

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING OIL PLATFORMS

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

JUDGMENT OF 6 NOVEMBER 2003

2003

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES PLATES-FORMES PÉTROLIÈRES

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

ARRÊT DU 6 NOVEMBRE 2003

45. The United States has never denied that its actions against the Iranian platforms amounted to a use of armed force. Some of the details of the attacks, so far as established by the material before the Court, may be pertinent to any assessment of the lawfulness of those actions. As already indicated, there were attacks on two successive occasions, on 19 October 1987 and on 18 April 1988. The Court will examine whether each of these met the conditions of Article XX, paragraph 1 (*d*), as interpreted by reference to the relevant rules of international law.

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46. The first installation attacked, on 19 October 1987, was the Reshadat complex, which consisted of three drilling and production platforms — R-3, R-4 and R-7 — linked to a total of 27 oil wells. The crude oil produced by the R-3 platform was transported by submarine pipeline to the R-4 platform and thence, together with the crude oil produced by R-4, to the R-7 platform that accommodated both production facilities and living quarters. This latter platform was also connected by submarine pipeline to another complex, named Resalat, which consisted of three linked drilling and production platforms, referred to as R-1. All the crude oil produced at the Reshadat and Resalat complexes, after gas and water separation, was transported by undersea pipeline from the R-7 platform to Lavan Island. At the time of the United States attacks, these complexes were not producing oil due to damage inflicted by prior Iraqi attacks in October 1986, July 1987 and August 1987. Iran has maintained that repair work on the platforms was close to completion in October 1987. The United States has however challenged this assertion (see below, paragraphs 65 and 93).

47. On 19 October 1987, four destroyers of the United States Navy, together with naval support craft and aircraft, approached the Reshadat R-7 platform. Iranian personnel was warned by the United States forces via radio of the imminent attack and abandoned the facility. The United States forces then opened fire on the platform; a unit later boarded and searched it, and placed and detonated explosive charges on the remaining structure. The United States ships then proceeded to the R-4 platform, which was being evacuated; according to a report of a Pentagon spokesman, cited in the press and not denied by the United States, the attack on the R-4 platform had not been included in the original plan, but it was seen as a “target of opportunity”. After having conducted reconnaissance fire and then having boarded and searched the platform, the United States forces placed and detonated explosive charges on this second installation. As a result of the attack, the R-7 platform was almost completely destroyed and the R-4 platform was severely damaged. While the attack was made solely on the Reshadat complex, it affected also the

operation of the Resalat complex. Iran states that production from the Reshadat and Resalat complexes was interrupted for several years.

48. The nature of this attack, and its alleged justification, was presented by the United States to the United Nations Security Council in the following terms (letter from the United States Permanent Representative of 19 October 1987, S/19219):

“In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that United States forces have exercised the inherent right of self-defence under international law by taking defensive action in response to attacks by the Islamic Republic of Iran against United States vessels in the Persian Gulf.

At approximately 11 p.m. Eastern Daylight Time on 16 October 1987, a Silkworm missile fired by Iranian forces from Iranian-occupied Iraqi territory struck the *Sea Isle City*, a United States flag vessel, in the territorial waters of Kuwait. This is the latest in a series of such missile attacks against United States flag and other non-belligerent vessels in Kuwaiti waters in pursuit of peaceful commerce. These actions are, moreover, only the latest in a series of unlawful armed attacks by Iranian forces against the United States, including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation.

At approximately 7 a.m. Eastern Daylight Time on 19 October 1987, United States naval vessels destroyed the Iranian military ocean platform at Rashadat [*sic*] (also known as Rostam) in international waters of the Persian Gulf. The military forces stationed on this platform have engaged in a variety of actions directed against United States flag and other non-belligerent vessels and aircraft. They have monitored the movements of United States convoys by radar and other means; co-ordinated minelaying in the path of our convoys; assisted small-boat attacks against other non-belligerent shipping; and fired at United States military helicopters, as occurred on 8 October 1987. Prior warning was given to permit the evacuation of the platform.”

49. In its Counter-Memorial, the United States linked its previous invocation of the right of self-defence with the application of Article XX, paragraph 1 (*d*), of the 1955 Treaty. It argued that Iranian actions during the relevant period constituted a threat to essential security interests of the United States, inasmuch as the flow of maritime commerce in the

Persian Gulf was threatened by Iran's repeated attacks on neutral vessels; that the lives of United States nationals were put at risk; that United States naval vessels were seriously impeded in their security duties; and that the United States Government and United States nationals suffered severe financial losses. According to the United States, it was clear that diplomatic measures were not a viable means of deterring Iran from its attacks: "Accordingly, armed action in self-defence was the only option left to the United States to prevent additional Iranian attacks."

50. The Court will thus first concentrate on the facts tending to show the validity or otherwise of the claim to exercise the right of self-defence. In its communication to the Security Council, cited above, the United States based this claim on the existence of

"a series of unlawful armed attacks by Iranian forces against the United States, including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation";

it referred in particular to a missile attack on the *Sea Isle City* as being the specific incident that led to the attack on the Iranian platforms. Before the Court, it has based itself more specifically on the attack on the *Sea Isle City*, but has continued to assert the relevance of the other attacks (see paragraph 62 below). To justify its choice of the platforms as target, the United States asserted that they had "engaged in a variety of actions directed against United States flag and other non-belligerent vessels and aircraft". Iran has denied any responsibility for (in particular) the attack on the *Sea Isle City*, and has claimed that the platforms had no military purpose, and were not engaged in any military activity.

51. Despite having thus referred to attacks on vessels and aircraft of other nationalities, the United States has not claimed to have been exercising collective self-defence on behalf of the neutral States engaged in shipping in the Persian Gulf; this would have required the existence of a request made to the United States "by the State which regards itself as the victim of an armed attack" (*I.C.J. Reports 1986*, p. 105, para. 199). Therefore, in order to establish that it was legally justified in attacking the Iranian platforms in exercise of the right of individual self-defence, the United States has to show that attacks had been made upon it for which Iran was responsible; and that those attacks were of such a nature

as to be qualified as “armed attacks” within the meaning of that expression in Article 51 of the United Nations Charter, and as understood in customary law on the use of force. As the Court observed in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, it is necessary to distinguish “the most grave forms of the use of force (those constituting an armed attack) from other less grave forms” (*I.C.J. Reports 1986*, p. 101, para. 191), since “In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack” (*ibid.*, p. 103, para. 195). The United States must also show that its actions were necessary and proportional to the armed attack made on it, and that the platforms were a legitimate military target open to attack in the exercise of self-defence.

52. Since it was the missile attack on the *Sea Isle City* that figured most prominently in the United States contentions, the Court will first examine in detail the evidence relating to that incident. The *Sea Isle City* was a Kuwaiti tanker reflagged to the United States; on 16 October 1987 it had just ended a voyage under “Operation Earnest Will” (see paragraph 24 above), when it was hit by a missile near Kuwait’s Al-Ahmadi Sea Island (or Mina al-Ahmadi) terminal. This incident, which caused damage to the ship and injury to six crew members, was claimed by the United States to be the seventh involving Iranian anti-ship cruise missiles in the area in the course of 1987. The United States asserts that the missile that struck the *Sea Isle City* was launched by Iran from a facility located in the Fao area. It recalls that in February 1986 Iran had taken control of a large part of the Fao peninsula and had captured three formerly Iraqi missile sites in the area, which it held at the time of the attack. It also maintains that there was an additional active cruise missile staging facility on Iranian territory near the Fao peninsula.

53. The evidence produced by the United States includes images, taken by satellite or aerial reconnaissance aircraft, of the Fao area and of the four alleged missile sites under Iranian control at the time of the attack, as well as a complementary expert report describing and examining this imagery. Although the United States has indicated that it was unable to recover and examine fragments of the specific missile that hit the *Sea Isle City*, it has produced, in the present proceedings, a statement by an independent expert, dated 27 March 1997, based on a previous examination by United States military analysts of fragments retrieved from other similar incidents in early 1987. That evidence shows, in the United States submission, that the specific missile was a land-launched HY-2 cruise missile of Chinese manufacture (also known as the “Silkworm” missile). The United States has also produced the testimony, dated 21 May 1997, of two Kuwaiti officers, to the effect that military personnel stationed on Kuwaiti islands had witnessed, in January, September and October 1987, the launching of six missiles from Iranian-controlled territory in the Fao area; in addition, one of

these officers asserts that he personally observed the path of the missile that struck the *Sea Isle City* on 16 October 1987.

54. Iran suggests that no credible evidence has been produced that there were operational Iranian missile sites in the Fao area; it acknowledges that it had captured three Iraqi missile sites in 1986, but these “were heavily damaged during the fighting with Iraq” and “were inoperative throughout the period that Iranian forces held Fao”. It therefore denies that the missile that struck the *Sea Isle City* was launched from those sites, or from an additional Iranian Silkworm missile site that the United States claims to have identified in the area, the existence of which Iran denies. Iran observes that the satellite images produced by the United States are not very clear, and appeals to its own experts’ opinion to prove that the installations shown therein “bear no resemblance to a normal Silkworm missile site”. Moreover, according to Iran, other United States evidence would show that, at the time of the attack, Iran had operative missile sites only in the Strait of Hormuz. Iran maintains that the statement of Kuwaiti officers produced by the United States is unconvincing since it is largely based on hearsay and is in part inconsistent.

55. Iran also suggests the alternative theory that the missile that hit the *Sea Isle City* was fired by Iraq, which, it contends, had both the appropriate missile capabilities, and an interest in internationalizing the conflict with Iran. According to Iran, the missile could have been launched by Iraq either from an aircraft, from a naval vessel or from an “operational missile site located at a position on Fao just to the west of areas occupied by Iran”. Iran alleges that, while the maximum range of the standard HY-2 (Silkworm) missile is 95 km, Iraq was in possession of modified versions of that missile that could cover ranges up to 150 or even 200 km. Moreover, according to an expert report produced by Iran, a missile of this kind does not necessarily travel in a straight line and could have been heading in the direction observed by the witnesses invoked by the United States even if it had not been launched from Iranian-held territory in the Fao area.

56. The United States claims that its satellite imagery shows that there was no Iraqi missile launching facility in the Fao area at the time. It also affirms, on the basis of an independent expert’s opinion, that HY-2 missiles are not equipped with a system capable of guiding them along a circuitous path, as contended by Iran. Finally, the United States rejects the Iranian theory that the missile was launched from air or sea, both because the fragments of missiles launched against Kuwaiti territory at the same period indicated a land-launched missile, and because United States AWACS radar planes did not detect any Iraqi military aircraft aloft in the northern Persian Gulf at the time of the attacks.

57. For present purposes, the Court has simply to determine whether the United States has demonstrated that it was the victim of an “armed attack” by Iran such as to justify it using armed force in self-defence; and the burden of proof of the facts showing the existence of such an attack rests on the United States. The Court does not have to attribute responsibility for firing the missile that struck the *Sea Isle City*, on the basis of a balance of evidence, either to Iran or to Iraq; if at the end of the day the evidence available is insufficient to establish that the missile was fired by Iran, then the necessary burden of proof has not been discharged by the United States.

58. As noted above, the United States claims that the missile that struck the *Sea Isle City* was a ground-launched HY-2 anti-ship missile of the type known as the “Silkworm”, but it has not been able to produce physical evidence of this, for example in the form of recovered fragments of the missile. The Court will however examine the other evidence on the hypothesis that the missile was of this type. The United States contends that the missile was fired from Iranian-held territory in the Fao area, and it has offered satellite pictures and expert evidence to show that there was, at the time, Iranian missile-firing equipment present there. Even with the assistance of the expert reports offered by both Parties, the Court does not however find the satellite images sufficiently clear to establish this point. The evidence that the particular missile came from the Fao direction is the testimony, mentioned above, of a Kuwaiti military officer, who claims to have observed the flight of the missile overhead, and thus to be able to identify the approximate bearing on which it was travelling. However, this testimony was given ten years after the reported events; and the officer does not state that he observed the launch of the missile (and the alleged firing point was too remote for this to have been possible), nor that he saw the missile strike the *Sea Isle City*, but merely that he saw a missile passing “overhead”, and that that vessel was struck by a missile “minutes later”. In sum, the witness evidence cannot be relied upon. Furthermore, the Court notes that there is a discrepancy between the English and Arabic texts of the statement produced before the Court, both of which were signed by the witness; the Arabic version lacks any indication of the bearing on which the observed missile was travelling.

59. There is a conflict of evidence between the Parties as to the characteristics of the Silkworm missile, in particular its maximum range, and whether or not when fired it always follows a straight-line course. According to the United States, the maximum range of the missile is of the order of 105 km, and this type of missile always follows a straight course until it approaches its objective, when its on-board guidance equipment causes it to lock on to a target which may be up to 12 degrees on either side of its course. Iran however contends that the missile may also be set to follow either a curved or dog-leg path, and that its maximum range is less, 95 km at the most. The Court does not consider that it is necessary for it

to decide between the conflicting expert testimony. It appears that at the time different models of the missile existed, with differing programming characteristics and maximum ranges. There is however no direct evidence at all of the type of missile that struck the *Sea Isle City*; the evidence as to the nature of other missiles fired at Kuwaiti territory at this period is suggestive, but no more. In considering whether the United States has discharged the burden of proof that Iranian forces fired the missile that struck the *Sea Isle City*, the Court must take note of this deficiency in the evidence available.

60. In connection with its contention that the *Sea Isle City* was the victim of an attack by Iran, the United States has referred to an announcement by President Ali Khomeini of Iran some three months earlier, indicating that Iran would attack the United States if it did not “leave the region”. This however is evidently not sufficient to justify the conclusion that any subsequent attack on the United States in the Persian Gulf was indeed the work of Iran. The United States also observes that, at the time, Iran was blamed for the attack by “Lloyd’s Maritime Information Service, the General Council of British Shipping, *Jane’s Intelligence Review* and other authoritative public sources”. These “public sources” are by definition secondary evidence; and the Court has no indication of what was the original source, or sources, or evidence on which the public sources relied. In this respect the Court would recall the caveat it included in its Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, that “Widespread reports of a fact may prove on closer examination to derive from a single source, and such reports, however numerous, will in such case have no greater value as evidence than the original source.” (*I.C.J. Reports 1986*, p. 41, para. 63.)

61. In short, the Court has examined with great care the evidence and arguments presented on each side, and finds that the evidence indicative of Iranian responsibility for the attack on the *Sea Isle City* is not sufficient to support the contentions of the United States. The conclusion to which the Court has come on this aspect of the case is thus that the burden of proof of the existence of an armed attack by Iran on the United States, in the form of the missile attack on the *Sea Isle City*, has not been discharged.

62. In its notification to the Security Council, and before the Court, the United States has however not relied solely on the *Sea Isle City* incident as constituting the “armed attack” to which the United States claimed to be responding. It asserted that that incident was “the latest in a series of such missile attacks against United States flag and other non-belligerent vessels in Kuwaiti waters in pursuit of peaceful commerce” and that

“These actions are, moreover, only the latest in a series of unlawful armed attacks by Iranian forces against the United States, including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation.” (See paragraph 48 above.)

Before the Court, it has contended that the missile attack on the *Sea Isle City* was itself an armed attack giving rise to the right of self-defence; the alleged pattern of Iranian use of force, it is said, “added to the gravity of the specific attacks, reinforced the necessity of action in self-defense, and helped to shape the appropriate response”.

63. The United States relies on the following incidents involving United States-flagged, or United States-owned, vessels and aircraft, in the period up to 19 October 1987, and attributes them to Iranian action: the mining of the United States-flagged *Bridgeton* on 24 July 1987; the mining of the United States-owned *Texaco Caribbean* on 10 August 1987; and firing on United States Navy helicopters by Iranian gunboats, and from the Reshadat oil platform, on 8 October 1987. The United States also claims to have detected and boarded an Iranian vessel, the *Iran Ajr*, in the act of laying mines in international waters some 50 nautical miles north-east of Bahrain, in the vicinity of the entrance to Bahrain’s deep-water shipping channel. Iran has denied any responsibility for the mining of the *Bridgeton* and the *Texaco Caribbean*; as regards the *Iran Ajr*, Iran has admitted that the vessel was carrying mines, but denies that they were being laid at the time it was boarded, and claims that its only mission was to transport them by a secure route to a quite different area.

64. On the hypothesis that all the incidents complained of are to be attributed to Iran, and thus setting aside the question, examined above, of attribution to Iran of the specific attack on the *Sea Isle City*, the question is whether that attack, either in itself or in combination with the rest of the “series of . . . attacks” cited by the United States can be categorized as an “armed attack” on the United States justifying self-defence. The Court notes first that the *Sea Isle City* was in Kuwaiti waters at the time of the attack on it, and that a Silkworm missile fired from (it is alleged) more than 100 km away could not have been aimed at the specific vessel, but simply programmed to hit some target in Kuwaiti waters. Secondly, the *Texaco Caribbean*, whatever its ownership, was not flying a United States flag, so that an attack on the vessel is not in itself to be equated with an attack on that State. As regards the alleged firing on United States helicopters from Iranian gunboats and from the Reshadat

oil platform, no persuasive evidence has been supplied to support this allegation. There is no evidence that the minelaying alleged to have been carried out by the *Iran Ajr*, at a time when Iran was at war with Iraq, was aimed specifically at the United States; and similarly it has not been established that the mine struck by the *Bridgeton* was laid with the specific intention of harming that ship, or other United States vessels. Even taken cumulatively, and reserving, as already noted, the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States, of the kind that the Court, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, qualified as a “most grave” form of the use of force (see paragraph 51 above).

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65. The second occasion on which Iranian oil installations were attacked was on 18 April 1988, with the action against the Salman and Nasr complexes. The Salman offshore oil complex consisted of seven interconnected platforms, including one drilling and two production platforms. Oil extracted from 21 wells was transported by submarine pipeline to this complex, and then on to Lavan Island after initial water and gas separation. This complex had been attacked by Iraq in October and November 1986, and was still undergoing repairs in April 1988; by that time, according to Iran, the works were “virtually completed”, but the United States questions this. The Nasr complex comprised one central platform, one flaring point, and six oil-producing platforms grouped around the central platform, served by 44 wells in the Sirri field and four wells in the Nosrat field. Crude oil from all these wells was transported by submarine pipeline to the central platform, and from there to Sirri Island. This complex was functioning normally in April 1988.

66. United States naval forces attacked the Salman and Nasr complexes on 18 April 1988. Two destroyers and a supply ship were involved in the attack on the Salman complex: shortly before 8 a.m., local time, the United States forces warned the personnel on the platforms that the attack was due to begin; some of them began to evacuate the installation, while others opened fire. A few minutes later, shelling on the complex commenced from United States ships, warplanes and helicopters. United States forces then boarded some of the platforms (but not that containing the control centre), and placed and detonated explosives. Iran states that the attack caused severe damage to the production facilities of the platforms, and that the activities of the Salman complex were totally

interrupted for four years, its regular production being resumed only in September 1992, and reaching a normal level in 1993.

The central platform of the Nasr complex was attacked at around 8.15 a.m. by three United States warships and a number of helicopters. After having been warned of the imminent military action, Iranian personnel evacuated the platform. The United States forces bombarded the installation and almost completely destroyed it; the platform was not boarded, since it was considered unsafe due to secondary explosions and fire. According to Iranian accounts, activities in the whole Nasr complex (including oil production and water injection) were interrupted as a consequence of the attack and did not resume until nearly four years later.

67. The nature of the attacks on the Salman and Nasr complexes, and their alleged justification, was presented by the United States to the United Nations Security Council in the following terms (letter from the United States Permanent Representative of 18 April 1988, S/19791):

“In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that United States forces have exercised their inherent right of self-defence under international law by taking defensive action in response to an attack by the Islamic Republic of Iran against a United States naval vessel in international waters of the Persian Gulf. The actions taken are necessary and are proportionate to the threat posed by such hostile Iranian actions.

At approximately 1010 Eastern Daylight Time on 14 April the USS *Samuel B. Roberts* was struck by a mine approximately 60 miles east of Bahrain, in international waters. Ten US sailors were injured, one seriously, and the ship was damaged. The mine which struck the *Roberts* was one of at least four mines laid in this area. The United States has subsequently identified the mines by type, and we have conclusive evidence that these mines were manufactured recently in Iran. The mines were laid in shipping lanes known by Iran to be used by US vessels, and intended by them to damage or sink such vessels. This is but the latest in a series of offensive attacks and provocations Iranian naval forces have taken against neutral shipping in the international waters of the Persian Gulf.

Through diplomatic channels, the United States has informed the Government of the Islamic Republic of Iran on four separate occasions, most recently 19 October 1987, that the United States would not accept Iran's minelaying in international waters or in the waters

of neutral States. In October, my Government indicated that the United States did not seek a military confrontation with Iran, but that it would take appropriate defensive measures against such hostile actions.

Starting at approximately 0100 Eastern Daylight Time 18 April US forces attacked military targets in the Persian Gulf which have been used for attacks against non-belligerent shipping in international waterways of the Gulf.

The US actions have been against legitimate military targets. All feasible measures have been taken to minimize the risk of civilian damage or casualties . . .”

68. The Court notes that the attacks on the Salman and Nasr platforms were not an isolated operation, aimed simply at the oil installations, as had been the case with the attacks of 19 October 1987; they formed part of a much more extensive military action, designated “Operation Praying Mantis”, conducted by the United States against what it regarded as “legitimate military targets”; armed force was used, and damage done to a number of targets, including the destruction of two Iranian frigates and other Iranian naval vessels and aircraft.

69. The USS *Samuel B. Roberts* was a warship returning to Bahrain on 14 April 1988, after escorting a convoy of United States-flagged merchant ships in the context of “Operation Earnest Will”, when it hit a mine near Shah Allum Shoal in the central Persian Gulf. The United States reports that, in the days following the attack, Belgian and Dutch mine-clearing forces and its own navy discovered several mines bearing Iranian serial numbers in the vicinity and it concludes therefore that the mine struck by the USS *Samuel B. Roberts* was laid by Iran. It also adduces other discoveries of Iranian mining activities at the time (including the boarding by United States forces of the Iranian vessel *Iran Ajr*, said to have been caught in the act of laying mines, referred to in paragraph 63 above), contemporary statements by Iranian military leaders and conclusions of the international shipping community (see paragraph 60 above), all allegedly demonstrating that Iran made a general practice of using mines to attack neutral shipping.

70. Iran denies that it had systematic recourse to minelaying in the Persian Gulf and suggests that evidence produced by the United States is unpersuasive. Furthermore, it contends that the United States has submitted no independent evidence that the laying of the mine that hit the

USS *Samuel B. Roberts* is attributable to Iran. Iran also suggests that the mine may have been laid by Iraq, a hypothesis that the United States rejects.

71. As in the case of the attack on the *Sea Isle City*, the first question is whether the United States has discharged the burden of proof that the USS *Samuel B. Roberts* was the victim of a mine laid by Iran. The Court notes that mines were being laid at the time by both belligerents in the Iran-Iraq war, so that evidence of other minelaying operations by Iran is not conclusive as to responsibility of Iran for this particular mine. In its communication to the Security Council in connection with the attack of 18 April 1988, the United States alleged that "The mines were laid in shipping lanes known by Iran to be used by US vessels, and intended by them to damage or sink such vessels" (paragraph 67 above). Iran has claimed that it laid mines only for defensive purposes in the Khor Abdullah Channel, but the United States has submitted evidence suggesting that Iran's mining operations were more extensive. The main evidence that the mine struck by the USS *Samuel B. Roberts* was laid by Iran was the discovery of moored mines in the same area, bearing serial numbers matching other Iranian mines, in particular those found aboard the vessel *Iran Ajr* (see paragraph 63 above). This evidence is highly suggestive, but not conclusive.

72. The Court notes further that, as on the occasion of the earlier attack on oil platforms, the United States in its communication to the Security Council claimed to have been exercising the right of self-defence in response to the "attack" on the USS *Samuel B. Roberts*, linking it also with "a series of offensive attacks and provocations Iranian naval forces have taken against neutral shipping in the international waters of the Persian Gulf" (paragraph 67 above). Before the Court, it has contended, as in the case of the missile attack on the *Sea Isle City*, that the mining was itself an armed attack giving rise to the right of self-defence and that the alleged pattern of Iranian use of force "added to the gravity of the specific attacks, reinforced the necessity of action in self-defense, and helped to shape the appropriate response" (see paragraph 62 above). No attacks on United States-flagged vessels (as distinct from United States-owned vessels), additional to those cited as justification for the earlier attacks on the Reshadat platforms, have been brought to the Court's attention, other than the mining of the USS *Samuel B. Roberts* itself. The question is therefore whether that incident sufficed in itself to justify action in self-defence, as amounting to an "armed attack". The Court does not exclude the possibility that the mining of a single military vessel might be sufficient to bring into play the "inherent right of self-defence"; but in view of all the circumstances, including the inconclusiveness of the evidence of Iran's responsibility for the mining of the USS *Samuel B. Roberts*, the

Court is unable to hold that the attacks on the Salman and Nasr platforms have been shown to have been justifiably made in response to an "armed attack" on the United States by Iran, in the form of the mining of the USS *Samuel B. Roberts*.

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73. As noted above (paragraph 43), in the present case a question of whether certain action is "necessary" arises both as an element of international law relating to self-defence and on the basis of the actual terms of Article XX, paragraph 1 (*d*), of the 1955 Treaty, already quoted, whereby the Treaty does "not preclude . . . measures . . . necessary to protect [the] essential security interests" of either party. In this latter respect, the United States claims that it considered in good faith that the attacks on the platforms were necessary to protect its essential security interests, and suggests that "A measure of discretion should be afforded to a party's good faith application of measures to protect its essential security interests." Iran was prepared to recognize some of the interests referred to by the United States — the safety of United States vessels and crew, and the uninterrupted flow of maritime commerce in the Persian Gulf — as being reasonable security interests of the United States, but denied that the United States actions against the platforms could be regarded as "necessary" to protect those interests. The Court does not however have to decide whether the United States interpretation of Article XX, paragraph 1 (*d*), on this point is correct, since the requirement of international law that measures taken avowedly in self-defence must have been necessary for that purpose is strict and objective, leaving no room for any "measure of discretion". The Court will therefore turn to the criteria of necessity and proportionality in the context of international law on self-defence.

74. In its decision in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court endorsed the shared view of the parties to that case that in customary law "whether the response to the [armed] attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence" (*I.C.J. Reports 1986*, p. 103, para. 194). One aspect of these criteria is the nature of the target of the force used avowedly in self-defence. In its communications to the Security Council, in particular in that of 19 October 1987 (paragraph 46 above), the United States indicated the grounds on

which it regarded the Iranian platforms as legitimate targets for an armed action in self-defence. In the present proceedings, the United States has continued to maintain that they were such, and has presented evidence directed to showing that the platforms collected and reported intelligence concerning passing vessels, acted as a military communication link co-ordinating Iranian naval forces and served as actual staging bases to launch helicopter and small boat attacks on neutral commercial shipping. The United States has referred to documents and materials found by its forces aboard the vessel *Iran Ajr* (see paragraph 63 above), allegedly establishing that the Reshadat platforms served as military communication facilities. It has also affirmed that the international shipping community at the time was aware of the military use of the platforms, as confirmed by the costly steps commercial vessels took to avoid them, and by various witness reports describing Iranian attacks. The United States has also submitted expert analysis of the conditions and circumstances surrounding these attacks, examining their pattern and location in the light of the equipment at Iran's disposal. Finally, the United States has produced a number of documents, found on the Reshadat complex when it was attacked, allegedly corroborating the platforms' military function. In particular, it contends that these documents prove that the Reshadat platforms had monitored the movements of the *Sea Isle City* on 8 August 1987. On the other hand, the forces that attacked the Salman and Nasr complexes were not able to board the platforms containing the control centres, and did not therefore seize any material (if indeed such existed) tending to show the use of those complexes for military purposes.

75. Iran recognizes the presence of limited military personnel and equipment on the Reshadat platforms, but insists that their purpose was exclusively defensive and justified by previous Iraqi attacks on its oil production facilities. Iran further challenges the evidence adduced by the United States in this regard. It alleges that documents found aboard the *Iran Ajr* and the Reshadat platforms are read out of their proper context, incorrectly translated and actually consistent with the platforms' purely defensive role; and that military expert analysis relied on by the United States is hypothetical and contradictory. Iran asserts further that reports and testimony referred to by the United States are mostly non-specific about the use of the platforms as staging bases to launch attacks, and that the equipment at its disposal could be used from mainland and off-shore islands, without any need to have recourse to the platforms.

76. The Court is not sufficiently convinced that the evidence available supports the contentions of the United States as to the significance of the military presence and activity on the Reshadat oil platforms; and it notes that no such evidence is offered in respect of the Salman and Nasr complexes. However, even accepting those contentions, for the purposes of discussion, the Court is unable to hold that the attacks made on the platforms could have been justified as acts of self-defence. The conditions for the exercise of the right of self-defence are well settled: as the Court observed in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, “The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law” (*I.C.J. Reports 1996 (I)*, p. 245, para. 41); and in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court referred to a specific rule “whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it” as “a rule well established in customary international law” (*I.C.J. Reports 1986*, p. 94, para. 176). In the case both of the attack on the *Sea Isle City* and the mining of the USS *Samuel B. Roberts*, the Court is not satisfied that the attacks on the platforms were necessary to respond to these incidents. In this connection, the Court notes that there is no evidence that the United States complained to Iran of the military activities of the platforms, in the same way as it complained repeatedly of minelaying and attacks on neutral shipping, which does not suggest that the targeting of the platforms was seen as a necessary act. The Court would also observe that in the case of the attack of 19 October 1987, the United States forces attacked the R-4 platform as a “target of opportunity”, not one previously identified as an appropriate military target (see paragraph 47 above).

77. As to the requirement of proportionality, the attack of 19 October 1987 might, had the Court found that it was necessary in response to the *Sea Isle City* incident as an armed attack committed by Iran, have been considered proportionate. In the case of the attacks of 18 April 1988, however, they were conceived and executed as part of a more extensive operation entitled “Operation Praying Mantis” (see paragraph 68 above). The question of the lawfulness of other aspects of that operation is not before the Court, since it is solely the action against the Salman and Nasr complexes that is presented as a breach of the 1955 Treaty; but the Court cannot assess in isolation the proportionality of that action to the attack to which it was said to be a response; it cannot close its eyes to the scale of the whole operation, which involved, *inter alia*, the destruction of two Iranian frigates and a number of other naval vessels and aircraft. As a response to the mining, by an unidentified agency, of a single United States warship, which was severely damaged but not sunk, and without loss of life, neither “Operation Praying Mantis” as a whole, nor even that

part of it that destroyed the Salman and Nasr platforms, can be regarded, in the circumstances of this case, as a proportionate use of force in self-defence.

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78. The Court thus concludes from the foregoing that the actions carried out by United States forces against Iranian oil installations on 19 October 1987 and 18 April 1988 cannot be justified, under Article XX, paragraph 1 (*d*), of the 1955 Treaty, as being measures necessary to protect the essential security interests of the United States, since those actions constituted recourse to armed force not qualifying, under international law on the question, as acts of self-defence, and thus did not fall within the category of measures contemplated, upon its correct interpretation, by that provision of the Treaty.

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79. Having satisfied itself that the United States may not rely, in the circumstances of the case, on the defence to the claim of Iran afforded by Article XX, paragraph 1 (*d*), of the 1955 Treaty, the Court has now to turn to that claim, made under Article X, paragraph 1, of that Treaty, which provides that "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation." In that respect, Iran's submission is that "in attacking and destroying on 19 October 1987 and 18 April 1988 the oil platforms referred to in Iran's Application, the United States breached its obligations to Iran under Article X, paragraph 1, of the Treaty of Amity . . .". It contends that the United States attacks on the oil platforms were directed against commercial facilities that were protected by Article X, paragraph 1, that they "impeded the normal functioning of the oil platforms and that they even resulted in the complete interruption of the platforms' activities, . . . thus preventing gravely *ab ovo* the possibility for Iran to enjoy freedom of commerce as guaranteed by" that Article.

80. As noted above (paragraph 31), in its Judgment of 12 December 1996 on the preliminary objection of the United States, the Court had occasion, for the purposes of ascertaining and defining the scope of its jurisdiction, to interpret a number of provisions of the 1955 Treaty, including Article X, paragraph 1. It noted that the Applicant had not alleged that any military action had affected its freedom of navigation, so that the only question to be decided was "whether the actions of the United States complained of by Iran had the potential to affect 'freedom of commerce'" as guaranteed by that provision (*I. C. J.*