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YEAR 1996

Public sitting

held on Monday 23 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 lundi 23 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:

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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,

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

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as Counsel.

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

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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

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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: Please be seated. This morning the Court will begin the hearings with the second round of oral arguments 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)* and I now call upon the distinguished Agent of the United States of America Mr. Michael Matheson, to open the reply for his government.

Mr. MATHESON: Mr. President and Members of the Court. This morning my colleagues and I will respond to the arguments made by the Islamic Republic of Iran and will recapitulate the main points of our case for upholding the preliminary objection of the United States. We will respond later in writing to the questions asked of us by Members of the Court last week, although we will also refer this morning to some of those questions in a preliminary way as they are relevant to the various points in our presentation.

In a few minutes I will outline the arguments which will be made this morning by members of the United States delegation. Before doing so, however, I would like to comment briefly on a few general aspects of the case laid before you by the Islamic Republic of Iran last week. Although the case was on the whole skilfully presented, there was much in it that was not responsive to the issues raised by the US preliminary objection, that was not appropriate for consideration at this preliminary phase, or that was otherwise not justified.

Facts Pertinent to the US Preliminary Objection

First, the distinguished Agent of the Islamic Republic of Iran took issue with the US statement that:

> "The factual assertions of both Parties confirm that the actions which form the basis of the complaint of the Islamic Republic of Iran were combat operations of the military forces of the United States, and that these operations were part of a

> series of hostile engagements between US and Iranian forces that occurred during the course of an international armed conflict."

Several objections to this statement were made by the distinguished Iranian Agent: that Iran was acting in self-defense against Iraqi aggression; that the United States had a duty of neutrality under these circumstances; that there was no armed conflict between Iran and the United States; and that the incidents referred to by the United States were not hostile engagements but unprovoked attacks (CR 96/14, p. 14-15).

With respect, these objections misunderstand or misstate our position. The pleadings and oral arguments of both Parties show that a series of inter-connected incidents occurred during this period in which US or Iranian forces, or both, took hostile action against targets of the other side. Neither party disputes this, at least with respect to the incidents involving the *Iran Ajr*, the various Iranian platforms and the naval engagements of 18 April 1988. These events occurred in the general context of an international armed conflict - namely, the Iran-Iraq war - a fact which neither party disputes. These undisputed facts provide, in our view, a sufficient factual foundation for the US preliminary objection.

It does not matter, for purposes of our preliminary objection, how these incidents of armed conflict are characterized; or whether Iran was acting in self-defense with respect to Iraq; or whether the United States had a duty of neutrality; or whether it was the United States or Iran which initiated these various incidents or which was at fault; or whether any particular incident involved an exchange of fire or simply an undefended attack by one side on the other. These would all be issues for a merits phase if one should occur.

The point for present purposes is that these incidents, including the attacks on the Iranian oil platforms, involved combat operations by the armed forces of one or both of the Parties. The United States contends that such uses of armed force have no reasonable connection with the Treaty, and objects to the jurisdiction of the Court in this case on that basis. There is no need for the Court to resolve any disputed questions of fact to decide on the US preliminary objection.

I should also add, in response to Judge Higgins' question, that our jurisdictional case does not rest on our contention that the oil platforms in question were being used for military purposes at the time of the attacks. This is a disputed question of fact, the resolution of which is not necessary to uphold our preliminary objection. If this case were to go to a merits phase, then the United States would show that these platforms were used for military operations against neutral vessels.

Consistency of the US Position on the Treaty

Second, various members of the Iranian delegation have alleged that the United States has followed a "double standard" in its position over the years with respect to the application of the 1955 Treaty (e.g., CR 96/14, p. 43). It was said that the United States has treated the 1955 Treaty as a "one-way street" by reason of the fact that the United States and US claimants had invoked the Treaty in prior cases before this Court and the Iran-United States Claims Tribunal, while resisting its application to Iranian claims in the present case (CR 96/14, pp. 12-13).

Mr. President, the record will show that the United States has been entirely consistent over the years in its position in this regard. We have consistently stated that the Treaty has been and continues to be in

force. We have consistently taken the view that the Treaty governs specific commercial and consular matters - such as the protection of consular personnel and other hostages in the case concerning *Diplomatic and Consular Staff in Tehran*, and the expropriation of property of US investors in Iran in cases before the Iran-United States Claims Tribunal. We have consistently taken the view that the Treaty does not govern the use of force. Nothing in the 1983 State Department Memorandum cited by Iran (CR 96/14, p. 43) is in any way inconsistent with this or any other aspect of our argument.

This is hardly evidence of a "double standard" or a "one-way street". We have not denied that the Treaty was in force when claims under it were brought against us, while arguing that it was in force when bringing our own claims, as the Islamic Republic of Iran has done. We have not invoked the Treaty when armed force was used against us, while denying its application when our use of armed force was at issue. Thus the Islamic Republic of Iran has no basis for arguing that we have shifted ground or adopted an expedient "double standard".

Discussion of Disputed Facts

Third, various members of the Iranian delegation objected to the discussion by the US delegation of disputed facts that would have to be resolved at a merits phase, if such a phase should occur. Counsel for Iran vowed that the Iranian side would not do likewise, although in fact they did so extensively.

Little needs be said on this point. The United States described what we believed to be undisputed facts and responded for the record to various allegations on disputed facts made by Iran in its last pleading. Iran devoted a considerable amount of time in its first round of oral pleading to presenting and embellishing the disputed facts, introducing a

good deal of new factual material and new arguments, and displaying various maps, charts and visual aids to illustrate its claims on the merits.

It is understandable that each side wishes the Court to know its views on these matters, even though each knows that they are not technically at issue in this preliminary phase. The important point is that the Court can decide the US preliminary objection without the need to resolve any of these disputed factual issues.

Having said that, it is necessary for me to make a few brief points in rebuttal to the Iranian factual presentation last week. First, counsel for Iran presented a series of new diagrams which were obviously designed to illustrate certain Iranian arguments about the merits of the case. The Court should not assume that these diagrams present an accurate, balanced or complete representation of the facts they address. These are matters that we would address in some detail in a merits phase if one should occur.

In particular, the diagrams were used to support the Iranian theory that the US attacks were deliberately designed to maximize economic damage to Iran rather than to deal with the Iranian use of the platforms to facilitate attacks on neutral vessels. Arguments of counsel, of course, are not evidence, and in this instance are not supported by evidence. Should the case proceed to the merits, we would show that the United States knew - from observations by US ships and helicopters as well as merchant shipping sources - that military equipment and personnel were positioned on particular platforms, which were involved in facilitating attacks on neutral vessels. These platforms were selected for attack because of these characteristics and not because of economic considerations.

In fact, even the material cited by counsel for Iran confirmed that US military plans were specifically directed against Iranian military assets, including warships and surveillance posts on the platforms, rather than economic targets as such (CR 96/14, pp. 51-52). Had the United States intended instead to inflict maximum economic damage - which it did not - its targets would have been different in character and scope.

Certain other factual assertions by the Iranian delegation are implausible on their face. For example, counsel for Iran attempted to rebut the US assertion that the *Sea Isle City* had been struck by an Iranian missile launched from the Faw Peninsula by stressing that the Faw Peninsula was Iraqi territory (CR 96/14, p. 49). He neglected to mention that this area was at the time occupied by Iranian forces.

Likewise, counsel for Iran argued that the platforms in question were much too small and crowded to have been used for military purposes of the kind alleged by the United States (CR 96/14, pp. 20-21). In fact, it is obvious that these platforms could easily accommodate (and, as we would be prepared to show, did accommodate) search radars, communications gear and other equipment sufficient to enable their use to track and target neutral vessels. These platform complexes also contained landing pads for helicopters, which we maintain were used to stage attacks on neutral vessels. If this case should proceed to the merits, we would establish these facts.

At one point, counsel for Iran sought to cast doubt on the veracity of US statements by recalling the Iran Air incident (CR 96/14, p. 48). It is true that certain statements of US authorities in the immediate aftermath of the incident contained inaccuracies. These statements were quickly corrected by the US Government, and US submissions to the Court

in that case did not repeat these errors. We are likewise confident that our submissions in the present case, which were the product of years of investigation, are accurate and complete.

Mr. President, there is no need for me to go on with a detailed commentary on the rest of the Iranian factual presentation at this time. If there is a merits phase in this case, we would of course be prepared to respond in detail to Iranian assertions and to present clear evidence to confirm our contentions.

The Burdens of a Merits Proceeding

Finally, the Islamic Republic of Iran stated that the United States had attempted "to threaten the Court with onerous evidentiary proceedings . . . with a view to deterring the Court from hearing any evidence at all" (CR 96/14, p. 15). On this point, I can only repeat what I said last week (CR 96/12, p. 20):

> "if the proper resolution of this case genuinely required the Court to engage in such a merits proceeding, even with all the attendant cost and consequences, the Court should decide to do so . . . On the other hand, if these consequences could be avoided through a proper decision in the current phase on the issues raised by the United States, this would clearly be the preferable course."

The Basic Issues

Mr. President, despite the length of the arguments of the two sides in this preliminary proceeding, the debate seems in the end to turn on a few basic questions. First, what is the basic scope and character of the Treaty? Is it the case, as the United States contends, that the Treaty deals solely with commercial and consular matters or, as Iran argues, that the Treaty was a broad charter for US-Iranian strategic relations, including military operations?

Second, do the specific provisions of the Treaty regulate combat operations of armed forces? Is it the case, as Iran argues, that Article I obligates both parties to refrain from all "unfriendly" acts, including hostile military operations? Is it the case, as Iran contends, that Article IV (1) imposes a requirement of "equitable treatment" on the conduct of such combat operations? Is it the case, as Iran argues, that Article X (1) applies to any military attacks on property that may have commercial value, even if the property has no direct relationship to maritime commerce?

Third, what is the proper standard by which the Court should decide whether it has jurisdiction over the claims of the Islamic Republic of Iran? Must the Applicant demonstrate that those claims have a reasonable relationship to the Treaty, as the United States argues, or some lesser connection, as Iran argues?

This morning we will respond to the Iranian arguments on these basic questions. Professor Lowenfeld will deal with the first question concerning the basic scope and purpose of the Treaty. Mr. Crook will deal with the second question regarding the application of the specific provisions of the Treaty to combat operations of military forces and other matters relating to the Treaty. I will then deal with the third question concerning the standard to be applied by the Court. I will conclude with a final summary of the United States case and will reaffirm the submission of the United States.

I therefore suggest that the Court now invite Professor Lowenfeld to address the Court concerning the basic scope and purpose of the Treaty. Thank you, Sir.

The PRESIDENT: I now give the floor to Professor Lowenfeld.

Professor LOWENFELD: Mr. President, Members of the Court, may it please the Court. My task here today is to respond to the professors appearing on behalf of Iran, my good friends Professor Condorelli and Professor Crawford, concerning the scope of the Treaty of Amity.

I. The Treaty in Context

Before I proceed to this task, I want briefly to take up the challenge posed by Mr. Bundy on Thursday morning. Mr. Bundy asked you to place the Treaty of Amity in the big picture, the geopolitical context, if you will. In the mid-1950s, the United States and Iran entered into a series of bilateral agreements, and Iran joined the Baghdad Pact after signing the Treaty of Amity, but before that Treaty entered into effect. A consortium had recently been formed among the British Petroleum Company (formerly Anglo-Iranian) and several US-based oil companies, and the consortium joined with the National Iranian Oil Company (NIOC) in developing the oil industry of Iran - off-shore as well as on-shore. Furthermore, as both Mr. Zahedin and Mr. Bundy emphasized, oil has strategic as well as economic importance.

No part of this history gives us the slightest difficulty. No part of this history answers the question whether Iran and the United States exchanged reciprocal consent to adjudication before this Court - under general principles of international law - of future disputes about the use of force.

It is instructive, since we are exploring context, to look at some of the other agreements between Iran and the United States signed in this period. What emerges is that Iran and the United States addressed their relationship not in a one-size-fits-all Treaty of Amity, but through a variety of instruments focused on different sectors and containing a variety of dispute settlement mechanisms.

- Perhaps the agreement most pertinent to the present controversy was an Agreement of Cooperation, signed in Ankara on 5 March 1959 (*TIAS* 4180; 10 *UST* 314). Under that Agreement of Cooperation, the parties addressed their cooperation for security and defence. The United States undertook (in Article I) to take "such appropriate action" including the use of armed forces, as may be mutually agreed upon. Further, the United States undertook (in Article II) to continue to furnish to the Government of Iran such military and economic assistance as may be mutually agreed upon, and the Government of Iran undertook (in Article III) to utilize such military and economic assistance as may be provided by the United States - "in a manner consonant with the aims and the purposes of the [Baghdad Pact] and for the purposes of effectively promoting the economic development of Iran and of preserving its national independence and integrity". The Agreement spoke of determination to resist aggression, about collective security, about rights of the Parties under Article 51 of the United Nations Charter. The Agreement of Cooperation contained no dispute settlement clause. It did, however, contain an express disclaimer of linkage with, for example, the Treaty of Amity. Article V of the Treaty of Cooperation states, in full: "The provisions of the present agreement do not affect the cooperation between the two Governments as envisaged in other international agreements or arrangements."
- The Agreement of Cooperation built on a Mutual Defence Assistance Agreement between the two parties signed in Washington as early as 23 May 1950 (81 *UNTS* 3; *TIAS* 2071; 1 *UST* 420). That Agreement, too, contained no formal dispute settlement clause, but provided

that the two governments will, upon the request of either of them, "consult regarding any matter relating to the application of these understandings or to operations or arrangements carried out pursuant to these understandings".

Thus the agreements, concluded both before and after conclusion of the Treaty of Amity, that *did* deal with military matters - with "fundamental strategic questions" in Mr. Bundy's phrase. Those Agreements called for cooperation and called for consultations, but not for third party dispute settlement. The two governments showed no disposition to subject matters of this kind to adjudication before this (or any other) Court. (I might add that after listening to Mr. Bundy the other day, I went to the Embassy library and got out the pertinent volume of *Foreign Relations of the United States, 1955-1957*, Volume XII. Here it is, it has 1,097 pages, including an elaborate index, it is entitled "Near East Region; Iran; Iraq". There are almost 300 pages about Iran - full of strategic and geopolitical discussions, meetings, memoranda, all kinds of notes about discussions, bilateral, multilateral - but not a word about the Treaty of Amity.)

In addition to these military and strategic agreements, Iran and the United States concluded a number of other agreements as part of their increasingly complex relationship. All of these agreements made some kind of provision for settlement of disputes, each different from the others; none of the agreements provided for reference of disputes to the World Court.

- For example, Iran and the United States entered into an agreement on Surplus Agricultural Commodities signed at Tehran on 20 February 1956 (*TIAS* 3506; 7 *UST* 329). The agreement contained a disputes provision - Article V - whereby the two governments

will, upon the request of either of them, consult regarding any matter relating to the application of the Agreement.

- The two parties entered into an Air Transport Services Agreement, signed at Tehran on 16 January 1957 (*TIAS* 4021; 9 *UST* 407). That agreement had quite an elaborate dispute settlement clause, calling for submission of any dispute that could not be settled by negotiation for an advisory report to some person or body designated by mutual agreement, or to a tribunal of three arbitrators, one to be named by each party and the third to be agreed by the two arbitrators so chosen. It is interesting to note that the International Court of Justice does have a role to play in the dispute settlement agreement under the Air Transport Services Agreement; but the role is limited to appointment by the President of the Court of an arbitrator or arbitrators if the preferred procedure for appointment of arbitrators does not succeed within specified periods.
- To take another example, Iran and the United States entered into an Agreement for Cooperation Concerning Civil Uses of Atomic Energy, signed in Washington on 5 March 1957 (*TIAS* 4207; 10 *UST.* 733). This agreement, which included provisions for the safeguarding of nuclear materials and for the protection of restricted data, contained no specific dispute settlement clause, but anticipated (in its Article X) that this initial agreement for cooperation would lead to consideration of further cooperation concerning power producing reactors.
- Finally, in this little catalogue, which may well be incomplete, Iran and the United States entered into an Investment Guaranty Agreement, signed at Tehran in September 1957 (*TIAS* 3913;

8 UST 1599). That agreement did have an explicit dispute settlement provision, applicable to the situation in which the United States became subrogated to a claim against Iran. That is, a claim originally would have been brought by an investor, the investor could have received compensation from the United States under the investment guaranty and then the United States would take up the investor's claim vis-a-vis Iran. And if that happened the parties were first supposed to negotiate, but if within a reasonable period of time they were unable to settle the dispute, the dispute was to be referred for final and binding determination by a sole arbitrator to be selected by mutual agreement. Again, as in the Air Transport Services Agreement, there was a role for the International Court of Justice, but again only to the effect that the President of the Court was to appoint the arbitrator, in default of agreement on such appointment by the two parties.

In sum, Mr. Bundy was correct in saying that the Treaty of Amity was part of a larger web of relationships created or recorded between Iran and the United States in the 1950's. Mr. Bundy and Mr. Condorelli are quite wrong, however, in painting the Treaty of Amity as some kind of all-purpose or umbrella agreement, and painting the dispute clause in the Treaty of Amity as overtaking all other dispute, consultation, or future negotiation clauses in the agreements between Iran and the United States. Each agreement had its own modality for resolution of possible disputes, from consultation to arbitration to renegotiation. None of the agreements other than the Treaty of Amity contained a World Court clause, and none of the other agreements indicated any understanding or expectation by the parties that all future disputes would come under the wings of the Treaty of Amity.

II. The Subject Matter of the Dispute: The Use of Force

Let me turn next to what Professor Crawford called the dress rehearsal. I suppose one can fairly paint parts of Commander Neubauer's presentation and the latter part of Mr. Bundy's presentation as an indication of the kind of factual and legal issues that would be raised if the Court were to find that it had jurisdiction. If there is a doubt in anyone's mind as to the subject matter of the dispute and the nexus, plausible connection, reasonable connection, or however one chooses to identify the missing link with the Treaty, a look at the issues raised by the differences between Mr. Bundy's version and Commander Neubauer's version has to remove that doubt. Consider where they differed - on fact and on law. Was Iran engaged in self-defense, was the United States so engaged, or both or neither? Was the *Sea Isle City* struck by a missile, and if so did it originate in Iranian-occupied or Iraqi-occupied territory? And what was the range of such a missile anyway? Were the platforms exclusively engaged in pumping oil or were they also being used for surveillance and for staging attacks on ships in the Gulf? What was the occupation of the persons stationed on the platforms? Were the platforms hit in 1988 primary targets or fall-back targets, and what legally relevant inference could be drawn from the answer to that question? And so on.

Others have a clearer picture of these facts than I do. My point is that a judicial investigation by this Court of these mixed factual/legal questions cannot - I repeat - cannot hang on the slender hook of the Treaty of Amity. Let me be clear: the United States is not saying that you cannot sort out this dispute, or that it would be too burdensome to do so. The United States' position, as I said in my opening statement a week ago, is that your jurisdiction is based on the consent of the

parties, and that neither party - neither party - gave its consent to the submission of the kinds of questions I have mentioned to adjudication - whether by the International Court of Justice or indeed by any court.

III. The Subject Matter of the Treaty: Commerce and Navigation

Professor Condorelli asked you, essentially, to break up the treaty into a hundred pieces, like a jig-saw puzzle whose pieces are thrown on the floor, and then to pick out of these pieces a few that can be fitted into a very different picture, that would be entitled "Rules pertaining to the Use of Force, the Rights and Duties of Non-Belligerents, and the Obligations of 'Sincere Friendship'." We do not recognize this picture, and I am confident that the Court will not recognize it either. We ask you to put the pieces together in the way they were designed to fit, and that they do fit.

It is perfectly clear that when one performs that exercise - that easy exercise - the whole treaty is about trade and investment, about travel, and about sojourn by nationals of one contracting party in the territory of the other (Art. II); about access to courts and to commercial arbitration (Art. III); about security of transnational investments (Art. IV); about purchase and sale of real property and protection of intellectual property (Art. V); about taxes imposed on nationals and companies of one contracting party by the other contracting party (Art. VI); about remittances and exchange restrictions (Art. VII); about customs duties and other restrictions on imports (Art. VIII and Art. IX); about shipping and access to ports (Art. X); about state-owned enterprises, government procurement and limits on sovereign immunity (Art. XI); and then, in Articles XII-XIX, a number of provisions relating to consuls that I need not spell out, including exequatur, privileges and immunities, furniture and baggage, and accreditation. Article XX - the

exceptions article - we have already explored, and articles XXII and XXIII are routine final clauses.

Postponing for the moment Article I, to which I will return, that leaves Article XXI, the compromissory clause on which Iran bases its claim to jurisdiction of the Court. If the Court is prepared to accept the position advanced by both Professor Condorelli and Professor Crawford that the Parties have a dispute about interpretation of the Treaty, and that that fact alone gives jurisdiction to the Court, that is the end of the argument. As I said in my opening statement, I cannot believe that this Court would lend itself to such a technique of fabricating jurisdiction. Professor Crawford asked you to rely on paragraph 29 of the recent *Genocide* case in support of that position. I am comforted by the next paragraph, to which my learned colleague did not refer. Paragraph 30 says:

> "To found its jurisdiction, the Court must, however, *still* ensure that the dispute in question does *indeed* fall within the provisions of Article IX of the Genocide Convention which was the compromissory clause of that Treaty." (Emphasis added.)

Thereafter, the opinion of the Court examines and analyzes the positions of the parties in relation to the Court's jurisdiction in detail, just as we have asked the Court to do in the present case.

Assuming, then, that the Court will go beyond what I have called the Baron Munchausen technique, and will undertake to "ensure that the dispute in question does indeed fall within the provisions of the [compromissory article of the Treaty]", I would ask the Court to look at the whole picture - that is the pieces properly assembled, to continue my metaphor of the jig-saw puzzle. When that is done, I submit that there can be no doubt that the picture shows a commercial treaty. In all of the articles that I have mentioned, the Treaty contains standards, criteria, procedures that can be applied or reviewed by a court, and that, as

Ambassador Bohlen wrote in the memorandum from which I read in my opening statement, the authorities are to a considerable extent established and well known.

Counsel for Applicant, in contrast, ask you to fish among the pieces. They say that Article X is an article about commercial relations, but they construe the expression "freedom of commerce and navigation" not in its normal meaning, as spelled out in the following paragraphs of Article X and in the various MFN and National Treatment clauses, but in a wholly contrived and artificial meaning, as if it read "freedom from becoming involved in military or naval engagements".

They fish out of Article IV (1) - also evidently an article about commercial relations - the words "equitable treatment", and ask you to hold that it is not equitable that installations of NIOC became the object of military operations.

And finally, they attempt to build out of Article I a whole universe of legal obligations. Realizing that there is an enormous gap - indeed a crater - in the standards to be applied in the jurisdiction they thus purport to manufacture, they have cited (several times) to Judge Virally's decision in the Iran-US Claims Tribunal in the case of *Amoco International Finance Corporation* v. *Iran*, 15 Iran-U.S.C.T.R. 189 at 222 (1987). My response to that point is embarrassingly easy.

First, contrary to Professor Condorelli's assertion (CR 96/14 at 74), the two parties in the *Amoco* case did not agree that general international law was incorporated into the Treaty of Amity; they agreed only that the lawfulness of the expropriation must be decided by reference to international law (see paragraph 87 of the Tribunal's decision in that case).

Second, the Claims Tribunal does not derive its jurisdiction from the Treaty of Amity, but from the Algiers Accords, which of course contain a wide choice of law clause (Article V of the Claims Agreement as you may remember) not limited to the Treaty of Amity.

And *third*, Article IV (2) of the Treaty of Amity, to which Judge Virally was addressing himself, provides (in pertinent part):

> "Property of nations and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, *in no case less than that required by international law.*" (Emphasis added.)

Thus Article IV (2), the article being construed by the Claims Tribunal, invites, or rather mandates, the decision-maker to compare the conduct of the state whose conduct is being challenged with the requirements of international law. To make Professor Condorelli's point pertinent here, the Court would have to add to Article I of the Treaty of Amity the words: "as required by international law in all its aspects, as they may exist at the time of the conclusion of this Treaty or as developed hereafter".

With respect, I do not think that the Treaty of Amity between the United States and Iran, or between the United States and China, Ethiopia, and Muscat and Oman, can bear that kind of rewriting.

* * *

Before closing, I might add just a few words on the *Nicaragua* case, on which Iran pins so much of its hopes. Nothing in that case, as we see it, runs contrary to anything that I have said. As I pointed out last Monday, the issues concerning the jurisdiction under the FCN treaty received little attention, either by the Parties or by the Court, for reasons we have explained. Mr. Crook will review the specific points made in the *Nicaragua* case as they bear on the present dispute. I want

to stress only that the decision in the *Nicaragua* case in no way supports the proposition advanced here on behalf of Iran that jurisdiction based solely on an FCN treaty can support a claim under customary rules of law concerning the use of force.

In short, we agree with Professor Crawford when he says Article XXI (2) is as broad as the Treaty itself. We disagree - and we are confident that the Court will disagree as well - with the further statement that the Treaty is as broad as anyone's conceivable construction of sincerity or friendship.

Thank you, Mr. President, that concludes my presentation. I suggest you may want to call now on Mr. Crook to continue the presentation on behalf of the United States.

The PRESIDENT: Thank you very much, Professor Lowenfeld. Now I give the floor to Mr. Crook.

Mr. CROOK: Mr. President, Members of the Court, in this short presentation, I shall address several significant questions raised in the oral proceedings regarding the 1955 Treaty. These arguments will underscore our point that there is no reasonable connection between the claims of the Islamic Republic of Iran and the specific rules of the Treaty that have been cited.

A. Circumstances of the Conclusion of the Treaty

First, a brief point regarding the circumstances of the conclusion of the Treaty. Professor Lowenfeld has just dealt with arguments suggested by counsel for the Islamic Republic of Iran regarding the supposed circumstances of the conclusion of the Treaty. I will not duplicate his presentation, but will add just one point. I showed in my initial presentation to the Court last week how the 1955 Treaty was the

lineal descendant of a long span of commercial and consular treaties between the Parties going back at least as far as 1856. Iran has thus far not responded in any way. The 1955 Treaty was not a novelty in the Parties relations, but was part of a long chain of similar agreements between the Parties. Nothing about the circumstances of the conclusion of this Treaty justifies interpreting its text in any broad, artificial or exceptional way.

B. The Preamble and Title of the Treaty

Arguments have also been advanced regarding the Treaty's Preamble and its title. As to the Preamble, there is really not much more that I can say. I would simply invite the Court to read the brief text in light of your experience and knowledge of international law. Then please consider whether, in your view, the few commonplace words used by the parties indicate that this Treaty is to be construed to bring the most fundamental issues of war and peace before you through the avenue of a commercial and consular treaty. I submit that they are not.

It has also been suggested that the Court should assign some particular importance to the presence of the word "amity" in the title of the Treaty. (In English, the Treaty is entitled "Treaty of Amity, economic relations and consular rights.") We do not agree with this suggestion.

It is common for treaties of this kind to include either the word "friendship" or the word "amity" in their titles. This will be clear from a review of the titles of such treaties contained in the list I cited at 20, *International Legal Materials* 565. Whichever word is chosen ("friendship" or "amity"), the essential meaning is the same. And in neither case, does the wording of the title does alter the substantive provisions of the Treaty. As this Court indicated in its judgment in the

case of the *Diplomatic and Consular Staff in Tehran*, to which I referred again without response by counsel for Iran, the meaning of this Treaty is to be found in its specific substantive articles (*I.C.J. Reports 1980*, p. 28, para 34).

The fact that its title may contain the word "amity" is not a reason to construe its provisions in the broad and artificial ways urged upon you here by the distinguished counsel for the Islamic Republic of Iran.

C. The Significance of Article I

Let me turn now to a few points regarding Article I. I do not need to remind the Court of the language of Article I, or to review all of the arguments you have heard from counsel for the Islamic Republic of Iran as they have tried to stretch these few words. I will confine myself to a few brief points.

1. Article I is a statement of aspiration and description, not a judicially enforceable rule

I pointed out that Article I can most reasonably be read as a statement of aspiration. This is a description of conditions that the Parties desired to secure through various means, including the 1955 Treaty. The alternative reading - that the maintenance of peace and friendship between the United States and Iran becomes a matter for this Court - is highly implausible. As I noted, certainly nothing in the practice of the Parties, at least before Iran decided to bring this case, suggested that the Parties viewed Article I as a rule of broad legal obligation. Counsel for the Islamic Republic of Iran have dealt with this point regarding the Parties' practice by ignoring it. They cannot ignore it, for it is a crucial guide to the correct interpretation of this Article.

Counsel for the Islamic Republic of Iran have tried to make much of the word "shall" in the expression "there *shall* be" peace and friendship between the parties. However, as you know, the word "shall" in English can have separate meanings. It can be a word of obligation, as counsel for Iran contend. However, the words "shall be" are also a future form of the verb "to be". That is also the sense of the French text of this agreement included in the UN Treaty Series and reproduced in Iran's application. Article I there says "Il y aura." There will be.

If the article were intended to convey the meaning of obligation urged by Professor Condorelli, it would have to be phrased quite differently. It would read: "that each party shall refrain from acts that disrupt" peace and friendship. But that is not what Article I says.

2. The principle of effectiveness requires no other result

Mr. President, Members of the Court, Professor Condorelli made much of the rule of interpretation regarding effectiveness, urging the Court adopt Iran's sweeping interpretation of Article I in order to avoid rendering that Article meaningless.

With all respect, I think that counsel for the Islamic Republic of Iran have not accurately characterized the situation. Our interpretation of Article I is not in any way inconsistent with the principle of effectiveness. We do not suggest that the Court disregard Article I. It may be a useful statement of the Parties' aspirations. It sets a framework for all that follows. It may in particular circumstances shed light on the construction of other articles. We do not ask the Court to ignore Article I.

What we do ask is that the Court not follow a maxim of interpretation to a result that is manifestly unreasonable or is at variance with the intentions of the parties. Nothing in the case of

Territorial Dispute (Libyan Arab Jamahiriya/Chad) or other decisions of this Court supports the contrary conclusion. In this respect, we find instruction in the Court's Judgment in the *Anglo-Iranian Oil* case, which was the subject of Judge Schwebel's question to the Parties on another matter. The Court there was urged by one party to give a particular effect to a provision of an instrument on the basis of the principle of effectiveness urged here by Professor Condorelli. This Court did not agree, concluding that the principle of effectiveness cannot supplant clear intention (*I.C.J. Reports 1952*, pp. 105-106).

The same principle should control here. The principle of effectiveness is one of many possible guides to interpretation. It should be viewed with particular caution and restraint in a jurisdictional context. But even if it were relevant here - and we do not agree that it is, for we do not ask the Court to ignore Article I - it cannot be used to produce, in the guise of interpretation, results that are manifestly at variance with the known intentions of the parties. The principle of effectiveness is not license to import into Article I all of the law of war and peace.

A variety of other arguments regarding the character of Article I have been advanced, but I do not believe that in the context of this rebuttal I can do more than urge the Court to weigh carefully what I have just said. Article I is a description, not a legal obligation, as the United Nation's French translation makes clear. The practice of the Parties shows that they have not previously construed this sweeping provision in the way now being urged. And the principle of effectiveness neither applies nor requires this Court, in the guise of treaty interpretation, to read new and wholly unintended meanings into treaties.

D. Article IV (1) and X (1) of the Treaty do not Regulate the Use of Armed Force

Let me know turn to a few arguments regarding Articles IV (1) and X (1) of the Treaty. Some of the arguments regarding these articles have been squarely joined as a result of the arguments of counsel. So there is not much I can do that might assist the Court. In other cases, the arguments adduced do not seem to require significant discussion. Thus, for example, Mr.Bundy's suggestion that Article IV (1)'s requirement of "equitable treatment" dictates that because Iran was found liable in claims in the Iran-United States Claims Tribunal on the basis of this Treaty, the United States should be found liable here (CR 96/14 at 42), is not a position that requires substantial discussion.

However, on a few points, more can perhaps be said.

First, I ask the Court to recall the important point concerning both of these Articles that elicited little or no response from counsel for Iran. I pointed out to the Court that neither of these Articles could intelligibly be applied in circumstances otherwise regulated by the law of armed conflict. If a use of force is lawful, it makes no sense to require that it also be "reasonable" or "non-discriminatory" in the sense of Article IV. Moreover, the lawful use of force cannot be reconciled with unimpeded maritime commerce - or even with the freedom of commerce generally, if you accept the much broader reading of Article X (1) offered by Iran. These Articles simply cannot be applied to regulate the lawful use of force.

E. The Maritime Focus of Article X (1) and Iran's Problem of "Commerce"

In their arguments regarding the specific articles of the 1955 Treaty, the distinguished counsel for the Islamic Republic of Iran devoted much time to discussing the case for applying Article X (1) to

the circumstances of Iran's claim. For our part, we are convinced that there is no reasonable connection between this Article and the matters raised by Iran. Let me review our reasoning.

First, the character of Article X (1), and of any obligations thereunder, relate to maritime or seaborne commerce between the parties, not to commerce generally. The military actions of the United States complained of by Iran did not interfere with maritime commerce between the territories of the two countries. They have no reasonable connection to Article X (1).

Now, the Court will recall that we showed how Article X(1) introduces a series of paragraphs, each dealing exclusively with maritime matters. We also referred to three of the leading writers on these treaties. Each underscored the maritime scope and character of Article X. Counsel for the Islamic Republic of Iran responded only by ignoring these arguments and authorities.

What was Iran's position regarding Article X (1)? Professor Condorelli essentially denied that Article X (1) had any particular relevance to maritime commerce or was limited to maritime trade. He said that Iran did not accuse the United States of "hindering the freedom of maritime commerce". He said, in our unofficial translation, that:

> "Iran's claims do not bear directly on freedom of commercial navigation; however, this has no relevance because Article X covers commerce in general, not simply maritime commerce." (CR 96/15, p. 34, in the French original.)

Thus, counsel for Iran do not regard Article X (1) as having particular pertinence to maritime commerce, and claim instead that this provision extends to all forms of commerce. Now, to arrive at this result, Iran must ignore authoritative writers who emphasize the maritime character of the Article. They also must disregard its role in

introducing a series of detailed provisions that deal with maritime affairs.

But, having agreed with us that their claims do not involve maritime commerce, counsel for the Islamic Republic of Iran face a difficulty. They must somehow relate their claims for damage to "commerce between the parties", the concept in Article X (1). Iran must meet this burden, though, for it must acknowledge - as it did - that these platforms are not part of maritime commerce. They were constructed as static production facilities, permanently affixed to the continental shelf. They are not vessels. Their operations are not part of maritime commerce, as that concept is understood in the ordinary course. The fact that the oil they produced was carried by a pipeline network that may have been connected to facilities at ports does not make these platforms part of maritime commerce, any more than transportation of apples by truck to a port makes the apple orchard part of maritime commerce.

In the face of these difficulties, counsel for Iran devised the following argument. These platforms are associated with the production of oil. Oil is a commodity that can enter commerce. Indeed, some of it might come to the United States through commercial sales. Therefore, the platforms are part of commerce. Therefore, damaging their existing or future production potential damages commerce that may potentially move between the United States and Iran.

Now, there are serious difficulties with this argument. First, it necessarily rests on a good deal of hypothesis and speculation. Second, there is no indication anywhere in the language or history of the text, or in the practice of the Parties, to support the assertion that Article X's short reference to "freedom of commerce" "between the parties" extends thus far. Third, and this is perhaps the greatest

defect of this theory, it is potentially unlimited. Under Iran's analysis, the maritime article of the 1955 Treaty would reach to include the production of goods or commodities any place in Iran, even if they might be consumed domestically or exported to countries other than the United States. This analysis could embrace virtually all economic activity that might take place in the Islamic Republic of Iran, and make it part of "commerce between the territories" of the United States and Iran. An argument that reaches so far must be rejected.

F. The *Nicaragua* case and the 1955 Treaty

Let me turn briefly to the *Nicaragua* case and the 1955 Treaty. I will not presume here to try to distil the debate that you have heard regarding the relevance or not of the Court's decisions in *Nicaragua* v. *United States*. I shall instead confine myself to three simple points.

First, the Court in that case did not adopt the argument now being advanced by the Islamic Republic of Iran regarding the supposed application of Article I. This is because, as both Parties here agree, the US-Nicaragua Treaty did not have an article comparable to Article I of this Treaty. The *Nicaragua* case does not support Iran's Article I claim.

Second, the Court in that case did not adopt the argument now being advanced by the Islamic Republic of Iran regarding the supposed application of Article IV (1). As to this claim too, the *Nicaragua* case does not support Iran's claim.

The matter is somewhat more complex as to Iran's third claim, under the shipping article, Article X (1). The Court in the *Nicaragua* case did not discuss in detail the relationship between the counterpart to Article X and the attacks on the oil platforms and storage facilities for which it found the United States to be responsible under that Treaty.

Yet, we believe that the Court's objective and fair inspection of the *Nicaragua* decision will show that the Court did not find these attacks to violate the Treaty merely because they affected a commodity potentially involved in commerce, as Iran claims here.

Rather, the Court's only discussion of Article X stressed the disruption of maritime commerce resulting from US actions. And, it must be emphasized, Iran has made clear, and it is pleading here, that it does not view its claims under Article X as being related to maritime trade. Thus, we do not believe that the *Nicaragua* case supports Iran's final claim under Article X (1).

G. Article XX (1) *(d)*

Mr. President, I will close with a brief discussion of Professor Crawford's dramatic response to our suggestion that the Court need not now address Article XX (1) *(d)*. We had hoped to simplify the situation for the Parties and the Court, but we clearly did not succeed in our modest effort.

We said that we thought that consideration of the interpretation and application of Article XX (1) *(d)* was a merits issue. Professor Crawford, though, tried to make this out as some sort of dramatic concession by the United States. His argument, creative even, to us at least, if not very persuasive, goes as follows:

> "The United States accepts that whether a government measure is 'necessary to protect its essential security interests' is an issue for the merits. In this case, the application of Article XX, paragraph 1 at the merits phase would implicate the law of armed conflict. Therefore, the United States concedes that the 1955 Treaty regulates the use of force and the exercise of self-defense."

That is the argument. The United States, however, has conceded no such thing. And counsel's conclusions cannot fairly be drawn from our statements. The position of the United States is that the 1955 Treaty

does not regulate the conduct of military hostilities, and therefore, that such conduct should never - never - be the subject of any merits proceedings in this Court under the Treaty. Article XX (1) *(d)* is not inconsistent with this position. It addresses a wide range of possible actions not necessarily involving the use of force, such as trade restrictions taken for reasons of national security.

If the Court should rule that it does have jurisdiction to adjudicate Iran's claims regarding the military events at issue - then, of course, the United States would demonstrate that its actions did not violate the Treaty. In this regard, the United States would invoke Article XX, paragraph 1, and show that the Treaty does not preclude the Parties from taking actions consistent with the law governing the use of force and the exercise of self-defense.

Thus, the United States certainly does not concede that the 1955 Treaty regulates the conduct of armed conflict. However, should the Court rule otherwise, there will be a need for the Parties and the Court to examine with care the exceptions to the reach of the Treaty that are expressly written into Article XX (1) *(d)*.

Mr. President, Members of the Court. This concludes my statement in rebuttal. I hope these points will be of some assistance to the Court in its difficult task. It has been an honour for me to appear before you.

I thank the Court, and invite you to call upon the Agent of the United States, Mr. Matheson, to complete our rebuttal.

The PRESIDENT: Thank you very much, Mr. Cook, and I now call upon the distinguished Agent of the United States of America, Mr. Matheson, to make his statement and also to give to the Court the final submissions of his Government.

Mr. MATHESON: Mr. President and Members of the Court, I will now address the third of the basic issues in dispute - namely, the standard that should be applied by the Court in deciding the jurisdictional issue.

The Standard for Jurisdiction

In judgments concerning jurisdiction, the Court has used a variety of formulations to characterize the burden that applicants must satisfy to demonstrate a dispute that comes within the Court's jurisdiction. The United States maintains that an applicant must show a reasonable connection between its claims and the treaty in question. Whatever the particular words invoked, what is clear is that a party which invokes the jurisdiction of the Court must demonstrate that its claims are sufficiently connected to a treaty that contains standards which the Court can properly apply to adjudicate those claims.

Counsel for Iran have suggested various formulations for this jurisdictional standard. They have referred at various points to the burden of demonstrating genuine questions (CR 96/14, p. 27), fundamental questions (CR 96/14, p. 26), and genuine connections (CR 96/15, p. 11) between an applicant's claims and the treaty in question. Professor Crawford suggested that the Applicant must present a "*bona fide* question" regarding the interpretation or application of a treaty (CR 96/15, p. 48). Professor Condorelli appeared to take a different view, asserting that it was sufficient that the Parties disagreed over the meaning of particular treaty provisions (CR 96/15, pp. 15, 27, 33).

It is our view that the Court's recent decision in the *Genocide* case supports the position of the United States, notwithstanding Iran's attempts to characterize that case differently. Counsel for Iran have suggested that the Court in the *Genocide* case considered the existence of a mere disagreement between the parties regarding the interpretation or

application of the Genocide Convention to be sufficient to give rise to a dispute within the Court's jurisdiction (CR 96/15, p. 50).

But this reference to the *Genocide* case was selective and incomplete. While the Court noted the existence of a dispute - in the literal sense that the two parties disagreed - it indicated this was not sufficient to give rise to jurisdiction. The Court explained that it "must, however, still ensure that the dispute in question does indeed fall within the provisions of Article I of the Genocide Convention" (*Judgment of 11 July 1996*, para. 30).

This passage refutes the notion that a mere disagreement between the parties gives rise to a dispute conferring jurisdiction. It confirms that the Court will not accept jurisdiction unless it is convinced that the dispute in question does in fact fall within the treaty.

In the *Genocide* case, the Respondent argued that the treaty in question (in this case, the Genocide Convention) did not apply to the type of conduct presented by the claim - in particular, acts allegedly occurring during internal armed conflict in territory not controlled by the Respondent. To resolve this issue, the Court had to decide between the opposing positions of the parties on the interpretation of specific provisions of the treaty. In doing so, the Court did not defer this issue to the merits simply because the parties had advanced possible or plausible or *bona fide* interpretations of the treaty. Rather, the Court went straight to the substance of the interpretive question and resolved it. This was a sensible and direct way of proceeding, which simplified the case by dealing at the outset with an issue that could otherwise have consumed additional time and effort later.

This is precisely what we ask the Court to do in the present case. The United States contends that the 1955 Treaty does not apply to the

type of conduct presented by the Iranian claim - in particular, combat operations by military forces in the context described in the pleadings. To resolve this issue, the Court would decide between the opposing positions of the Parties on the interpretation of the treaty. Such a decision would be a sensible and direct way of proceeding, which would simplify the case by dealing at the outset with a straightforward legal issue requiring no resolution of disputed facts.

Counsel for Iran further attempted to dissuade the Court from applying the standard advocated by the United States by arguing that "such a test inevitably forces the Applicant State to proceed too far into the merits" (CR 96/15, p. 47). He claimed that a reasonable connection of the Treaty could only be demonstrated by establishing facts relevant to the resolution of the merits.

This argument is not persuasive, certainly not in the circumstances of the present case. It is the position of the United States that the 1955 Treaty does not regulate the conduct of military hostilities and was never intended to do so. As we have shown, this contention does not require the resolution of disputed facts and does not prejudge the various substantive issues that would be at the heart of the merits phase - whether Iran was responsible for the mines and missiles that damaged American vessels, whether the platforms were being used for military purposes, whether the US attacks were in legitimate self-defense, and so on.

Thus, the objection now before the Court is demonstrably of an exclusively preliminary character. Its resolution would be entirely consistent with the text and purposes of Article 79 as we have attempted to explain them, a conclusion which Iran has not effectively refuted.

Conclusion

Mr. President and Members of the Court, you have now heard our responses to the arguments of the Islamic Republic of Iran. There is a basic question which underlies all of this debate, and upon which the disposition of our preliminary objection should turn.

The Court exists to provide a judicial forum through which States may secure a peaceful resolution of disputes between them. Its jurisdiction is founded upon the consent of States to submit such disputes, or categories of disputes, as they wish, to have decided by the Court. Therefore, the essential question in every jurisdictional proceeding should be: is this a dispute of the type that the Parties intended to be decided by this Court when they consented to the Court's jurisdiction? This is the question toward which every jurisdictional principle and every rule of treaty construction must be subordinate.

This, for example, is the lesson of the 1952 *Anglo-Iranian Oil Co.* case. In that case, the Court decided that a party's declaration accepting the Court's jurisdiction over certain disputes should be limited in a certain way, even though the text was subject to a different interpretation under the principle of effectiveness. For the Court, the main consideration was to determine whether that party actually intended to give the Court jurisdiction to rule on the type of dispute in question, which the Court decided was not the case.

In the present case, the basic question is whether a dispute concerning combat operations by military forces is one which Iran and the United States intended to be decided by the Court when they concluded the 1955 Treaty. As you know, we believe this question must be answered in the negative.

We have shown that the 1955 Treaty was not the vehicle by which Iran

and the United States attempted to build a strategic alliance, or to deal with national defence or the use of armed force. Other agreements were entered into for these purposes during this period, and none of these contained a compromissory clause referring disputes to the Court. The conclusion is inescapable that the parties did not intend that the Court be charged with this responsibility.

This is confirmed by the entire substance and character of the Treaty itself. As we have shown, the Treaty is about commercial and consular matters, and was only the latest in a long series of such treaties concluded by both the United States and Iran for these purposes with a variety of countries. It contains no standards by which the use of armed force could be judged. The parties gave no indication - to the Senate, the Majlis, or anyone else - that it was to govern the use of armed force.

If that were really the parties' intent, then surely would not have manifested it simply by shifting the placement in the Treaty of a vague aspirational statement about peace and friendship. That is not the way that governments deal with the very serious matter of armed conflict.

Nor is it plausible to assume, as Iran argues, that this vague language was supposed to confer on the Court jurisdiction to hear such disputes arising under the entire body of international law concerning the use of armed force, which of course was already in force with respect to both countries. Why would governments choose a commercial and consular treaty for such a purpose, rather than one or more of the other defence agreements which they had negotiated during this period? Why would the parties not do so expressly, rather than by inference from vague aspirational language?

Under these circumstances, it defies common sense to conclude that the two governments actually intended to regulate the use of armed force and to give jurisdiction to the Court over such use in a treaty of this sort and in such a casual manner. This is the fundamental point which the Court must deal with, and which no amount of legal maxims or sophisticated advocacy can obscure.

We ask the Court to carry out the true intentions of the parties in this case. We ask the Court to reject the submission of the Applicant and the improbable interpretations of the Treaty that have been offered in its support. We ask the Court to uphold the preliminary objection of the United States. Accordingly, we maintain the submission contained on page 54 of the US Preliminary Objection as our Final Submission.

Mr. President, this concludes the argument of the United States. We will provide written answers to all the questions asked of us by Members of the Court within the time-limit prescribed. As always, we thank the Court for its consideration of our presentations and for the honour of appearing before it. Thank you, Sir.

The PRESIDENT: Thank you very much Mr. Matheson. That concludes the oral argument on behalf of the United States of America. The Court will now adjourn and the hearing will resume tomorrow morning at 10 o'clock for the reply of the Islamic Republic of Iran.

The Court rose at 11.30 a.m.
