Question of Vice-President Schwebel

In these proceedings, both Parties cite documents from the ratification processes of treaties of friendship, commerce and navigation to shed light on their intentions in concluding the 1955 Treaty of Amity, Economic Relations and Consular Rights in the terms in which it was concluded.

In its Judgment of 22 July 1952, on the Preliminary Objection of Iran in the Anglo-Iranian Oil Company case, the Court found what was the intention of Iran in drafting the terms of its declaration of adherence to the compulsory jurisdiction of the Court under Article 36, paragraph 2 (I.C.J. Reports 1952, pp. 104-07).

To what extent, if any, do the Parties in the case now before the Court find the holdings of the Court in the jurisdictional phase of the Anglo-Iranian Company case instructive?

In the 1952 Anglo-Iranian Oil Company case, the Court decided that the Article 36(2) declaration of a state accepting the Court's jurisdiction over certain disputes should be limited in a certain way, even though the text was subject to a different interpretation. For the Court, the main consideration was whether the state actually intended to give the Court jurisdiction to rule on the type of dispute in question, which the Court decided was not the case. In the present case, the basic question is whether a dispute concerning the combat operations of military forces is one which the United States and Iran intended to be decided by the Court when they concluded the 1955 Treaty. The United States submits that the answer is no.

In addition, the Court's decision in the Anglo-Iranian Oil Company case reflects a cautious application of the "principle of

effectiveness." Although it could have applied such a principle to find broad jurisdiction over disputes concerning a state, the Court declined to do so when it was apparent that such an interpretation was at variance with the intentions of that state at the time it accepted the Court's jurisdiction.

Finally, the Court's decision confirms that it may properly consider documents submitted by a government to its parliament during proceedings for the ratification of a treaty, if the Court believes that those documents shed light on the intent and practice of one or more of the parties. In the present case, both parties have called such documents to the Court's attention for this purpose.

While the instrument at issue in the Anglo-Iranian Oil Company case was a unilateral declaration, the reasoning of the Court is equally applicable in the case now before this Court. In both cases, the Court has before it an instrument upon which its jurisdiction is purportedly established. In both cases, it is appropriate for the Court to assess the underlying intent of the parties in determining the scope of that jurisdiction. The Court also used this approach in its judgment of December 18, 1978, in the Aegean Sea Continental Shelf case. In this case, the Court assessed the intention of Greece, in adopting reservations to its acceptance of the Court's jurisdiction, by examining domestic materials, including materials placed before the Greek parliament.

Question of Judge Rosalyn Higgins

Does the United States view that the 1955 Treaty of Amity affords no basis of jurisdiction in this case depend upon the contention that the oil platforms in question were being used for military purposes rather than commercial purposes? If the oil platforms were in fact dedicated to commercial use, would the Treaty of Amity thereby afford a basis of jurisdiction?

The United States position that the Court does not have jurisdiction over the Application filed by the Islamic Republic of Iran does not rest on our view that the oil platforms were being used for military purposes at the time of the attacks.

This is a disputed question of fact, the resolution of which is not necessary to uphold our Preliminary Objection. If this case were to go to a merits phase, then the United States would show that these platforms were used for military operations against neutral vessels. However, in our view, the U.S. Preliminary Objection would still be valid in the circumstances here even if the platforms were exclusively devoted to commercial use.

The pleadings and oral arguments of the parties show that a series of inter-connected incidents occurred during this period in which U.S. or Iranian armed forces, or both, took hostile action against targets of the other side. These undisputed facts provide a sufficient factual foundation for the U.S. Preliminary Objection. The legality of attacks on the oil platforms must be

assessed using international rules on the use of armed force and, as such, fall outside the scope of the 1955 Treaty.

Question of Judge ad hoc Rigaux

According to Iran, the NIOC was still delivering oil to the United States at the time of the destruction of the oil platforms which are the subject of the dispute. Were these supplies interrupted after President Carter's Executive Order in November 1979? If so, for how long? When were they resumed and when did they cease?

On November 12, 1979, following the seizure of the U.S. Embassy in Tehran, President Carter imposed a ban on the import of Iranian crude oil into the United States (Proclamation 4702). On January 19, 1981, President Carter revoked this ban (Executive Order 12282) and oil deliveries resumed within a year. On October 29, 1987, President Reagan signed Executive Order 12613, which prohibited the import of all goods or services of Iranian origin, including oil (although there were certain exceptions, such as for petroleum products refined from Iranian oil in a third country).

These actions of the United States illustrate the type of measures which Article XX(1)(d) of the 1955 Treaty excludes from the coverage of the remainder of the Treaty -- that is, economic measures necessary to protect essential security interests (or to fulfill a party's obligations for the maintenance or restoration

of international peace and security). We note that the General Agreement on Tariffs and Trade 1994 (Article XXI) and the World Trade Organization General Agreement on Trade in Services (Article XIV bis) -- agreements that clearly do not regulate the use of armed force -- also permit parties to take measures to protect their essential security interests. If the Court should hold that the U.S. attacks on the oil platforms at issue in this case do fall within the scope of the provisions of 1955 Treaty, the United States would then show at a merits phase that the attacks were necessary to protect its essential security interests.