked in October 1987 passed from there by subsea line to the

oil terminal on Lavan Island and that the Salman complex, object of the attack of April 1988, was also connected to the oil terminal on Lavan by subsea line.

51. The Court notes that Iran's oil production, a vital part of that country's economy, constitutes an important component of its foreign trade.

On the material now before the Court, it is indeed not able to determine if and to what extent the destruction of the Iranian oil platforms had an effect upon the export trade in Iranian oil; it notes nonetheless that their destruction was capable of having such an effect and, consequently, of having an adverse effect upon the freedom of commerce as guaranteed by Article X, paragraph 1, of the Treaty of 1955. It follows that its lawfulness can be evaluated in relation to that paragraph. The argument made on this point by the United States must be rejected.

52. The conclusions which the Court has reached above as to Article X, paragraph 1, are confirmed by the nature of the Treaty of which this provision forms a part. Its Article I has, as already observed, been drafted in terms so general that by itself it is not capable of generating legal rights and obligations. This is not to say, however, that it cannot be invoked for the purpose of construing other provisions of the Treaty. The Court cannot lose sight of the fact that Article I states in general terms that there shall be firm and enduring peace and sincere friendship between the Parties. The spirit and intent set out in this Article animate and give meaning to the entire Treaty and must, in case of doubt, incline the Court to the construction which seems more in consonance with its overall objective of achieving friendly relations over the entire range of activities covered by the Treaty.

* * *

53. In the light of the foregoing, the Court concludes that there exists between the Parties a dispute as to the interpretation and the application of Article X, paragraph 1, of the Treaty of 1955; that this dispute falls within the scope of the compromissory clause in Article XXI, paragraph 2, of the Treaty; and that as a consequence the Court has jurisdiction to entertain this dispute.

54. Since it must thus reject the preliminary objection raised by the United States, the Court notes that the submissions whereby Iran requested it, on a subsidiary basis, to find that the objection did not possess, in the circumstances of the case, an exclusively preliminary character, no longer have any object.

* * *

55. For these reasons,

THE COURT,

(1) *Rejects*, by fourteen votes to two, the preliminary objection of the United States of America according to which the Treaty of 1955 does not provide any basis for the jurisdiction of the Court;

IN FAVOUR: *President* Bedjaoui; *Judges* Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; *Judge* ad hoc Rigaux;

AGAINST: *Vice-President* Schwebel; *Judge* Oda;

(2) *Finds*, by fourteen votes to two, that it has jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by the Islamic Republic of Iran under Article X, paragraph 1, of that Treaty.

IN FAVOUR: *President* Bedjaoui; *Judges* Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins, Parra-Aranguren; *Judge* ad hoc Rigaux;

AGAINST: *Vice-President* Schwebel; *Judge* Oda.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twelfth day of December, one thousand nine hundred and ninety-six, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Islamic Republic of Iran and the Government of the United States of America, respectively.

(Signed) Mohammed BEDJAOUI,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judges SHAHABUDDEEN, RANJEVA, HIGGINS and PARRA-ARANGUREN and Judge *ad hoc* RIGAUX append separate opinions to the Judgment of the Court.

Vice-President SCHWEBEL and Judge ODA append dissenting opinions to the Judgment of the Court.

(Initialled) M.B.
(Initialled) E.V.O.