

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING OIL PLATFORMS

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

COUNTER-CLAIM

ORDER OF 10 MARCH 1998

1998

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)

DEMANDE RECONVENTIONNELLE

ORDONNANCE DU 10 MARS 1998

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INTERNATIONAL COURT OF JUSTICE

YEAR 1998

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CASE CONCERNING OIL PLATFORMS

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

COUNTER-CLAIM

ORDER

Present: Vice-President WEERAMANTRY, Acting President; President SCHWEBEL; Judges ODA, BEDJAoui, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK; Judge ad hoc RIGAUx; Registrar VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45 and 80 of the Rules of Court,

Makes the following Order:

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

“aris[ing] out of the attack 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”;

whereas, in its Application, Iran, maintaining that those acts constituted “a fundamental breach” of various provisions of the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Iran, which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter “the 1955 Treaty”), and of international law, invoked Article XXI, paragraph 2, of the 1955 Treaty as the basis of the Court’s jurisdiction; and, whereas at the end of its Application, it set out its claims as follows:

“On the basis of the foregoing, and while reserving the right to supplement and amend these submissions as appropriate in the course of further proceedings in the case, the Islamic Republic respectfully requests the Court to adjudge and declare as follows:

- (a) that the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;
- (b) that in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, *inter alia*, under Articles I and X (1) of the Treaty of Amity and international law;
- (c) that in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including Articles I and X (1), and international law;
- (d) that the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and
- (e) any other remedy the Court may deem appropriate”;

2. Whereas, on 8 June 1993, within the fixed time-limit, as extended by the Order made by the President of the Court on 3 June 1993, Iran filed its Memorial, at the end of which it made the following submissions:

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

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

3. Whereas, on 16 December 1993, within the time-limit fixed for the filing of the Counter-Memorial, as extended by the Order made by the President of the Court on 3 June 1993, the United States, referring to Article 79 of the Rules of Court, raised a preliminary objection to the jurisdiction of the Court, at the end of which it requested that the Court “decline to entertain the case”; and whereas, by a Judgment dated 12 December 1996, the Court rejected the “objection . . . according to which the Treaty of 1955 does not provide any basis for the jurisdiction of the Court” and found

“that it has jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of 1955, to entertain the claims made by the Islamic Republic of Iran under Article X, paragraph 1, of that Treaty”;

4. Whereas, on 23 June 1997, within the new time-limit fixed by the Order made by the President of the Court on 16 December 1996, the United States filed its Counter-Memorial, entitled “Counter-Memorial and Counter-Claim”; whereas it stated, in the introduction to that Counter-Memorial that, on the one hand, “Part VI sets forth the US counter-claim in this case, which is based on facts directly at issue in assessing Iran’s claim” and, on the other hand, “As required by Article 80 of the Court’s Rules, this counter-claim is ‘directly connected with the subject-matter’ of Iran’s claim, and ‘comes within the jurisdiction of the Court’”; whereas, in Part VI of its Counter-Memorial, the United States sets out the factual background, the reasons for which it considers that the Court

has jurisdiction to hear the counter-claim and that the counter-claim is admissible, and its submission that "Iran's actions against US vessels violated Article X of the 1955 Treaty"; and, whereas at the end of the Counter-Memorial, it made the following submissions:

"On the basis of the facts and arguments set out above, the Government of the United States of America requests that the Court adjudge and declare:

1. That the United States did not breach its obligations to the Islamic Republic of Iran under Article X (1) of the Treaty of Amity between the United States and Iran, and,
2. That the claims of the Islamic Republic of Iran are accordingly dismissed.

With respect to its counter-claim, and in accordance with Article 80 of the Rules of the Court, the United States requests that the Court adjudge and declare:

1. That in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987-1988 that were dangerous and detrimental to maritime commerce, the Islamic Republic of Iran breached its obligations to the United States under Article X of the 1955 Treaty, and
2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for violating the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings.

The United States reserves the right to introduce and present to the Court in due course a precise evaluation of the reparation owed by Iran."

* * *

5. Whereas, by a letter dated 23 June 1997, filed at the same time as its Government's Counter-Memorial, the Agent of the United States informed the Court of the following:

"In connection with the Counter-Claim, the United States had requested on March 26 that the Government of Iran enter into negotiations for the payment of compensation to the United States for damages incurred from Iran's actions, on the ground that they violated Article X of the 1955 Treaty. By letter dated June 12, Iran replied to that request, proposing instead that the Parties conduct negotiations on a broader range of subjects. Iran's proposal in this respect was not acceptable to the United States. Accordingly, the Parties have not agreed to enter into negotiations regarding the matters involved in the US Counter-Claim";

and whereas the Registrar communicated a copy of that letter, together with the Counter-Memorial, to the Agent of Iran;

6. Whereas, in a letter dated 2 October 1997, the Agent of Iran, referring to that communication, stated as follows:

“In the Counter-Memorial and Counter-Claim of the United States dated 23 June 1997, paragraph 6.10, it was asserted that the Government of the Islamic Republic of Iran has not agreed to enter into negotiations in relation to the counter-claim. That statement was not, however, accompanied by the correspondence which has been exchanged between the Parties.

In order fully to inform the Court on this question, I attach hereto copies of [that correspondence]. The Court will see that, through this exchange of letters, Iran did agree to discuss all legal issues arising between the United States and Iran in relation to the period covered by the case before the Court”;

whereas, in that letter, he also stated the following:

“I should further observe that Iran has serious objections to the admissibility of the United States counter-claim. It is Iran’s position that the counter-claim as formulated by the United States does not meet the requirements of Article 80 (1) of the Rules. Iran requests a hearing on this question, as provided for in Article 80 (3) of the Rules. Iran would wish, prior to that hearing, to submit a brief statement explaining its objections to the counter-claim. In light of the fact that the Vice-President has scheduled a meeting with the Agents of the Parties on 17 October 1997 to consider further proceedings in this case, I would hope that it will be possible at that meeting to discuss, amongst other issues, the procedure and modalities for the hearing under Article 80 (3) in relation to the counter-claim”;

and whereas the Registrar sent a copy of that letter and of its enclosures to the Agent for the United States;

7. Whereas, on 17 October 1997, the Vice-President of the Court, acting as President in the case by virtue of Article 13, paragraph 1, and Article 32, paragraph 1, of the Rules of Court, held a meeting with the Agents of the Parties in order to find out their views as to the further proceedings in the case; whereas the two Agents agreed that their respective Governments would submit written observations on the question of the admissibility of the United States counter-claim; and whereas the Agent of Iran envisaged that his Government would then present oral observations on the question;

8. Whereas, by a letter dated 20 October 1997, the Agent of the United States, referring to the views expressed during that meeting, let it be known that his Government

“under[stood] that any order by the Court [would] limit the filing of these submissions to the issue set forth in Rule 80 (3) of the Rules of Court, in other words, to the connection of the counter-claim to Iran’s claim”;

and whereas the Registrar communicated a copy of this letter to the Agent of Iran;

9. Whereas, by a letter dated 21 October 1997, the Registrar, on the instructions of the Court, invited the Iranian Government to specify in writing, by 18 November 1997 at the latest, the legal grounds on which it relied in maintaining that the Respondent’s counter-claim did not meet the requirements of Article 80, paragraph 1, of the Rules of Court; and whereas, in that letter, the Registrar stated that the Government of the United States would in turn be invited to present its views on the question during the month following the filing of Iran’s observations; and whereas the Registrar sent a copy of that letter to the United States the same day;

10. Whereas, by a letter dated 27 October 1997, the Agent of Iran stated as follows:

“Iran does not share the views of the United States as expressed in its letter of 20 October 1997 that Iran’s submissions are to be limited to the issues set forth in Article 80, paragraph 3, of the Rules. As provided for in Article 80, paragraph 1, of the Rules, a counter-claim may only be presented provided that it is directly connected with the subject-matter of the claim of the party and that it comes under the jurisdiction of the Court. Pursuant to the Registrar’s letter of 21 October 1997, Iran’s submissions will be directed to showing the legal grounds why the counter-claim presented by the United States does not meet these requirements, as indicated in Iran’s letter of 2 October 1997.

As the Court is aware, Iran has requested a hearing pursuant to Article 80, paragraph 3, of the Rules. Iran understands that the Court will address this request after receiving the written submissions of the Parties”;

and whereas the Registrar sent a copy of that letter to the Agent of the United States;

11. Whereas, by a communication from its Agent dated 18 November 1997 and filed in the Registry on that day, 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; and whereas, by a letter dated 18 November 1997, the Registrar sent a copy

of that document to the United States Government, and informed the Iranian Government that he had done so that same day;

12. Whereas, in the introduction to its written observations, Iran states that in its Judgment of 12 December 1996, the Court ruled, on the one hand, that only Article X, paragraph 1, of the Treaty of Amity was applicable to the Iranian claim, thereby limiting Iran “to contesting the legality of the attack on the platforms under Article X (1) . . . and under no other provision”, and, on the other hand, that “the aspect of Article X (1) of the Treaty which relates to the present affair is that relating to freedom of commerce between the territories of the Parties”, the case being thus limited to that question; whereas it submits that, “[d]espite the specific and precise nature of the issues which remained for decision as a result of the Court’s Judgment of 12 December 1996, the Respondent has now chosen to react by lodging a counter-claim of a sweeping and general character”, in a way which is inconsistent “with its previously declared position on claims under the Treaty”; whereas Iran makes the following criticisms of this “change of position”:

“First, the United States seeks to widen the dispute to provisions of the Treaty of Amity, Articles X (2)-(5), which were never in question in the proceedings to date, and have never been mentioned before by the United States. Second, the United States also seeks to widen the dispute to include US claims concerning Iran’s overall conduct throughout the period 1987-1988, when it has always been its position in the preliminary objection phrase that such overall conduct, at least in so far as it concerned the United States, was irrelevant in this case, and specifically brought its preliminary objection to limit Iran’s claim as far as possible. Third, and most importantly, the United States has effectively refused to seek to resolve these wider disputes by diplomatic negotiations, despite Iran’s agreement to such negotiations”;

and whereas Iran adds that the seven specific attacks described in the counter-claim, which are alleged to have been carried out against “US vessels”, fall “wholly outside the scope of the Treaty of Amity, and in particular the provisions of Article X (1) dealing with freedom of commerce between the territories of the High Contracting Parties”, and hence it is claimed that, “following the Court’s Judgment of 12 December 1996, there is . . . no basis in the Treaty on which the Court can evaluate the legality of these alleged attacks in this case”;

13. Whereas Iran states that it is “convinced that the United States counter-claim, as formulated, is inadmissible under Article 80, paragraph 1, of the Rules”; whereas it “therefore asks the Court to hear the Parties pursuant to Article 80, paragraph 3, of the Rules, in order to

decide whether or not the question presented in the United States counter-claim ‘shall be joined to the original proceedings’; and whereas Iran states that “in summarizing its objections in its written statement, [it] reserves the right to further particularize and develop them in the hearing for which Article 80, paragraph 3, specifically provides”;

14. Whereas, in the body of its written observations, Iran maintains that neither of the two conditions required by Article 80 of the Rules of Court for a counter-claim to be presented — namely, on the one hand, that the counter-claim and the original claim must be “directly connected” and, on the other hand, that the counter-claim must “come within the jurisdiction of the Court” — are met in the present case;

15. Whereas Iran first of all claims that the United States counter-claim is not sufficiently specific for the Court to be able to determine whether it is directly connected with the principal claim; whereas it points out that “the counter-claim is not limited to the seven incidents referred to in paragraph 6.08” and argues that “it does nothing more than allege unspecified Iranian interference with unspecified maritime trade between the United States and Iran”; and whereas Iran argues that “no counter-claim may be filed after submission of the Counter-Memorial”, it challenges the right which the United States reserves “to add further instances of Iranian attacks on US vessels in the [Persian] Gulf in 1987-1988”, whilst noting that “in any event, in the case of each such instance which the United States may subsequently seek to introduce, it would be necessary to apply the test of admissibility under Article 80 of the Rules”;

16. Whereas Iran then states that there is no direct connection between the counter-claim and the principal claim, either general, or with regard to the specific cases of attacks which, according to the counter-claim, were allegedly carried out on “United States shipping”;

17. Whereas, as regards the first point, Iran explains its position as follows:

“To the extent that the United States Counter-Claim consists of a general assertion of the violation of freedom of commerce and navigation between the United States and Iran, either under Article X (1) or under Article X (3)-(5), there is not even the appearance of any legal or factual connection between such a violation and the attacks on the platforms. The United States did not attack the platforms because of any alleged Iranian attacks on vessels engaged in trade between Iran and the United States, whether or not such vessels were US vessels within the meaning of Article X (2)”;

18. Whereas Iran, having furthermore analysed each of the specific attacks on vessels alleged by the Respondent in detail, from the standpoint of the admissibility of the counter-claim, states that that analysis “is based on the presentation of these incidents made by the United States” and “is entirely without prejudice to Iran’s position at any subsequent phase of the present proceedings”; and whereas at the end of that analysis Iran concludes first of all that “no fewer than six incidents involved vessels which were not . . . engaged in commerce or even navigation between the territories of the High Contracting Parties” and that those incidents are accordingly “irrelevant to a counter-claim which is founded on an assertion of a violation of freedom of commerce and navigation between the two countries”; whereas Iran concludes secondly that, although the seventh vessel (the *Texaco Caribbean*) was, it could be argued, “covered by Article X (1) of the Treaty which is the provision by reference to which the legality of the attack on the platforms is to be appreciated”, that vessel was not a United States flagged vessel and “in any event, there is no factual or legal link whatever between the alleged attack on the *Texaco Caribbean* and the attacks on the platforms”; and whereas, thirdly, Iran concludes, on the one hand, that

“even assuming that there may be a sufficient legal link (*connexité juridique*) between claims of a breach of freedom of commerce under Article X (1) of the Treaty (which pursuant to the Court’s Judgment of 12 December 1996 now forms the sole basis of Iran’s Application) and claims of breaches of freedom of navigation under Articles X (3)-(5), only two of the incidents involved US vessels within the meaning of Article X (2) which were even arguably covered by those paragraphs (*Bridgeton* and *Sea Isle City*)”

and, on the other hand, that “[i]n any event, none of these incidents, even on the facts alleged by the United States, raises, even arguably, a case of violation of Article X (3)-(5)”;

19. Whereas, whilst restating its position that the United States counter-claim does not come within the jurisdiction of the Court and is therefore inadmissible, on this ground also, Iran observes moreover that “it is . . . not entirely clear from the language of Article 80, paragraph 3, of the Rules whether the hearing for which that paragraph provides extends to cover an objection . . . based on lack of jurisdiction”; whereas Iran recognizes that, although “a State is normally entitled to question the Court’s jurisdiction over a claim prior to being called on to respond to the merits of that claim”, “proceedings under Article 80 are [not] a substitute for a preliminary objection”, since the hearing for which Article 80, paragraph 3, provides “is evidently intended to be a brief one,

to which the protective provisions of Article 79 of the Rules do not as such apply"; whereas Iran considers that "the decision the Court is called upon to make under Article 80, paragraph 3, concerns exclusively the question of whether or not the counter-claim should be joined to the original proceedings" and does not prejudice in any way the right of the party objecting to the counter-claim "to make any defence relating either to the admissibility or to the merits of the counter-claim in a subsequent phase of the proceedings"; whereas, therefore, Iran "reserves the right, if necessary, to lodge preliminary objections in respect of the United States counter-claim"; and whereas it notes however that "the fact that a counter-claim is plainly outside the Court's jurisdiction is *relevant* for the purposes of Article 80, paragraph 3" in so far as, on the one hand "a counter-claim which fails to satisfy the express requirement imposed by Article 80, paragraph 1, should not be joined to the original proceedings, whether the failure relates to lack of connection or lack of jurisdiction", and, on the other hand, "there may well be a link between an evident lack of jurisdiction and the lack of direct connection" as, Iran alleges, is the case here;

20. Whereas, in the concluding remarks to its written observations, Iran alleges that, in general, the State responding to the counter-claim is "at a significant disadvantage" since it "is apparently confined to a single written pleading, whereas the counter-claimant will have both the first and the last written word on the matter"; whereas Iran maintains that in this instance "the generalized claim of the United States with respect to the period of 1987-1988 covers a series of incidents with respect to which Iran has important additional claims of its own", and whereas, "[i]f the United States counter-claim was admitted, Iran would necessarily be forced to seek leave to introduce such claims", otherwise it would be "severely prejudiced"; and whereas Iran also argues that "[i]f the case were to be widened in the way proposed by the United States, this might also prejudice third States' interests", since "Article 40, paragraph 3, of the Statute of the Court only provides that a new case is notified to third States" and that "[no] such provision is made with respect to counter-claims";

21. Whereas, by a communication from its Agent dated 18 December 1997 and received in the Registry on that day, the United States submitted to the Court its observations on the admissibility of the counter-claim set out in its Counter-Memorial, taking the observations submitted by Iran into consideration; and whereas, by a letter dated 18 December 1997, the Registrar communicated a copy of the observations of the United States Government to the Iranian Government, informing the latter, on the one hand, that the Court would decide on future proceedings on the basis of the documents now before it and, on the other hand, that

the Agents of the Parties would be informed of the decision in due course; and whereas, the same day, the Registrar transmitted that information to the Government of the United States;

22. Whereas, in the introduction to its written observations, the United States submits that Iran's request for a hearing on the matter was made pursuant to Article 80, paragraph 3, of the Rules of Court and that:

“Under the Rules of Court, the only legally relevant issue now is whether there is ‘doubt’ as to whether the US counter-claim is ‘directly connected to the subject-matter’ of Iran’s claim. Here, there can be no such doubt. There is therefore no basis for Iran’s demand for a hearing or for its insistence that the counter-claim not be joined to the original proceedings”;

whereas the United States maintains that Iran “asks the Court . . . to address issues going far beyond the limits of Article 80 (3), including sweeping objections to jurisdiction and admissibility of the counter-claim”; whereas, in the first part of its observations, the United States submits that Iran “essentially seeks a separate procedure similar to preliminary objections under Article 79” and draws, between the proceedings provided for, respectively, in Article 79 and in Article 80 of the Rules of Court, analogies which are “false” in so far as “the Party facing the counter-claim initiated the case and chose the forum”; and whereas it draws the attention of the Court to the following:

“Moreover, the Court could face great practical difficulties in seeking to resolve Iran’s objections to admissibility at this stage in the context of Article 80 (3). Many of Iran’s objections to jurisdiction and admissibility involve contested matters of fact which the Court cannot effectively address and decide at this stage, particularly not in the context of the abbreviated procedures of Article 80 (3)³.

³ Should the Court decide to consider these issues in the present context, the United States would have to request a further opportunity to address them in greater detail in writing before the Court rendered any decision”;

23. Whereas the United States considers that “Iran . . . regularly mischaracterizes the key legal requirements of Article 80”; whereas the United States points out that under that provision the counter-claim must be directly connected “to the *subject-matter* of the claim, not to the claim itself”; whereas from this it infers that “[a] proper counter-claim need not be a mirror image of the claim or rest upon precisely the same

theory or facts” but that it “must be sufficiently linked to the facts or circumstances giving rise to the claim — the ‘subject-matter’ — to enable the Court to address both efficiently in the context of a single proceeding”; whereas it argues that for the Court to rule, within a single proceeding, on claims where there are substantial common elements “helps to reduce the burden on the Court . . . guards against inconsistent results, and helps the Court to reach a just and rational result”; and whereas, having analysed the case-law of the Court and of its predecessor, it reaches the conclusion that the decisions of those two Courts reflect “this practical understanding of the necessary connection between claim and counter-claim”;

24. Whereas, in the second part of its written observations, the United States seeks to show that its counter-claim is “directly connected to the subject-matter” of Iran’s claim; whereas it accuses Iran of putting forward an “artificial and illogical definition of the subject-matter of the [main] claim” by asking the Court “to consider only the US defensive actions against [Iran’s] platforms” and “to exclude Iran’s prior conduct leading to those actions”; and whereas it maintains that the factual connection between the subject-matter of Iran’s case and the United States counter-claim is direct and compelling since

“the facts and circumstances that caused the United States to engage Iran’s oil platforms — Iranian attacks on, and threats to, merchant shipping, including US shipping and US nationals — are at the heart of the US defence to Iran’s claims”

and “[t]hese same facts and circumstances are likewise the basis of the US counter-claim”;

25. Whereas the United States goes into greater detail of Iran’s alleged actions which, according to the United States, justified “under . . . the law of self-defence and the 1955 Treaty’s provision”, the “defensive actions” which it took, in October 1987, against the Rostam Platform, then, in April 1988, against the Sirri and Sassan Platforms; and whereas it explains that in committing those acts Iran violated the 1955 Treaty, not only because the “seven specific Iranian attacks” which it describes damaged its vessels, but also because the consequences of Iran’s conduct for the overall exercise of navigational rights protected by the 1955 Treaty were the following:

“Iran’s pattern of armed attacks against neutral shipping created threatening conditions which interfered with the ability of all US-flag and US-owned ships and US nationals to exercise their rights under the Treaty. Substantial damages resulted, including increases in the costs of operating both US-flag and US-owned commercial vessels and the warships protecting them. Insurance and labour

costs increased; steaming times increased; vessels were forced to carry smaller cargoes in order to pass through the relative safety of shallower waters”;

26. Whereas the United States, whilst it maintains that the Iranian objections to the jurisdiction of the Court to entertain its counter-claim “are not appropriate for consideration at this stage [of the case]”, intends nonetheless “[to] comment briefly on some of Iran’s argument concerning the 1955 Treaty”; whereas it alleges that “Iran’s jurisdictional arguments seek to force all of the US counter-claim into the confines of Article X (1) of the 1955 Treaty”, of which it provides a debatable interpretation, and whereas “[i]ssues involving the relationship between that Article and the US counter-claim await the Court’s eventual decision regarding the interpretation and application of that Article”; whereas it argues that “Iran’s specific objections to the application of paragraphs X (2) through X (5) of the Treaty are without merit”, in so far as, *inter alia*, “these provisions are not limited to ships involved in trade between the United States and Iran”; and whereas it adds that “the exclusion of warships in Article X (6) is not applicable to Article X (5)”, since attacks on United States warships protecting United States commercial vessels must “be viewed as endangering and denying access to those commercial vessels as well”;

27. Whereas the United States rejects the Iranian contention that the United States counter-claim “is not admissible because it is not framed clearly or with sufficient precision”; whereas it asserts that the counter-claim “has been stated with sufficient precision to be understood by Iran”; and whereas it observes that, although it has reserved the right to prove other Iranian ship attacks, “Iran itself has frequently sought to reserve the right to prove additional matters supporting its claims”;

28. Whereas the United States also denies that there is any basis to the Iranian argument that it too could have made a counter-claim, pointing out that “Iran initiated [these proceedings], asserting claims that it alone selected”; and whereas it denies that its counter-claim affects the rights of third parties since “[t]he other States potentially interested in the . . . counter-claim have indicated their consent or lack of objection to the counter-claim”;

29. Whereas, in the third part of its written observations, the United States reiterates its conviction that, contrary to what is maintained by

Iran, no hearing is required in the present circumstances; it points out that the expression “after hearing the Parties”, which appears in paragraph 3 of Article 80 of the Rules “come[s] into operation only if the Court determines that there is ‘doubt’ as to the requisite ‘connection between the question presented by way of counter-claim and the subject-matter’”, which is not the case here; and whereas it adds that “[t]he principles of justice and of sound judicial administration require no different result” since “[t]he question of connection . . . here is simple and straightforward” and that “[t]he relevant considerations are fully explained in the papers submitted by the Parties”;

30. Whereas, in its concluding observations, the United States submits that “the Court should now decide to join the questions presented by the US counter-claim to the original proceeding” since “[b]oth claim and counter-claim arise out of the same circumstances and require the Court to examine and decide many of the same factual and legal issues”;

31. Whereas, having regard to Article 80, paragraph 3, of its Rules, and having received detailed written observations from each of the Parties, the Court is sufficiently well informed of the positions they hold with regard to the admissibility of the claims presented as counter-claims by the United States; and whereas, accordingly, it does not appear necessary to hear the Parties further on the subject;

* * *

32. Whereas in this case Iran does not dispute that the United States claim is presented not as a defence on the merits, but as a “counter-claim” within the meaning of Article 80 of the Rules of Court; whereas it is not disputed that the claim has been “made in the Counter-Memorial of the party presenting it, and [appears] as part of the submissions of that party”, in accordance with Article 80, paragraph 2; whereas, however, Iran denies that the counter-claim meets the requirements of “jurisdiction” and of “direct connection” set out in Article 80, paragraph 1, and whereas it falls to the Court to determine whether these requirements are met in this particular case;

33. Whereas the Court has already had occasion to state the reasons why the admissibility of a counter-claim as such is contingent on those conditions in the following terms:

“Whereas the Respondent cannot use a counter-claim as a means of referring to an international court claims which exceed the limits of its jurisdiction as recognized by the parties; and whereas the Respondent cannot use that means either to impose on the Applicant any claim it chooses, at the risk of infringing the Applicant’s rights and of compromising the proper administration of justice; and whereas it is for that reason that paragraph 1 of Article 80 of the Rules of Court requires

that the counter-claim ‘comes within the jurisdiction of the Court’ and ‘that it is directly connected with the subject-matter of the claim of the other party’” (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Order of 17 December 1997, I.C.J. Reports 1997, pp. 257-258, para. 31*);

* *

34. Whereas the Court has found, in its Judgment of 12 December 1996, that its jurisdiction in the present case covers claims made under Article X, paragraph 1, of the 1955 Treaty, which is worded as follows: “Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation”;

35. Whereas, in its Judgment of 12 December 1996, the Court indicated, *inter alia*,

“it would be a natural interpretation of the word ‘commerce’, in Article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general — not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce” (*Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996, p. 819, para. 49*).

and whereas it added that:

“Article X, paragraph 1, of the Treaty of 1955 does not strictly speaking protect ‘commerce’ but ‘freedom of commerce’. Any act which would impede that ‘freedom’, is thereby prohibited. Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and their storage with a view to export” (*ibid.*, para. 50);

36. Whereas the counter-claim presented by the United States alleges attacks on shipping, the laying of mines, and other military actions said to be “dangerous and detrimental to maritime commerce”; whereas such facts are capable of falling within the scope of Article X, paragraph 1, of the 1955 Treaty as interpreted by the Court; and whereas the Court has jurisdiction to entertain the United States counter-claim in so far as the facts alleged may have prejudiced the freedoms guaranteed by Article X, paragraph 1;

* *

37. Whereas the Rules of Court do not define what is meant by “directly connected”; whereas it is for the Court, in its sole discretion, to

assess whether the counter-claim is sufficiently connected to the principal claim, taking account of the particular aspects of each case; and whereas, as a general rule, the degree of connection between the claims must be assessed both in fact and in law;

38. Whereas, in the present case, it emerges from the Parties' submissions that their claims rest on facts of the same nature; whereas they form part of the same factual complex since the facts relied on — whether involving the destruction of oil platforms or of ships — are alleged to have occurred in the Gulf during the same period; whereas the United States indicates, moreover, that it intends to rely on the same facts and circumstances in order both to refute the allegations of Iran and to obtain judgment against that State; and whereas, with their respective claims, the two Parties pursue the same legal aim, namely the establishment of legal responsibility for violations of the 1955 Treaty;

39. Whereas the Court considers that the counter-claim presented by the United States is directly connected with the subject-matter of the claims of Iran;

* *

40. Whereas in the light of the foregoing, the Court considers that the counter-claim presented by the United States satisfies the conditions set forth in Article 80, paragraph 1, of the Rules of Court;

* * *

41. Whereas a decision given on the admissibility of a counter-claim taking account of the requirements set out in Article 80 of the Rules in no way prejudices any question which the Court will be called upon to hear during the remainder of the proceedings;

42. Whereas in order to protect the rights which third States entitled to appear before the Court derive from the Statute, the Court instructs the Registrar to transmit a copy of this Order to them;

43. Whereas when, in accordance with the provisions of its Rules, the Court decides, in the interests of the proper administration of justice, to rule on the respective claims of the parties in a single set of proceedings, it must not, for all that, lose sight of the interest of the Applicant to have its claims decided within a reasonable period of time;

44. Whereas, during the meeting which the Vice-President of the Court held on 17 October 1997 with the Agents of the Parties (see paragraph 7 above), the Agents envisaged a new exchange of written pleadings on the merits; and whereas the Agent of Iran, when asked about the time his Government would need in order to present a Reply, if such proved necessary, indicated that, without prejudice to the question of whether that pleading should also cover the counter-claim, a time-limit of one year

as from the date of filing of the Counter-Memorial would seem necessary to reply to it; and whereas at the end of its written observations (see paragraphs 21 *et seq.* above), the United States expressed itself as follows in that connection:

“As to the schedule of future proceeding on the merits of this case, the United States would not object should Iran ask under Article 45 (2) of the Rules of Court for permission to submit a Reply to the US Counter-Memorial to accompany its defence to the US counter-claim, if the United States is also authorized to file a Rejoinder. The United States notes, however, that Iran received the US Counter-Memorial and Counter-Claim late in June 1997, nearly six months ago. Iran thus already has had as long to study the US document as the United States had to write it. Therefore Iran should be required to submit any Reply within six months. The United States should then be given as much time to prepare its Rejoinder as Iran will have had from June 1997 to the filing of its Reply”;

45. Whereas, taking into account the conclusions it has reached above, the Court considers that it is necessary for Iran to file a Reply and for the United States to file a Rejoinder relating to the claims of both Parties; and whereas it is 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 may be the subject of a subsequent Order;

* * *

46. For these reasons,

THE COURT,

(A) By fifteen votes to one,

Finds that the counter-claim presented by the United States in its Counter-Memorial is admissible as such and forms part of the current proceedings;

IN FAVOUR: *Vice-President Weeramantry, Acting President; President Schwebel; Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;*

AGAINST: *Judge ad hoc Rigaux;*

(B) Unanimously,

Directs Iran to submit a Reply and the United States to submit a Rejoinder relating to the claims of both Parties and *fixes* the following dates as time-limits for the filing of these pleadings:

For the Reply of Iran, 10 September 1998;

For the Rejoinder of the United States, 23 November 1999; and

Reserves the subsequent procedure for further decision.

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

(Signed) Christopher G. WEERAMANTRY,
Vice-President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judges ODA and HIGGINS append separate opinions to the Order of the Court.

Judge *ad hoc* RIGAUX appends a dissenting opinion to the Order of the Court.

(Initialled) C.G.W.

(Initialled) E.V.O.