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International Court
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YEAR 1996

Public sitting

held on Thursday 19 September 1996, at 10 a.m., at the Peace Palace,

President Bedjaoui presiding

in the case concerning Oil Platforms

(Islamic Republic of Iran v. United States of America)

Preliminary Objection

VERBATIM RECORD

ANNEE 1996

Audience publique

tenue le jeudi 19 septembre 1996, à 10 heures, au Palais de la Paix,

sous la présidence de M. Bedjaoui, Président

en l'affaire des Plates-formes pétrolières

(République islamique d'Iran c. Etats-Unis d'Amérique)

Exception préliminaire

COMPTE RENDU

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

Présents : M. Bedjaoui, Président
M. Schwebel, Vice-Président
MM. Oda
Guillaume
Shahabuddeen
Weeramantry
Ranjeva
Herczegh
Shi
Fleischhauer
Koroma
Vereshchetin
Ferrari Bravo
Mme Higgins,
M. Parra-Aranguren, juges
M. Rigaux, juge *ad hoc*

M. Valencia-Ospina, Greffier

The Government of the Islamic Republic of Iran is represented by:

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

as Agent;

Mr. 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 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 of International Law, Emeritus, University of Cambridge,

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

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

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

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

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

as Counsel.

The Government of the United States of America is represented by:

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as Agent;

Dr. John H. McNeill, Senior Deputy General Counsel, U.S. Department of Defense,

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

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M. Luigi Condorelli, professeur de droit international à l'Université de Genève,

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M. Andreas F. Lowenfeld, professeur de droit international, titulaire de la chaire Rubin à la faculté de droit de l'Université de New York,

Mr. John R. Crook, Assistant Legal Adviser for United Nations Affairs, U.S. 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, JAGC, United States Navy,

as Counsel and Advocates;

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

as Counsel.

M. John R. Crook, conseiller juridique adjoint pour les questions concernant l'Organisation des Nations Unies au département d'Etat des Etats-Unis,

M. Sean Murphy, conseiller pour les affaires juridiques à l'ambassade des Etats-Unis aux Pays-Bas,

M. Jack Chorowsky, assistant spécial du conseiller juridique du département d'Etat des Etats-Unis,

Le capitaine de frégate Ronald D. Neubauer, *Judge Advocate General's Corps,* de la Marine des Etats-Unis,

comme conseils et avocats;

M. Allen Weiner, bureau du conseiller juridique, attaché à l'ambassade des Etats-Unis aux Pays-Bas,

comme conseils.

The PRESIDENT: Today the Court will resume its public hearings on the preliminary objection of the United States of America in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)*. I now call upon the distinguished Agent of the Islamic Republic of Iran, Mr. Mohammed Hussein Zahedin-Labbaf, to open the pleadings on behalf of his Government.

Mr. ZAHEDIN-LABBAF:

In the Name of God the Merciful and Compassionate.

1. Mr. President, Members of the Court, it is an honour and privilege for me to appear before the Court today in this important case as Agent of the Islamic Republic of Iran.

2. This case concerns violations by the United States of provisions of a bilateral treaty between Iran and the United States, the 1955 Treaty of Amity. These violations of the Treaty of Amity occurred when in October 1987 and April 1988 US naval forces attacked and destroyed three sets of Iranian commercial oil installations situated on Iran's continental shelf in the Persian Gulf and owned and operated by the National Iranian Oil Company.

3. In bringing this case before the Court, Iran submits that each of these attacks constituted a serious violation by the United States of important provisions of the Treaty of Amity, and that the Court's jurisdiction to rule on such claims is firmly established by Article XXI (2) of the Treaty - the Treaty's compromissory clause.

4. The United States, in contrast, has objected to the Court's jurisdiction in this case. It contends that the 1955 Treaty of Amity is, contrary to its title, exclusively concerned with commercial matters, and is not designed to deal with the use of armed force by one of the parties against installations of the other.

5. Starting from this premise, the United States has taken the position that the case that Iran has introduced is essentially a case arising under the United Nations Charter, and that what Iran is trying to do is to obtain a general condemnation of the United States for its role in the Iran-Iraq war. The United States argues that it is not the role of the Court to be dragged into disputes of this kind between two parties.

6. It has to be said at the outset, Mr. President, that this is a complete mischaracterization of Iran's case.

7. Let there be no further misunderstandings. While it is of course a matter of public knowledge that Iran has a long list of complaints for the wrongs done and sufferings caused by the United States during the Iran-Iraq war, such matters are not before the Court in this case. What Iran has brought before the Court is a purely legal case arising out of very particular incidents - and one that is grounded in specific provisions of the Treaty of Amity which Iran maintains the United States has breached by attacking the oil platforms. The provisions at issue include Article I, which provides that there shall be firm and enduring peace and sincere friendship between the parties; Article IV, which sets forth a standard of fair and equitable treatment by one party to the nationals and companies of the other, and to their property and enterprises; and Article X, which provides for freedom of commerce and navigation.

8. In Iran's view, the United States' attacks on the platforms violated each of these provisions. Accordingly, Iran's case entails not only a claim for satisfaction in the form of a declaration stating that the United States violated its treaty obligations in destroying the platforms, but also compensation for the substantial damages that Iran

suffered as a result of the destruction of commercial installations belonging to the National Iranian Oil Company, a joint-stock company organized and existing under the commercial laws of Iran.

9. Representatives of the National Iranian Oil Company are here today as part of Iran's delegation. With the Court's leave, I will ask the head of the National Iranian Oil Company's Legal Affairs Department, Dr. Zeinoddin, to follow me. Dr. Zeinoddin will describe for the Court the commercial nature of the platforms and their economic importance to Iran. He will also describe the heavy financial, commercial and economic consequences of the US attacks to Iran's oil industry.

10. In an effort to support its assertion that the Treaty of Amity is exclusively a commercial treaty and therefore has no role to play in connection with the claims that Iran has introduced, the United States has also argued that the Treaty was designed to protect US commercial (and particularly oil) interests in Iran and that this shows that its object and purpose was *solely* commercial. The United States ignores what the Treaty says. It is a treaty of amity. It contains a specific obligation in Article I concerning firm and enduring peace and sincere friendship and this language has implications far beyond the purely commercial sphere. But the United States also ignores the importance of the Treaty in its historical context. While I will leave to Iran's Counsel a detailed explanation of how the United States' contentions are misconceived from the historical point of view, let me make the point now that the international oil industry has as much a strategic component as a commercial one. If one aspect of the 1955 Treaty of Amity was to protect US oil interests in Iran, as the United States maintains, nonetheless the Treaty had as much a strategic importance as a commercial one. And it will be seen that the history of the Treaty bears this out.

11. To the extent that the Treaty also addressed commercial matters, it is Iran's position that the platforms attacked by the United States were commercial installations. It is also Iran's position that these installations were either engaged in the production of oil and gas when they were destroyed or were in the process of being repaired - after earlier Iraqi attacks - so that production could resume. The oil produced from these platforms was vital to Iran's economy. These were in no way military facilities. Indeed, as Dr. Zeinoddin will explain, these installations were wholly inappropriate for use as military installations of the kind alleged by the United States. It is equally undeniable that Iran suffered commercial damage as a result of the attacks. In such circumstances, the US attacks must give rise to a question of interpretation and application of the Treaty.

12. To place these issues in perspective, Mr. Bundy - following Dr. Zeinoddin - will examine the historical background to the Treaty and will show that the Treaty was clearly intended to have both strategic and commercial importance. Mr. Bundy will also examine the development of the platforms in the context of the Treaty, as well as those particular aspects of the background to the US attacks and of the attacks themselves which have a special relevance to the issues confronting the Court.

13. In making this factual presentation, Iran is mindful, of course, that the Court has separated the jurisdictional phase of the case from the merits, and that these proceedings are devoted to the preliminary objection on jurisdiction, without the need to decide at this stage whether or not the US attacks actually constituted breaches of the Treaty. For this reason, we will attempt to confine our presentation to issues that are relevant to the Court's jurisdiction, and will enter into other matters only in so far as they are actually necessary in order to

make the case as a whole more easily understood. As to any other facts relating to the merits, Iran respectfully reserves its right to address these issues as appropriate at a subsequent stage of the proceedings. It is at that stage of the proceedings that Iran will answer the multitude of false accusations made by the United States both in its written and its oral pleadings concerning alleged Iranian actions in the Persian Gulf. Iran will restrict itself now to denying such accusations. But it is important to stress one point, however obvious - that it is Iran which accepts the jurisdiction of the Court in this case. It is the United States which does not want such issues to be discussed on the merits, and which seeks, in introducing such issues in the jurisdiction phase - where they are strictly irrelevant - to avoid a full and proper analysis of the merits.

14. Because this is the jurisdictional phase, Iran's counsel will focus on the legal aspects of the United States' preliminary objection. Following Mr. Bundy, Professor Condorelli will examine the specific provisions of the Treaty invoked by Iran in order to demonstrate that a genuine dispute as to their interpretation and application exists between the Parties. Professor Crawford will then show that the legal requirements for the Court's jurisdiction under the compromissory clause of the Treaty have been satisfied and that the United States' objection must therefore fail.

15. Iran brings this case in full confidence that the Court is a court of law and that the Parties come before it as equals to seek justice. For years, the United States and US companies have relied on the Treaty of Amity as claimants before the Iran-United States Claims Tribunal, United States courts and other tribunals. The United States has relied on it also in this Court. Now, as Respondent, the United

States seeks to avoid recourse to the Treaty. But international law is not a one-way street, Mr. President, and it is in this spirit of equality that Iran submits its claims to the Court.

16. Before calling upon Dr. Zeinoddin, I would like to end by making three points. *First*, as I have pointed out, Iran suffered severe financial and commercial damage as a result of the destruction of its oil platforms at the hands of US naval forces in October 1987 and April 1988. It should be remembered that these damages were inflicted at a critical stage of Iran's history and at a time when Iran's territorial integrity was at risk due to an illegal aggression and invasion.

17. In this context, let no one forget the findings of the Secretary-General of the United Nations: that this war - which caused the loss of hundreds of thousands of Iranian lives and hundreds of millions of dollars of damage to Iran's economy - was begun by an illegal invasion followed by continuous occupation of Iranian territory during the conflict. The Secretary-General held that such actions entailed the full responsibility of Iraq for the conflict.

18. The Secretary-General's Report began by noting that:

> "the war between Iran and Iraq, which was going to be waged for so many years, was started in contravention of international law, and violations of international law give rise to responsibility for the conflict".

It went on to note that the specific concern of the international community in this context was "the illegal use of force and the disregard for the territorial integrity of a Member State". The Report found that the "outstanding event" under these violations was

> "the attack of 22 September 1980 against Iran, which cannot be justified under the Charter of the United Nations, any recognized rules and principles of international law or any principles of international morality [and thus] entails the responsibility for the conflict".

The Report pointed out that Iraq's explanations for its actions on 22 September 1980 "do not appear sufficient or acceptable to the international community" and added that Iraq's aggression against Iran "which was followed by Iraq's continuous occupation of Iranian territory during the conflict" was "in violation of the prohibition of the use of force, which is regarded as one of the rules of *jus cogens*"[1]. It is against this background that the US attacks on Iran's oil platforms must be considered.

19. The *second* point I want to make concerns the United States' characterization of the dispute before the Court, which in many ways ignores the Secretary-General's findings. The Agent of the United States characterized the dispute before the Court as involving: "combat operations" and described these attacks as "part of a series of hostile engagements between United States and Iranian forces that occurred during the course of an international armed conflict" (CR 96/13, p. 61). It was actually suggested that such a characterization of the dispute before the Court was accepted by Iran. Mr. President, Members of the Court, Iran vigorously contests this characterization of the dispute for a number of reasons :

1. This characterization ignores the fact that Iran was acting in self-defence in the face of an aggressor who was illegally occupying part of its territory.
2. It ignores the fact that the United States had as a minimum, both under the Treaty of Amity and under international law, a duty of strict neutrality in such a situation. There was at no stage a state of armed conflict between Iran and the United States.

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[1]See Further Report of the Secretary-General on the Implementation of Security Council resolution 598 (1987), 9 December 1991 (S/23273), para. 5 (Iran's Memorial, Exhibit 42).

3. It implies that the attacks on the platforms were a part of a series of hostile engagements between Iranian and United States forces, whereas it is Iran's position that these were unprovoked attacks on civilian and commercial facilities.

In short, Iran disputes not only the United States' version of these events but also the United States' characterization of the dispute before the Court. Iran's claim, by contrast, relates only to the specific United States attacks on the specified civilian facilities.

20. The *third* point I want to make before concluding is a more cheerful one. Iran is pleased to note the United States' announcement that it is willing to appear in this Court on the merits in the event that the Court finds that it has jurisdiction (CR 96/12, pp. 13 *et seq.*). It is true that the United States made this announcement this week in terms which appeared to threaten the Court with onerous evidentiary proceedings which would tax its limited resources. In addition, the intention of the United States to produce vast quantities of evidence was made with a view to deterring the Court from hearing any evidence at all. But that aside, Mr. President, this is a court of justice, to which parties to the Statute are entitled to come. The Court, while no doubt pleased that both Parties are ready to resolve their disputes on the merits by the submission of evidentiary materials, will not be deterred by the prospect that it has to do justice in respect of their dispute. That is its function. And it is no more inappropriate for Iran to bring this dispute under the Treaty of Amity than it was for Iran to bring the *Aerial Incident* case, which Iran is pleased to record was settled amicably.

21. Mr. President, Members of the Court, Iran was one of the early members of both the League of Nations and the United Nations. Iran

remains deeply committed to the principles of those bodies, to the rule of law and to the peaceful settlement of disputes. Iran has shown this through the establishment of the Algiers Declarations, by its compliance with the Judgement of the Court in the *Diplomatic and Consular Staff* case as a result of which that case was withdrawn from the Court, and through the work of the Iran-United States Claims Tribunal. Such actions show a firm commitment to the obligation to settle disputes peacefully and a strong confidence in the rule of law. It is with such commitment and such confidence that Iran has submitted this case to you.

Mr. President, that concludes my opening statement. I would ask you to call upon Dr. Zeinoddin, who will continue with the next part of Iran's presentation. Thank you.

The PRESIDENT: Thank you very much, Mr. Mohammed Hussein Zahedin-Labbaf. I now give the floor to Dr. Zeinoddin.

Mr. ZEINODDIN:

1. Mr. President, Distinguished Members of the Court, it is my task to assist the Court in describing the commercial significance of this case to Iran. The National Iranian Oil Company is a commercial entity formed under the commercial code of Iran for commercial purposes and in which the Government is the shareholder. The National Iranian Oil Company is responsible for the exploration, production and marketing of all of Iran's oil, activities which entailed the construction and use of the platforms which were attacked by the United States' military forces on 19 October 1987 and 18 April 1988.

2. The Court will not need reminding that oil is the life blood of Iran's economy, and these platforms were of a vital commercial and economic importance to Iran. Their purpose was to gather oil from a

series of inter-connected oil wells drilled into the underlying oil fields. The oil would then be pumped from the platform by undersea pipeline to the nearest facilities for the storage and/or loading onto tankers for sale on the world's markets. The platforms were complex structures containing sophisticated equipment representing hundreds of millions of dollars worth of investment. Between them, the platforms hit and destroyed by the United States had an oil production capacity of over 500,000 barrels of oil per day, and were the sole means available for exploiting the underlying oil field reserves. Thus, any damage to or destruction of such platforms would be certain to cause substantial losses, not only in internal costs of new investment to rebuild the platforms, but also in loss of revenues due to the disruption of oil exports, possible, or rather inevitable, damage to the underlying oil reserves, and environmental damage including a huge discharge of oil into the sea. In the event, the cost of rebuilding only one of these platforms amounted to over 500 million dollars.

3. The commercial importance of these platforms is borne out by briefly recalling the history of their development. These platforms, as well as other Iranian offshore platforms in the Persian Gulf had been built, and the underlying oil fields exploited, through joint venture agreements entered into between the National Iranian Oil Company and foreign, principally United States, oil companies, in the late 1950s and early 1960s following the signing of the Treaty of Amity.

4. The joint exploitation of the oil fields continued right up until the Islamic Revolution. During the Revolution, the foreign oil companies who were involved in joint venture agreements with the National Iranian Oil Company left Iran and were not in a position to resume their activities under these agreements. Nevertheless, they were able to make

claims, for hundreds of millions of dollars, for their lost interests. As Mr. Bundy will explain in more detail after I have spoken, many of these claims were presented before the Iran-United States Claims Tribunal. It is significant that in bringing these claims the United States companies relied on provisions of the Treaty of Amity in order to justify their claims, alleging that the events surrounding the Islamic Revolution amounted to an unlawful taking and requesting compensation under the terms of Article IV (2) of the Treaty of Amity. The companies also produced affidavits by United States officials who were involved in the negotiation of the Treaty to the effect that the Treaty was in part specifically designed to protect oil interests, in particular, United States oil investments in Iran. The huge size of the United States companies' claims in these cases also emphasizes the commercial value of the platforms in question, and of the underlying oil fields. The National Iranian Oil Company eventually paid in the order of hundreds of millions of dollars in settlement of the United States oil companies' claim relating to two of the platforms in question in this case.

5. Following the Revolution, and the departure of the oil companies, the National Iranian Oil Company continued to exploit the oil fields and to use the oil platforms for the production of oil, i.e., for commercial purposes. This situation remained unchanged during the war imposed upon Iran by Iraqi aggression. Indeed, these offshore fields had a particular economic importance during the war because many of Iran's mainland oilfields were close to the frontline and were thus exposed to the calamities of the war and continued bombardment. Moreover, several of Iran's main oil facilities and export centres, old and new, such as Bandar Imam, Abadan, and Kharg Island in the same region were subject to constant attack. However, the platforms at issue in this case were

farther from the frontline and were thus relatively secure - at least during the early years of the war.

6. It was no doubt with these considerations in mind, and in an effort to internationalize the conflict, and to attempt to destroy the basis of Iran's economy - its oil, that Iraq began in 1986 to 1987 to carry out indiscriminate attacks throughout the Persian Gulf on all kinds of shipping, but in particular against any facility that was connected in any way with Iran's oil industry. Iraq's capacity to make such long-range attacks far down the Persian Gulf to where the oil platforms at issue were located had also increased. Because of their critical importance to the economy of the country, these platforms were an obvious target, particularly in view of their inability to defend themselves against any military attacks. Small security forces were put on the platforms in an effort to provide some moral comfort for the oil company personnel working there, and to help them evacuate in the event of Iraqi attack. However, such measures were necessarily very limited. As I mentioned, the platforms were extremely vulnerable. They are static, basically unable to defend themselves, and highly dangerous for obvious reasons - the presence of oil and gas in substantial quantities on the platforms themselves.

7. Despite Iraqi attacks on individual platforms, and the danger to personnel, the National Iranian Oil Company exerted every possible effort to repair the platforms and tried strenuously to keep them in production because of their vital economic importance.

8. It was against this background that the first attack by the United States military forces took place on 19 October 1987, against two platform complexes in the Reshadat field. This attack effectively put an end to production from both the Reshadat and Resalat fields. The second

attacks took place on 18 April 1988 against the Salman complex and against the Central Nasr production platform. In each of these attacks, the platforms were bombarded by massed United States naval forces. In two of the attacks, United States forces then boarded the platforms to lay explosives in order to complete the destruction. The people on the platforms simply had no way to defend themselves against such force. The attacks in fact caused loss of life and injuries to personnel stationed on the platforms. They also caused massive economic damage to Iran, not only in the immediate loss of oil revenues, but also in the huge costs of rebuilding the platforms, costs which are still being felt by Iran today.

9. The United States has tried to justify the first attack against the Reshadat platform on the basis of an alleged Iranian missile attack against the *Sea Isle City*, a vessel stationed in Kuwaiti waters, some four days earlier. And the second attacks, on 18 April 1988, were allegedly a reprisal against the fact that the *Samuel B. Roberts*, a United States military vessel, hit a mine in the Persian Gulf east of Bahrain some days earlier. Iran will not address these allegations in detail because they are essentially matters for the merits. However, I will make a few brief points in response to the United States' allegation that these platforms were some kind of military installations. While this is also a matter for the merits, I want to explain to the Court why such a contention, which Iran of course denies, is on its face implausible. Such platforms are quite small, and are packed with complex equipment. As a general rule, they were operated by 10-15 oil company personnel - technicians, drilling experts and so on, responsible for maintenance and repair work. It is not feasible to install missiles or any other kind of sophisticated military equipment on such small areas, and totally impractical to use them as a base for attacks. The very idea

is absurd not because of physical limitations of the platforms and their extreme vulnerability, but also because of the high level of danger that would be involved in having any kind of explosive material on such platforms. The small number of security personnel posted on these platforms were simply there to act as look-outs to provide early warning of attacks and to provide some comfort and support to the oil company personnel in the light of Iraqi attacks. These platforms could not possibly be used for any military purposes of the kind contended by the United States.

10. In short, these platforms were not and could not be military installations. They were used for commercial purposes, and this is just one of the reasons why Iran contends that these attacks were not carried out by way of lawful self-defence, but were designed to cause the maximum financial, commercial, and economic damage to Iran.

11. Mr. President, Members of the Court, I have referred to certain facts from the perspective of the company who owned and operated these platforms, and I have tried to emphasize the commercial significance of these platforms, the nature of the activities carried out on them, and the enormous magnitude of the damage suffered by the Iranian oil industry. In Iran's view, these matters only confirm the applicability of the Treaty of Amity to this dispute.

12. Mr. President, distinguished Members of the Court, that is all I wanted to say with regard to the background to this case. I will now hand over to Mr. Bundy who will present you with a more detailed appreciation of the facts and of their relevance to the issues of jurisdiction currently before you. Thank you.

The PRESIDENT: Thank you very much, Mr. Zeinoddin. I now give the floor to Mr. Rodman Bundy.

Mr. BUNDY:

THE FACTS RELEVANT TO JURISDICTION

Introduction

Mr. President, Members of the Court, may it please the Court. I am honoured to appear before you today on behalf of the Islamic Republic of Iran in this important case.

Now, as Iran's Agent has explained to you, my task is to lay before you the factual considerations which are relevant to the question of jurisdiction. I stress the word "jurisdiction" because the nature of these proceedings is such that it is neither necessary, nor appropriate, for me to trespass on to the merits.

Our distinguished opponents have shown no similar reservations about discussing the merits. Commander Neubauer presented the views of the United States at some length and in some detail on several issues of fact relating to the Iran-Iraq war and the attacks on the platforms.

Professor Lowenfeld argued that Iran could not rely on Article X (1) of the Treaty of Amity, which provides, as you know, for freedom of commerce and navigation, because "whatever their normal function, the oil platforms involved in the present case were being used ... for guiding armed attacks on shipping in the Gulf - hardly a commercial activity" (CR 96/12 p. 55).

Mr. Matheson added that the Court's decision in the *Nicaragua* case on the same freedom of commerce clause that appears in the Treaty of Amity has no application here because "we are dealing with platforms that have no relationship to maritime commerce and were in fact being used for military purposes" (CR 96/13, p. 63). And Dr. Murphy made the same point. He asserted that the platforms and the oil facilities attacked by

the United States in this case had no linkage to maritime commerce unlike the installations that were subject to attack in the *Nicaragua* case (CR 96/13, pp. 41-42).

Mr. President, Members of the Court, those kinds of issues are clearly matters for the merits. They are squarely in dispute between the Parties and they have not been proved by the United States. So it is no use, I would submit, for Mr. Chorowsky to try to reassure us that the United States has not asked the Court to resolve any factual issues which are in dispute and which are at the heart of the merits, for that is precisely what the United States has done (CR 96/13, pp. 54). As the example I have just cited so clearly shows, in order to support its preliminary objection the United States asks the Court to assume, despite the evidence to the contrary, that the platforms were not engaged in commercial activities, but rather were being used as bases to attack neutral shipping when they were destroyed by the United States. Now we will prove that that was not the case, but we will do so at the appropriate time - which is at the merits.

Elsewhere, the United States asks the Court to accept that the attacks on the platforms were part of a series of hostile engagements between Iran and the United States which constituted armed conflict (CR 96/13, pp. 25-61). As Iran's Agent has stated, Iran disagrees. There was no state of armed conflict between Iran and the United States and Iran had absolutely no desire to engage US forces. If anything, the evidence that has already been produced in the written submissions demonstrates that Iran sought to avoid confrontation with the United States (Iran's Memorial, Exhibits 44 and 55). It was the United States which attacked and destroyed a defenceless set of

commercial oil platforms. This was not "armed conflict". And if it was an "engagement", it was a singularly unilateral one.

Now, although there are many such issues that have been raised by our opponents, I do not intend to follow them down the same factual paths. This is not because Iran does not wish to take up these issues on the merits or accepts what the United States has to say about them, but rather out of deference to Article 79 (5) of the Rules of Court - a provision which Mr. Chorowsky neglected to mention in his exposé on Article 79 the other day. It provides, as the Court is well aware, that statements at these hearings should be confined to matters that are relevant to the preliminary objection. So, accordingly, I shall concentrate on the factual issues which Iran believes to be genuinely relevant to the question of jurisdiction, and I shall comment on other factual matters only to the extent that it is necessary to restore some balance to what the United States has said.

* * *

As the Court is aware, Iran's claims relate to the destruction by the United States in October 1987 and April 1988 of several oil platforms which, as Dr. Zeinoddin has explained, were owned and operated by the National Iranian Oil Company (NIOC). These platforms were engaged in the commercial production of oil and gas from Iran's continental shelf when they were attacked. Now I will be explaining in due course the layout of the platforms and the installations. But only two of those installations, platform R7, in the Reshadat complex and the control room at the Salman complex were undergoing repairs at the time they were attacked. These were repairs that were necessitated by earlier Iraqi bombardments. The other platforms were operational. Iran maintains that

these attacks of the United States breached specific provisions of the 1955 Treaty of Amity between the two countries.

Aside from taking issue with the commercial nature of the platforms, the essence of the United States' objection is that there is no connection, no connection whatsoever, between the Treaty and Iran's claims. This argument resurfaces repeatedly throughout the preliminary objection and we have heard it again in the first round presentation of our distinguished opponents. Let me quote one of the ways in which the United States characterizes this assertion and this is from the preliminary objection:

> "Iran's efforts to recast the 1955 Treaty addressing purely commercial and consular matters, as addressing the fundamental issues of war and peace fly in the face of the *terms* of the 1955 Treaty and its *history* as well as the *jurisprudence* of the Court." (Preliminary Objection, para. 3.01; emphasis added.)

Now, it will fall to my colleagues, Professors Condorelli and Crawford, to demonstrate the fallacies of this argument based on the *terms* of the Treaty and the Court's *jurisprudence*. In so far as the facts are concerned, what I propose to do is to test the United States' contentions against the historical background of the case, including the *history* of the Treaty. In Iran's submission, this analysis will support the following four propositions:

(i) contrary to the United States' assertion, the Treaty of Amity was *not* solely concerned with commercial or consular matters, but it had a far wider strategic importance of which the undertaking to maintain *peaceful* and *friendly* relations was an essential element;

(ii) the off-shore oil installations which the United States destroyed in this case represented precisely the kind of facilities that the Treaty was designed to protect;

(iii) the oil platforms in question were engaged in *commercial* operations when they were destroyed and fell squarely within the scope of the Treaty's provisions even under the United States' reading of the Treaty; and

(iv) the United States' attacks on the platforms consequently give rise to fundamental questions relating to the interpretation and application of the Treaty, and this is true whether these attacks are viewed in isolation or in the overall context of the United States' conduct in the Persian Gulf during the Iran-Iraq war.

In order to place these matters in perspective, it may assist the Court if I adopt a generally chronological approach to the facts. This involves focusing on four main series of events:

(i) *first*, I shall examine the factual context within which the Treaty of Amity was signed in 1955. For it is this context which sheds light on the object and purpose of the Treaty's individual provisions;

(ii) *second*, I shall review the subsequent development of Iran's off-shore oil industry, including the platforms that are the subject of these proceedings. It will be seen that one of the purposes of the Treaty was to encourage and protect this development, not solely for commercial purposes as the United States would have the Court believe, but also for fundamental political and strategic reasons;

(iii) the *third* section of my presentation will address very briefly, and I assure the Court it will be brief, on some of the background facts relating to the Iran-Iraq war. While I do not propose to treat these matters in detail whatsoever, it is necessary to touch

on certain events in order to correct the highly coloured version of the facts presented by the United States at these hearings;

(iv) finally, I shall say a few words about the attacks themselves and the United States' alleged justification for them.

Once again, I stress that in undertaking this exercise my purpose is not to examine whether the United States actually breached the provisions of the Treaty. This is clearly reserved for the merits. Rather, my intention is to show that there are genuine questions, genuine questions of interpretation and application of the Treaty sufficient to vest jurisdiction in the Court under the terms of the Treaty's compromissory clause.

* * *

Now with that introduction, Mr. President, let me turn to:

1. The factual background within which the Treaty of Amity was signed

In his intervention on Tuesday, Mr. Crook conveyed the impression that there was nothing particularly remarkable about the signing of the Treaty of Amity in 1955. He claimed that it had a purely commercial, practical character and that there were no high politics or strategy involved (CR 96/13, pp. 8, 10). With due respect, this account of the historical context in which the Treaty was signed does not do justice to the very important and real political and strategic interests that were at stake at that time.

The Treaty of Amity was signed on 15 August 1955 during what was a highly sensitive period for Iran and the United States in their relations, when fundamental strategic questions were as important as if not more important than commercial considerations. Contrary to Mr. Crook's suggestion, shortly before the Treaty there had been in fact a fundamental shift in the Parties' political relations, and this played a

key role in the political background of the Treaty. It was not simply that the Shah needed a boost to his régime, as Professor Lowenfeld suggested the other day (CR 96/12, p. 53). Rather, it was that the United States was intent on strengthening its relations with Iran across the board, as a result of changes in the Iranian Government that had happened shortly before the onset of the Cold War. Any proper interpretation of the Treaty cannot be divorced from this particular context.

Four years earlier in 1951, the Iranian Parliament, with the support of Dr. Mossedegh's National Front, had passed an act nationalizing Iran's oil industry, which up to that point, as the Court will be aware, had been exclusively owned and operated by the Anglo-Iranian Oil Company. This event provoked a serious international crisis which involved the United States and other countries.

The Court will be aware of the political events that followed these developments, particularly in view of the fact that proceedings were brought before the Court in 1951 relating to the nationalization of the Anglo-Iranian Oil Company. As has been acknowledged by US officials, in August 1953 Dr. Mossedegh was deposed as a result of a coup organized and financed by the CIA - about as drastic a shift in relations as one can imagine - and the United States was well on its way to establishing a new relationship with Iran under the Shah that would form one of the cornerstones of its foreign policy for the next twenty-five years.

In addition to reinstating the Shah, the United States had two main objectives. The first was to prevent Iran from falling under the Soviet Union's sphere of influence during a particularly sensitive period of the Cold War. The second was to develop Iran's oil industry, but not simply for commercial purposes, but also for fundamental *political* and *strategic*

reasons which included the need to provide for a flow of income to the Shah in order to prop up his régime and to ensure a secure source of oil to the West. These two policies were interrelated, and each was based on its own set of political considerations and each was served by the signing of the Treaty of Amity.

To this end, the United States embarked on three initiatives. *First*, in 1954, several major US oil companies became involved for the first time in Iran's oil industry through participation in a new "Consortium Agreement" with NIOC. This Agreement replaced the old arrangements that had previously existed under the Anglo-Iranian Company, and subsequently, other oil agreements were signed between NIOC and US oil companies including the agreements that led to the construction of the platforms at issue in this case. *Second*, the United States took the lead in the creation of the Baghdad Pact - otherwise known as CENTO - a strategically oriented military alliance between Iran, Iraq, Turkey and Pakistan which was created in 1955 and which Iran adhered to later in the year. *Third*, in August 1955, amidst these events the United States cemented relations with Iran by signing the Treaty of Amity, the negotiation of which had actually started in July 1954. It was no accident that these three events coincided.

With respect to the Consortium Agreement, it represented one of the most important oil agreements in the world. While the Anglo-Iranian Oil Company had previously held concessionary rights over virtually all of Iran's oil industry, these interests had been transferred to NIOC as a result of Iran's nationalization policy, and a consortium of international oil companies, in which American companies commanded a 40% share, was formed for the purpose of purchasing Iranian oil at favourable prices and operating the oil industry.

One of the ironies of this case is that for several years during the 1980s, NIOC and most of the major oil companies that were parties to the Iranian oil agreements were engaged in litigation relating to these agreements, and this was litigation that was heard just down the hall. In all of these cases, all of them, the oil companies stressed the linkage between the signing of the Treaty of Amity and the development of Iran's oil industry in the 1950s.

In particular, the companies were at pains to show that one of the purposes of the Treaty was to protect US oil investments especially after the signing of the Consortium Agreement in 1954. The Court will find, as Dr. Zeinoddin has mentioned, in Iran's written pleadings affidavits prepared by two of the US negotiators of the Treaty and they expressly confirm that the Consortium Agreement was an important part of the political background of the Treaty negotiations (Exhibit 5 to Iran's Observations).

The oil companies were correct, Mr. President: *one* of the purposes of the Treaty was to provide for the protection of investment in Iran's oil industry. But that does not mean that the Treaty was exclusively concerned with commercial matters as our distinguished opponents would have the Court believe. For oil and strategic interests go hand in hand, and the interests of the American oil companies that were being protected in Iran in the 1950s were as much *strategic* in nature as commercial. In other words, the Treaty of Amity, as its name suggests, was designed to deal with fundamental issues involving peace, friendship and security as well as commercial relations.

The evidence for this conclusion is derived from official US Government documents which have been annexed to Iran's pleadings (see exhibits 4-7 to Iran's Observations). As these documents show, US

companies at the time actually had little interest from the commercial point of view in becoming involved in Iran's oil industry in the 1950s. At the time, their petroleum requirements were amply covered by other sources of supply, and there was a reluctance of some of the US major oil companies to become involved in Iran for fear of alienating other regional powers, such as Saudi Arabia, in which they had a significant stake.

The US Government took a fundamentally different view. The matter was of such importance that it was discussed at the highest levels of the American Government. And as a result of this debate, considerable pressure was placed on US oil companies to become involved in Iran's oil industry despite their reluctance to do so.

If the Court refers to Exhibit 7 to Iran's Observations, it will find a copy of a letter dated 28 January 1954 from the Acting United States Secretary of State to the Chairman of the Standard Oil Company of California, which at that time, if I am correct, was the largest American oil company, which sums up how the United States viewed the Iranian oil situation. This was at the same time the Treaty was being negotiated. That letter leaves no doubt that the United States Government deemed the participation of US oil companies in Iran's oil industry to be absolutely essential to the security interests of the United States. Not only was it thought that this participation would permit oil revenues to flow to the new Iranian régime, the "friendly" Iranian régime, but it would also contribute to protecting Western interests in the petroleum resources of the Middle East in general.

Now the response of the American oil companies echoed the same theme. So that when the vice-president of Standard Oil Company wrote back to the Secretary of State, he observed that from the strictly

commercial point of view, Standard Oil Company had no real interest in becoming involved in Iran, but it would do so because it was conscious of the large national security interests involved, those were the words that he used (exhibit 7, to Iran's Observations).

Now, because the pricing mechanisms of the purchase of Iranian oil by US companies under the Consortium Agreement would have violated American anti-trust laws, the US Government sought a specific anti-trust exemption for participating companies so that they could collaborate in the Consortium and in the development of Iran's oil industry. But as the US national security-council noted at the time, the enforcement of American anti-trust laws was deemed to be far less important to national security interests of the United States when fostering development of American companies in Iran's oil industry (Exhibit 7, p. 52 to Iran's Observation).

So, if it is true as the facts demonstrate, that the Treaty of Amity was in part designed to protect US oil interests in Iran's oil industry, then it must also be true that this was as much for strategic reasons as commercial ones.

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This leads me to the other important event that affected Iran-US relations at the time. For just as the Treaty of Amity was being negotiated and the Consortium Agreement put into place, the United States was also working to establish a military alliance in the region, an alliance that came to be known as the Baghdad Pact.

As you can see from the first illustration that you will find in your folder, the negotiation of the Baghdad Pact extended the reach of regional security arrangements, anchored by the NATO alliance in the

west, along virtually the entire southern flank of the Soviet Union. These events coincided with the Berlin crisis of June 1953, the end of the Korean War, the coming to power of a Republican administration under President Eisenhower in Washington, and the succession to power of Premier Kruschev in the Soviet Union - hardly a normal political environment as Mr. Crook has sought to portray.

In April 1954, a mutual defence agreement was signed between Turkey and Pakistan. In July 1954, negotiations commenced over the Treaty of Amity. In February 1955, a further defense agreement was entered into between Turkey and Iraq and Iran adhered to that in October 1955 thus completing the Baghdad Pact.

And, as a matter of fact, Iran adhered to the Baghdad Pact just two months after it signed the Treaty of Amity. For just as the United States was anxious to have Iran join a regional security arrangement, so also was it intent on concluding its own Treaty of Amity with Iran to counter Soviet influence in the country and to strengthen political relations with Iran based on principles of peace and friendship. To the extent that the Treaty was also expected to encourage American companies to invest in Iran (commercial activities) this was perceived as advantageous in that it would encourage Iranian-US interdependence and would assist the Shah in regenerating Iran's economy, thus strengthening his régime.

It was against this background that the Treaty of Amity came into existence. Given the importance that Iran played in US strategic thinking at the time, it was no accident that the Treaty of Amity contained a separate provision not found in virtually all of the other United States' Friendship, Commerce and Navigation treaties: namely, the provision that appears in the Treaty's very first article stipulating

that "there shall be firm and enduring peace and sincere friendship between the United States of America and Iran". This particular formula of words chosen by the parties was no accident. It was the direct product of the historical setting in which the Treaty was signed.

And that is not to say that the protection and development of Iran's oil industry had no commercial dimension. Clearly it did. But the Treaty of Amity addresses *both* strategic *and* commercial matters, and oil embodies the two. So the fact that commercial issues are also dealt with in the Treaty hardly creates an impediment to the Court's jurisdiction in this case, particularly when it is recalled that the oil platforms that were attacked and destroyed by the United States were constructed for the purpose of engaging in commercial activities and were so engaged when they were attacked.

By stressing the supposedly "purely commercial" nature of the Treaty, the United States really raises a false problem. At the end of the day, the installations that the were attacked in October 1987 and April 1988 were *both* strategic and commercial in nature. And they were even linked to maritime commerce by virtue of their connection by pipelines to storage and export facilities on Lavan and Sirri Islands close to the Iranian mainland coast. So the dual aspect of the Treaty, the security, peace and friendship aspect and the commercial aspect, provides additional support for the proposition that Iran's claims give rise to fundamental questions of interpretation and application of the Treaty which this Court has jurisdiction to rule on.

Mr. President, I turn now to the second part of my intervention, which deals with the development of Iran's off-shore oil industry, including the platforms in question in this case.

2. ***The development of Iran's offshore industry including the platforms in question***

The conclusion of the Consortium Agreement and the signing of the Treaty of Amity ushered in a new phase in the development of Iran's oil industry. In 1957, two years after the Treaty was signed, Iran enacted a Petroleum Act which opened up off-shore areas in Iran's continental shelf for exploration and production by NIOC in participation with foreign oil companies. The first off-shore agreement was signed in 1958 between NIOC and an American oil company, AMOCO. Now, pursuant to this agreement, four fields were discovered up here in the northern portion of the Persian Gulf in the vicinity of Kharg Island.

This was followed, in January 1965, by the conclusion of two further agreements between NIOC, on the one hand, and a group of oil companies including American participants, on the other. And these are the agreements have a direct bearing on this case.

The first of these was a Joint Structure Agreement between NIOC and a group headed by the Phillips Petroleum Company (American company), pursuant to which a joint star company called IMINOCO was formed to explore for, and exploit, petroleum resources lying further south in the Persian Gulf. Now, it was in this area here. IMINOCO's efforts were successful, and two significant oil fields were discovered - the Rostam field, which was subsequently renamed Reshadat after the Revolution, and the Rakhsh field, which is there, which was subsequently renamed Resalat after 1979; the position of those fields within Iran's continental shelf, which is this boundary here, can clearly be seen on the map. A reduced version of that map is the second map in your folder. A series of production, service and drilling platforms were constructed on both of these fields, and commercial production began from Reshadat in 1969 and Resalat in 1971.

Now, I am going to place on the screen behind me a diagram of the Reshadat and Resalat complex which is No. 3 in your folder, and with the Court's indulgence, Mr. President, I would like to spend a few minutes explaining how these platforms operated because this aspect of the case has a direct bearing on the military actions that the United States took in October 1987, because these were the installations that were attacked on 19 October 1987. Now, as I have said, there were two main complexes, Reshadat (R7) and Resalat (R1), both of which consisted of three inter-connected platforms (as a drilling platform, a service platform and a production platform) and the two fields lay about 29 kilometres apart from each other. A further platform (which is labelled R4), up here, also existed and it had drilling, service and production facilities as well. Now, together, this series of platforms serviced a total of some 40 separate oil wells with a production capacity of up to 200,000 barrels of crude oil a day - a significant commercial operation by any standard. The only reason why this R7 platform was not producing oil in October 1987 when it was attacked was because it had previously been attacked by Iraqi warplanes and was in the course of being repaired. In fact, on the day that the United States attacked the place, Iranian oil workers were engaged in replacing a generator that had been destroyed by the Iraqi bombardments earlier in the year.

As can be seen from the diagram, the lay-out of the facilities was such that all of the oil produced from either Resalat, over here, or Reshadat field here, passed through a central platform on the Reshadat (R7) complex, before it was piped on by an undersea pipeline to the storage and loading facilities at Lavan Island, and you will see Lavan Island on the map that is in your folder, No. 2. So even if it was necessary to show a link with "maritime" commerce to fall within the

scope of Article X (1) of the Treaty of Amity, a proposition which the United States has advanced, but with which Iran does not agree with, and which the language of Article X does not support - and by the way, which, in our view, the Court in no way endorsed in the *Nicaragua* case - that link nonetheless existed. These platforms were linked to loading and storage facilities for export on Lavan Island and this can clearly be shown on the evidence.

Because of the nature of their design, the Court will appreciate that if the Reshadat complex was put out of action, then that would have a knock-on effect of preventing oil pumped from Resalat over here of being able to be shipped to the mainland because all of the Resalat production had to pass through these platforms *before* being pumped on. I mention this point because when the United States attacked these platforms in October 1987, it concentrated its attack *exclusively* on these platforms here - it did not even go after the Resalat field. The R4 platform was not intended to be attacked but if you read the US documents, it was spotted during the engagement and was destroyed as what US military commanders called a "target of opportunity". By doing this, by concentrating its attack on these central platforms in Reshadat, the United States maximized the *commercial* damage that was inflicted on Iran, since production, as I have shown, was stopped from *both* the Reshadat and the Resalat fields. No oil could be transmitted for export from either field as long as the central Reshadat complex was out of action.

Mr. President, if one is trying to inflict maximum economic damage on an adversary, this tactic makes a certain amount of sense. But when you consider that the rationale for the United States' actions was ostensibly to prevent the recurrence of alleged Iranian attacks against neutral shipping, said to be emanating from these platforms, it is

curious that the United States did not deem it necessary to destroy the other platforms in the complex as well, particularly those at Resalat. On the face of it, one would have thought that it would have been equally possible for Iran to launch so-called "attacks" from the Resalat platforms as well, so that simply destroying the Reshadat platforms would not solve the problem, if there really was a problem. Iran would submit that the United States' focus on the central Reshadat platforms raises a serious doubt as to the credibility of the United States' claims that its actions were taken solely out of self-defence. Instead, the US attacks had all the hallmarks of economic retaliation against Iran and certainly, this is a plausible view of the facts, although the determination of the issues such as these is very much a matter for the merits.

As I have mentioned, there was a second Joint Structure Agreement signed in January 1965 which is also relevant to this case. This was between NIOC and four US oil companies (Atlantic Refining Company, Murphy Oil, Sun Oil and Union Oil Company of California) and these companies formed another joint stock operation called, LAPCO, which carried out operations which lead to the discovery of the Sassan field, which is right down here. That field was subsequently renamed Salman - which is what appears on your map - after the Revolution, and commercial production started from that field in 1968.

As you can see, the Salman complex was located south of Reshadat and Resalat and south of Lavan Island. It consisted of seven connected platforms linked to some 38 wells with a production capacity of over 220,000 barrels of crude oil per day. Again, a substantial commercial operation. A photograph of the Salman complex appears as number No. 5 in your folder and it may give the Court an idea of the magnitude of the

facilities that were involved. This complex was one of the installations attacked by the US Navy in April 1988.

The other offshore facility attacked in April 1988 was the Nasr complex down here. It had been known as Sirri (after the nearby island), that is Sirri Island there, prior to the Revolution, but it had its name changed to Nasr. It was developed through a different set of contractual arrangements between NIOC and the French company, Elf Aquitaine. This field was also located within Iran's continental shelf and had a production capacity at the time it was destroyed of roughly 100,000 barrels of crude oil per day. As the United States' own documentary exhibits, that were attached to their preliminary objection, reveal the Nasr platform was producing substantial quantities of crude oil when it was destroyed.

As you can see from the diagram I am placing on the screen, this is the Nasr complex, it consisted of seven multi-well platforms inter-linked with each other by underground pipelines. Platform A, which is this one right in the middle, included a central production platform, a well platform and a flare system and you will see that in the photograph which appears as No. 7 in your folder, No. 6 being a reduced version of this diagram. Once again, it was this central structure, Platform A, that was the focus of the United States' attacks in April 1988. It is also apparent that it was from Platform A that the oil was piped back to the loading, storage and export facilities on Sirri Island, by virtue of an underground pipeline, but the only difference in these facilities from what was at stake in the *Nicaragua* case was the length of the pipeline.

Once again, the choice of targets by the US Navy is revealing. For just as the oil that was produced at the Reshadat and Resalat platforms passed through a central platform before being pumped to the export

facilities, so also did oil produced from these seven platforms, all have to be transferred via Platform A before making its way to Sirri Island. Consequently, if Platform A was knocked out of commission, as it was in April 1988 by the United States, then no other production from any of the other six platforms would have been possible, thus, again inflicting maximum economic damage on Iran and its oil exports.

It will be a matter for the Court at the merits stage to consider why the United States chose this central platform alone to attack, and left the others untouched. But the reason why I emphasize the lay-out of these facilities at this stage is because is sheds light on the motives behind the United States' actions and, in our view, highlights the close nexus that exists between Iran's claims and the individual provisions of the Treaty. Aside from being an overtly unfriendly and unpeaceful act, the United States' focus on the central platforms in each instance must raise at least a legitimate issue sufficient to vest jurisdiction in the Court as to whether that action was consistent with the United States' obligation to Iran to guarantee freedom of commerce and navigation and to accord fair and equitable treatment to Iran's companies and their property.

Mr. President, that concludes the second part of my intervention, the third and fourth parts will be somewhat shorter, but with your permission I would suggest that, perhaps, this is the appropriate time for the customary morning break.

The PRESIDENT: Please continue your statement until its end.

Mr. BUNDY: By 1979, each of the platforms that I have been discussing had been producing oil in commercial quantities for several years. The Reshadat, Resalat and Salman complexes had, in fact, been

jointly owned as I have described by US oil companies pursuant to contractual arrangements which gave them a right to a portion of the oil produced. These contracts were scheduled to run until roughly the end of this century.

At the beginning of 1979, Iran underwent a fundamental political, religious and social revolution which affected all aspects of Iranian society. It is not necessary to dwell at length on these matters since they are public knowledge. Virtually all US companies departed from Iran, and the commercial operation of the offshore oil fields which I have described was assumed by NIOC acting alone.

Despite the fact that relations between the two countries deteriorated, two matters during this period warrant mention at this stage. The first is that neither Party took any steps to terminate the Treaty of Amity, which remained in force between the Parties - as this Court, as well as the Iran-US Claims Tribunal, has already recognized. The second point, is that the Parties were also able to provide for a mechanism for settling disputes that had arisen up through 1980 by conclusion of the Algiers Declarations in January 1981.

One of the outcomes of the Algiers Declarations was the establishment as everyone knows of the Iran-US Claims Tribunal. While I do not propose to divert this Court's attention from this case to the proceedings of the Tribunal, there is one aspect of those proceedings which has a bearing on the jurisdictional issues confronting the Court here, and which confirms the close connection that exists between the oil platforms and the Treaty of Amity.

Following the events of 1979 and the establishment of the Tribunal, a number of US oil companies brought claims before the Tribunal for losses arising out of the fact that they were no longer able to operate

in Iran under their original contractual arrangements. Amongst these companies were the Phillips Oil Company which, I noted a few moments ago, had been one of NIOC's partners in the Reshadat and Resalat operations, and the four US oil companies comprising the LAPCO Group that had made up the foreign contingent producing oil with NIOC from the Salman field.

The claims of all of these companies were broadly similar in nature, although the amounts ranged from hundreds of millions of dollars in the case of the Reshadat (IMINOCO) operations to well over $ 1 billion in connection with the Salman (LAPCO) agreement. The claimants all asked for the value of their share of the oil from the fields that would have been produced up until the year 2000, when the contracts were set to expire - in other words, during and beyond the period in which the production facilities from which that oil was supposed to be produced were attacked and destroyed by the United States. NIOC settled all of these cases. The practical consequence of these settlements is that the US oil companies have all been compensated as if their contractual right to produce oil from the platforms that had been destroyed here has been recognized to the end of the century, while NIOC, on the other hand, has been deprived of the same production by virtue of the destruction of the platforms that took place in 1987 and 1988. Whether this is "equitable treatment" within the meaning of Article IV of the Treaty of Amity, will be a matter for consideration at a later stage.

As part of their claims, each of the US oil companies invoked the Treaty of Amity, particularly Article IV thereof, as providing for the relevant standard of compensation for the Tribunal to apply. I can assure you, Mr. President, as someone involved in those proceedings, that not a day of hearings went by down the hall when the US oil companies did

not invoke the Treaty of Amity to the offshore oil operations that are an issue in this case.

Nor were the oil companies lacking the support of the United States Government in making out their cases. For 1983 and 1984, in anticipation that the Tribunal would be faced with the question of whether to apply the Treaty of Amity to the cases before it, the Legal Adviser to the State Department, at the request of the US Congress, prepared two memoranda supporting the applicability of the Treaty of Amity to the oil cases before the Tribunal. Those memoranda may be found in Exhibits 94 and 95 to Iran's Memorial.

While there is much of interest in those documents, it is striking that one of the assertions raised by the State Department in the 1983 memorandum was that Iran's conduct in allegedly ceasing oil exports from Iran to the United States after the Iranian Revolution violated Article X of the Treaty of Amity, which as you know guarantees freedom of commerce and navigation. This is a revelation (Exhibit 94, p. 1407 and Notes 20 and 21). Apparently, under the United States' reasoning, if Iran halted oil exports to the United States - including exports from the offshore fields in issue here - then this would constitute a breach of Article X of the Treaty of Amity. But if the United States destroys the very same platforms that make that production possible, then this not only does not constitute a breach according to the United States, but it does not even give rise to a question of interpretation and application of the Treaty sufficient to vest this Court's jurisdiction.

The double standards are really quite striking. When it suits its interests, the United States has no hesitation in invoking the Treaty; but when the tables are turned and the United States finds itself in the position of a Respondent, its colours change and the provisions of the

Treaty have no more relevance despite the fact that the very same oil installations are involved.

In any event, Iran did not halt oil exports to the United States after the Islamic Revolution. To the contrary, the United States remained one of the largest purchasers of Iranian oil right up until the time that the platforms were first attacked in October 1987. For example on 26 October 1987, this is just one week after the US attacks on the Reshadat complex, the White House issued a "fact sheet" documenting the fact that US purchases of Iranian oil during the first seven months of 1987 were over $1 billion, with 600,000 barrels of oil a day, a day, being sold to the United States during July 1987 alone (Exhibit 1 to Iran's Observations).

Those are significant quantities of crude oil sales and they attest to the high level of oil-related commerce that existed between the Parties at the time the platforms were attacked. I need hardly add that this oil was exported by tanker - in other words, by maritime commerce. With the destruction of the platforms no further production from the underlying fields, let alone shipments of oil to the United States or elsewhere, was possible. Freedom of commerce - even maritime commerce - was fundamentally impaired. Shortly afterwards, the United States implemented a trade embargo against Iran prohibiting such sales. But at the time the platforms were attacked, there was a substantial bilateral trade in oil.

Mr. President, Members of the Court, Iran believes that the factual background that I have reviewed shows very clearly that the Treaty of Amity was designed to address both strategic issues, such as the obligation of peace and sincere friendship, and commerce, such as the protection of oil and gas operations from Iran's offshore fields. Each

of these issues is clearly brought into play by Iran's claims, thus demonstrating that genuine questions of interpretation and application of the Treaty of Amity are at issue here.

* * *

3. Background to the Attacks themselves

I would now like to turn, Mr. President, to the background events that occurred prior to the attacks on the platforms. Ordinarily we would not dwell on these issues because, as the United States itself admits, they are really more properly deferred until the merits stage. Nonetheless, the presentation of the facts that you heard on Monday afternoon was so self-serving and selective, that some comment is called for.

As to its selectivity, we find it extraordinary, as the Agent of Iran has already indicated, that the US representatives did not refer to perhaps the single most important fact relating to the background of the dispute and this was the finding contained in the 1991 Report of the Secretary-General attributing responsibility for the Iran-Iraq conflict on Iraq. Suffice it to recall that Iran was fully justified in adopting measures in self-defence against Iraq's aggression. And this fact must constantly be borne in mind in evaluating the conduct of the States concerned which led up to the attacks on Iran's oil platforms.

The second striking aspect of the presentation made by Commander Neubauer was his characterization of US policy with respect to the war. In Commander Neubauer's words, "the United States desired the war to end without victor or vanquished" (CR 96/12, p. 25), and that statement echoed official declarations made by the United States Government during the war to the effect that the United States professed to be neutral. This was an attitude which even if it had been true,

would have ignored the fact that Iraq was the aggressor in the war and that Iran, that was the victim of that aggression, was linked by a Treaty of Amity to the United States.

Iran has furnished a compendium of evidence in its written pleadings which contradicts this characterization of the US role in the war. While I do not propose to recanvas that evidence at this juncture, let me remind our colleagues what US Government officials themselves were saying about the US policy of neutrality.

- "The Reagan and Bush administrations supported Iraq against Iran." Those were the words of Henry Kissinger, the former Secretary of State and National Security Adviser (Iran's Memorial, Exhibit 45).
- "It was pretty obvious that the United States was tilting towards Iraq." That was the conclusion of William Colby, the former Director of the CIA (Iran's Memorial, Exhibit 51).
- "We [the United States] wanted to ensure that Iran did not win the war. In other words, we became *de facto* allies of Iraq." That came from Lawrence Korb, a former US Assistant Secretary of Defence during the relevant period (Iran's Memorial, Exhibit 51).

There is a great deal more in the public record attesting to the United States' support for Iraq and its predisposition to treat Iran with hostility. And at the merits stage, evidence of this conduct will be relevant because it will show the true purpose behind the destruction of the platforms. And that, in turn, will show that by reference to the actual terms of the Treaty - terms like "peace and sincere friendship", "unreasonable measures", "fair treatment", "freedom of commerce" - that the United States was in breach. If these Treaty concepts are to be applied to a party's conduct, you cannot ignore the motive behind that conduct and that is what gives these events their relevance.

The third aspect of Commander Neubauer's presentation calling for comment was his description of the "Tanker War". Although the Commander rightly pointed out that Iraq was responsible for introducing the tanker war to the Persian Gulf, he went on to blame Iran for interfering with merchant shipping and for taking steps that led to the attacks on the platforms.

Once again these allegations are all to do with the merits. For present purposes I need only recall the words of the very influential United States Senator, Senator Sam Nunn, who had this to say about the Tanker War just four months before the first attack on Iran's platforms took place in 1987. Senator Nunn stated:

> "the challenges to freedom of navigation originate with Kuwait's ally Iraq. It is difficult to justify US action ... when America is indirectly protecting the interest of Iraq who started the 'Tanker War'." (Exhibit 32 to Iran's Memorial.)

It is also worth remembering that Kuwait, which was one of the Gulf Co-operation Countries to which Commander Neubauer referred the other day, did subsequently apologize to Iran for its role during the Iran-Iraq the war.

The final point I wish to make on these background facts concerns the evidence that the United States claims it will produce at the merits stage. As Iran's Agent has indicated, Iran welcomes the declaration by the United States that it intends to appear for the merits if the case continues, and Iran looks forward to exchanges on the evidence at that time.

How complicated those proceedings will be remains to be seen. But merely because significant issues of fact and law may be in dispute is scarcely a reason for the Court to decline jurisdiction now. Iran has every confidence that the Court is well equipped to handle issues of fact and law, even if they are complex.

That being said, a word of caution should perhaps be raised with respect to the factual allegations advanced by the United States on Monday. We were told that the United States has "compelling" evidence on a number of points. We were also reminded by Commander Neubauer of the very tragic incident involving the destruction of an Iranian civilian Airbus by and American warship, the *USS Vincennes*, shortly after the second attack on Iran's oil platforms. In that incident the initial position of the United States was also that compelling evidence existed to show a number of things: first, that the airplane was descending in a dive, an attacking dive on the *Vincennes* when it was attacked, that it was emitting a military electronic signal rather than a civilian signal from the aircraft itself, that it was outside its assigned air corridor when it was shot down, that United States warships had not penetrated into Iran's territorial waters when they fired the missile shooting-down the aircraft, and that, in fact, US vessels at that time were responding to a distress signal from a third-party merchant vessel, that allegedly had been attacked by Iran.

Each and every one of those factual assertions was subsequently shown to be erroneous by United States Defense Department officials themselves. And I do not propose to say more about the airbus matter because the case has been settled. But it is important to bear in mind that what the United States says about facts cannot always be accepted at face value without a careful examination of those facts. And that is what we trust we will be able to pursue at the merits stage.

4. *The Attacks on the Platforms of 19 October 1987 and 18 April 1988*

I now turn to the last portion of my presentation, Mr. President, with your permission, concerning the actual attacks on the platforms of

October 1987 and April 1988. Let me start with the attack of 19 October 1987 on the Reshadat complex.

According to the United States, the attack on the Reshadat complex was in response to what was alleged to be the firing of an Iranian Silkworm missile from the Fao Peninsula that hit a US flagged merchant vessel, the *Sea Isle City*, which was located just off the Kuwaiti coast south of Kuwait City (Preliminary Objection, pp. 17-18). Now, the following points are relevant in considering that claim. And it was an Iranian missile that hit the *Sea Isle City*.

First, of course, the Fao Peninsula lies in Iraqi territory. There was fighting there between the two countries at the time. This was Iraqi territory.

Second, absolutely no proof has been furnished by the United States for the allegation that it was an *Iranian* missile that was fired.

Third, US Government sources themselves refute the idea that Iran had Silkworms on the Fao Peninsula from whence the missile is said to have come. If the Court turns to illustration No. 9 in its folder, it will see a diagram of the situation provided in an official State Department bulletin which shows that Iran had no missiles in the area. That diagram indicates that to the extent Iran possessed Silkworms, they were all located near the Strait of Hormuz. Now the date of this diagram, which has been included in Iran's written submissions, is October 1987, precisely the time that the United States now alleges Iran's Silkworms were located up on the Fao Peninsula.

Fourth, the maximum range of a Silkworm, as confirmed by this State Department map, is 85 kilometres. US weapons experts and *Jane's Defence Weekly* have placed the effective range of a silkworm actually at much lower range: usually 40 kilometres (Iran's Observations, Annex 1,

p. 17). As illustration No. 10 in your folder shows, the *closest* point on the Fao Peninsula to the *Sea Isle City* was 95 kilometres. So even on the United States' own evidence, Iran could not have hit the *Sea Isle City* with a Silkworm, if it had Silkworms in the area, which it did not.

Fifth, it is public knowledge, on the other hand, that Iraq possessed Silkworms, including ones that could be launched from planes, and which had been used against third parties earlier in the year (Exhibit 68 to Iran's Memorial). And, of course, one should not forget the Iraqi missile attack against the *USS Stark*, in which 37 American soldiers tragically died, which illustrated the Iraqi policy of "shoot first, identify the target later". So it was entirely plausible that the missile attack relied on by the United States originated from Iraq. It certainly would not have been the first time that Iraq tried to "internationalize" the conflict, and not the last time Iraq took aggressive measures against Kuwait.

Finally, there is the strange choice of targets by the United States on which to mete out its revenge. For if the United States really did consider that it was obligated to take measures out of self-defence against Silkworm attacks, why did it not go after the missile sites themselves? Why did it instead destroy a virtually defenceless set of oil platforms some 600 kilometres away, which were in no position to put up no resistance whatsoever? And why, as I discussed earlier, did it concentrate only on the central platform of those facilities to the exclusion of others?

On 19 October 1987, the United States launched a massive attack against the Reshadat platform. Four of the most sophisticated destroyers in the US Navy were deployed, together with a guided-missile cruiser, F-14 fighters and a radar plane. The platforms had a handful of personnel

on them who were carrying out repairs to the facilities necessitated, as I have said, by earlier Iraqi attacks.

The personnel were given a few minutes to leave, and then firing began. No resistance was put up. This was followed by a raiding force from the United States warships which planted demolition charges, further destroying the installations.

And I think it's instructive Mr. President, if I just paste-up for a moment photographs of the platforms after their attack (11 and 12 in the folder). As you can see the destruction was complete.

Now, this leads me to the second series of attacks on 18 April 1988 against the Salman and Nasr platforms. The immediate precursor to this event was the hitting of a US naval vessel, the *USS Samuel B. Roberts*, by a mine on 14 April 1988 in the Central Persian Gulf east of Bahrain (folder No. 13).

The United States has assumed the mine to be Iranian although it never produced evidence to this effect. Four days after, the *Roberts* his the mine, United States attacked the Salman and Nasr platforms.

As described in Iran's written pleadings, the United States had in fact been planning these military operations well *before* the *Roberts* ever hit a mine, and they were designed to have a far wider purpose than simply destroying the platforms in question. As the US naval commander who led the operation has recounted, the operation - which was named "Operation Praying Mantis" - began ten months earlier with extensive planning in California (Exhibit 80 to Iran's Memorial). The objectives of the exercise, according to the US Navy, were stated to be the following - and, this is important - I am going to quote from an official navy report of this incident. After the *Roberts* hit the mine what was the United States Navy's plan:

> "Sink the Iranian *Saam* - class frigate *Sabalan* or a suitable alternative.
>
> Neutralize the surveillance posts on the Sassan [Salman] and Sirri [Nasr] gas/oil separation platforms and the Rahkish Gas/oil separation platforms, *if sinking a ship was not practicable."* (*Ibid.*, p. 68.)

Note this last instruction, Mr. President. The platforms were originally *not* the intended target of the US operation. The sinking of the Iranian frigate, the *Sabalan*, or a suitable alternative was the main goal. The platforms were only to be targeted "if sinking a ship was not practicable". And not only the fact that ten months planning went into the attacks, but also the fact that the platforms were not to be attacked if an Iranian warship could be sunk, seriously undermine the credibility to the US contention that it destroyed the platforms out of self-defence.

A large number of warplanes, helicopters and nine US warships were involved in the operation, together with an aircraft carrier standing by. The attacks on both the Salman and Nasr platforms took place simultaneously. Once again, the Iranian personnel were given five minutes to abandon the platforms, and in fact heavy fire from the US warships commenced at the Salman installations even before the personnel were able to evacuate, despite their plea to be given more time. This was followed by the landing of marines which planted explosives on the platforms. Once again, the Court can see photographs of the Salman and Nasr platforms after they were attacked in its folder (Nos. 14 and 15).

No resistance was offered by the Iranian personnel - a fact which is not surprising given that the platforms were not military installations and the Iranian personnel had no means to defend themselves. As the US Commander of one of the attacks confirmed, the Nasr platform was an active oil-producing platform when it was hit - in other words, it was a commercial operation (Iran's Observations, Exhibit 80).

The assault on the platforms was not the end of the engagement. The US Navy was still on the lookout for Iranian ships which had been their intended target in the first place. Three US warships found a lone Iranian patrol boat, the *Joshan,* and it was sunk by six missiles, killing 11 Iranian sailors and injuring 33 others. Meanwhile, three more US warships went after the *Sabalan,* but could not find it. Instead, they discovered the Iranian frigate, the *Sahand,* well up the Persian Gulf in the Strait of Hormuz, which was threatening no one. It was bombed and sunk by US aircraft with help from nearby naval vessels. Forty-five Iranians were killed and 87 injured. Then later the *Sabalan* was located further north, and it too was bombed with still more casualties.

So there you have it, Mr. President. In one day, the United States set out to sink one Iranian warship in reprisal for an incident that Iran was not responsible for, but wound up destroying two sets of platforms having an oil capacity of over 300,000 barrels of crude oil per day as well as half of Iran's navy The US forces did not even suffer a scratch. As was aptly summed up by the British newspaper the *Guardian* at the time, "it seems as if local American Commanders were looking for a fight and needed only the slightest pretext from the Iranians" (Exhibit 83 to Iran's Memorial).

* * *

5. ***Conclusions***

Mr. President, Members of the Court. Those are some of the essential facts. If it has been necessary to tackle these issues in more detail than would ordinarily be expected during a jurisdictional hearing, this is because there has been a need to correct the imbalance presented by the US pleadings and to emphasize the close jurisdictional nexus that

exists between the attacks on the platforms and the Treaty of Amity, including the history of the Treaty.

While Iran is convinced that it can demonstrate on the merits that the US actions constituted breaches of the Treaty of Amity, at this stage of the proceedings it need not go so far. The question is whether the United States' actions give rise to genuine questions of interpretation and application of the Treaty. Iran submits that based on the history of the Treaty, the development of the offshore oil platforms in issue here, and the attacks themselves, the answer is clear. The Court has jurisdiction.

And that concludes my remarks Mr. President. Professor Condorelli is to follow me, I appreciate the extra time that has been allocated to me to finish my presentation. Would this be an appropriate time for a short break before Mr. Condorelli takes the floor?

The PRESIDENT: Thank you very much, Mr. Rodman Bundy. The hearing is suspended for a break of 15 minutes.

The Court adjourned from 11.50 a.m. to 12.15 p.m.

The PRESIDENT : Please be seated. I now give the floor to Professor Luigi Condorelli to continue the oral pleadings of Iran.

M. CONDORELLI :

Introduction

Monsieur le Président, Madame et Messieurs les Juges, c'est un grand honneur pour moi de me présenter une nouvelle fois devant votre haute juridiction. Mon vœu le plus sincère est de pouvoir aider la Cour à accomplir son importante mission de régler le présent différend conformément à la justice et au droit international.

La tâche qui m'a été confiée est de démontrer que le différend entre la République islamique d'Iran et les Etats-Unis, dont votre Cour est saisie, relève bien de l'interprétation et de l'application du traité d'amitié de 1955 entre l'Iran et les Etats-Unis (TA de 1955) et peut être donc réglé sur sa base. Cette démonstration permettra ensuite au prochain plaideur de la Partie iranienne, le Professeur Crawford, de mettre en évidence que la Cour jouit de la pleine compétence pour régler le différend au fond, conformément aux provisions du paragraphe 2 de l'article XXI du traité d'amitié de 1955.

Mon exposé s'articulera en deux parties.

La première me permettra de présenter le traité dans son ensemble. Je releverai d'abord qu'il s'agit d'un accord international dont il est incontroversé qu'il est en vigueur. Je constaterai après cela que rien ne saurait empêcher l'Iran de se prévaloir de tous les droits que le traité lui confère, tant au moyen de ses normes matérielles que de celles relatives au règlement des différends. Ensuite, j'identifierai les caractéristiques générales du traité, son objet et son but, en en analysant le texte, le préambule, ainsi que les circonstances qui ont présidé à sa négociation et à sa conclusion. Enfin, je discuterai les principes et méthodes à utiliser pour son interprétation.

Dans la deuxième partie de cette plaidoirie, demain matin avec votre permission, je centrerai l'attention sur les trois articles du traité (les articles I, IV, paragraphe 1, et X) dont l'Iran est convaincu qu'ils sont directement pertinents afin d'évaluer l'illégalité des attaques armées lancées par les Etats-Unis contre les plates-formes pétrolières de la NIOC dans le golfe Persique. L'analyse permettra de constater que ces attaques tombent effectivement dans la sphère d'application du traité, les Etats-Unis ayant violé leurs obligations établies par les

dispositions évoquées du traité envers l'Iran; le différend au sujet de ces attaques, dont la Cour est saisie, porte donc justement sur l'interprétation et l'application du traité; de ce fait, la clause compromissoire du traité donne incontestablement à votre haute juridiction la plénitude de la compétence pour son règlement.

PREMIÈRE PARTIE

1. Le traité de 1955 était en vigueur aux moments pertinents et l'est encore aujourd'hui

Monsieur le Président, Madame et Messieurs de la Cour, en attaquant la première partie de ma plaidoirie, je dirai tout de suite que je n'aurai nullement besoin de m'attarder sur la question préliminaire de savoir si le traité d'amitié est ou non en vigueur. Il me suffit d'observer que les Etats-Unis n'ont soulevé aucune contestation à ce sujet, ni par écrit, ni oralement. La thèse sur laquelle les Etats-Unis insistent tout au long de leurs plaidoiries est qu'une "reasonable interpretation" du traité[1] permettrait de constater que "there is no relationship between the Treaty and the claims contained in Iran's Application"[2]. L'agent de la Partie adverse a parlé dans la même veine de l'absence de "reasonable connection" (CR 96/13, p. 63). Il est donc évident, Madame et Messieurs les Juges, que, du fait même de prétendre que le traité est inapplicable en l'espèce parce qu'il ne couvre pas la matière objet du présent différend, les Etats-Unis admettent comme allant *de plano* que par ailleurs le traité lie toujours les Parties.

Les raisons qui imposent à la Partie adverse pareille reconnaissance sont tellement évidentes que l'on comprend aisément pourquoi nos contradicteurs n'ont pas songé un seul instant à soutenir la thèse

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[1] USPO, p. 32, par. 2.10.

[2] USPO, p. 2, par. 4; p. 40, par. 3.15.

contraire. C'est que depuis la révolution iranienne de 1979 la permanence des liens conventionnels résultant du traité d'amitié de 1955 a été l'une des pièces maîtresses de la politique américaine envers l'Iran et l'un des outils fondamentaux pour le règlement des différends opposant les deux Parties.

En effet, dans tout le contentieux qui s'est développé entre les Parties depuis la révolution iranienne, et notamment dans le contentieux judiciaire, les Etats-Unis ont régulièrement fait valoir que le traité était en vigueur, donc parfaitement applicable; et — il convient de le souligner — ils ont toujours eu gain de cause, sans la moindre exception.

Ainsi, déjà en 1980 votre Cour leur a donné raison dans son arrêt sur le fond de l'affaire du *Personnel diplomatique et consulaire des Etats-Unis à Téhéran*, en soulignant avec fermeté que les dispositions du traité «continuent à faire partie du droit applicable entre les Etats-Unis et l'Iran»[3]. Ensuite, à de très nombreuses reprises le Tribunal des réclamations Etats-Unis/Iran a fait de même, tant avant qu'après les faits qui sont l'objet du présent différend. Mais ce n'est pas tout : tant avant qu'après les faits en cause, divers tribunaux internes américains ont également reconnu que le traité est en vigueur et qu'il continue d'être applicable dans les relations entre les parties[4].

Une citation spécifique mérite à ce sujet la toute récente décision du 25 avril 1996 de la United States District Court for the Southern District of New York dans l'affaire *Calgrath*, qui applique une disposition du traité pour régler un différend se rapportant à des événements des années 1992-1995 en prenant soin d'observer que:

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[3]Affaire du *Personnel diplomatique et consulaire des Etats-Unis à Téhéran, arrêt, 24 mai 1980, C.I.J. Recueil 1980*, p. 28, par. 54.

[4] Mémoire de l'Iran, p. 56, par. 2.06, et note 176.

"Although the signatories have not always lived up to the obligations imposed by the document, the United States State Department takes the position that the Treaty is 'in full force and effect and (has) not been terminated by either party...'."[5]

Monsieur le Président, il est extrêmement rare qu'un traité international entre deux Etats ait formé l'objet d'un corpus jurisprudentiel aussi fourni et cohérent, établissant sans exception sa permanence en vigueur, et ceci malgré les tensions et les difficultés qui ont pu caractériser les relations entre les parties pendant les derniers temps. Et il est aussi parfaitement remarquable, que ces décisions, toutes ces décisions, tant internationales qu'internes, ont toujours accueilli sur cette question le point de vue officiel des Etats-Unis d'Amérique, qui ont donc régulièrement et pleinement bénéficié — tant en leur faveur directement qu'en faveur de leurs ressortissants — des avantages découlant du traité.

2. Rien n'empêche l'Iran de faire valoir aujourd'hui devant la Cour tous les droits que le traité de 1955 lui confère contre les Etats-Unis.

Il est donc indiscutable que le traité lie toujours les Parties: les Etats-Unis ne prétendent d'ailleurs pas le contraire. Il s'ensuit logiquement que l'Iran a le droit incontestable d'en invoquer les dispositions à son avantage devant votre Cour.

Il convient que j'insiste sur les droits que l'Iran tire du traité de 1955, du fait même que celui-ci est toujours en vigueur. De toute évidence, ces droits restent intacts, même s'il est vrai qu'à un moment donné la partie iranienne s'était efforcée de démontrer, devant le Tribunal des réclamations Etats-Unis/Iran des différends que le traité avait cessé d'être en vigueur à cause des violations graves dont

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[5] Calgrath Investment, Ltd. *v.* Bank Saderat Iran and Bank Saderat Iran, New York Agency, 95 Civ. 5232 (MBM), Opinion and Order of April 25, 1996, p. 6, US SD NY, reproduite dans *Mealey's International Arbitration Report*, vol. 11, Issue n° 5, p. 1-4.

s'étaient rendus responsables les Etats-Unis dans les années 1979-1980[6]. Le Tribunal, en effet, avait réfuté la thèse iranienne, avait jugé que le traité était resté en vigueur et avait donc consenti aux Etats-Unis de continuer à tirer avantage de ses dispositions[7]. En conséquence, les Etats-Unis ne sauraient s'opposer maintenant à ce que l'Iran bénéficie également des droits que le traité lui accorde et qu'il exige à son tour le respect par la Partie adverse des obligations correspondantes. Il faut que je souligne dans ce contexte une donnée juridique importante : le préambule du traité base explicitement les relations entre les parties sur ce qu'il appelle la "reciprocal equality of treatement".

En somme, du fait même d'être en vigueur, le traité lie également les parties et ses dispositions doivent être respectées par chacune d'elles de bonne foi et, j'insiste sur la formule préambulaire que je viens de citer, "on the basis of reciprocal equality of treatement". Les Etats-Unis, ayant toujours soutenu avec plein succès que le traité continue d'être en vigueur, ne seraient évidemment pas recevable s'ils prétendaient aujourd'hui le contraire devant votre Cour. Quant à l'Iran, la thèse de l'extinction du traité — que la partie iranienne avait jadis avancée — n'ayant pas été retenue par la justice internationale, rien ne saurait faire obstacle à ce qu'il retire maintenant, lui aussi, les bénéfices découlant de l'application du même traité, dont il a dû supporter le poids sans interruption. Il va de soi que, parmi ces bénéfices, il y a celui de pouvoir mettre en branle les procédures de règlement des différends prévues par le traité; face à certaines allégations de la Partie adverse prétendant que des violations du traité d'amitié seraient imputables à l'Iran, et non pas aux Etats-Unis, il

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[6] Iran Observations and Submission, p. 45 ss.

[7] *Supra*, note précédente.

convient de rappeler à toute fin utile ce que votre Cour a eu l'occasion d'élucider en 1980 au sujet du même traité, dans son arrêt sur l'affaire du *Personnel diplomatique et consulaire*, c'est le paragraphe 53. Votre Cour a dit ceci :

> "De toute manière, aucune violation du traité commise par l'une ou l'autre des parties ne saurait avoir pour effet d'empêcher cette partie d'invoquer les dispositions du traité relatives au règlement pacifique des différends."[8]

Ce sont là des concepts juridiques de caractère élémentaire sur lesquels il n'est pas utile d'insister encore, tant ils sont évidents. Les Etats-Unis, d'ailleurs, se gardent bien de mettre en doute le droit de l'Iran de tirer maintenant avantage à son tour des dispositions du traité. Quant aux objections de la Partie adverse suivant lesquelles en l'espèce l'invocation du traité devant vous serait tardive, je laisse sur ce point à mon collègue le professeur Crawford le soin de les réfuter tout à l'heure, dans le cadre de sa plaidoirie sur les aspects de procédure de la présente affaire.

3. L'objet et le but du traité de 1955 à la lumière des circonstances ayant présidé à sa négociation et à sa conclusion

J'en viens maintenant au traité lui même, afin d'en identifier avant tout les caractéristiques d'ensemble. Il s'agit là d'une question importante, qui mérite d'être éclaircie à titre préliminaire, vu qu'elle forme l'objet d'un désaccord fondamental entre les Parties au présent différend.

En effet, l'Iran est convaincu que le traité a une portée bien plus large que les seules relations strictement économiques, commerciales et consulaires entre les Parties, puisqu'il vise également à leur imposer

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[8]Affaire du *Personnel diplomatique et consulaire des Etats-Unis à Téhéran, C.I.J. Recueil 1980*, p. 28, par. 53).

des obligations attenant aux relations politiques réciproques. Par contre, la Partie adverse soutient devant la Cour que le traité serait "purely commercial and consular"; qu'il n'aurait pour objet que des intérêts commerciaux des ressortissants des deux pays sur le territoire de l'autre et certaines questions consulaires; que toutes ses dispositions seraient, encore une fois, "wholly commercial and consular", donc inapplicables pour le règlement d'un différend portant, en substance, sur la légalité de l'emploi de la force dans les relations internationales.

Pourtant, le titre que les Parties ont concordé de donner au traité est déjà un indice significatif, puisqu'il affiche que le traité ne s'occupe pas seulement de relations économiques et de droits consulaires, mais couvre également l'«amitié», l'"amity" c'est-à-dire les relations amicales entre les cocontractants.

Cet indice, Monsieur le Président est remarquablement conforté par l'analyse du préambule, préambule qui souligne avec force que le but poursuivi par les parties en concluant le traité va bien au-delà de l'économie, du commerce, des investissements et des relations consulaires : les parties ont exprimé ouvertement dans le préambule l'intention de viser plus haut et plus large, en faisant de leur traité un instrument couvrant l'ensemble de leurs relations. En effet, le préambule indique que l'intention à laquelle le traité répond est, en tout premier lieu, de "emphasize", donc de consolider, renforcer, développer les relations amicales entre les parties, ce qui de toute évidence ne se limite pas au commerce; elles ont souhaité également réaffirmer - je cite les mots du préambule - "the high principles in the regulation of human affairs" (des affaires qui, me semble-t-il, ne sauraient être entendues comme les seules affaires d'argent!) C'est

seulement après que figurent, dans le préambule, les finalités d'ordre plus strictement économique, commercial et consulaire.

Ces remarques concernent le but et l'objet du traité, tels qu'ils apparaissent mis en exergue par le préambule, mais elles sont d'une grande importance au vu du rôle primaire qu'il faut justement assigner au préambule à fin d'identifier l'objet et le but d'un traité afin d'interprétation, comme le consacre d'ailleurs la "Règle générale d'interprétation" codifiée à l'article 31, alinéa 1, de la convention de Vienne sur le droit des traités.

Il faut rappeler aussi, dans ce contexte, ce que votre Cour a souligné maintes fois : il est nécessaire de prendre en considération le préambule d'un traité international afin de déceler l'objet et le but poursuivi par les parties contractantes et pour en interpréter les dispositions. Ainsi, pour ne citer que deux précédents jurisprudentiels, dans l'arrêt du 27 août 1952, dans l'affaire des *Droits des ressortissants des Etats-Unis d'Amérique au Maroc,* la Cour a déclaré qu'il fallait, pour interpréter les dispositions de l'acte d'Algésiras de 1906, tenir compte des buts de ce traité, tels qu'ils sont énoncés justement dans le préambule[9]. Egalement, la Cour s'est référée au préambule pour identifier la nature juridique et l'interprétation du mandat de l'Afrique du Sud sur le Sud-Ouest africain, dans son arrêt du 21 décembre 1962 sur les exceptions préliminaires[10].

Monsieur le Président, je n'ai pas l'intention de discuter ici la question générale de savoir si le préambule d'un traité peut constituer à lui seul la source d'obligations précises pour les parties; il est par

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[9] *C.I.J. Recueil 1952*,p. 196 et suiv.

[10] *C.I.J. Recueil 1962*, p. 330 et suiv. Voir aussi l'arrêt du 26 novembre 1984 dans l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci, C.I.J. Recueil 1984*, p. 428.

contre indiscutable – selon l'enseignement de votre jurisprudence – que le préambule est utile pour interpréter le texte du traité et pour identifier les obligations prescrites par ses dispositions. Autrement dit, l'Iran n'a pas prétendu et ne prétend pas maintenant que la Cour pourrait, sur la base du seul préambule du traité, décider si les Etats-unis ont violé ou non envers l'Iran leurs obligations conventionnelles. En revanche, l'Iran soutient fermement qu'il y a une parfaite correspondance entre le préambule et le texte du traité, en ce sens que le texte reprend et traduit en obligations bien déterminées l'ensemble des buts résultant du préambule, y compris celui relatif au développement des relations amicales.

Il suffit d'un coup d'oeil au texte des articles du traité pour que s'impose le constat que le traité en question n'est justement pas "purely commercial and consular" comme le dit la Partie adverse : il faut nier l'évidence pour ne pas voir son article premier et pour ne pas s'incliner devant le langage parfaitement contraignant qu'il emploie lorsqu'il prescrit que "there shall be [il ne dit pas "there should be"!] firm and enduring peace and sincere friendship between the United States of America and Iran". Pourtant, de par sa position prioritaire même, de par son libellé ferme, de par sa portée large, l'article premier exprime nettement la volonté des cocontractants de ne pas limiter la sphère d'application du traité aux seules relations économiques, commerciales et consulaires. Je me limite ici à cette seule observation au sujet de l'article premier, sans anticiper sur l'examen détaillé que j'en ferai dans la deuxième partie de ma plaidoirie, étant donné qu'il s'agit pour le moment d'identifier exclusivement les caractéristiques d'ensemble du traité et l'ampleur de son objet.

Soit dit en passant, ce n'est pas seulement grâce à l'article premier que le traité révèle sa vraie nature d'instrument conventionnel couvrant des relations bien plus larges que celles de nature purement commerciale. L'article II, par exemple, s'occupe de garantir, entre autres, certains droits fondamentaux aux ressortissants de chacune des Hautes Parties contractantes se trouvant sur le territoire de l'autre, et ceci bien au-delà du domaine des activités économiques et commerciales : il y est question ainsi de la liberté d'association, de la liberté de conscience et de religion, du droit de mener des activités philanthropiques, éducatives, scientifiques, de la liberté d'information, de communication (al. 2), ainsi que du droit de recevoir un traitement humain et équitable en cas d'arrestation et, plus en général, du droit de bénéficier de la manière la plus constante de la protection et de la sécurité (al. 4). Encore, l'article III accorde les garanties découlant du principe du *due process of law*, et ceci dans tous les domaines touchant à la vie de la personne, et non seulement en matière strictement économique.

L'analyse que je viens de présenter a été centrée - comme il convient - sur le texte du traité lui-même (y compris son préambule), qui est bien évidemment décisif pour identifier sa sphère d'application. Les éléments recueillis étayent sans l'ombre d'un doute la thèse présentée par l'Iran et condamnent comme insoutenable, ici aussi sans l'ombre d'un doute, la thèse des Etats-Unis relative au caractère strictement commercial et consulaire du traité. Les choses étant donc parfaitement claires, l'Iran n'aurait pas besoin de chercher des confirmations de sa position dans le rappel des "circonstances dans lesquelles le traité a été conclu", qui constituent notoirement de simples "moyens complémentaires d'interprétation" des traités internationaux, comme

l'exprime l'article 32 de la convention de Vienne sur le droit des traités et comme la Cour - votre Cour - l'a rappelé à maintes occasions, y compris tout dernièrement, dans l'arrêt du 15 février 1995, dans l'affaire de la *Délimitation maritime et des questions territoriales entre Qatar et Bahrein*, au paragraphe 40 de cet arrêt.

Toutefois, *ex abundanti cautela*, il est opportun de revenir rapidement sur ce que l'Iran a déjà abondamment illustré par écrit et que mon collègue, maître Bundy, vient de mettre au clair de façon détaillée dans sa plaidoirie : l'analyse historique démontre parfaitement qu'en négociant et en concluant le traité, les Etats-Unis se proposaient des buts politiques et stratégiques d'une portée bien plus large qu'exclusivement commerciale. Il s'agissait de mettre en place avec l'Iran des relations spéciales, capables de l'attirer définitivement dans l'orbite occidentale et de le soustraire à jamais à l'influence soviétique.

L'Iran a également montré que ce contexte historique explique en particulier pourquoi le traité contient l'article premier, obligeant les parties contractantes à maintenir à l'avenir des relations amicales et pacifiques : une disposition qui - comme on le verra plus tard - n'a trouvé sa place que dans quatre traités bilatéraux d'amitié conclus par les Etats-Unis, sur un total de plus de deux dizaines. L'Iran a souligné en particulier, et avec force, les témoignages de source officielle américaine indiquant que l'inclusion dans quelques-uns seulement de ces traités bilatéraux de la clause en question n'est pas du tout "customary"

dans la pratique conventionnelle des Etats-Unis et qu'elle a pour but de rendre plus étroites les relations économiques entre les Etats-Unis et les Etats concernés[11].

Ces affirmations, Monsieur le Président, ne sont pas une invention de l'Iran : c'est le Département d'Etat des Etats-Unis d'Amérique qui les a faites dans un document que l'Iran a produit devant la Cour, en tant qu'annexe 10 de ses observations écrites à l'exception préliminaire des Etats-Unis, et qui se référait au traité avec la Chine du 4 novembre 1946 (l'un des trois autres traités d'amitié dont l'article premier est le frère jumeau de l'article premier de notre traité), un document dans lequel tout est écrit, et il est donc - je le dis avec tout le respect - étonnant de voir plusieurs des plaideurs de la Partie adverse s'évertuer à affirmer, contre l'évidence probatoire, que l'article premier du traité serait une clause de routine, qui traînerait constamment dans la plupart des traités de ce genre.

La vérité est tout autre, Monsieur le Président : la vérité est que les négociateurs américains avaient voulu l'inclusion dans le traité d'amitié avec l'Iran de cette disposition, qui est inhabituelle dans ce genre de traités, parce qu'ils lui assignaient intentionnellement un sens et un effet précis : celui de resserrer les liens politiques entre les parties. Le document que je viens de citer le dit noir sur blanc: "the inclusion of this paragraph is appropriate in view of the close political relations between China and the United States" (c'est le document à propos de l'accord avec la Chine). Entre autres, il résulte en particulier des travaux préparatoires que le texte de l'article premier du traité avec l'Iran fut proposé par les Etats-Unis et accepté par

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[11] Voir les observations de l'Iran, page 16, paragraphe 1.27, ainsi que le mémorandum du département d'Etat des Etats-Unis annexé par l'Iran (pièce 10). Voir aussi *infra*, note 39 (texte relatif).

l'Iran. Comment mettre en doute, face à de pareilles preuves, confortées par les admissions explicites et officielles de la Partie adverse, que la portée du traité d'amitié de 1955 avec l'Iran transcende les seules relations commerciales et consulaires ?

Pourtant, les Etats-Unis essaient d'étayer contre toute vraisemblance leur allégation suivant laquelle la portée du traité de 1955 n'irait pas au delà du domaine strictement commercial et consulaire. Et dans leurs écritures ils ont même prétendu à cette fin que l'Iran aurait reconnu devant le Tribunal des réclamations Etats-Unis/Iran la non-pertinence du traité au sujet des questions ayant trait à l'emploi de la force, comme la tentative d'action de commando lancée par les Etats-Unis en 1980 en connexion avec l'affaire du *Personnel diplomatique et consulaire des Etats-Unis à Téhéran*[12]. Or, l'Iran pense avoir démontré dans sa plaidoirie écrite du 1er juillet 1994[13] que l'allégation de la Partie adverse est erronée, puisqu'elle est basée sur une citation amputée de la thèse iranienne de l'époque. En effet, si l'on analyse l'ensemble des documents de source iranienne présentés dans l'affaire *Amoco International Finance*, on s'aperçoit aisément que, bien au contraire, la partie iranienne avait soutenu devant le Tribunal que le raid armé des Etats-Unis avait constitué une violation tellement grave du traité de 1955, qu'il en avait engendré l'extinction. Le Tribunal avait refusé d'admettre que le traité avait pris fin, il est donc évident que l'Iran peut maintenant s'en prévaloir et en invoquer l'application concernant les attaques armées américaines de 1987 et 1988 contre les plates-formes pétrolières iraniennes puisque rien dans sa conduite antérieure ne rend inadmissible une telle requête à votre Cour, puisque

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[12] USPO, p. 46, par. 3.29.

[13] *Op. cit.*, p. 45.

rien ne plaide dans le sens que l'Iran aurait admis devant cet autre Tribunal que le traité n'est pas applicable dans ce genre de situations. Je note au passage que dans leur présentation orale les plaideurs de la Partie adverse n'ont pas repris cet argument : sans doute, la démonstration qu'avait offerte par écrit l'Iran leur a paru convaincante.

Ce sont, Monsieur le Président, Madame et Messieurs les Juges, les Etats-Unis en revanche qui, dans leurs exceptions préliminaires[14], admettent implicitement la pertinence du traité de 1955 pour évaluer des actes d'emploi de la force! En effet, de façon incidente, la Partie adverse accuse l'Iran d'avoir violé le principe de la liberté de navigation (dont il est question à l'article X du traité en question), du fait d'avoir mouiller des mines dans des eaux internationales et d'avoir attaquer des navires marchands, au cours du conflit avec l'Iraq. Par contre, soutient la Partie adverse, je cite : «all the action by the United States were taken to advance freedom of navigation[15]».

Dans une phase ultérieure de la présente procédure, l'Iran aura souhaitablement l'occasion de montrer combien, tant l'accusation lancée contre l'Iran que l'auto-justification avancée par la Partie adverse, sont infondées. A ce stade, il suffira de remarquer que tant l'une que l'autre impliquent clairement la reconnaissance que le domaine d'application du traité va bien au-delà des relations commerciales et consulaires, puisque les Etats-Unis admettent qu'à la lumière de l'une de ses dispositions, il est possible de qualifier de légale ou d'illégale la force employée en l'espèce par les Etats-Unis ou l'Iran. C'est cela exactement que l'Iran demande à votre Cour de bien vouloir dire : l'Iran se réjouit donc de constater qu'en substance, au-delà des positions de

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[14] *Op. cit.*, p. 50.

[15] *Ibid.*, p. 49, par. 3.34.

façade, les Etats-Unis partagent son point de vue quant à la portée large du traité de 1955 et à son aptitude à couvrir les actes d'emploi de la force.

Une dernière remarque à ce sujet. La thèse des Etats-Unis, que je viens de qualifier de «position de façade», fait fi de la jurisprudence de votre Cour qui, dans son arrêt du 27 juin 1986 dans l'affaire des *Activités militaires et paramilitaires au Nicaragua et contre celui-ci*, a décidé qu'une série d'attaques armées américaines en territoire du Nicaragua constituaient la violation d'obligations résultant d'une disposition du traité d'amitié entre les Etats-Unis et le Nicaragua - l'article XIX de ce traité-là - qui est la soeur jumelle de l'article X du traité avec l'Iran. Je reviendrai avec plus de détails sur ce point dans la deuxième partie de ma plaidoirie, lorsque je me pencherai, justement, sur l'interprétation de l'article X, relatif à la liberté de commerce et de navigation. Pour l'heure, je me limiterai à relever que les *distinguo* dans lesquels s'est lancé – avec beaucoup d'habileté, il faut le reconnaître – l'un des plaideurs de la Partie adverse, Mr. Murphy, n'enlèvent absolument rien à l'importance et à la pertinence de ce précédent, qui conforte incontestablement le point de vue de l'Iran : votre jurisprudence confirme on ne peut plus nettement que les dispositions du traité d'amitié Iran-Etats-Unis, à l'instar de celles identiques du traité d'amitié Etats-Unis-Nicaragua sont parfaitement utilisables pour évaluer la légalité ou non d'actes d'emploi de la force par une partie portant préjudice aux intérêts, protégés par le traité d'amitié, de l'autre partie.

4. Les principes à utiliser pour l'interprétation des dispositions du traité de 1955

En discutant de la nature et de l'étendue des obligations découlant du traité de 1955, j'ai déjà évoqué certains principes (ou méthodes) d'interprétation qui sont particulièrement pertinents dans notre affaire. C'est le cas, notamment, du principe de l'interprétation dite «téléologique», qui demande d'apprécier la signification des dispositions de tout accord international en tenant compte de l'objet et du but de celui-ci (tel qu'il résulte, en particulier, du préambule). C'est le cas aussi du recours aux «moyens complémentaires d'interprétation».

Deux autres grands principes méritent également d'être mis en évidence à ce stade, avant d'analyser de façon ponctuelle les trois dispositions du traité sur lesquelles se fonde la requête de l'Iran dans la présente affaire. Il s'agit du principe dit de l'«effet utile», ou «effectiveness» (*ut res magis valeat quam pereat*) et du principe de l'interprétation dite «contextuelle», qui impose de tenir compte de tout l'«environnement» juridique d'un traité, y compris le droit international général, pour l'interpréter. Dans ses écritures, la Partie iranienne a pris la liberté d'illustrer avec beaucoup de détails l'assise et la portée de ces principes, qui jouissent d'une reconnaissance universelle tant dans la jurisprudence que dans la doctrine[16] : de ce fait, je pourrai me limiter ici à un rappel qui sera d'autant plus bref que la Partie adverse ne semble, pour l'heure, vouloir en contester ni la validité, ni la pertinence.

Le principe de l'«effet utile» est, comme l'a défini votre Cour dans son arrêt du 3 février 1994[17], dans l'affaire du *Différend territorial*

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[16] Mémoire de l'Iran, p. 72 et suiv.; Observations et (Submissions) de l'Iran, p. 23 et suiv. et p. 42 et suiv.

[17] Affaire du *Différend territorial (Jamahiriya arabe libyenne/Tchad)*, *C.I.J. Recueil 1994*, par. 51.

(Jamahiriya arabe libyenne/Tchad) : «l'un des principes fondamentaux d'interprétation des traités constamment admis dans la jurisprudence internationale». Ce principe impose d'interpréter toute clause conventionnelle, comme le dit l'ancienne sentence arbitrale : «so as to give it a meaning rather than so as to deprive it of meaning»[18]. Autrement dit, en cas de doute sur l'interprétation d'une disposition d'un traité, l'interprète doit choisir entre plusieurs sens possibles celui qui permet d'accorder à cette disposition un effet et de lui donner application, plutôt qu'un autre sens qui la priverait de toute utilité, qui la viderait de toute portée juridique[19].

Il est tout à fait remarquable que, dans l'arrêt à peine cité de 1994, votre Cour, dans l'affaire du *Différend territorial (Jamahiriya arabe libyenne/Tchad)*, dans cet arrêt, le principe en question a joué pour votre Cour un rôle essentiel dans le règlement du différend territorial qui opposait la Libye au Tchad et qui portait justement sur l'interprétation d'un traité d'amitié. C'est en s'en inspirant *apertis verbis* de ce principe que votre Cour a décidé de choisir l'interprétation de l'article 3 du traité d'amitié et de bon voisinage du 10 août 1955 entre la France et la Libye que prônait le Tchad. En effet, cette interprétation donnait à l'article en question un «effet utile», alors que l'interprétation suggérée par la Libye aurait privé «totalement» (c'est le mot qu'utilise votre Cour) d'effet certaines parties de la disposition[20]. J'ajoute d'ailleurs que votre Cour a raisonné de façon très similaire encore plus récemment, dans

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[18] Cayuga Indian Claim, 22 janvier 1926, *AJIL*, vol. 20, 1926, p. 587. Voir la citation plus complète dans observations de l'Iran, p. 42.

[19] Pour la doctrine en ce sens, voir les citations contenues dans observations de l'Iran, p. 43, note 99.

[20] *C.I.J. Recueil 1994*, cit., par. 47 (et *passim*) de l'arrêt.

son arrêt du 15 février 1995 dans l'affaire de la *Délimitation maritime et des questions territoriales entre Qatar et Bahreïn*[21].

Le principe de l'«effet utile» est donc une clé parfaitement fiable, qu'il conviendra d'utiliser sans hésitation par la suite, afin d'interpréter les articles pertinents du traité de 1955. Il en va de même pour l'autre principe évoqué précédemment, suivant lequel un traité doit être interprété à la lumière de son contexte; contexte dont fait partie, comme le consacre l'article 31, alinéa 3, lit. c, de la convention de Vienne sur le droit des traités de 1969, «toute règle pertinente de droit international applicable dans les relations entre les parties», y compris donc, bien évidemment, le droit international général et la Charte des Nations Unies.

Les écritures iraniennes, ici aussi, ont cité un grand nombre de précédents jurisprudentiels et d'opinions doctrinales établissant le caractère incontesté de ce principe[22]. Au vu de l'unanimité qui règne au sujet de la pleine validité du principe en question, il serait fastidieux pour votre Cour que je m'attarde dans des citations qui pourraient être fort nombreuses. Je voudrais pourtant me limiter à signaler ici deux points.

Le premier est que, contrairement à ce que semble craindre l'un des plaideurs de l'autre côté de la barre, M. Crook, l'Iran n'a absolument rien à objecter au bien-fondé des remarques qu'il a présentées au sujet de l'article 31, alinéa 3, lit. c, de la convention de Vienne sur le droit des traités (CR 96/13, p. 20-21). Il est indiscutable, en effet, que cette disposition proclame exclusivement un principe d'interprétation des traités et n'élargit d'aucune façon, en tant que telle, la compétence

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[21] *C.I.J. Recueil 1995*, p. 19, par. 35.

[22] *Supra*, note 17; voir spécialement les observations de l'Iran, p. 24-27, et notes pertinentes.

de votre Cour. Il est également indiscutable que seules les règles *«pertinentes»* du droit international en vigueur sont à utiliser pour interpréter les traités. Parfaitement d'accord sur toute la ligne, M. Crook : les Parties à la présente procédure conviennent donc – d'ailleurs elles ne pourraient pas faire autrement – que votre Cour a la mission de prendre en considération toute règle pertinente du droit international, en dehors le cas échéant du traité lui-même, pour interpréter les dispositions de celui-ci. Toutes les dispositions de celui-ci, toutes les dispositions du traité de 1955, bien entendu : y compris, cela va de soi, l'article I ! En somme, pour déterminer la signification de cet article, votre Cour devra avoir recours aux règles de droit international en vigueur entre les Parties qui sont «pertinentes» afin de déterminer ce que veut dire "firm and enduring peace" et ce que veut dire "sincere friendship".

Le deuxième point, le voici : il convient de rappeler que le principe consacré à l'article 31, alinéa 3, lit. c, de la convention de Vienne a été appliqué à plusieurs reprises par le Tribunal des réclamations Etats-Unis/Iran, et sur demande précise du demandeur américain, justement à fin d'interprétation du traité qui nous intéresse ici.

Parmi les sentences pertinentes[23], celle de 1987 dans l'affaire *Amoco International Finance*[24] mérite une citation explicite. Dans ce cas, la question de l'utilisation du droit international général afin de combler les lacunes du traité (en l'espèce, celles de l'article IV) avait formé l'objet d'un débat judiciaire très serré entre la partie iranienne et la partie demanderesse, Amoco. On notera cependant que les deux parties

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[23]Pour les références,observations de l'Iran, p. 26, note 59.

[24] Amoco International Finance Corp. *v.* The Islamic Republic of Iran et al., sentence N°310-56-3 du 14 juillet 1987, par.88-100 (15 Iran-U.S. Claims Tribunal Reports, 1987 II, p.189 ss.).

concordaient pleinement quant à l'idée qu'il fallait avoir recours au droit international général dans ce but, celui-ci devant être conçu comme «incorporé» dans le traité de 1955[25] : il y avait cependant désaccord concernant le contenu du droit coutumier en vigueur aujourd'hui en matière d'expropriation d'intérêts économiques étrangers. Or, avant de trancher le point litigieux, le Tribunal se lance dans un *obiter dictum* particulièrement heureux, dans lequel on reconnait bien la griffe du Président, le regretté Professeur Michel Virally. Cet *obiter dictum* – dont il ne faut pas oublier qu'il a été dicté en songeant spécifiquement à notre traité – représente, à mon sens, la formulation la plus accomplie et la plus satisfaisante du principe relatif à l'utilisation du droit international général dans l'interprétation des traités internationaux. Permettez-moi, Monsieur le Président, de citer intégralement le passage pertinent de la sentence :

> "As a *lex specialis* in the relations between the two countries, the Treaty supersedes the *lex generalis*, namely customary international law. This does not mean, however, that the latter is irrelevant in the instant case. On the contrary, the rules of customary law may be useful in order to fill in the possible *lacunae* of the Treaty, to ascertain the meaning of undefined terms in its text or, more generally, to aid interpretation and implementation of its provisions."[26]

Monsieur le Président, Madame et Messieurs les Juges, dans la prochaine analyse des dispositions du traité qui sont pertinentes pour le règlement du présent différend, il faudra garder soigneusement en mémoire ce principe, tel que l'a identifié le Tribunal des réclamations Etats-Unis/Iran en 1987, et ce pour l'appliquer spécifiquement à notre traité : c'est bien au droit international général qu'il faut donc avoir recours chaque fois qu'on décèle des lacunes dans les dispositions du

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[25] Par.87 de la sentence.

[26] Paragraphe 112 de la sentence.

traité, ou chaque fois qu'on y rencontre des termes et des concepts non précisément définis par le même traité.

Monsieur le Président, Madame et Messieurs les Juges, avec votre permission, je voudrais interrompre ici ma plaidoirie pour la reprendre demain matin. Merci.

Le PRESIDENT : Je vous remercie, Monsieur le professeur Luigi Condorelli pour votre exposé. Je déclare close la séance de ce matin et la Cour reprendra ses audiences publiques demain matin à 10 heures.

L'audience est levée à 13 h 05.