CR 2003/5

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2003

Public sitting

held on Monday 17 February 2003, at 3 p.m., at the Peace Palace,

President Shi presiding,

***in the case concerning* Oil Platforms**
(Islamic Republic of Iran *v.* United States of America)

VERBATIM RECORD

ANNÉE 2003

Audience publique

tenue le lundi 17 février 2003, à 15 heures, au Palais de la Paix,

sous la présidence de M.Shi, président,

***en l'affaire des* Plates-formes pétrolières**
(République islamique d'Iran c. Etats-Unis d'Amérique)

COMPTE RENDU

Present:	President	Shi
	Vice-President	Ranjeva
	Judges	Guillaume
		Koroma
		Vereshchetin
		Higgins
		Parra-Aranguren
		Kooijmans
		Rezek
		Al-Khasawneh
		Buergenthal
		Elaraby
		Owada
		Simma
		Tomka
	Judge *ad hoc*	Rigaux
	Registrar	Couvreur

Présents : M. Shi, président
M. Ranjeva, vice-président
MM. Guillaume
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby
Owada
Simma
Tomka, juges
M. Rigaux, juge *ad hoc*

M. Couvreur, 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-US Claims Tribunal, Deputy Director for Legal Affairs, Bureau of International Legal Services of the Islamic Republic of Iran, The Hague,

as Agent;

Mr. D. Momtaz, Professor of International Law, Tehran University, member of the International Law Commission,

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

Mr. Michael Bothe, Professor of Public Law, Johann Wolfgang Goethe University of Frankfurt-am-Main, Head of Research Unit, Peace Research Institute, Frankfurt,

Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the English and Australian Bars, member of the Institute of International Law,

Mr. Alain Pellet, Professor at the University of Parix X-Nanterre, member and former Chairman of the International Law Commission,

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

Mr. David S. Sellers, avocat à la cour d'appel de Paris, Solicitor of the Supreme Court of England and Wales, Frere Cholmeley/Eversheds, Paris,

as Counsel and Advocates;

Mr. M. Mashkour, Deputy Director for Legal Affairs, Bureau of International Legal Services of the Islamic Republic of Iran,

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

Mr. R. Badri Ahari, Legal Adviser, Bureau of International Legal Services of the Islamic Republic of Iran,

Ms Nanette Pilkington, avocat à la cour d'appel de Paris, Frere Cholmeley/Eversheds, Paris,

Mr. William Thomas, Solicitor of the Supreme Court of England and Wales, Frere Cholmeley/Eversheds, Paris,

Mr. Leopold von Carlowitz, Research Fellow, Peace Research Institute, Frankfurt,

Mr. Mathias Forteau, docteur en droit, Researcher at the Centre de droit international de Nanterre (CEDIN), University of Paris X-Nanterre,

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M. M. H. Zahedin-Labbaf, agent de la République islamique d'Iran auprès du Tribunal des réclamations Etats-Unis/Iran, directeur adjoint des affaires juridiques au bureau des services juridiques internationaux de la République islamique d'Iran à La Haye,

comme agent;

M. D. Momtaz, professeur de droit international à l'Université de Téhéran, membre de la Commission du droit international,

M. S. M. Zeinoddin, chef du service juridique de la National Iranian Oil Company,

M. Michael Bothe, professeur de droit public à l'Université Johann Wolfgang Goethe de Francfort-sur-le-Main, directeur de la recherche à l'Institut de recherche pour la paix à Francfort,

M. James R. Crawford, S.C., F.B.A., professeur de droit international, titulaire de la chaire Whewell à l'Université de Cambridge, membre des barreaux d'Angleterre et d'Australie, membre de l'Institut de droit international,

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M. David S. Sellers, avocat à la cour d'appel de Paris, Solicitor auprès de la Cour suprême d'Angleterre et du Pays de Galles, cabinet Frere Cholmeley/Eversheds, Paris,

comme conseils et avocats;

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M. M. A. Movahed, conseiller juridique principal à la National Iranian Oil Company,

M. R. Badri Ahari, conseiller juridique au bureau des services juridiques internationaux de la République islamique d'Iran à La Haye,

Mme Nanette Pilkington, avocat à la cour d'appel de Paris, cabinet Frere Cholmeley/Eversheds, Paris,

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M. Leopold von Carlowitz, chargé de recherche à l'Institut de recherche pour la paix à Francfort,

M. Mathias Forteau, docteur en droit, chercheur au Centre de droit international de Nanterre (CEDIN) de l'Université de Paris X-Nanterre,

comme conseils;

Mr. Robert C. Rizzutti, Vice-President, Cartographic Operations, International Mapping Associates,

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

Mr. William H. Taft, IV, Legal Adviser, United States Department of State,

as Agent;

Mr. Ronald J. Bettauer, Deputy Legal Adviser, United States Department of State,

as Co-Agent;

Mr. Michael J. Matheson, Professor, George Washington University School of Law,

Mr. D. Stephen Mathias, Assistant Legal Adviser for United Nations Affairs, United States Department of State,

Mr. Michael J. Mattler, Attorney-Adviser, United States Department of State,

Mr. Sean Murphy, Professor, George Washington University School of Law,

Mr. Ronald D. Neubauer, Associate Deputy General Counsel, United States Department of Defence,

Mr. Prosper Weil, Professor Emeritus, University of Paris II, member of the Institut de droit international, member of the Académie des sciences morales et politiques (Institut de France),

as Counsel and Advocates;

Mr. Paul Beaver, Defence & Maritime Affairs Consultant, Ashbourne Beaver Associates, Ltd., London,

Mr. John Moore, Senior Associate, C & O Resources, Washington, D.C.

as Advocates;

Mr. Clifton M. Johnson, Legal Counsellor, United States Embassy, The Hague,

Mr. David A. Kaye, Deputy Legal Counsellor, United States Embassy, The Hague,

Ms Kathleen Milton, Attorney-Adviser, United States Department of State,

as Counsel;

Ms Marianne Hata, United States Department of State,

Ms Cécile Jouglet, United States Embassy, Paris,

Ms Joanne Nelligan, United States Department of State,

M. Robert C. Rizzutti, vice-président des opérations cartographiques, International Mapping Associates,

comme conseiller technique.

Le Gouvernement des Etats-Unies d'Amérique est representée par :

M. William H. Taft, IV, conseiller juridique du département d'Etat des Etats-Unis,

comme agent;

M. Ronald J. Bettauer, conseiller juridique adjoint du département d'Etat des Etats-Unis,

comme coagent;

M. Michael J. Matheson, professeur à la faculté de droit de l'Université George Washington,

M. D. Stephen Mathias, directeur chargé des questions concernant les Nations Unies auprès du conseiller juridique du département d'Etat des Etats-Unis,

M. Michael J. Mattler, avocat-conseiller au département d'Etat des Etats-Unis,

M. Sean Murphy, professeur à la faculté de droit de l'Université George Washington,

M. Ronald D. Neubauer, assistant au bureau du conseiller juridique adjoint du département de la défense des Etats-Unis,

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M. John Moore, associé principal, *C & O Resources*, Washington D. C.,

comme avocats;

M. Clifton M. Johnson, conseiller juridique à l'ambassade des Etats-Unis à La Haye,

M. David A. Kaye, conseiller juridique adjoint à l'ambassade des Etats-Unis à La Haye,

Mme Kathleen Milton, avocat-conseiller au département d'Etat des Etats-Unis,

comme conseils;

Mme Marianna Hata, département d'Etat des Etats-Unis,

Mme Cécile Jouglet, ambassade des Etats-Unis à Paris,

Mme Joanne Nelligan, département d'Etat des Etats-Unis,

Ms Aileen Robinson, United States Department of State,

Ms Laura Romains, United States Embassy, The Hague,

as Administrative Staff.

Mme Aileen Robinson, département d'Etat des Etats-Unis,

Mme Laura Romains, ambassade des Etats-Unis à La Haye,

comme personnel administratif.

The PRESIDENT: Please be seated. The sitting is open.

The Court meets today, pursuant to Articles 43 *et seq.* of its Statute, to hear the oral arguments of the Parties on the merits in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America).*

Before recalling the principal phases of the present proceedings, it is necessary to complete the composition of the Court. With effect from 6 February 2003, Messrs. Hisashi Owada, Bruno Simma and Peter Tomka became Members of the Court. At the same time, Judge Abdul Koroma and myself were re-elected for a further term of office. We congratulate our new colleagues, as well as our colleague re-elected, and are very happy to have the benefit of their participation in the work of the Court.

Article 20 of the Statute of the Court provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". As it is specified in Article 4, paragraph 3, of the Rules of Court, that provision does not apply to Members of the Court whose term of office continues, following their re-election. I shall now say a few words about each of the new Members of the Court. I shall then invite them, in the order in which they take precedence by virtue of Article 3, paragraph 3, of the Rules of Court, to make their declaration.

Judge Hisashi Owada, of Japanese nationality, has a Bachelor of Arts degree from the University of Tokyo and a Bachelor of Laws degree from Cambridge University. He entered the Foreign Service of Japan in 1955 and followed a successful career within the Ministry of Foreign Affairs, both in his country and abroad; he has also represented Japan in several international conferences. He was Deputy Minister, and then Vice-Minister for Foreign Affairs of Japan until 1993. Between 1994 and 1998, he was Permanent Representative of his country to the United Nations, and, from 1999, he was a Special Adviser to the Minister for Foreign Affairs of Japan and Senior Adviser to the President of the World Bank. Judge Owada has combined his diplomatic responsibilities with a remarkable career in academia, having published many works on international law and taught in prestigious institutions, including, in recent years, Waseda

University Graduate School and New York University, as well as the Hague Academy of International Law.

Judge Bruno Simma, of German nationality, studied law at the University of Innsbruck, where he obtained a doctorate degree in 1966. In 1973, he became Professor of International Law and European Community Law at the University of Munich, where he has been teaching ever since and where he was director of the Institute of International Law; he was Dean of the Faculty of Law of that university between 1995 and 1997. Judge Simma has also lectured in other prestigious academic institutions, such as the Hague Academy of International Law and, lately, the University of Michigan Law School. His publications in international law are numerous and well known; I would mention, in particular, his collaboration with Alfred Verdross in the publication of the *Universelles Völkerrecht*, his work as editor of the Commentary to the United Nations Charter, and his participation in the creation of the European Journal of International Law. Judge Simma is also familiar to the Peace Palace, since he has appeared before the Court as counsel in several cases. At the time of his election, he was since 1996 a member of the United Nations International Law Commission.

Judge Peter Tomka, of Slovak nationality, obtained his Master's degree in Law, *summa cum laude*, at Charles University in Prague, where he also completed a PhD in International Law. He has devoted his professional activities to the Ministry of Foreign Affairs of Czechoslovakia and, later, Slovakia. In Prague, he was Head of the Public International Law Division and then went to New York, where he became Counsellor and Legal Adviser at the Permanent Mission of Czechoslovakia to the United Nations. From 1993, he was successively Deputy Permanent Representative and Acting Permanent Representative of Slovakia to the United Nations. Back in Bratislava, he later became Director General for International Legal and Consular Affairs, before assuming, in 1999, the position of Permanent Representative of Slovakia to the United Nations. Judge Tomka has represented Czechoslovakia and Slovakia in numerous international conferences and institutions, and was the Agent of Slovakia before this Court in the case concerning the *Gabèíkovo-Nagymaros Project*. In 1999, he was elected member of the United Nations International Law Commission. He has also assumed academic functions at Charles University in

Prague and at Comenius University in Bratislava, and has published numerous works in international law.

I shall now invite each of these judges to make the solemn declaration prescribed by the Statute, and I request all those present to rise. Judge Owada.

Judge OWADA:

"I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Thank you. Judge Simma.

Judge SIMMA:

"I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

The PRESIDENT: Thank you. Judge Tomka.

Judge TOMKA:

«Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: Thank you. Please be seated. The Court takes note of the solemn declarations made by Judges Owada, Simma and Tomka and I declare them duly installed as Members of the Court.

I should recall in that regard that, since the Court does not include upon the Bench a judge of the nationality of the Islamic Republic of Iran, that Party has availed itself of its right, under Article 31, paragraph 2, of the Statute, to choose a judge *ad hoc*, and that it has chosen Mr. François Rigaux, Professor at the University of Louvain (Belgium) and Member of the Institut de droit international. In accordance with Article 31, paragraph 6, of the Statute, Article 20 does apply to judges *ad hoc*. Professor Rigaux made his solemn declaration on 16 September 1996, at the opening of the hearings on the preliminary objection of the United States, and was then

installed as judge *ad hoc* in the case; in accordance with Article 8, paragraph 3, *in fine*, of the Rules of Court, he is not required to make a new declaration for the present phase of the case.

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On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America concerning a dispute "aris[ing] out of the attack [on] and destruction of three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, by several warships of the United States Navy on 19 October 1987 and 18 April 1988, respectively". In its Application, Iran contended that these acts constituted a "fundamental breach" of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957, as well as of international law. The Application invoked, as a basis for the Court's jurisdiction, Article XXI, paragraph 2, of the Treaty of 1955.

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By an Order of 4 December 1992 the President of the Court fixed 31 May 1993 as the time-limit for the filing of the Memorial of Iran and 30 November 1993 as the time-limit for the filing of the Counter-Memorial of the United States. By an Order of 3 June 1993, at the request of Iran, he extended to 8 June 1993 the time-limit for the filing of the Memorial; the time-limit for the filing of the Counter-Memorial was extended, by the same Order, to 16 December 1993.

Iran duly filed its Memorial within the time-limit as thus extended.

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Within the time-limit as extended for the filing of the Counter-Memorial, the United States raised a preliminary objection to the jurisdiction of the Court pursuant to Article 79, paragraph 1, of the Rules of Court adopted on 14 April 1978. Consequently, by an Order dated 18 January 1994,

the President of the Court noted that, by virtue of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended, and fixed 1 July 1994 as the time-limit within which Iran might present a written statement of its observations and submissions on the preliminary objection raised by the United States.

Within the time-limit thus fixed, Iran presented such a statement, and the case became ready for hearing with respect to the preliminary objection.

At the public sittings held between 16 and 24 September 1996, the Parties were heard on the question of jurisdiction of the Court. By a Judgment dated 12 December 1996 the Court rejected the preliminary objection of the United States and found that it had jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by Iran under Article X, paragraph 1, of that Treaty.

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By an Order of 16 December 1996 the President of the Court fixed 23 June 1997 as the new time-limit for the filing of the Counter-Memorial of the United States. Within this time-limit, the United States filed its Counter-Memorial; this pleading included a counter-claim concerning "Iran's actions in the Gulf during 1987-88 which, among other things, involved mining and other attacks on U.S.-flag or U.S.-owned vessels".

In a letter of 2 October 1997 Iran expressed its opinion that "the counterclaim as formulated by the United States [did] not meet the requirements of Article 80 [, paragraph 1,] of the Rules" and its wish "to submit a brief statement explaining its objections to the counterclaim". At a meeting convened on 17 October 1997 with the Agents of the Parties by the Vice-President of the Court, acting President in the case, the two Agents agreed that their respective Governments would submit written observations on the question of the admissibility of the United States counter-claim. On 18 November 1997, Iran forwarded to the Court a document entitled "Request for hearing in relation to the United States counter-claim pursuant to Article 80 (3) of the Rules of Court", which contained its observations on the admissibility of the counter-claim; by a letter dated 18 November 1997 the Registrar sent a copy of that document to the United States Government.

By a letter from its Agent dated 18 December 1997, the United States submitted to the Court its observations on the admissibility of the counter-claim set out in its Counter-Memorial, taking into consideration the observations presented by Iran; by a letter dated 18 December 1997, the Registrar communicated a copy of the observations of the United States Government to the Iranian Government. Having received detailed written observations from each of the Parties, the Court considered that it was sufficiently well informed of their respective positions with regard to the admissibility of the counter-claim.

By an Order of 10 March 1998 the Court held that the counter-claim presented by the United States in its Counter-Memorial was admissible as such and formed part of the current proceedings. It also directed Iran to file a Reply and the United States to file a Rejoinder, relating to the claims of both Parties, and fixed 10 September 1998 and 23 November 1999 respectively as the time-limits for the filing of those pleadings. Lastly, the Court held that it was necessary moreover, "in order to ensure strict equality between the Parties, to reserve the right of Iran to present its views in writing a second time on the United States counter-claim, in an additional pleading the filing of which [might] be the subject of a subsequent Order".

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By an Order of 26 May 1998, at the request of Iran, the Vice-President of the Court, acting President in the case, extended the time-limits for the filing of the Reply of Iran and of the Rejoinder of the United States to 10 December 1998 and 23 May 2000, respectively. By an Order of 8 December 1998, at the request of Iran, the Court further extended the time-limits for the filing of the Reply and the Rejoinder to 10 March 1999 and 23 November 2000, respectively.

Iran duly filed its "Reply and Defence to Counter-Claim", and the United States its Rejoinder, within the time-limits as thus extended.

By a letter dated 30 July 2001 and received in the Registry on 7 August 2001, the Agent of Iran, referring to the above-mentioned Order of 10 March 1998, informed the Court that his Government wished to present its views in writing a second time on the counter-claim of the United States. By an Order of 28 August 2001, the Vice-President of the Court, taking account of

the agreement of the Parties, authorized the submission by Iran of an additional pleading relating solely to the counter-claim submitted by the United States and fixed 24 September 2001 as the time-limit for the filing of that pleading.

Iran duly filed the additional pleading within the time-limit as thus fixed and the case was ready for hearing on the merits.

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At a meeting held on 6 November 2002 by the President of the Court with the Agents of the Parties, the Agent of Iran, subject to confirmation, and the Agent of the United States agreed that the oral proceedings on the merits should begin on 17 or 18 February 2003; the Agent of Iran subsequently confirmed the agreement of his Government. At the same meeting the Agents of the Parties also presented their views on the organization of the oral proceedings on the merits. Pursuant to Articles 54 and 58 of the Rules, the Court fixed 17 February 2003 as the date for the opening of the hearings and adopted a timetable for them. The Registrar informed the Parties accordingly by letters of 19 November 2002.

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At the above-mentioned meeting of 6 November 2002, the Agents of the Parties informed the President of the Court that they had decided not to present witnesses during the oral proceedings. The Agent of the United States nevertheless expressed his Government's intention, under Article 56 of the Rules, to file a new document containing additional analysis and explanations by experts concerning certain evidence already produced in the case. On 20 November 2002, the United States filed an expert's report dated 18 November 2002, together with a copy of a diplomatic Note dated 20 November 2002 from the Royal Norwegian Embassy in Washington D.C. to the United States Department of State. In a letter dated 20 January 2003 and received in the Registry on 22 January 2003, the Agent of Iran informed the Court that his Government did not object to the production of the above-mentioned documents by the United States and asked the Court, pursuant to Article 56, paragraph 3, of the Rules of Court, that

comments of Iran's own expert on the United States expert's report "be made part of the record in the case".

On 22 January 2003, the Court decided to authorize the production of the above-mentioned documents by the United States and comments thereon by Iran; the Registrar informed the Parties accordingly by letters of the same date.

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I would add that, having consulted the Parties, the Court has decided, in accordance with Article 53, paragraph 2, of the Rules of Court, that copies of the pleadings and documents annexed will be made accessible to the public on the opening of the oral proceedings on the merits. Further, in accordance with the Court's practice, these pleadings without their annexes will from today be put on the Court's Internet site.

I note the presence at the hearing of the Agents, Counsel and Advocates of both Parties. In accordance with the arrangements on the organization of the procedure which have been decided by the Court, the oral hearings will comprise a first and a second round of oral argument. Each Party will have a total of five full sessions of three hours for the first round and a total of two full sessions of three hours for the second round.

Iran will present its first round of oral arguments on its claims this afternoon, on Tuesday 18 February at 10 a.m. and on Wednesday 19 February, at 10 a.m. and 3 p.m. The United States will present its first round of oral arguments both on the claims of Iran and on its own counter-claim on Friday 21 February, at 10 a.m., on Monday 24 February, at 3 p.m., on Tuesday 25 February at 10 a.m. and on Wednesday 26 February at 10 a.m. and 3 p.m. Iran will then conclude its first round of oral argument with respect to the counter-claim of the United States on Friday 28 February at 10 a.m.

Iran will then present its oral reply on Monday 3 March at 10 a.m. and, for a speaking time of one-and-a-half hours, at 3 p.m. For its part, the United States will present its oral reply both on the claims of Iran and on its own counter-claim on Wednesday 5 March at 10 a.m. and 3 p.m. Iran

will conclude its second round of oral argument with respect to the counter-claim of the United States on Friday 7 March at 10 a.m. for a speaking time of one-and-a-half hours.

Thus, I shall now give the floor to H.E. Mr. Zahedin-Labbaf, Agent of the Islamic Republic of Iran.

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Mr. ZAHEDIN-LABBAF: In the Name of God, the Merciful and Compassionate.

1. Mr. President, distinguished Members of the Court, it is an honour and a privilege for me to appear again before the Court today in this very important case, as Agent of the Islamic Republic of Iran. I am particularly pleased now to be representing my country in the merits phase of the case. I am also pleased that the United States has continued to participate in this legal process, and that it is represented here today.

2. May I also take this opportunity, in the name of the Iranian delegation, to congratulate you, Mr. President, and you, Mr. Vice-President, on your respective elections to office, and at the same time pay tribute to you, Judge Guillaume, for the leadership you have provided to the Court over the past three years. May I also congratulate the new Members of the Court, Judges Owada, Tomka and Simma.

3. As I explained during the oral proceedings that were held in 1996 on the United States preliminary objection, this case concerns violations by the United States of the Treaty of Amity that was entered into in 1955 between Iran and the United States. These violations occurred when, in October 1987 and April 1988, United States naval forces attacked and destroyed three sets of Iranian commercial oil installations. As the Court can see on the map which appears on the screen (and which is at tab 1 in the judges' folders), these installations were situated on Iran's continental shelf in the Persian Gulf. They were owned and operated by the National Iranian Oil Company.

4. The United States sought to have Iran's Application dismissed on the basis that the Court lacked jurisdiction to entertain Iran's claims. However, by its Judgment of 12 December 1996 the

Court rejected the United States preliminary objection and held that it had jurisdiction to entertain Iran's claims on the basis of Article X, paragraph 1, of the Treaty of Amity. Although Iran had originally relied on other provisions of the Treaty of Amity in addition to Article X, paragraph 1, it respects the Court's decision and will continue to comply with the Judgment in these oral proceedings.

5. Article X, paragraph 1, of the Treaty of Amity (which is at tab 2 in the judges' folders) provides that "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation". In that regard, the Court found in its Judgment on the preliminary objection that the destruction of the oil installations by the United States was capable of having an effect upon the export trade in Iranian oil and, consequently, of having an adverse effect upon the freedom of commerce as guaranteed by Article X, paragraph 1, of the Treaty of Amity[1].

6. Iran will show during these oral proceedings that the United States military actions against the Iranian oil platforms certainly did have such an effect, and that they were thus violations of the United States obligation under Article X, paragraph 1. Iran will further show that these violations caused Iran substantial damage, and that as a result Iran is entitled to receive both declaratory relief and financial compensation, the quantification of which will be reserved to a subsequent phase of the proceedings.

7. Mr. President, Members of the Court, before handing the floor over to counsel for Iran, who will further develop the factual and legal issues that arise in this case, I would like to say a few words about the context in which the United States attacks on the Iranian oil platforms occurred.

8. At the time of those attacks, in 1987 and 1988, Iran had already been engaged for over seven years in a long and bloody conflict, the Iran-Iraq war. That war was caused by an unprovoked aggression of Iraq against Iran when Iraq invaded and occupied Iranian territory. The fact that Iran was the victim of Iraqi aggression was recognized by the Secretary-General of the United Nations[2] in a report to the Security Council which is contained in the judges' folders at

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[1] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 1996 (II),* p. 820, para. 51.

[2] Memorial of Iran, Exhibit 42 (Further Report of the Secretary-General on the Implementation of Security Council resolution 598 (1987), 9 December 1991 (United Nations doc. S/23273)).

tab 3. The same fact has even been acknowledged recently — albeit belatedly — by prominent United States officials, including the current President of the United States[3].

9. At the time of the United States attacks on Iran's oil platforms, the so-called "Tanker War" in the waters of the Persian Gulf had been continuing for more than six years. Again, the spread of the war to the Persian Gulf was also due to Iraq, which in 1981 had begun to attack both Iranian and neutral shipping.

10. Curiously, the United States written pleadings barely mention the fact that there was a violent war taking place at the time of the United States destruction of the oil platforms. Iraq is hardly ever mentioned, and the United States seeks to leave the reader with the impression that, for some reason known only to itself, Iran was deliberately and gratuitously creating a dangerous situation for neutral shipping in the Persian Gulf.

11. Mr. President, the reality is of course quite different. Iran had been forced into a war and had similarly been forced into the extension of the conflict into the Persian Gulf, the circumstances for which it bore no responsibility. Put simply, and as Professor Momtaz will also show in more detail, during that war Iran was fighting for its survival against an enemy which had no hesitation in violating fundamental rules of international law in its prosecution of the war. I wish the international community had been as emphatic in condemning and stopping repeated attacks with chemical weapons committed by Iraq against my country as it is now in enquiring into the mere possible threat of future use of chemical weapons by Iraq. When Iran needed the protection of international law, there were few voices to speak on its behalf. But Iran believes that international law protects States which are the subject of an armed attack — irrespective of the misguided views of a major power. Under international law, Iran was entitled to defend itself against attack, and was fully justified in trying to ensure that no contraband was shipped through the Persian Gulf to support the Iraqi war effort. It also had to make strenuous efforts to protect its economy, both by ensuring the defence of its oil installations and by keeping the Persian Gulf safe for shipping serving Iranian ports.

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[3]Address to the United Nations General Assembly by President George W. Bush, 12 September 2002 (United Nations doc. A/57/PV.2).

12. As the Court will be well aware, the oil industry was and remains by far the most important sector of the Iranian economy, and it was of course particularly vital to Iran during the Iran-Iraq war. The United States nevertheless attempts to put a sinister interpretation on the fact that there were a small number of military personnel stationed on the oil platforms that its fleet destroyed. But what could be more normal, at a time of war, than the fact that the commercial infrastructure that contributed to the most essential sector of the Iranian economy should be defended — albeit in modest, almost token ways — against attack by the enemy, Iraq, and its war planes? Indeed, the very platforms that were destroyed by the United States had already undergone attacks by Iraq, and it would have been very strange if Iran had not sought to defend them by the limited means at its disposal.

13. Mr. President, distinguished Members of the Court, it was not Iran's behaviour that was abnormal: it was the behaviour of the United States, which claimed at the time, and still claims before the Court today, that it was a neutral party in relation to the conflict. In the circumstances, at a time when Iran was fighting for its very survival, the least one would have expected from a neutral State was that it should act in a neutral manner, with even-handedness towards each of the participants in the conflict, and that it should not favour one of the participants over the other. As was noted in the Judgment of 12 December 1996, this Court stated that it "cannot lose sight of the fact that Article I [of the Treaty of Amity] states in general terms that there shall be firm and enduring peace and sincere friendship between the Parties". The Court further stated that:

> "The spirit and intent set out in this Article animate and give meaning to the entire Treaty of [Amity] and must, in case of doubt, incline the Court to the construction which seems more in consonance with its overall objective of achieving friendly relations over the entire range of activities covered by the Treaty."[4]

14. Mr. President, Members of the Court, how did the United States comply with its general obligation of neutrality and the objective of achieving friendly relations with Iran as spelt out in the treaty? Ironic as this may seem in today's circumstances, the United States actively supported Iraq, the aggressor State. This occurred despite the United States undertaking in the Algiers Declarations of 1981 "not to intervene, directly or indirectly, politically or militarily, in Iran's

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[4] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 1996 (II)*, p. 820, para. 52.

internal affairs"[5], and in contravention of the provisions of Article X, paragraph 1, of the Treaty of Amity which, as the Court has observed, must be read and interpreted in the light and spirit of Article I of the same Treaty.

15. You will no doubt have read the press reports on this subject which appeared at the end of last year, and which confirm earlier accounts to which Iran has already referred in its written pleadings. Mr. Bundy will be addressing you in greater detail concerning the constant United States support for Iraq throughout the Iran-Iraq war and the hostile United States actions taken against Iran. I would just like to highlight here the fact that these recent press reports, which are stated to be based on a review of "thousands of declassified United States Government documents and interviews with former policymakers"[6], confirm what Iran has been saying throughout these proceedings — namely, that the United States consistently provided intelligence and logistical support for Iraqi aggression against Iran, and that the United States was "concerned that Iraq should not lose the war".

16. So, on the one hand, the United States was actively assisting Iraq with its intelligence and logistical support — which included the supply of "numerous items that had both military and civilian applications, including poisonous chemicals and deadly biological viruses"[7] — and was giving further indirect assistance by reflagging and escorting Kuwaiti tankers which were shipping cargoes whose proceeds were being used to finance the Iraqi war effort. Mr. Bundy will give further details of the very substantial financial assistance provided, both directly and indirectly, by the United States to Iraq.

17. On the other hand, the United States imposed an embargo upon Iran and, amongst other things, in the two incidents which are the subject of this case, destroyed commercial oil-producing facilities that were an essential part of Iran's economy. Also — although this is not the subject of the present claim — the United States boasted that it had destroyed half of the Iranian Navy during the attack on the Salman and Nasr platforms in April 1988. That attack took place, not

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[5] *International Legal Materials*, Vol. XX, No. 1, p. 224.

[6] See, for example, *International Herald Tribune*, 31 December 2002-1 January 2003.

[7] *Ibid.*

coincidentally, at the same time as Iraq launched its counter-offensive to retake the Fao peninsula from Iran.

18. Unlike other States which, although professing neutrality, in fact assisted Iraq's war effort during the conflict, the United States has never sought to apologize to Iran for its non-neutral behaviour in the conflict. While Kuwait has made public apologies[8] and a British Foreign Office Minister has stated that "the United States and Britain have a lot to apologize for over their support of Iraq"[9], Iran has received no apology from the United States itself.

19. Iran can only explain the United States conduct throughout the Iran-Iraq war, and its subsequent failure to make any kind of apology, as stemming from an instinctive predisposition of hostility towards Iran. This had continued unabated since the time of the Islamic Revolution, despite the official settlement of the tensions between the two countries pursuant to the Algiers Declarations. The United States had no logical or legal reason to support Iraq against Iran: Iraq was the aggressor State who had launched an unprovoked invasion of Iranian territory; Iraq was the party who was using chemical weapons and launching missiles against Iranian civilians; and Iraq was the party who took the conflict to the Persian Gulf by attacking both Iranian and neutral shipping. Iran, on the other hand, was the victim; Iran used only conventional weapons in its defence and respected the laws of warfare; and Iran was the party in whose interest it was to keep the Persian Gulf open to shipping.

20. As regards the subject-matter of Iran's claim in this case, the United States cannot deny, and, in fact, has not attempted to deny, that it was responsible for the destruction of the oil platforms. Instead, it has put forward a series of arguments in an attempt to justify its actions. The United States principal argument is that it acted in self-defence. At the time, it alleged specifically that its attack on the Reshadat complex was in self-defence following a missile attack on the reflagged Kuwaiti tanker *Sea Isle City* in a Kuwaiti port; and that its attacks on the Salman and Nasr complexes were in self-defence following an incident when the United States warship *Samuel B. Roberts* hit a mine in the central part of the Persian Gulf. The United States is now less specific, and appears to be alleging that its actions were taken in self-defence against a number of

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[8]Iran's Reply and Defence to Counter-Claim, Exhibit 13 (various press reports from 1990, 1992 and 1994).

[9]*Reuters News*, 24 March 2000.

other events that occurred during the Iran-Iraq war — in the same way as its counter-claim is based on a number of individual incidents but also, apparently, on the generally dangerous situation prevailing in the Persian Gulf at the time, for which it appears to attribute all responsibility to Iran. As will be shown in more detail in the course of these oral proceedings, the United States arguments based on self-defence must fail.

21. Moreover, the United States cannot seriously argue that it acted as it did because its "essential security interests" were at stake. The United States had not been invaded; the United States was not fighting for its survival; and there was no threat either to oil supplies to the United States or even to oil prices which, during the course of the war, had actually fallen by 50 per cent. To the extent that any threat may be said to have existed, it was caused by Iraq.

22. These facts underline the emptiness of the United States argument that its attacks on Iran's commercial oil installations were legitimate because they were necessary for the protection of its essential security interests. If any State's essential security interests can be said to have been in need of protection at the time, they were those of Iran, who was under attack from Iraq and who was also having to face non-neutral conduct from a number of countries, not least the United States. For reasons that will be further explained by Professor Crawford, Iran has not sought to rely on an "essential security interests" argument to justify any of the actions that are attributed to it by the United States in this case. If, however, it were to rely on this argument, it would be seen that there was no comparison between Iran's essential security interests and those alleged by the United States.

23. I would add that despite this clear imbalance in the respective security interests that were at stake, the conduct of Iran's forces was described by a United States commander on duty in the Persian Gulf as "pointedly non-threatening"[10]. It is true that Iran was not content to allow shipping notoriously carrying contraband goods in support of Iraq's war effort to pass unquestioned through the Persian Gulf. For this reason Iran conducted legitimate stop-and-search operations, in conformity with international law. This was confirmed at the time by American and British

[10]Memorial of Iran, Exhibit 55 (Carlson, Commander D., "The *Vincennes* Incident", *Proceedings/Naval Review*, September 1987, p. 87).

Government officials[11]. In contrast, the conduct of the United States has been described as aggressive and provocative. In July 1988, this is what was said by a United States National Security Officer whose responsibilities involved Iran: "[American naval units] have been deployed aggressively and provocatively in the hottest parts of the Persian Gulf", and "Our aggressive patrolling strategy tends to start fights, not to end them. We behave at times as if our objective was to goad Iran into a war with us."[12]

24. Mr. President and distinguished Members of the Court, this is the context that Iran believes must always be borne in mind when the respective arguments of the Parties are heard in this case.

25. I will now indicate the order and content of Iran's presentations with regard to its claim. With the Court's leave, Professor Crawford will first provide an overview of the case as a whole from a legal point of view.

26. Later this afternoon, Professor Momtaz will address the legitimacy of various actions that Iran took in order to protect itself, and indeed neutral shipping, in the context of Iraq's aggression. In particular, Professor Momtaz will deal with the war zone that was declared by Iran along its Persian Gulf coasts and will show that, far from having the illegal or sinister intent attributed to it by the United States, this war zone was declared so that neutral shipping was warned of the dangers of travelling through the waters concerned. He will also show that Iran was entitled in the circumstances to engage in stop-and-search activities in an effort to prevent the shipping of contraband to fuel the Iraqi war effort.

27. Professor Momtaz will be followed by Mr. Bundy, who will describe in more detail the extent of the United States support for Iraq and its actions taken against Iran — conduct which forms the context within which the United States attacks on the platforms must be considered.

28. Tomorrow morning, Professor Pellet will analyse Article X, paragraph 1, of the Treaty of Amity, which was violated by the United States when it destroyed Iranian oil installations with its attacks of October 1987 and April 1988. In particular, Professor Pellet will show that these attacks

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[11]Reply and Defence to Counter-Claim by Iran, Vol. II, Report of Prof. Freedman, para. 34, fn. 58; Memorial of Iran, Exhibit 115 (Hansard, *H. C. Debs.*, Vol. 91, Cols. 278-279).

[12]G. Sick, "Failure and Danger in the Gulf", *New York Times*, 6 July 1988, p. A23.

were in direct breach of the United States obligation to ensure the freedom of commerce protected by Article X, paragraph 1.

29. Professor Pellet will be followed by Dr. Zeinoddin, who is the Head of the Legal Department of NIOC — the National Iranian Oil Company — which owned and operated the platforms. Dr. Zeinoddin will describe how the various platforms were designed and operated, and will provide details on their status at the time of United States attacks. He will also explain the commercial damage that Iran suffered as a result of the United States attacks on these facilities, whose oil production was vital to Iran's economy.

30. We will then turn to the two attacks carried out by the United States, and the two specific events which, at the time, were said to have justified them. First, Mr. Sellers will describe the attack of October 1987 on the Reshadat complex, which was said to be in self-defence against the missile attack on the *Sea Isle City*. He will show that the United States has failed to meet its burden of proving that it was Iran who launched the missile that struck the *Sea Isle City*.

31. Second, Mr. Bundy will deal with the attacks of April 1988 on the Salman and Nasr complexes. He will show that, here again, the United States has failed to meet its burden of proving that the *Samuel B. Roberts* was targeted by an Iranian mine or of establishing any link whatsoever between that incident and the Salman and Nasr platforms. Mr. Bundy will further show that, even if Iran's responsibility could be proven, which it is not, this would not have provided any justification for the destruction of the Salman and Nasr platforms and indeed half of the Iranian Navy.

32. Professor Bothe will then analyse the law of self-defence and the obligations that are incumbent upon neutral States. This will be done both by reference to the alleged general situation of armed attack that now appears to be put forward by the United States as justification for the actions that it claims to have taken in self-defence, and in relation to the specific events to which the attacks on the platforms were said at the time to be in response.

33. Professor Crawford will then turn to the United States alternative defence, based on Article XX, paragraph 1 *(d)*, of the Treaty of Amity, the "essential security interests" clause. He will show that this defence must fail. As a matter of law it is necessary for the United States to show that the measure concerned was necessary to protect its essential security interests. This is an

objective test, and in applying it the Court has to take into account that what is in issue here are two major uses of armed force in breach of the United Nations Charter. Having regard to this, and to the facts of the matter as Iran has presented them, it will be seen that no essential security interest of the United States was threatened by Iran. Moreover the measures taken were not necessary, or even useful, to protect any security interest in freedom of navigation or in maintaining the flow of oil from the Persian Gulf.

34. Professor Pellet will then deal with the United States "clean hands" argument, and will show that this argument, like the United States other arguments, lacks merit.

35. Finally, Professor Crawford will return to outline the remedies that Iran seeks from this Court.

36. Mr. President, Iran will not be dealing with the United States counter-claim until after it has heard the United States first-round presentation. However, I would just say a few words now regarding the counter-claim.

37. First, it should not be forgotten that, although the Court has held in its Order of 10 March 1998 that the counter-claim is admissible under Article 80, paragraph 1, of the Rules of Court, the Court has not disposed definitively of all issues of jurisdiction and admissibility. Iran has raised a series of such issues in its Reply and in its Further Response to the United States Counter-Claim[13], and maintains its objections to jurisdiction and admissibility in these oral proceedings.

38. In any event, there is no merit to the United States counter-claim, as Iran will show at the appropriate time. At the present stage, I would simply remind the Court that the United States did not raise any such claim — even on a diplomatic level — until after the Judgment of December 1996 had rejected its preliminary objection. Moreover, although the shipping of many other nations suffered damage during the Iran-Iraq war, no other nation has seen fit to claim compensation from Iran for such damage. These facts in themselves, Iran submits, are sufficient to demonstrate the artificiality of the counter-claim.

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[13]Reply and Defence to Counter-Claim by Iran, paras. 9.1 *et seq.*; Further Response of Iran to the United States Counter-Claim, paras. 5.23 *et seq.*

39. Before passing the floor to Professor Crawford, I feel obliged to say a few words about an allegation that has been made by the United States in its Rejoinder. This allegation is that Iran has made false representations in its written presentations to the Court, in particular in its responses to the United States allegations regarding missile sites and mining[14]. Mr. President, Iran considers that this is a very serious accusation for which there is no basis and which cannot be allowed to stand. Mr. Sellers and Mr. Bundy will be dealing with the relevant facts in their respective presentations to the Court. For my part, I must assure you that Iran has always been and will continue to be truthful in its presentations to the Court. Iran has the greatest respect for the Court, as the principal judicial organ of the United Nations.

40. Finally, Mr. President, distinguished Members of the Court, I must stress that Iran remains committed to the rule of law and to the peaceful settlement of disputes. It is confident that justice will be done in this case, and that the Court will take care to view the United States actions in 1987 and 1988 in the light of the rule of law.

41. Mr. President, that concludes my opening statement. I would be grateful if you would now call upon Professor Crawford, who will continue with the next part of Iran's presentation. Thank you.

The PRESIDENT: Thank you, distinguished Agent of Iran. I now give the floor to Professor Crawford.

Mr. CRAWFORD:

Introduction and overview

Mr. President, Members of the Court.

1. It is my task in these opening remarks to place the present case in its legal context and to provide an overview of Iran's presentations on issues of law.

The Court's 1996 decision rejecting the United States preliminary objection

2. In doing so, I begin with your decision on the preliminary objection, way back in 1996. The Court we have the honour to address is of course the same Court as in 1996 — you are now so

[14]Rejoinder of the United States, paras. 1.06, 1.49 *et seq*. and 1.68 *et seq*.

permanent and so well established that you do not need to have the word "permanent" in your name, as your predecessor did. But I cannot resist observing that of the 16 judges who took part in that decision, only eight remain Members of the Court; and I hope this gives me some licence to remind you of what was decided on that occasion. For you both gave and took away: Iran royally accepts of course the negative aspects of your decision, as it concerns Article I and Article IV of the Treaty, just as it accepts and relies on the positive aspects, in particular those concerning the scope and application of Article X, paragraph 1.

3. Let me begin with one important point on which the parties agree and which the Court has clearly confirmed. The Treaty of Amity was in force at all relevant times and it remains in force today[15]. The United States successfully relied on the Treaty in the *United States Diplomatic and Consular Staff in Tehran* case[16]. United States individuals and corporations have repeatedly relied on it for various purposes before international tribunals, including the Iran-United States Claims Tribunal, as well as before the United States own courts. The Treaty governs the relations between the parties in accordance with its terms. If either party engages in conduct covered by the Treaty which is in breach of its provisions, then the responsibility of that party is engaged and the other party is entitled to invoke the Treaty and to claim compensation for any injury suffered[17]. So that is a point on which the parties agree.

4. Then there are a series of propositions which the United States has at various times controverted or denied, but which you clearly established by your Judgment. Let me mention three of them.

5. *First*, the Treaty prohibits conduct of the parties inconsistent with its substantive provisions; for example it imposes an obligation on them not to interfere with the freedom of commerce between their respective territories, and it does not matter what *character* the conduct in question possessed. In fact this is not just a commercial treaty — it is entitled a Treaty of Amity, Economic Relations and Consular Rights. But even in relation to its provisions dealing with economic and commercial questions, such as Article X, paragraph 1, the Treaty sets a *general*

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[15]*I.C.J. Reports 1996 (II)*, p. 809, para. 15.

[16]*I.C.J. Reports 1980*, p. 28, para. 54.

[17]See ILC Articles on Responsibility of States for Internationally Wrongful Acts, annexed to GA resolution 56/83, 12 December 2001, Arts. 1, 12, 31, 42.

standard for the conduct of the parties, without any requirement that the breach be commercial in character. You said this very clearly in 1996, in paragraph 21 of your Judgment, which is set out in my text, but which I will not read.

> "The Treaty of 1955 imposes on each of the Parties various obligations on a variety of matters. Any action by one of the Parties that is incompatible with those obligations is unlawful, regardless of the means by which it is brought about. A violation of the rights of one party under the Treaty by means of the use of force is as unlawful as would be a violation by administrative decision or by any other means. Matters relating to the use of force are therefore not *per se* excluded from the reach of the Treaty of 1955. The arguments put forward on this point by the United States must therefore be rejected."[18]

6. I will however, take the liberty of reading the International Law Commission's paraphrase of that paragraph in its commentary to Article 12 of the ILC Articles on State Responsibility.

The PRESIDENT: May I interrupt you, Professor Crawford, for just a moment. Please speak a little slower. Thank you.

Mr. CRAWFORD: Sir, I hope you won't have to remind me, though I'm trying to catch up after the initial loss of half an hour, but I will speak slower. This finding was re-emphasized, as I say, by the International Law Commission quoting the Court in its commentary to Article 12. The commentary reads in part as follows: "[T]he breach by a State of an international obligation constitutes an internationally wrongful act, whatever the subject matter or content of the obligation breached, and whatever description may be given to the non-conforming conduct."[19] That is what you said and that the Commission confirmed.

7. *Secondly*, you confirmed that the essential security interests clause, Article XX, paragraph 1 *(d)*, did not affect your jurisdiction, but gave the United States (and for that matter Iran) "a possible defence on the merits to be used should the occasion arise"[20]. This was how you had interpreted the equivalent provision of the 1956 Treaty in the *Nicaragua* case in 1986, and you saw "no reason to vary [your] conclusions" as to that provision[21]. I might add that although in its written argument the United States had argued that paragraph 1 *(d)* went to jurisdiction — that it

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[18] *I.C.J. Reports 1996 (II)*, pp. 811-812, para. 21.

[19] ILC Articles, commentary to Art. 12, para. 10.

[20] *I.C.J. Reports 1996 (II)*, p. 811, para. 20.

[21] *Ibid.*

excluded issues of essential security as a preliminary matter from the jurisdiction of the Court — the United States conceded in oral argument that Article XX "was a merits issue"[22]. Indeed, as I read his dissenting opinion, counsel for the United States was criticized by Judge Schwebel for making that concession[23]. But the Court was clear on the point — just as the Treaty is clear. The Court's jurisdiction extends to interpreting and applying the whole of the Treaty including Article XX. Iran has to establish a case that there was a violation of a substantive provision of the Treaty: here it is Article X, paragraph 1, interpreted in the light of Article I. Once it has done so, the United States may rely on Article XX, paragraph 1 *(d)*, as a "a possible defence on the merits".

8. The third point, you upheld your jurisdiction under Article X, paragraph 1, of the Treaty. You held that this provision is not confined to maritime commerce but extends to commerce in general. As you said, "The Treaty of 1955 is . . . a Treaty relating to trade and commerce in general, and not one restricted purely to maritime commerce."[24] And the clear guarantee given in paragraph 1 has to be interpreted, and was interpreted, in that light. Moreover, Article X, paragraph 1, could not be limited merely to acts of purchase and sale; it was concerned with a wider range of activities including "the procurement of goods with a view to using them for commerce"[25]. Thus relying among other sources on the *Dictionnaire de la terminologie de droit international* produced under the authority of President Basdevant, you adopted a broad interpretation of commerce: "all transactions of import and export, relationships of exchange, purchase, sale, transport, and financial operations between nations". No one with any understanding of guarantees of freedom of trade and commerce in national as well as international law could be surprised by such an interpretation; indeed no one familiar with the interpretation of the United States Constitution could be surprised by it. It is an interpretation of commerce, and of freedom of commerce, that would instinctively appeal to a United States lawyer, even if it does not forensically appeal to the United States in this case. It can reasonably be thought to reflect the shared understanding of the parties to the Treaty of Amity. Freedom of commerce is not just

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[22]As quoted by the Court: *ibid.* For the concession see CR 96/13, pp. 32-33 (Mr. Crook); *ibid.*, p. 55 (Mr. Chorowsky).

[23]*I.C.J. Reports 1996 (II)*, pp. 878-881.

[24]*I.C.J. Reports 1996 (II)*, p. 817, para. 41.

[25]*I.C.J. Reports 1996 (II)*, p. 818, para. 45.

freedom at the common border, freedom at the customs house; it is freedom in the flow of commerce. Otherwise one party to a treaty of this kind could devastate the economy of the other, eliminate all possibility of commerce, yet argue that because there was some notional freedom at the frontier, Article X, paragraph 1, has been complied with. That would be wholly inconsistent with the idea of freedom and with the operation of a legal guarantee. Yet — as applied to the platforms and the oil infrastructure they represented — that is the interpretation on which the United States effectively relies. The flow of the single most important commercial commodity between the two States, oil, can be cut off at its source by deliberate destructive action — and still there is freedom of commerce. The Court will be familiar with the statement of the Roman author Tacitus — "They make a wilderness and call it peace."[26] Adapted to the present case, this might read: they destroy the source of wealth, the instruments and substance of commerce, and they call it freedom. Indeed, without quoting Tacitus, you made exactly the same point:

> "Article X, paragraph 1, [of the Treaty of 1955] does not strictly speaking protect 'commerce' but '*freedom* of commerce'. Any act which would impede that 'freedom' is thereby prohibited. Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and their storage with a view to export."[27]

9. Moreover the guarantee of freedom of commerce "between the territories of the two High Contracting Parties" was attracted *in this case*. As you said, it was not necessary "to enter into the question whether [Article X, paragraph 1] is restricted to commerce 'between' the Parties. It is not contested between them that oil exports from Iran to the United States were — to some degree — ongoing at least until after the destruction of the first set of oil platforms."[28] You went on to reserve to the merits the question "if and to what extent the destruction of the Iranian oil platforms had an effect upon the export trade in Iranian oil", but you noted nonetheless "that their destruction was capable of having such an effect and, consequently, of having an adverse effect upon the freedom of commerce as guaranteed by Article X, paragraph 1. It follows that its lawfulness can be evaluated in relation to that paragraph".

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[26] *Agricola*, Chap. 30.

[27] *I.C.J. Reports 1996 (II)*, p. 819, para. 50.

[28] *I.C.J. Reports 1996 (II)*, pp. 817-818, para. 44.

10. This is, with respect, both clear and — as far as it goes — complete. You upheld your jurisdiction on the basis of an unequivocal interpretation of Article X, paragraph 1. You left open certain questions, primarily questions of fact — as well as the issue of a possible defence arising from Article XX, paragraph 1 *(d)*.

11. On the other hand, you also held that Articles I and IV of the Treaty did not provide a basis for the Iranian claim. In the case of Article I, you rejected the argument that it incorporated by reference into the Treaty the whole of general international law. It was preambular in effect, even though it was contained in a separate Article. But you still said that Article I was "not without legal significance"[29]. In your words:

> "by incorporating into the body of the Treaty the form of words used in Article I, the two States intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations and that such a development would in turn reinforce that peace and that friendship. It follows that Article I must be regarded as fixing an objective, in the light of which the other Treaty provisions are to be interpreted and applied."[30]

And subsequently you took Article I into account, in particular in the interpretation of Article X, paragraph 1. I refer in particular to paragraph 52 of your Judgment[31].

12. You also rejected Article IV as a basis for Iran's claims. It was only concerned with "the way in which the natural persons and legal entities [of the other State] are, in the exercise of their private and professional activities, to be treated by the State concerned"[32].

13. Now it is sometimes suggested that the Court at the stage of the merits may revisit or revise its findings on preliminary objections. But as to the law, that cannot be right. Your decision of 12 December 1996 is a judgment, not an order; it is an adjudication, not an indication. It establishes the various propositions of law which you laid down with the force of *res judicata* under Article 59 of the Statute. The position as to the facts may perhaps be different, in that determinations on questions of fact might be expressed to be provisional and subject to further examination. But you were careful to make it clear what issues of fact were left open or required further discussion. By contrast, you definitively interpreted the Treaty of Amity so as to establish

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[29] *I.C.J. Reports 1996 (II)*, p. 815, para. 31.

[30] *I.C.J. Reports 1996 (II)*, p. 814, para. 28.

[31] *I.C.J. Reports 1996 (II)*, p. 820, para. 52.

[32] *I.C.J. Reports 1996 (II)*, p. 816, para. 36.

authoritatively that Iran's claim did not — as to Articles I and IV — fall within the Treaty, and — as to Article X — that it did fall within the Treaty, assuming the facts to be as Iran stated them. The phrase "fall within" that I have just used is taken from paragraph 16 of the Judgment.

14. It may be noted that in 1996 you went further into issues of interpretation than you had done in some earlier cases, or that some of the judges in separate or dissenting opinions thought was necessary. Judge Shahabuddeen, in his separate opinion, pointed out that paragraph 16 of the Judgment means "that the Court is required to make a definitive interpretation of the Treaty at this jurisdictional phase"[33]. The result of that was a definitive ruling on the scope of the Treaty as he recognized. If I may use the language of Judge Higgins in her separate opinion, the Court engaged in a "detailed analysis" of the Treaty, not an "impressionistic" analysis[34]. The resulting decision is "definitive"[35].

15. In short there would be no point in the Court's exercise of detailed interpretation at the level of the preliminary objections if the issues apparently then decided could be revisited at the merits. Indeed, if you were to revisit the scope of Article X, there might be a question of your revisiting the scope of Articles I and IV. But you will be pleased to know that I won't address you further on those articles. Your 1996 Judgment provides both Parties with a clear and secure basis — a secure platform, if I can use the word — on which to consider the facts and claims of the Parties now.

The Court's 1998 decision on the United States Counter-Claim

Mr. President, Members of the Court:

16. I should briefly mention your Order of 10 March 1998 on the Counter-Claim. As the Agent has just mentioned, Iran proposes to reserve its comments on the Counter-Claim until we have heard what the United States has to say. I would only note that in your Order you expressly reaffirmed your decision on the interpretation of Article X, paragraph 1, quoting *inter alia* the

[33] *I.C.J. Reports 1996 (II)*, p. 822.

[34] *I.C.J. Reports 1996 (II)*, p. 855, paras. 29, 30.

[35] *Ibid.*, para. 31.

passage about freedom of commerce from your Judgment on the preliminary objection which I have just quoted[36].

Mr. President, Members of the Court, I was going to go on now to outline Iran's case on the merits. In view of the various happy events that have occurred since 3 o'clock this might however be a time to take a break.

The PRESIDENT: The Court adjourns for ten minutes and then will resume. Thank you.

The Court adjourned from 4.20 p.m. to 4.30 p.m.

The PRESIDENT: Please be seated. Professor Crawford, please continue.

Mr. CRAWFORD: Thank you, Sir. Before the break I outlined the Court's Judgment on preliminary objections and the principal matters that the Court then decided. I turn now to Iran's case on the merits.

Iran's case on the merits

17. As the Court has said Article X, paragraph 1, of the Treaty of Amity was in force at all relevant times and governed the conduct of the parties in their mutual relations. The notion of freedom of commerce, as the Court said, is a broad one, extending, as a minimum, to "acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and their storage with a view to export". An unjustified attack on commercial facilities, in use or intended for use for the purposes of production, transportation and storage of oil for export to the United States, would thus be a breach of Article X, paragraph 1, unless it was held to fall within one of the exceptions set out in Article XX, paragraph 1.

18. And that is Iran's case. In its essentials, it is an extremely simple case, despite all the complications the United States has sought to introduce. It can be encapsulated in the following three simple propositions:

(1) *First*, the United States, an avowed neutral in the war between Iraq and Iran, on two separate occasions deliberately attacked and destroyed these commercial facilities, thereby seriously

[36] *I.C.J. Reports 1998*, p. 203, para. 35.

affecting and impairing freedom of commerce in oil between Iran and the United States, contrary to Article X, paragraph 1, of the Treaty.

(2) *Second*, in relation to this action, there is no circumstance precluding wrongfulness; in particular, the conduct was not a lawful exercise of self-defence — which was the justification given by the United States at the time.

(3) *Third*, this conduct was not "necessary to protect [the] essential security interests of the United States", within the meaning of Article XX, paragraph 1 *(d)*, of the Treaty. That sub-paragraph did not therefore preclude the operation of Article X, paragraph 1, in this case.

19. It is really as simple as that. But it may be helpful if I offer some preliminary observations on each of these three points, which will be further elaborated by counsel for Iran over the next two days.

20. On the first point, the deliberate attack on and destruction of commercial facilities engaged in commence, including, in particular, commerce in oil destined for the United States. It can hardly be doubted that such an attack — unless otherwise justified in law or excluded from the terms of the Treaty by express provision — would violate a guarantee of freedom of commerce between the territories of the two States parties. There is no doubt about the attribution of the conduct to the United States — that is not in dispute. Moreover, as my colleagues will show, this was an attack on commercial facilities *as such*. It was not collateral damage; it was not the result of mistaken targeting. The platforms did not get in the way of an attack on some legitimate target. They were not hit because of a mistaken address. The United States intended to damage and destroy these facilities and — except as to one platform, where the detonator did not explode — it achieved that intention. Of course, inadvertent conduct can constitute a breach of a treaty: all that is required for a breach, in the terms of Article 12 of the ILC Articles, is that it be "not in conformity with what is required of the State by the obligation"; and a guarantee of freedom of commerce might well be infringed by inadvertent conduct. But no such question arises here; this conduct was deliberate and knowing. The United States had first-hand knowledge of the Iranian oil facilities in the Persian Gulf: United States contractors had assisted in the construction of precisely these facilities, and we can assume that the details of their construction and operation were known to the United States. The specific targets were selected not because they were military

installations — that they were part of Iran's "war machine", to use the journalists' favourite phrase. They were lightly armed for self-defence and the reason for that was that they had been previously attacked by Iraq. They were attacked by Iraq precisely as commercial facilities and they were attacked by the United States precisely as commercial facilities. Moreover, as we will show, they were attacked in a way which was calculated to maximize the commercial harm and impact upon Iran.

21. Now, prima facie, this is a breach of Article X, paragraph 1; this is not in conformity with what is required of the United States by the obligation arising from that paragraph. There had been a long-standing trade in oil between Iran and the United States, and it included oil from these fields, extracted and transported using the facilities of the National Iranian Oil Company (NIOC), the State company which owned and operated the platforms. The facts of the trading situation will be outlined by Dr. Zeinoddin when he speaks tomorrow. He has been the Head of the Legal Division of NIOC since 1981. The platforms were not used for military purposes, they were civilian facilities. Iran had had a substantial navy, and there were dedicated radar stations and units along its coastline. Iran did not need cumbersome oil platforms to play a role in its military efforts in the war with Iraq; it needed to keep them operating precisely as the civilian facilities they were destined to be. For example, the equipment found on the Reshadat platform consisted of a small, non-functioning radar unit and a small anti-aircraft battery, put there in an attempt to deter or ward off further Iraqi air attacks and to give the civilian personnel operating the platforms at least a minimum sense that they were being defended.

22. The underlying point may be illustrated by an example. For a neighbouring neutral State to blow up a bridge, connecting it to another State which is defending itself in a war started by a third State, would evidently be inconsistent with freedom of commerce across the bridge. Let us assume that the bridge had traditionally been built to facilitate trade and commerce between the two States; it had been an important, expensive, well-known aspect of the infrastructure underpinning long-standing commercial relations between them. Political relations between the two States might have ebbed and flowed; there might have been political changes in one or both States which meant that those relations were difficult, perhaps extremely difficult. No doubt there could have been faults on both sides in a deteriorating political relationship. But still their

commercial relations continued, and the bilateral Treaty of Amity, Economic Relations and Consular Rights remained in force notwithstanding political difficulties. Either party could have terminated that Treaty on six months' notice; neither party did; both continuously relied on it. In such a case, the destruction of the bridge would be plainly inconsistent with freedom of commerce between the two States. It would then be for the State which destroyed the bridge to show that it did so because its essential security interests made this necessary — a difficult thing to show, you might think, and not something that could be done simply on the assertion of the destroying State as to its perception of security interests.

23. Now it is for the United States to tell the Court whether it thinks the deliberate destruction of bridges is consistent with freedom of commerce. But at least it appears not to defend such conduct outright. Leaving the issues of self-defence and essential security interests to one side, it appears to accept that a deliberate attack on a commercial facility, which has historically been used to produce and transport commercial goods traded between the two States, is or would be a violation of freedom of commerce. But it argues that the situation of the platforms is different. First, it points out that at the time of the 1987 attack the Reshadat platforms were under repair as the result of an earlier Iraqi attack. Dr. Zeinoddin will deal with these facts in more detail, but the position was that the platforms were nearly repaired and were about to resume production; they had in the past been used to support the export trade in oil to the United States and they were about to resume. The commerce whose freedom is guaranteed by Article X, paragraph 1, is not a temporary phenomenon: it is a pattern of trade over the years. The United States appears to believe that if our hypothetical bridge had been damaged by a third party so that it was temporarily out of service and under repair, it would be consistent with the freedom of commerce for the United States to destroy the bridge utterly. It is a curious concept of freedom.

24. Then the United States asserts that, shortly after the destruction of the Reshadat platforms, it imposed an oil embargo with Iran which was in force at the time of the attack in 1988 on the Salman and Nasr platforms. The first point to make here is that, obviously enough, the United States own action subsequent to the 1987 attack — in imposing the embargo — cannot justify the attack, if it was a breach of the Treaty of Amity. A valid claim of Iran resulting from the 1987 attack does not disappear because the United States subsequently engages in some other

conduct hostile to Iran. Whether that has effects on quantum, or on the remedies available, is a matter to which I will return on Wednesday, but it cannot have any effect on the reality of the prior breach of the Treaty in relation to the 1987 attack.

25. Now as to the 1988 attack on the Salman and Nasr platforms, it is true that there was no direct trade in oil between Iran and the United States in 1988, at the time of the attack, because of the embargo. But that objection ignores the term "freedom" in Article X, paragraph 1: this paragraph guarantees not just actual commerce on a given day but freedom of commerce on a continuing basis — a point Professor Pellet will emphasize tomorrow. Moreover it is one thing to impose an embargo which can be readily lifted and was in fact partially lifted in 1991; it is another to destroy a commercial facility which was constructed for the purpose of commerce in oil, in particular with the United States, which had been historically used for that purpose and which was destined to be used again. Thus the United States impaired freedom of commerce between the two States, just as surely as the destruction of a bridge built between their respective territories would have done; and it would not have mattered if there had been a temporary embargo in crossing the bridge.

26. Now of course there are no direct physical bridges between the United States and Iran. They are not adjoining neighbours, as Iraq adjoins Iran. But nor were they adjoining neighbours in 1955 when the Treaty of Amity was signed. The freedom of commerce between the territories of the High Contracting Parties which Article X, paragraph 1, guarantees is freedom of commercial relations between these two States, situated as they are. And the reality of the freedom of commerce that is guaranteed by paragraph 1 has to be assessed in that context, and having regard to the realities of the particular trade in question. In fact, the way oil flows in international markets is both direct and indirect; it can be trans-shipped, refined, mixed, traded, exchanged and on-sold. Iran has produced an expert report on this by Professor Odell, which is Volume III of Iran's Reply. But to test the United States argument, let us assume for a moment that it was Iran which in 1987 imposed an embargo on oil export direct to the United States. Of course Iran did not do so, any more than it ever attempted to close the Straits of Hormuz: neither of these things was remotely in its interest to do. But let us make that assumption, and let us further assume that as part of the embargo Iran tried to insist that no Iranian oil be trans-shipped even indirectly to the United States.

On this scenario, Iran would have insisted that the Netherlands, for example, to whose Rotterdam refineries many consignments of Iranian crude were shipped, must ensure that no drop of oil ever reached the United States — it would be a secondary boycott. Could Iran have justified its embargo on commerce with the United States on the basis that the oil in question transited or stopped over in a third State? I do not think so. The United States would have been justified in treating the boycott as a breach of Article X, paragraph 1. Having regard to the characteristics of the oil industry, and the fact of long-standing, historic trade in oil between Iran and the United States, the Iranian measures would have been inconsistent with freedom of commerce between the territories of the High Contracting Parties.

27. The point about the embargo is important in a number of ways. The Court will have observed that Iran has not raised the question of the embargo — the United States embargo, the real embargo, not the hypothetical one — *as such*, that is to say, as a substantive breach of the Treaty of Amity. This is not because the United States embargo raised no issue under Article X, paragraph 1; it certainly did, and Iran will say that the embargo as an unlawful act cannot be relied on by the United States in an attempt to mitigate its obligation to pay compensation for losses arising from the destruction of the platforms. But that is not an issue in the present phase of the case: for the moment we are concerned with whether there has been a breach, not with the question of quantum. And in any event, in formulating its substantive claims against the United States, Iran focused on its real grievance in terms of the economic values protected by Article X, paragraph 1, that is to say, on the destruction of the platforms. Above all, what strikes one about these United States actions is their destructiveness. An oil embargo might have reduced or if it had been imposed on third State trans-shipment even halted trade in oil for the time being. Whether or not that would have breached Article X, paragraph 1, it would at least have left Iran the freedom to sell its oil on the open market to third States, something it could easily have done in fact. The damages for such a breach would thus have been much, much limited. But to destroy the facilities themselves — now there we have the negation of freedom!

28. For these reasons it is understandable that the principal United States focus in this merits phase of the present case is by way of defence. The Court having already denied the United States argument that military action cannot violate a commercial treaty, the United States focuses mainly

on its defences to the claim rather than the question of breach. It seeks to justify the United States conduct in destroying the platforms. And that brings me to Iran's *second* basic proposition. This is that, in relation to this action, there is no circumstance precluding wrongfulness; the conduct was not a valid or lawful exercise of self-defence.

29. Now for the purposes of these proceedings Iran accepts that action otherwise lawfully taken in self-defence could constitute a circumstance precluding wrongfulness in relation to Article X, paragraph 1, of the Treaty. In other words, it accepts the proposition contained in Article 21 of the ILC Articles on State Responsibility which reads: "The wrongfulness of an act of the State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations". There is no express stipulation to that effect in the 1955 Treaty, but there does not need to be. If the United States was acting in self-defence in attacking and destroying or attempting to destroy the platforms, then Article X, paragraph 1, of the Treaty is not one of the "obligations of total restraint" of which you spoke in the *Nuclear Weapons* Advisory Opinion[37]. Freedom of commerce may suffer when action is taken in self-defence; it is not an "intransgressible" value.

30. But the United States was not acting in self-defence in its attacks on the platforms. It had not itself been attacked by Iran, and it had certainly not been attacked by the platforms, which were commercial facilities. It was nominally in the position of a neutral, not a belligerent, yet it acted as destructively as a belligerent, and vis-à-vis the platforms in essentially the same manner as the aggressor, Iraq. Professor Bothe will explore these issues further on Wednesday.

31. This brings me to Iran's *third* proposition, which you will recall is as follows. The United States conduct was not "necessary to protect [the] essential security interests of the United States", within the meaning of paragraph 1 *(d)* of Article XX, of the Treaty. I will discuss this in detail on Wednesday and will not anticipate what will be said then. Let me just make two preliminary points. First, the Court has jurisdiction over Article XX as over the rest of the Treaty of Amity. Article XX, paragraph 1 *(d)*, is not an automatic reservation, nor is it an automatic source of a defence to any action, no matter how extreme, how destructive or how unjustified.

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[37] *I.C.J. Reports 1996 (I)*, p. 242, para. 30; and see the ILC's commentary to Art. 21, paras. 2-6.

When it operates, national security is a categorical and pressing matter, one which international tribunals must recognize. But national security can cover a multitude of sins, and it must be kept within appropriate limits — it is not simply a trump card to be pulled out of the sleeve for cursory inspection by the tribunal. So, and this is my second point, if the United States is really to establish that national security compelled it to act as it did, it must articulate that defence, the issue of national security, and show the necessity of its action. That was the approach you took to a provision in exactly the same terms in the *Nicaragua* case, and we call on you to apply the same approach here.

Conclusion

32. Mr. President, Members of the Court. It is obvious that in assessing the claims and counter-claims of the parties concerning breach of one provision of a bilateral treaty, you will have to take into consideration the wider context of the war of self-defence, and virtually of national survival, in which Iran was engaged at the time. In order to assist the Court, we commissioned an independent report by a respected expert, Professor Laurence Freedman of Kings College London, which you will find in Volume II of Iran's Reply. As I have said, it is an independent report and Iran does not necessarily agree with every word of it: Professor Freedman was asked to write this report by himself, precisely to assure independence; the report was not dictated to him. But it does give you some idea of the overall context, and in that sense we commend it to you. By contrast the United States has still to respond to most of the points made in the Freedman Report.

33. In fact the principal United States response, confronted with such material, is to assert its irrelevance. But it is not irrelevant, because it is necessary to take into account both the factual and legal context. At a time when Iran was, patently, exercising its right of self-defence against an armed attack, against an outright aggression, it sought to maintain, if not friendly, then at least correct relations with the rest of the world, including the United States. The maintenance in force of the Treaty of Amity was an aspect of this. For this Court it is not the case that amidst the clash of arms the laws are silent; you made that clear in *Nicaragua*, and again in the *Nuclear Weapons* Advisory Opinion; we ask you to do it again here. The United States accepted to keep the Treaty of Amity in force while adopting what (it now admits) was a patently shortsighted tilt towards Iraq.

In the course of doing so, it committed acts going way beyond any real or imagined necessity or interest, punitive acts which infringed the freedom of commerce between the two States and did so obviously and by any measure, thereby violating a treaty in force.

34. Mr. President, Members of the Court, no doubt international law has to be applied realistically, and I suppose a court might hesitate before a major power which is invoking essential security interests to justify its behaviour. But for this Court the fundamental value is the rule of international law. States can hardly be expected to comply with international law — as they are constantly enjoined by the powerful to do — unless the powerful can themselves be called to account for their own actions by the same standards before a tribunal which has jurisdiction. You have already held that you have jurisdiction. Iran respectfully calls on the Court to apply the law to the merits of this case, with neither fear of the consequences nor favour for the more favoured State — with neither anger nor partiality — *sine ira et studio* — if I may quote Tacitus once more[38]. And doing so, you should conclude — we respectfully submit — that these attacks on the platforms were a clear breach of a treaty in force, Article X, paragraph 1, of the Treaty of Amity, and you should draw the necessary legal consequences that flow from this finding.

Thank you, Mr. President, Members of the Court, and I would now ask you, Mr. President, to call upon Professor Djamchid Momtaz to address the Court.

The PRESIDENT: Thank you, Professor Crawford. I now give the floor to Professor Momtaz.

M. MOMTAZ :

La légitimité des mesures adoptées par l'Iran dans le golfe Persique face à l'agression de l'Iraq

Au nom de Dieu, clément et miséricordieux.

Monsieur le président, Madame et Messieurs les juges,

1. Je suis profondément sensible à l'honneur qui m'est fait et au privilège qui m'est accordé de pouvoir m'exprimer aujourd'hui devant la plus haute juridiction internationale. Je suis en outre très heureux de pouvoir, par l'exposé que je suis appelé à faire, assister la Cour dans sa tâche. Cet

[38] *Annals*, Book 1, Chap. 1.

exposé portera sur la légitimité des mesures adoptées de 1980 à 1988 par la République Islamique d'Iran dans le golfe Persique, et ceci dans le but de faire face à l'agression préméditée de l'Iraq.

2. Je tiens d'emblée à préciser que ma plaidoirie ne doit pas être considérée comme un réquisitoire contre l'Iraq et qu'il ne s'agit nullement ici d'établir la responsabilité de ce dernier dans le déclenchement du conflit armé, réalité que nul ne conteste désormais. C'est en ayant présent à l'esprit ce contexte qu'il conviendrait, Monsieur le président, d'évaluer les arguments présentés par les Etats-Unis pour justifier la destruction des ensembles de plates-formes pétrolières de Reshadat le 19 octobre 1987 ainsi que Salman et Nasr le 18 avril 1988.

3. Monsieur le président, il est désormais bien établi que le 17 septembre 1980 l'Iraq dénonçait unilatéralement le traité relatif à la frontière et au bon voisinage signé avec l'Iran le 13 juin 1975, et qu'il lançait, quelques jours plus tard, le 22 septembre 1980 contre le territoire iranien ses divisions blindées. En moins d'une semaine l'Iraq parvenait à occuper quelque 30 000 kilomètres carrés du territoire iranien. Il aura fallu attendre la veille de l'invasion du Koweït par l'Iraq, en 1990 pour que l'intégrité territoriale de l'Iran soit de nouveau rétablie.

4. Le rapport du Secrétaire général des Nations Unies, établi sur la base du paragraphe 6 de la résolution 598 du 20 juillet 1987 du Conseil de sécurité et consacré à la détermination de la responsabilité du conflit reconnaît d'ailleurs expressément la responsabilité de l'Iraq dans le déclenchement du conflit qui se prolongea jusqu'au 20 août 1988. Dans ce rapport, rendu public le 9 décembre 1991, le Secrétaire général précisait en effet :

> «Même si l'Iran avait quelque peu empiété sur le territoire iraquien avant l'éclatement du conflit, cet empiétement ne justifiait pas l'agression de l'Iraq contre l'Iran à laquelle a fait suite l'occupation par l'Iraq du territoire iranien pendant toute la durée du conflit, et ce en violation de l'interdiction de l'usage de la force qui est considérée comme l'une des règles du *jus cogens*.»

Pour le Secrétaire général, l'attaque lancée contre l'Iran par l'Iraq constituait :

> «Le fait saillant, parmi les violations du droit international, que l'on ne saurait justifier en invoquant la Charte des Nations Unies, des règles et principes reconnus du droit international ou les principes quelconques de la morale internationale et qui entraîne la responsabilité du conflit.»[39]

La version anglaise, version originale du rapport du Secrétaire général figure sous l'onglet 3 du dossier des juges. Il s'agit plus précisément des paragraphes 6 et 7 de ce rapport.

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[39] S/23273.

5. Pour faire face à cette agression caractérisée, la République islamique d'Iran n'avait d'autre alternative que de réagir en ayant recours, en vertu de l'article 51 de la Charte des Nations Unies, à son «droit naturel de légitime défense individuelle». C'est dans l'exercice de ce droit et en vue d'assurer la défense de ses côtes et empêcher l'Iraq d'accroître sa combativité et de contrecarrer ainsi l'initiative de ce dernier d'étendre la guerre aux eaux du golfe Persique que l'Iran a été amené à prendre des mesures conformes au droit de la guerre sur mer. En d'autres termes, Monsieur le président, il n'est pas douteux que dans cette guerre qui lui a été imposée, l'Iran était en droit de compter que le *jus in bello* serait respecté et ceci tant par l'Etat agresseur que par les Etats neutres. C'est en parfaite conformité avec le droit de la guerre que l'Iran a été contraint de bloquer les côtes de l'Iraq, d'instituer une zone de guerre et d'intercepter les navires de commerce neutres, points que j'évoquerai tour à tour au cours de ma plaidoirie.

I. La zone de guerre de l'Iran et la zone d'exclusion totale de l'Iraq

6. Monsieur le président, le jour même de l'attaque de grande envergure lancée par l'Iraq, le commandant en chef de la marine iranienne adressait une notice aux navigateurs amenés à se rendre dans le golfe Persique[40]. Par cette notice, la République islamique d'Iran instituait le blocus des côtes iraquiennes et déclarait zone de guerre les eaux adjacentes à ses côtes.

7. A propos du blocus, je ne ferai que rappeler très brièvement qu'il s'agit d'une méthode de combat propre à la guerre sur mer, par laquelle le belligérant qui l'impose s'efforce d'interdire toute communication entre le littoral ennemi et la haute mer. La décision de la République islamique d'Iran de bloquer les côtes de l'Iraq était tout à fait conforme à la déclaration de Paris du 30 mars 1856, dont les dispositions réglementent les rapports entre belligérants et neutres dans la guerre sur mer, cette déclaration de Paris est considérée comme étant l'expression d'une coutume désormais bien établie.

8. Quant à la zone de guerre mise en place par l'Iran, plus communément appelée zone d'opérations, elle était destinée à mettre en garde la navigation neutre contre les dangers pouvant résulter des combats en mer ainsi qu'à assurer la défense du territoire iranien en réglementant la navigation neutre. Dans cette zone de guerre, qui s'étendait jusqu'à une ligne reliant les points les

[40] Notice to Mariners n° 17/59; cf. A. De Guttry et N. Ronzitti, *The Iran-Iraq War (1980-1988) and the Law of Naval Warfare*, Cambridge, 1993, p. 37.

plus éloignés de la mer territoriale des îles iraniennes du golfe Persique, les navires de commerce neutres, quelle que soit leur destination, étaient invités à emprunter des couloirs de navigation qui leur étaient assignés et à communiquer régulièrement leur position aux autorités iraniennes[41]. La carte qui va être projetée sur l'écran montre l'étendue de cette zone de guerre instituée par la République islamique d'Iran en 1980.

9. La réglementation appliquée par l'Iran dans cette zone de guerre, tout en sauvegardant la sécurité des côtes iraniennes et en évitant toute intrusion ennemie, était destinée principalement *à sauvegarder la libre circulation des navires de commerce neutres à destination et en provenance des ports iraniens*. En effet, dans la mesure où, contrairement à l'Iraq, la seule et unique voie d'exportation du pétrole iranien, alors principale source de financement de son effort de guerre, passait par les voies de navigation du golfe Persique, le maintien de la liberté de navigation devenait évidemment vital pour la République islamique d'Iran. C'est ainsi qu'à plusieurs reprises l'Iran s'engagea officiellement à n'épargner aucun effort pour sauvegarder cette liberté de navigation et à garantir le libre transit à travers le détroit d'Hormuz servant à la navigation internationale[42].

10. En revanche, l'Iraq exprima très clairement à maintes reprises sa volonté d'empêcher par tous les moyens l'Iran d'exporter son pétrole par le golfe Persique. C'est d'ailleurs à cette fin que, dès le 7 octobre 1980, l'Iraq déclarait zone interdite à toute navigation les eaux du golfe Persique situées au nord du 29e parallèle nord. La carte qui est projetée sur l'écran sera complétée, Monsieur le président, en précisant la position de cette zone d'exclusion totale de l'Iraq[43]. Etaient inclus dans cette zone d'exclusion non seulement l'île de Kharg, principal terminal pétrolier de l'Iran, mais aussi les ports iraniens d'Imam Khomeini et Bouchir.

11. Monsieur le président, le 16 août 1982, l'Iraq étendait sa zone d'exclusion pour y englober les eaux distantes de 60 kilomètres de l'île de Kharg. La carte projetée sera finalement complétée par l'ajout des limites de la zone d'exclusion totale de l'Iraq après son extension

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[41] Notice to Mariners n° 23/59 du 21 janvier 1981; cf. De Guttry et Ronzitti, *op. cit*., p. 38.

[42] Lettre du ministre des affaires étrangères de l'Iran au Secrétaire général des Nations Unies S/14 226 — 22/1/81; cf., également, Memorial of Iran, Vol. II, Exhibit 22, p. 316.

[43] US Defence Mapping and Hydrographic Center (DMAHIC) Special Warning n° 50; cf. De Guttry et Ronzitti, *op. cit*., p. 72.

en 1982. La carte sur laquelle sont tracées les limites de la zone de guerre iranienne, la zone d'exclusion de l'Iraq ainsi que son extension en 1982, figure sous l'onglet 4 du dossier des juges[44]. L'effectivité de la zone d'exclusion de l'Iraq fut assurée non pas par des bâtiments de surface mais par des avions de combat qui attaquaient à vue tout navire de commerce. C'est ainsi d'ailleurs que l'Iraq reconnut à plusieurs reprises avoir utilisé ses super étendards armés d'exocets pour frapper et couler des pétroliers arborant des pavillons neutres navigant dans la zone d'exclusion de l'Iraq[45].

12. Monsieur le président, ces raids n'ont pas épargné les bâtiments battant pavillon d'Etats qui s'étaient pourtant alignés sur l'Iraq dans le conflit armé l'opposant à la République islamique d'Iran. On en veut pour preuve l'attaque menée le 25 avril 1984 contre le pétrolier battant pavillon de l'Arabie saoudite le *Safina Al Arab*, révélée par le président Saddam Hussein en personne[46]. Les frappes iraquiennes n'ont d'ailleurs pas été limitées aux pétroliers se trouvant dans la zone d'exclusion mise en place par l'Iraq. Parmi les nombreuses autres attaques imputables à l'Iraq, je me contenterai de citer celles menées contre deux pétroliers se trouvant au sud-est du Koweït où ils venaient de charger. Ces attaques, à l'extérieur de la zone d'exclusion, ont été d'ailleurs annoncées par les autorités iraquiennes elles-mêmes, je veux parler de ces deux pétroliers qui se trouvaient aux approches des côtes du Koweït le 27 mars 1984[47]. Peu après, plus précisément le 9 mai 1984, le ministre iraquien du pétrole avouait, lors de la réunion de l'Organisation des pays arabes exportateurs de pétrole (l'OPAEP) que l'aviation iraquienne, agissant parfois d'une altitude très élevée, était incapable de reconnaître préalablement le navire de commerce qu'elle prenait pour cible[48], preuve s'il en est de la responsabilité de l'Iraq dans les attaques indiscriminées qu'il mena contre la navigation neutre.

13. Telle a été l'attitude des Etats-Unis face à ces attaques. Les Etats-Unis non seulement s'abstiendront de condamner ces frappes mais adopteront tout au long du conflit une attitude bienveillante et je dirais même complaisante à l'égard de l'Iraq. Cette politique est en flagrante

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[44] DMAHIC Special Warning n° 62; cf. De Guttry et Ronzitti, *op. cit*., p. 72.

[45] AFP — 6 2 et 5 mai 1984; cf., également, Reply and Defence to Counter-Claim by Iran, Vol. II, Exhibit 15.

[46] AFP – 27 avril 1984; cf., également Rapport du professeur Freedman, Reply and Defence to Counter-Claim by Iran, Vol. II.

[47] AFP – 2 mai 1984; cf. également, Reply and Defence to Counter-Claim by Iran, Vol. II, Exhibit 15.

[48] AFP – 9 mai 1984.

contradiction avec l'engagement maintes fois réitéré des Etats-Unis de sauvegarder le libre flux du pétrole provenant du golfe Persique dont l'économie du monde occidental en dépend étroitement[49]. En réalité, Monsieur le président, cette politique suivie par les Etats-Unis était parfaitement conforme à la détermination des Etats-Unis d'Amérique d'empêcher la victoire de l'Iran dans la guerre qui l'opposait à l'Iraq, et cette volonté devait logiquement conduire les Etats-Unis à un soutien sans faille de leur part à l'effort de guerre iraquien. Mon collègue, M. Bundy, sera amené tout à l'heure à approfondir devant vous cette question et à mettre en exergue les moyens mis en œuvre par les Etats-Unis pour parvenir à leurs fins. L'un des subterfuges utilisés, que je serai par contre appelé à examiner dans la seconde partie de ma plaidoirie, a été les obstacles régulièrement mis à l'exercice du droit de l'Iran, en tant que belligérant, d'intercepter et de visiter les navires neutres en vue de s'assurer qu'ils respectaient le droit de la neutralité. Question dont je vais être amené maintenant à traiter.

II. L'interception et la visite des navires neutres par l'Iran

14. Monsieur le président, d'après les principes universellement reconnus, un bateau de guerre belligérant a le droit d'arrêter, dans les eaux soumises à la libre navigation, un navire de commerce neutre et de procéder à l'inspection de sa cargaison afin de s'assurer qu'il observe les règles de neutralité et qu'il ne transporte pas de contrebande de guerre. La déclaration de Paris, à laquelle je me suis déjà référé, énonce ce principe par un *dictum* bien connu des internationalistes, à savoir : «le pavillon neutre ne couvre pas la contrebande de guerre». Il est désormais établi que la détermination des articles de contrebande de guerre relève de la compétence exclusive des belligérants[50]. Tel est d'ailleurs le fondement juridique de la loi relative au droit de prise adoptée par le Parlement iranien le 31 janvier 1988. Conformément à cette loi qui codifie en fait la pratique suivie par la marine iranienne tout au long du conflit armé en mer, est qualifié de contrebande de guerre et, de ce fait, susceptible d'être saisi, tout matériel ou bien de nature à accroître la combativité de l'ennemi. Destinées à annihiler l'effort de guerre de l'Iraq, les opérations d'interception et de visite menées par la République islamique de l'Iran à l'encontre des navires

[49] Secretary of Defense, A Report to the Congress on Security Arrangements in the Persian Gulf, 15 June 1987; cf. Memorial of Iran, Vol. II, Exhibit 32.

[50] Ch. Rousseau, *Droit des conflits armés*, Pédone, 1983, p. 471.

neutres étaient donc tout à fait conformes au droit des conflits armés et visaient tout simplement à faire face à la guerre d'agression qui lui était imposée.

15. D'ailleurs, Monsieur le président, la licéité des opérations d'interception et de visite n'a été contestée ni par le Conseil de sécurité ni par les Etats dont les navires avaient été interceptés par la marine de guerre iranienne. Suite à l'interception et à la visite le 13 janvier 1986 du *Président Taylor*, battant pavillon américain, par la marine de guerre de l'Iran, les Etats-Unis reconnaissaient expressément le droit des belligérants de mener de telles opérations en haute mer[51]. Des doutes, Monsieur le président, ont été néanmoins exprimés sur la légalité de ces opérations lorsqu'elles visaient des navires de commerce se dirigeant vers le territoire koweïtien ou en provenance de ce territoire. Le gonflement sans précédent du tonnage des marchandises débarquées dans les ports du Koweït avait rendu l'Iran quelque peu suspicieux quant à la destination finale des marchandises débarquées dans les ports du Koweït. Afin de s'assurer que ces biens n'étaient pas destinés à l'ennemi, l'Iran conformément au droit de la guerre sur mer, a intercepté et visité ces navires de commerce neutres qui se rendaient dans des installations portuaires du Koweït. Ces opérations ont été menées en application de la fameuse théorie de «voyage continu» prise en compte et appliquée par la jurisprudence des prises, thèse d'ailleurs consacrée par la Haute Cour de justice britannique le 16 septembre 1915 dans la fameuse affaire *Kim*[52]. Cette jurisprudence autorise la saisine de contrebande de guerre se trouvant sur un navire neutre dans son voyage entre deux ports neutres si sa destination finale est le territoire ennemi. D'ailleurs, Monsieur le président, ces opérations d'interception menées par la marine de guerre iranienne ont permis entre autres à la marine iranienne d'établir que la destination de l'armement transporté par le navire danois *Elsa Cat*, intercepté en août 1981, était en réalité hostile puisque cette cargaison était destinée à l'Iraq[53]. Il en va de même de la cargaison du navire *El Muharaq* battant pavillon koweïtien, arrêté en juin 1985, dont l'étiquetage indiquait clairement qu'elle était destinée à l'ennemi[54].

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[51] Statement by Principal Deputy Press Secretary of the President 13 January 1986; cf. Reply and Defence to Counter-Claim by Iran, vol. II, rapport du professeur Freedman, par. 34, note 58.

[52] Ch. Rousseau, *Droit des conflits armés*, Pédone 1983, p. 486-487.

[53] Cf. Ch. Rousseau, «Chronique des faits internationaux», *RGDIP*, vol. 86, 1982, pp. 812 et suiv.

[54] Cf. Observations and Submissions of Iran on the United States. Preliminary Objection, vol. I, Annex, par. 28 et vol. II, Exhibit 20.

16. Il a été aussi établi que, pour contourner le blocus de ses côtes, l'Iraq utilisait les installations portuaires du Koweït pour écouler une partie de sa production de pétrole ainsi que pour exporter la production des gisements de Kafji, situés dans l'ancienne zone neutre entre l'Arabie saoudite et le Koweït, gisement qui avait été mis en 1983 à la disposition de l'Iraq afin de soutenir son effort de guerre contre l'Iran[55].

17. Il ne s'agit évidemment pas ici de faire le procès du Koweït et ce dans la mesure où tous ces faits que je viens de relater ont été ultérieurement reconnus par les autorités koweïtiennes qui, à plusieurs reprises, ont présenté leurs excuses pour l'attitude hostile adoptée par ce pays à l'égard de l'Iran. Je relaterai à ce propos la déclaration faite à l'occasion d'une interview du cheikh Sabah, ministre des affaires étrangères du Koweït, et remontant à septembre 1994, au cours de laquelle il s'est exprimé en ces termes : *«I would like to use this opportunity for us to ask Iran publicly . . . for forgiveness for having supported Iraq in the war against Iran from 1980-1988. We committed a great error then»*[56]. Il ne s'agit pas non plus comme je l'ai déjà dit de faire le procès de l'Iraq. En revanche, ce que nous cherchons à établir devant vous est la responsabilité des Etats-Unis qui, en tant qu'Etat prétendument neutre, n'en ont pas moins soutenu, et ceci en toute connaissance de cause, le Koweït et l'Arabie saoudite dans leur entreprise en faveur de l'Iraq.

18. En vue d'entraver les opérations d'interception et de visite menées par la marine de guerre de l'Iran, la marine des Etats-Unis accordait une protection militaire, sous forme de convois, aux navires de commerce se rendant ou en provenance du Koweït. Il est vrai que, conformément aux articles 61 et 62 de la déclaration de Londres du 26 février 1909 sur le droit de la guerre sur mer, les navires de guerre neutres sont autorisés à convoyer les navires de commerce battant leur pavillon. Dans ce cas, les navires de commerce seront exempts de visite, mais le commandant du convoi reste tenu de donner par écrit, à la demande du commandant d'un bâtiment de guerre belligérant, toute information que la visite serait susceptible de faire obtenir. Or, l'escorte assurée par la marine de guerre des Etats-Unis ne répondait pas à ces conditions. Procédant par voie d'intimidation et de menace, les commandants des navires de guerre des Etats-Unis rendaient en pratique impossible tout contact en vue d'obtenir des garanties quant à l'absence de toute

[55] War Relief Crude oil Agreement F. Mehr ODIL, Vol. 20 n° 1989, p. 105-106, Memorial of Iran, Exhibit 27.

[56] Reply and Defence to Counter-Claim by Iran, Exhibit 13.

contrebande de guerre à bord des navires qu'ils convoyaient. J'en veux pour preuve les avertissements lancés par les navires de guerre des Etats-Unis en vue de dissuader la marine iranienne d'intercepter et de visiter le *President Mc Kinley* battant pavillon américain et cela le 14 mai 1986[57]. De même, les Etats-Unis, en étendant leur protection à tous les navires de commerce, ont violé la déclaration de Londres, plus précisément son article 62, qui exige des navires de guerre qu'ils escortent uniquement les navires de commerce arborant leur pavillon, ceci à l'exclusion de navires battant tout autre pavillon.

19. C'est sans doute pour se conformer à cette règle que les Etats-Unis décidaient, le 30 juin 1987, d'autoriser les pétroliers koweïtiens, et ce en l'absence de tout lien substantiel avec ces derniers, d'arborer leur pavillon. Des voix se sont d'ailleurs élevées au sein du Congrès américain pour condamner ce «repavillonnement», considéré comme étant l'expression de l'alignement des Etats-Unis sur l'Iraq. Pour le sénateur Nunn, président de la commission des affaires étrangères du Sénat, la raison invoquée pour justifier cette politique méconnaissait le fait que l'Iran avait été victime d'une agression, aussi bien sur terre que dans la guerre des tankers[58].

20. En définitive, il est indubitable que tous ces gestes de bienveillance à l'égard de l'Iraq, et des Etats qui le soutenaient, constituaient *a contrario* autant d'actes de malveillance à l'égard de l'Iran, et, par conséquent, un manquement au devoir des Etats-Unis, qui s'étaient déclarés neutres au début du conflit. En effet, l'article 9 de la convention de La Haye du 18 octobre 1907 concernant les droits et devoirs des puissances neutres en cas de guerre maritime impose aux neutres une obligation d'impartialité les contraignant à traiter les belligérants de manière identique. La marine de guerre des Etats-Unis a, en fait, participé activement à la guerre par des actes hostiles dirigés contre des objectifs civils iraniens, dont les plates-formes pétrolières attaquées en octobre 1987 et avril 1988, et ceci en violation de l'article X, paragraphe 1, du traité d'amitié, de commerce et des droits consulaires du 15 août 1955 liant l'Iran et les Etats-Unis. Ces attaques étaient destinées à porter un coup à la production pétrolière de l'Iran, attaques que les Etats-Unis ont tenté de camoufler en invoquant le droit individuel de légitime défense.

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[57] *New York Times*, 15 mai 1986, Memorial of Iran, Exhibit 30.

[58] Memorial of Iran, Exhibit 32.

Parvenu au terme de mon exposé, je vous serais reconnaissant, Monsieur le président, de bien vouloir accorder la parole à M. Bundy.

Je vous remercie, Madame et Messieurs les juges, de votre attention.

The PRESIDENT: Thank you, Professor Momtaz. I now give the floor to Mr. Bundy.

Mr. BUNDY: Thank you, Mr. President

Mr. President, Members of the Court, it is, for me, a great honour to appear before you today on behalf of the Islamic Republic of Iran in this important case.

The background to the attacks on the platforms: United States support for Iraq in its war efforts and the United States predisposition to treat Iran with hostility

A. Introduction

1. For the third time in the past two decades, the eyes of the world are focused on the northern Persian Gulf where the threat of hostilities once again casts an ominous shadow over current events. The significance of this fact I trust will not be lost on the Court, and the fact that the present case arises out of a previous conflict in the same region. While it may be difficult in such circumstances to find a silver lining in the storm clouds of war, it is fitting that this Court, as the principal judicial organ of the United Nations, is called upon to decide this case in accordance with the rule of law.

2. In its oral argument during the jurisdictional phase of the proceedings (CR 96/12, p. 23), and again in its Counter-Memorial (para. 1.01), the United States stressed that "[t]he setting for this case is the Iran-Iraq War which raged from 1980-1988". This is a statement with which Iran fully agrees. Indeed, the attacks by United States naval forces on Iran's offshore oil platforms, which form the subject-matter of the present dispute, cannot be divorced from the factual context within which those attacks took place. The events of October 1987 and April 1988 did not occur in a vacuum. They were linked to a whole pattern of hostile United States behaviour towards Iran that had its roots in policies that the United States Government, at its highest levels, adopted in support of Iraqi aggression against Iran.

3. Despite admitting that the setting for the case is the Iran-Iraq war, the United States has gone on to argue, I would suggest in a disingenuous fashion, that: "All of Iran's past allegations regarding all forms of alleged US misconduct, other than the US actions against the oil platforms, are accordingly no longer at issue, and the United States has not addressed them in this Counter-Memorial." (Counter-Memorial of the United States, para. I.13.) To this the United States has added, in a procedurally untimely fashion, a jurisdictional objection in its Rejoinder. There it is asserted that Iran's references to past United States conduct "raise issues that are outside this Court's jurisdiction and have no relevance to this case" (Rejoinder of the United States, para. 1.09).

4. Not only does the United States misstate the issue in jurisdictional terms, its arguments regarding the relevance of its own conduct leading up to the attacks on the oil platforms are demonstrably misplaced. The Court is not asked in these proceedings to decide whether the United States support for Iraq violated international law. Iran's claims rest solely on the proposition that the United States breached Article X, paragraph 1, of the 1955 Treaty in destroying the three sets of oil platforms in question.

5. The United States, in turn, has invoked self-defence as justification for those attacks. And as the Court observed in the *Nicaragua* case:

> "[T]he normal purpose of an invocation of self-defence is to justify conduct which would otherwise be wrongful. If advanced as a justification in itself, not coupled with a denial of the conduct alleged, it may well imply both an admission of that conduct, and of the wrongfulness of that conduct in the absence of the justification of self-defence." (*Military and Paramilitary, Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 45, para. 74.)

6. The question, therefore, is whether the United States has sustained its burden of proof that its invocation of self-defence, or even its plea of essential security interests, is legally justified. To decide that issue, the Court cannot avoid addressing the motives — the real reasons — behind the United States actions. Was the United States genuinely acting in self-defence when it attacked Iran's platforms? Or, did its interests lie elsewhere? Were its actions part of a broader policy which was designed to place military and economic pressure on Iran — a policy which the then United States Assistant Secretary of Defence, Lawrence Korb, described in the following way?

"[W]hen we [the United States] went in, we wanted to ensure that Iran didn't win that war from Iraq. That was our real objective, and so we were doing a lot of things to ensure that we could teach the Iranians a lesson." (Memorial of Iran, Exhibit 51.)

7. Mr. President, destroying Iran's oil platforms, which were so essential to Iran's economy and commerce, was one of those things designed to assist Iraq and to teach Iran a lesson. This was not an exercise in self-defence, but rather one based on short-term and, ultimately, misguided expediency. Moreover, it was conduct which was in breach of Article X, paragraph 1, of the Treaty of Amity.

8. In considering these issues, it is important to bear in mind, as Iran's Agent has said, what the Court had to say about Article I of the Treaty of Amity in its 1996 Judgment on jurisdiction. As the Court will recall, Article I provided that: "There shall be firm and enduring peace and sincere friendship" between the two Contracting parties.

9. While the Court did not consider that Article I provided a separate basis of jurisdiction in the case, it did not thereby rule that Article I was deprived of all relevance. As the Court stated:

> "by incorporating into the body of the Treaty the form of words used in Article I, the two States intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations and that such a development would in turn reinforce that peace and that friendship. It follows that Article I must be regarded as fixing an objective, in the light of which the other Treaty provisions are to be interpreted and applied." (*I.C.J. Reports 1996 (II)*, p. 814, para. 28.)

10. It therefore follows that any appreciation of the true position, including the application of Article X, paragraph 1, of the Treaty to the attacks on the platforms, necessarily entails an examination of the United States conduct leading up to those attacks themselves and a consideration of the United States obligations under Article I of the Treaty in the light of which Article X, paragraph 1, is to be interpreted and applied. And it is this conduct which I will presently review.

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11. The United States maintains that it was strictly neutral in the Iran-Iraq conflict. It argues that United States policy prohibited the export of arms to both Iran and Iraq, that the United States wished to bring about a cessation of hostilities without victor or vanquished and that its aims were directed at preserving freedom of navigation in the Persian Gulf (CR 96/12, p. 25 (Neubauer)).

12. These assertions are contradicted by the contemporary evidence, including statements issued by senior United States Government officials at the time. As the record shows, and as I shall review, the United States actively supported Iraq in its war efforts against Iran and was predisposed to treat Iran throughout the conflict with hostility. That predisposition carried over to the attacks on the oil platforms in October 1987 and April 1988 and even to events afterwards such as the downing in July 1988 of an Iranian civilian airbus with the loss of 290 lives.

13. To give the Court a flavour of the United States attitude prior to its attacks on the platforms, let me quote from a sample of views that reflected official United States policy at the time. First let's start with James Baker, the former Secretary of State:

> "The policy of the United States Government at the time was to assist Iraq in their war against Iran in order to create, in effect, a counterweight to Iran . . . So we supplied Iraq with a lot of intelligence support and probably quite a bit of material support as well." (James Baker, former Secretary of State (quoted in *The Making of Saddam*, BBC Radio 4, 27 January 2003, 20h00-20h30 GMT).)

Then we have Ambassador Richard Murphy who was at the time the Assistant Secretary of State for Near Eastern and South Asian Affairs. He testified in front of the United States Senate as follows:

> "Because of our interest in seeing the Iranian revolution contained within Iran, the United States has an important stake in Iraq's continuing ability to sustain its defenses." (Ambassador Richard Murphy, Assistant Secretary of State for Near Eastern and South Asian Affairs, in testimony before the US Senate Foreign Relations Committee on 29 May 1987 (Memorial of Iran, Exhibit 49).)

We then have Lawrence Korb, whom I referred to a few moments ago, the former Assistant Secretary of Defence. He stated:

> "We now know, and I think even before this incident, that when the United States went into the Gulf it was not simply just to escort Kuwaiti tankers. We wanted to ensure that Iran did not win that war. In other words, we became *de facto* allies of Iraq." (Lawrence Korb, former Assistant Secretary of Defense, 2 July 1992 (Memorial of Iran, Exhibit 51).)

— William Colby, the former Director of the Central Intelligence Agency, wrote: "It was pretty obvious that the United States was tilting towards Iraq." (2 July 1992, Memorial of Iran, Exhibit 51.)

— Howard Teicher, a Staff Member to the National Security Council of the United States, wrote in testimony before a United States federal court: "In June, 1982, President Reagan decided that the United States could not afford to allow Iraq to lose the war to Iran. President Reagan decided that the United States would do whatever was necessary and legal to prevent Iraq from losing the war with Iran." (Reply of Iran, Exhibit 10.)

— George Shultz, another former American Secretary of State: "Our support for Iraq increased in rough proportion to Iran's military successes: plain and simple the United States was engaged in a limited form of balance of power policy. The United States could not stand idle and watch the Khomeini revolution sweep forward." (Reply of Iran, cited in the Freedman Report, p. 46.)

— And finally, Henry Kissinger: "The Reagan and Bush administrations supported Iraq against Iran . . . By extending assistance after Iraq had become the strongest power in the Gulf, they contributed to its later aggressiveness, which culminated in the annexation of Kuwait." (Memorial of Iran, Exhibit 45.)

14. Recall, if you would, Mr. President and Members of the Court, that these statements related to a context in which Iraq, in contravention of basic principles of international law — indeed, of *jus cogens* — was the aggressor, in which Iraq was using chemical weapons against Iran and launching indiscriminate missile attacks against Iranian cities, and in which Iraq had initiated and prosecuted the so-called "tanker war". Yet, the United States nonetheless allied itself with Iraq.

15. Before moving on to the specifics of conduct which demonstrate the United States unremitting hostility towards Iran, two further points need to be emphasized in order to place this evidence in its proper legal context. The first is that the kind of statements to which I have just referred and which were put on the screen have been recognized by the Court as constituting evidence which is prima facie of a "superior credibility", to use the Court's own characterization. As the Court stated in the merits phase in the *Nicaragua* case:

> "The Court takes the view that statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. They may then be construed as a form of admission." (*I.C.J. Reports 1986*, p. 41, para. 64.)

16. Secondly, the United States has not denied any of the evidence which so clearly shows that its actions during the Iran-Iraq war were designed to assist Iraq and to prejudice, intimidate and

punish Iran. Iran has addressed this evidence in detail in all of its written pleadings, including in the jurisdictional phase and on the merits. But the United States has remained silent. It proceeds as if Iraq did not exist or at least as if its relationship with Iraq was not a factor which influenced its conduct towards Iran.

17. Based on that fundamentally flawed premise, the United States simply discards Iran's discussion of the factual context within which the attacks on the platforms took place as "diversionary tactics" (Rejoinder of the United States, para. 1.10). But they were no such thing. The evidence that Iran has referred to has been extensively documented and is a matter of public record, and it shows unequivocally that, prior to, during and following the attacks on the platforms, the United States — as incredible as it may seem today — supported Iraq militarily, logistically, financially and diplomatically. United States policy was driven by an intense antipathy towards Iran and a predisposition to teach Iran a lesson despite the fact that Iran was the victim of Iraqi aggression. That was the context in which the attacks on the platforms took place. As such, it is directly relevant to the issue of whether the United States invocation of self-defence can be sustained or whether the United States conduct in destroying the platforms was genuinely necessary to protect its essential security interests.

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B. Specific examples of US conduct hostile to Iran

18. On 22 September 1980, Iraq invaded Iran thus triggering the war. As the Court has heard, in his report to the Security Council on the implementation of Security Council resolution 598, the Secretary-General of the United Nations characterized that event — Iraq's invasion — as one which could not be justified under the United Nations Charter, any recognized rules and principles of international law or any principles of international morality, and which thus entailed responsibility for the conflict. Iraq was the aggressor, and Iran was forced to take defensive measures and to become engaged in a conflict which it neither sought nor was

responsible for. In these circumstances, if anyone was entitled to exercise its inherent right of self-defence recognized in Article 51 of the Charter, it was Iran. That elementary, yet fundamental, fact is ignored by the United States in its pleadings.

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1. The removal, in 1982, by the United States of Iraq from its list of States supporting terrorism and the freeing of export credits for Iraq

19. If we turn to the specifics of United States conduct in the region, in March 1982 during a crucial point in the Iran-Iraq war when Iran was just beginning to repel the Iraqi invasion and beginning to expel Iraq from Iranian territory, the State Department removed Iraq from its list of countries supporting terrorism. That had enormously favourable implications for Iraq which as a result became eligible for a wide range of trade and export credits with the United States — a vital development for the Iraqi régime which was strapped for cash in view of its military campaign against Iran. Needless to say, no similar financial facilities were offered by the United States to Iran.

20. There was also no justification for this move — removing Iraq from the State Department's terrorism list — in terms of Iraq's record with respect to terrorism. As the Defense Department's then director for counter-terrorism programmes remarked: "No one had any doubts about his [Saddam Hussein's] continued involvement with terrorism. The real reason was to help them succeed in the war against Iran." (Reply of Iran, Exhibit 7.)

21. As I said, as a result of that action, trade between the United States and Iraq, including trade in items which had a clear "dual use" capability, increased from approximately $570 million in 1983 to over $3.6 billion in 1989, the year after the second attack on the platforms (Reply of Iran, Exhibit 7).

22. In 1982 alone, a $300 million loan was guaranteed by the United States to Iraq (Memorial of Iran, Exhibit 46; Reply of Iran, Exhibit 8). That had the inevitable consequence or effect of allowing Iraq to free up other financial resources for military purposes. The United States

also began to supply Iraq with sensitive "dual use" materials. For example, a large consignment of helicopters, which had clear military potential, were sold to Iraq. Shipments of trucks, computer equipment and chemical products followed. As the United States knew full well, all of this material clearly could be, and was, used by Iraq for military purposes against Iran (Reply of Iran, Exhibit 8). In 1984, as Professor Freedman explains in his report, Vice-President Bush intervened with the United States Export-Import Bank (EXIM) to provide $484 million in credits to Iraq — one of the largest financial commitments that bank has ever made (Freedman Report, Reply of Iran, Vol. II, pp. 19-20). According to a 1992 United States Congressional hearing on Iraq, as early as October 1983, the State Department had lent its support to this policy. A contemporary State Department cable stated:

> "In considering ways to build international confidence in Iraq's economic and financial future, we should give serious thought to offering Eximbank credits. New U.S. credits . . . will demonstrate U.S. confidence in the Iraqi economy. [And] this in turn could encourage other countries to provide similar assistance. Such concrete demonstrations of support could ease pressure on Iraq." (Memorial of Iran, Exhibit 50).

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2. President Reagan's issuance of a national security decision directive to support Iraq in its war efforts

23. Initially in its war campaign Iraq had the upper hand by virtue of its invasion of September 1980. But by the spring of 1982, the strategic situation had begun to change.

24. Howard Teicher was, at that time, a staff member of the United States National Security Council responsible for the Middle East and for Political-Military Affairs. In sworn testimony before a United States federal court, Mr. Teicher described the situation in the following way — and the Court can find his complete testimony under tab 5 of your folders:

> "In the Spring of 1982, Iraq teetered on the brink of losing its war with Iran. In May and June, 1982, the Iranians discovered a gap in the Iraqi defenses along the Iran-Iraq border between Baghdad to the north and Basra to the south. Iran positioned a massive invasion force directly across from the gap in the Iraqi defenses. An Iranian

> breakthrough at this spot would have cut off Baghdad from Basra and would have resulted in Iraq's defeat." (Reply of Iran, Exhibit 10.)

25. As Mr. Teicher testified in federal court, United States intelligence had detected this gap and the massing of Iranian forces opposite it. The consequences of that discovery, in Mr. Teicher's words, were the following: "President Reagan was forced to choose between *(a)* maintaining strict neutrality and allowing Iran to defeat Iraq, or *(b)* intervening and providing assistance to Iraq." *(Ibid.)*

26. President Reagan opted for the latter course, deciding that "the United States would do whatever was necessary and legal to prevent Iraq from losing the war with Iran" (Reply of Iran, Exhibit 10). Now that decision was formalized by the issuance of a National Security Decision Directive ("NSDD") in June 1982. The Directive itself remains classified by the United States, although Mr. Teicher has stated that he has first-hand knowledge of it because he was one of its co-authors. And the Directive has also been referred to in a recent *Washington Post* article that was reprinted at the end of last year in the *International Herald Tribune* (which you can find at tab 6 of your folders).

27. In his court testimony, Mr. Teicher explained United States policy in the following way:

> "CIA Director Casey personally spearheaded the effort to ensure that Iraq had sufficient military weapons, ammunition and vehicles to avoid losing the Iran-Iraq war. Pursuant to the recent NSDD, the United States actively supported the Iraqi war effort by supplying the Iraqis with billions of dollars of credits, by providing U.S. military intelligence and advice to the Iraqis, and by closely monitoring third country arms sales to Iraq to make sure that Iraq had the military weaponry required." (Reply of Iran, Exhibit 10.)

28. 1982; just two years after Iraq's invasion of Iran, any notion of United States neutrality in the conflict had become a complete fiction. Quite apart from the United States failure to denounce Iraq for starting the war, the highest echelons of the United States administration had directed that the Government should do whatever it can to prevent Iraq from losing that war. Moreover, that policy was in contravention to United Nations Security Council resolutions which had repeatedly called upon *all* States "to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict" (Memorial of Iran, Exhibit 24).

Mr. President, it is 6 o'clock. I have probably another 20 to 25 minutes, but I will be perfectly happy to do that tomorrow morning. I am at the Court's disposition.

The PRESIDENT: You may continue, please.

Mr. BUNDY: Thank you, Mr. President.

3. Despite Iraq's use of chemical weapons against Iran, the United States increased its support

29. As early as November 1983, Secretary of State Shultz was informed by a senior State Department official that intelligence reports showed that Iraqi troops were resorting on an "almost daily" basis to the use of chemical weapons against Iran (*International Herald Tribune*, 31 December 2002-1 January 2003, judges' folders, tab 5). And despite those reports, in December 1983 the United States administration sent to Iraq a special envoy, Donald Rumsfeld, currently the United States Secretary of Defence and one of the leading proponents today of taking military action against the very same Iraqi régime he visited in 1983. Amongst other things, in 1983, Mr. Rumsfeld informed Saddam Hussein that the United States was prepared to re-establish diplomatic relations with Iraq that had been broken since the 1967 Middle East war *(ibid.)*.

30. Iraqi use of chemical weapons against Iran gave rise to repeated Iranian complaints. In March 1984, a report was prepared by four specialists who visited Iran, and that report was submitted to the Secretary-General of the United Nations and to the Security Council: and those specialists unanimously concluded that chemical weapons *had* been used against Iran (Memorial of Iran, Exhibit 11).

31. As admitted by counsel for the United States in oral argument during the jurisdictional phase, Iraq also "began the so-called 'Tanker War' when it commenced attacks against tankers carrying Iranian crude through the Gulf" (CR 96/12, p. 23 (Neubauer)). Expert reports, in fact, noted that American foreign policy specialists actually had helped Iraq devise the strategy of attacking ships trading with Iran: they put the citations to that evidence, you will find, in the compte rendu (Further Response of Iran, para. 3.34; and see Exhibit 3 to the Reply of Iran and the Freedman Report).

32. One would have thought, Mr. President, that these two developments — the use by Iraq of chemical weapons and its instigation of the tanker war — would have elicited the strongest condemnation from the United States, particularly if, as the United States alleges, it was truly neutral in the conflict. After all, we cannot help but be struck by the fact that hardly a day goes by now without Washington reminding the world that Iraq has used chemical weapons against, and invaded, its neighbours in the past — Iran amongst others. In this respect, it was scarcely a source of satisfaction to Iran to hear President Bush, in his speech to the General Assembly on 12 September last year, remind the international community that Iraq had attacked Iran in 1980 and had gassed Iranians. Where was the voice of the United States administration when those events took place?

33. Instead of condemning Iraq, the United States first tried to have the Security Council impose an arms embargo on Iran (Memorial of Iran, para. 1.86). And after that effort failed, on 26 November 1984, just after President Reagan had been re-elected for a second term, the United States restored full diplomatic relations with Iraq. The Iraqi Foreign Minister at the time, Tarik Aziz, who is currently the Deputy Prime Minister, was invited to the White House to meet with President Reagan and Secretary Shultz to mark that occasion. That development could only be viewed in the context of the ongoing Iran-Iraq war as an outright endorsement for Iraqi policy and conduct. Iran, on the other hand, was blamed for the conflict and made the target of "Operation Staunch", a United States initiative designed to deny the supply of weapons to Iran.

34. The Secretary-General of the United Nations despatched further missions to Iran to investigate the continuing reports that Iraq was using chemical weapons in April 1985, February 1986, April 1987, March 1988 and July 1988. And on each occasion, Iraq was found to have resorted to such weapons (Memorial of Iran, Exhibit 12). Nonetheless, United States support for Iraq continued unabated. As the former Secretary-General of the United Nations, Mr. Pérez de Cuellar, has recalled, the United States "was unremittingly hostile to Iran, and

therefore it was not inclined to support any Security Council action that might be favourable to Tehran" (Reply of Iran, Exhibit 6).

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4. Provision by the United States of intelligence to Iraq

35. In the meantime, the United States Government had authorized an intelligence sharing programme with Iraq pursuant to which Iraq received sensitive satellite reconnaissance photographs to assist in its military strategy. According to European intelligence sources, Iraq was furnished, amongst other things, with warnings of attacks by Iranian planes which were monitored by American AWACS or these aeroplanes that survey from radar up in the air operating out of Saudi Arabia in the Persian Gulf (Reply of Iran, Exhibit 4, p. 160). According to one analyst:

> "These [AWACS reports] were supplemented by reports every 12 hours on the Iranian military activity on the ground . . . which were passed on to Baghdad via Riyadh. This information played a vital role in aiding the effectiveness of the operations mounted by Baghdad to defeat the massive Iranian offensive of March 1985." *(Ibid.)*

36. Those reports were subsequently confirmed by the former head of Iraqi military intelligence, a man named General al-Samarra'i, who escaped from Baghdad in 1994 after the Kuwait conflict (Reply of Iran, Exhibit 9). General al-Samarra'i indicated that he had been the chief military contact between the CIA in the United States Embassy in Baghdad and the Iraqi Army. In that capacity, he stated that he met with the CIA once or twice a week to review United States satellite photos.

37. In addition to providing intelligence to Iraq on Iranian positions, United States Government officials also played an instrumental role in arranging the sale of sensitive and controversial weapons to Iraq. Mr. Teicher, once again in his Federal court deposition, a National Security Council staff member, testified that the Director of the CIA, William Casey, along with the Deputy Director, Robert Gates, authorized and approved the manufacture and sale of cluster

bombs from a third party to Iraq (Reply of Iran, Exhibit 10, p. 6). There was no doubt as to how Iraq intended to use those munitions.

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5. Iraq's attack on the U.S.S. *Stark* and the reflagging of Kuwaiti vessels in 1987

38. By early 1987, the year of the first attack on Iran's platforms, the United States was considering expanding its support for Iraq by reflagging Kuwaiti tankers many of which, as Professor Momtaz has said, were carrying Iraqi oil. To place this new development in context as a precursor to the subsequent United States attacks on the platforms, it is necessary to bring to the Court's attention a few key points.

39. Before the reflagging initiative could be put into place, on 17 May 1987 Iraq attacked a United States naval vessel — the U.S.S. *Stark* — with a missile killing 37 sailors. Rather than take action against Iraq, who many commentators considered at the time was attempting to internationalize the conflict by drawing the outside powers in, the United States response was to blame Iran for its alleged recalcitrance in ending the war.

40. On 20 May 1987, three days after Iraq's attack on the *Stark*, Secretary Shultz wrote to the United States Congress in the following terms: "Quite apart from the Iraqi attack on the U.S.S. *Stark*, Iran continues publicly and privately to threaten shipping in the Gulf. It is this basic Iranian threat to the free flow of oil and to the principle of freedom of navigation which is unacceptable." (Memorial of Iran, Exhibit 53.)

41. And that was followed nine days later by testimony from the Assistant Secretary of State, Richard Murphy, before the United States Congress. Notwithstanding Iraq's attack on the *Stark* that had just taken place, he testified, "Iranian attacks threaten to cause the further spread of the war" (Memorial of Iran, Exhibit 49, p. 66). And also in that statement Secretary Murphy said that "because of our interest in seeing the Iranian revolution contained within Iran, the United States has an important stake in Iraq's continuing ability to sustain its defenses" *(Ibid.)*.

42. Here you had, Mr. President, a direct Iraqi attack on an American warship which took place in the context of (i) a war that Iraq was responsible for starting, (ii) a continued Iraqi use of chemical weapons, and (iii) a "tanker war" which Iraq was also responsible for starting, as admitted by the United States in these proceedings and the United States was blaming Iran. In fact, two days after the attack on the *Stark*, President Reagan approved the reflagging plan, which was another development clearly designed to assist Iraq.

43. The disingenuous nature of the American Administration's logic was not lost on informed observers at the time. As I have already noted, the Assistant Secretary of Defence, Mr. Korb, expressed the view that the decision to reflag Kuwaiti tankers was designed "to ensure that Iran did not win that war". In his words, as I have said, "United States became *de facto* allies of Iraq" (Memorial of Iran, Exhibit 51).

44. The highly-respected Chairman of the United States Senate Armed Services Committee, Senator Sam Nunn, took a similar position. In a report that he prepared for ultimate submission to the Senate Majority Leader in June 1987, shortly before the first of the attacks on the platform, Senator Nunn advanced the following points: these are direct quotes from him.

— "[T]he challenges to freedom of navigation originate with Kuwait's ally Iraq."

— "The U.S. decision to protect Kuwaiti tankers is viewed in the region as a clear alignment with Iraq and its Gulf allies".

— "This U.S. step reduces the downside risks for the principal aggressor (Iraq) in the 'tanker war' to continue its attacks. Moreover, by doing so, the United States is confronting Iran with whom it shares the objective of keeping the Gulf open for the free flow of oil."

— Finally, Senator Nunn said that the Administration's justification for this policy "ignores the basic fact that Iran has twice been the victim of initial Iraqi aggression: in the land war and in the 'tanker war'" (Memorial of Iran, Exhibit 32).

45. Another senator, Senator Dornan, added his voice to those who questioned the wisdom of United States policy, and he stated: "The reality is that not only are we tilting towards Iraq, but we are trying to help Iraq win the sea war by guarding Iraqi and Kuwaiti shipping." (Reply of Iran, Exhibit 12.)

46. In sum, the reflagging policy was one more element in a concerted effort undertaken by the United States to support Iraq and to intimidate and provoke Iran: and it is no coincidence that

two months after the United States escorted the first Kuwaiti tanker under this new reflagging policy the United States launched its first attack against Iran's oil platforms.

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6. Other evidence documenting the actions taken by the United States against Iran

47. Mr. President — you'll be relieved that I only have about five minutes left —, in reviewing the context within which the United States attacks on Iran's oil platforms took place, I focused primarily on statements issued by ranking members of the United States Government itself. I have confined myself to this category of evidence because the Court itself has stated that it can be of particular probative value — statements of this kind —, particularly when such statements acknowledge facts or conduct unfavourable to the State represented by the individual making them.

48. But that is not to say that this evidence stands in isolation. The Court need only refer to the significant body of third-party evidence, press reports, Iranian witness statements and expert studies, including the study of the highly-respected expert, Sir Laurence Freedman, furnished in Iran's written pleadings, to appreciate that the pattern of hostile conduct in which the United States was engaged against Iran was a matter of public knowledge. As the Court observed in the *Nicaragua* case, "public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge" (*I.C.J. Reports 1986*, p. 40, para. 63). In the present case, the statements provided by Iranian witnesses, third-party observers, press reports, published works, they corroborate the evidence put forward by senior United States Government spokesmen to which I have referred previously.

49. If the United States chooses not to address this evidence, that is its prerogative. But that scarcely diminishes the probative value of the evidence as a whole. If, on the other hand, the United States belatedly decides in its oral argument that it must confront these facts, then let it produce the National Security Decision Directive which remains classified but which played such a

central role in formulating United States policy in support of Iraq. And let it also try to explain how the policies it engaged in, to which I have referred, were not designed to prejudice Iran as was so amply attested to by the United States own government officials.

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C. Conclusions

50. Mr. President, Members of the Court. In its Rejoinder, the United States referred to a statement made by the former Secretary of State, Madeleine Albright, two years ago. Mrs. Albright said the following: "[A]spects of U.S. policy towards Iraq, during its conflict with Iran appear now to have been regrettably short-sighted, especially in light of our subsequent experiences with Saddam Hussein." (Rejoinder of the United States, p. 7, fn. 11.) Our colleagues on the other side of the Bar contend that "while such statements may be of diplomatic or historical interest, they shed no light on the specific facts or legal issues raised by this case" *(ibid.)*.

51. Such backhanded attempts to dismiss the relevance of United States conduct towards Iran in the years leading up to the destruction of Iran's oil platforms cannot be sustained. Policies may change; principles do not. As the late Judge Lachs so rightly observed in his separate opinion in the *Nicaragua* case: "Almost all disputes arising between States have both political and legal aspects; politics and law meet at almost every point on the road. Political organs, national or international, are under obligation to respect the law." (*I.C.J. Reports 1986*, p. 168.)

52. The attacks on Iran's oil platforms were not isolated incidents divorced from the overall conduct of the United States during the Iran-Iraq war. While counsel for Iran will, in subsequent presentations, focus on the events immediately surrounding those attacks, the evidence which I have reviewed today, and which is in Iran's pleadings, shows that the United States was embarked at the time on a premeditated, extensive and concerted policy of supporting Iraq to Iran's detriment. The platforms were not attacked out of any notion of self-defence or of protecting essential security

interests. They were destroyed in contravention of Article X, paragraph 1, of the Treaty as a result of this conscientious policy of truly unremitting hostility towards Iran.

53. In the light of today's environment, it is all the more important for the Court to rest its decision on principle, not, as the United States would have it, on self-serving and short-sighted elements of political expediency which were contrary to treaty obligations that the United States owed to Iran.

54. Mr. President, that concludes my presentation. I am extremely grateful for the patience of the Court and I would ask you, tomorrow morning, if you would call upon Professor Pellet to continue Iran's presentation. Thank you very much.

The PRESIDENT: Thank you, Mr. Bundy. The Court will now adjourn until tomorrow morning, when the hearing resumes at 10 a.m. Thank you.

The Court rose at 6.20 p.m.

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