In The Name Of God

# INTERNATIONAL COURT OF JUSTICE

# CASE CONCERNING OIL PLATFORMS

## (ISLAMIC REPUBLIC OF IRAN V. UNITED STATES OF AMERICA)

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## MEMORIAL

**Submitted by the**

## ISLAMIC REPUBLIC OF IRAN

**Volume I**

**8 June 1993**

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# INTRODUCTION

1. This Memorial is filed pursuant to the Court's Order dated 4 December 1992 fixing 31 May 1993 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran ("Iran"). The Order was issued following a meeting of the Parties with the President of the Court on 3 December 1992 in accordance with Article 48 of the Statute of the Court and Article 44(1) of the Rules of Court. The time-limit for the filing of Iran's Memorial was extended until 8 June 1993 by Order of the Court dated 3 June 1993.

2. As the Court is aware, proceedings were instituted in this case by an Application filed by Iran on 2 November 1992. The case arises out of the attack and destruction by U.S. naval warships of three offshore oil production complexes located in the Persian Gulf owned and operated by the National Iranian Oil Company (see, Map 1, facing page 10). The attacks in question took place on 19 October 1987 and 18 April 1988.

3. As will be more fully developed in this Memorial, the U.S. actions in attacking the oil platforms violated fundamental principles of international law prohibiting the use of armed force, including a number of specific provisions of the 1955 Treaty of Amity between Iran and the United States providing that there be peace and friendship between the two countries, that each Party accord fair and equitable treatment to the nationals and companies of the other and to their property and interests, and that there be freedom of commerce and navigation between the territories of the Parties.

4. While Iran's claims are based on the attacks themselves, it is important to appreciate that the United States' actions did not take place in a vacuum, but occurred in the context of a devastating war which Iraq, in violation of fundamental principles of jus cogens, initiated against Iran in September 1980. As will be demonstrated in Part I below where the factual aspects of the case are discussed, the United States failed to remain neutral in the conflict in violation of its international obligations. Particularly from 1984 onwards, the United States pursued a deliberate policy of assistance to Iraq in its war efforts against Iran coupled with provocation, threats and outright aggression against Iran. The attacks on Iran's oil platforms in 1987 and 1988, which were designed to cause

maximum economic damage to Iran, were carried out against the backdrop of this policy.

5. After a discussion of the facts in Part I, Part II will then take up the issue of jurisdiction and will show that under the compromissory clause of the Treaty of Amity (Article XXI(2)), the Court has jurisdiction to rule on the claims submitted by Iran based on breaches by the United States of various Treaty provisions. Although Article XXI(2) does not expressly require that the Parties attempt to negotiate their differences before a case concerning the Treaty's interpretation or application can be submitted to the Court, Iran will demonstrate that the United States was so adamantly opposed to discussing the issue with Iran that a settlement by negotiation was impossible.

6. In Part III, Iran will review the specific provisions of the Treaty of Amity which the United States breached by virtue of its attacks on the oil platforms. In the light of the interpretation and application of these provisions, Iran will demonstrate that the U.S. actions were clearly in conflict with its international obligations imposed by the Treaty.

7. At the time the attacks took place, the United States attempted to justify its actions by asserting that they constituted legitimate acts of self-defence. Prima facie, of course, the use of armed force by the United States was illegal. Thus, while the burden of proof rests on the United States to support its self-defence argument, Part IV will show that in the light of the facts of the case, the United States' allegation cannot be sustained as a matter of law. Indeed, even on a reading of the facts which is most favourable to the United States, its actions constituted illegal reprisals for which the United States bears full responsibility.

8. Having established the United States' responsibility for breaching the Treaty of Amity, Part V will then turn to the substance of Iran's claims for declaratory relief and reparation. The legal basis of Iran's claims and the elements for which Iran is claiming will be outlined in Part V. Iran reserves the right, however, to defer a detailed discussion on the form and quantum of compensation owing until a subsequent phase of these proceedings. Following Part V, Iran's Memorial concludes with its Submissions.

9. The Memorial also includes a number of documentary exhibits which are referred to in the course of the discussion that follows. These are included in Volumes II to IV hereto.

# PART I

## THE FACTUAL BACKGROUND TO THE DISPUTE

1.01 As explained in Iran's Application, the dispute before the Court involves attacks on, and the destruction of, several commercial oil production platforms and associated facilities owned and operated by the National Iranian Oil Company in the Persian Gulf in 1987 and 1988. The existence of these attacks, and the fact that they were made by U.S. military forces, is not in dispute. However, the context of the attacks - the general status of U.S.-Iranian relations established by the Treaty of Amity, both before and after the 1979 Islamic Revolution, and the period from 1980-88 during which Iran was subject to Iraqi aggression - is as important as the attacks themselves. Consideration of this background is relevant to show not only the applicability of the Treaty of Amity to this dispute, but also the illegality of the U.S. actions in carrying out the attacks. This Part will therefore deal with this background first before turning to a description of the attacks themselves.

1.02 Chapter I briefly describes relations between Iran and the United States from the signing of the Treaty of Amity on 15 August 1955 up to and immediately after the Islamic Revolution of 1979. The facts related in this Chapter show three things: first, that the Treaty of Amity was entered into in order to establish close bonds between Iran and the United States in a number of fields and was not a purely commercial treaty; second, that one of the most important motives for the new relationship created by the Treaty was the development of Iran's oil industry, including, as one vital element, precisely those oilfields and platforms in the Persian Gulf which were subject to the U.S. attacks in 1987 and 1988; and third, that the Treaty of Amity remained in force after the Islamic Revolution in 1979.

1.03 A peaceful settlement of outstanding disputes between Iran and the United States was achieved by the Algiers Declarations of January 1981. As a result, U.S. oil companies were able to bring claims before the Iran-U.S. Claims Tribunal for losses arising out of the events of 1979. These claims were for billions of dollars of compensation for the full value of the oil companies' rights to exploit Iranian oil until the end of the century, including oil from the offshore oilfields and platforms that are the subject of this case. The companies relied in part on the Treaty of Amity as providing the applicable standard of

compensation for their claims. As will be further described in Chapter I, the United States chose to destroy these same oilfields, platforms and facilities at the very time the Iran-U.S. Claims Tribunal was considering the companies' claims. Despite these actions, the U.S. oil companies, as indeed all other foreign oil companies operating in Iran prior to the Revolution, received full compensation for their claims without any account being taken of the fact that after the U.S. attacks production from the fields in question ceased.

1.04 The U.S. attacks occurred against the backdrop of a war that had been imposed upon Iran by Iraqi aggression and continued occupation of Iranian territory from 1980 onwards. Iraq's aggression and its attempt to widen the conflict by instigating indiscriminate attacks on commercial targets in the Persian Gulf will be described in Chapter II. The lawful defensive measures taken by Iran in response to Iraq's aggression will also be described in this Chapter.

1.05 Chapter III then considers the United States' role in the Iran-Iraq war. Officially, the United States announced that it was neutral in the conflict, and Security Council Resolutions concerning the conflict called on third States to exercise the utmost restraint and to avoid any act that might escalate hostilities. The United States also had special duties to Iran under the Treaty of Amity. Yet despite the existence of such obligations, it is public knowledge that during the conflict the United States actively supported Iraq militarily, politically and financially, and acted against the interests of Iran, even to the extent of committing acts of aggression against Iran. This aspect of the factual background is described in Chapter III. It is of relevance to an understanding of the attacks themselves, which are described in Chapter IV.

## CHAPTER I RELATIONS BETWEEN THE PARTIES - THE CIRCUMSTANCES OF THE SIGNING OF THE TREATY OF AMITY AND THE TREATY'S CONTINUING APPLICABILITY AFTER THE ISLAMIC REVOLUTION IN 1979

### SECTION A The Circumstances of the Signing of the Treaty of Amity

1.06 The Treaty of Amity, Economic Relations and Consular Rights signed with Iran was one of a series of bilateral "friendship, commerce and navigation" (F.C.N.) treaties entered into by the United States. As their name suggests, FCN treaties were not limited to purely commercial relations. Rather,

they had been a tool of U.S. foreign policy - understood in a wide sense - ever since the first such treaty was entered into with France in 1778. By World War II, over 100 such treaties had been concluded by the United States. In the struggle between Soviet and American influence in world affairs in the cold war period, the importance of these treaties for the United States became more pronounced. Accordingly, in the decade following the end of World War II, the United States concluded 14 such treaties, including the Treaty of Amity with Iran[1].

1.07 While the fear of Soviet influence was an important factor in U.S. policy towards Iran in the post-World War II period, the immediate cause of U.S. involvement was oil. In March 1951, with the support of Dr. Mossadegh's National Front, the Iranian Parliament passed an act nationalizing the Iranian oil industry[2]. At that time, all of Iran's oil was produced and operated by the Anglo-Iranian Oil Company (AIOC), which was owned by British interests. AIOC had exclusive concessionary rights over virtually all of Iran's oil producing areas, as well as use of the Abadan refinery, then the world's largest. In the resulting dispute between Iran, the British Government and AIOC, a total embargo was imposed on Iranian oil. This embargo caused economic hardship and disruption in Iran, and allowed the communist Tudeh party to exploit the situation to strengthen its position.

1.08 In August 1953, Dr. Mossadegh was deposed following a coup instigated, organized and carried out by the CIA under orders from the new Republican Administration of President Eisenhower in Washington, and with British support[3]. Many regarded the toppling of Dr. Mossadegh as a major blow

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1 See, Wilson, R.R.: "A Decade of New Commercial Treaties", American Journal of International Law, Vol. 50, 1956, pp. 927-928. The political importance of these treaties is alluded to in a 1954 U.S. Statute authorizing the U.S. President to negotiate treaties like that with Iran, which states their aim as being the achievement of "rising levels of production and standards of living essential to the economic progress and defensive strength of the free world". Exhibit 1.

2 These events and those related in paras. 1.07-1.10 are summarized in Ramazani, R.K.: "Iran's Foreign Policy: Perspectives and Projections", in Economic Consequences of the Revolution in Iran, A Compendium of Papers submitted to the Joint Economic Committee of the Congress of the United States, 19 November 1979, 96th Congress, 1st Session, Washington, U.S. Government Printing Office, 1980, pp. 69-72. Exhibit 2.

3 The CIA's involvement in the coup was extensively publicized during the 1979 Islamic Revolution with the publication of Kermit Roosevelt's Countercoup: the Struggle for the Control of Iran, New York, McGraw-Hill, 1979. See, also, Zabih, S.: The Mossadegh Era, Chicago, Lake View Press, 1982, pp. 124-126 and 139-143, for a summary of the literature on this subject. Exhibit 3.

to democracy in Iran. The United States' aims were essentially threefold: to remove Dr. Mossadegh's Government from power and install the pro-American Shah; to remove the perceived communist threat; and to end the oil dispute and gain access for U.S. companies to Iranian oil.

1.09 The United States was successful in all three aims. The Shah was to hold power for another 25 years. The communist party was largely suppressed. Finally, U.S. oil companies obtained a significant participation in Iran's oil industry shortly after Mossadegh's fall with the settlement of the oil dispute. AIOC received compensation for the loss of its monopoly position, and in 1954 a new agreement was signed between the National Iranian Oil Company ("NIOC") and a consortium of foreign oil companies in which U.S. companies obtained a 40 percent share.

1.10 The key element in U.S. policy was the Treaty of Amity signed on 15 August 1955. The circumstances of its signing - immediately after the coup which removed Dr. Mossadegh and reinstated the Shah - show that the Treaty was not a purely commercial treaty. Indeed, the Treaty cemented political, commercial and diplomatic links between Iran and the United States at a highly opportune time for the United States.

## SECTION B The Development of Iran's Offshore Fields and Facilities Following the Signing of the Treaty of Amity

1.11 In the years following the signing of the Treaty up to the Islamic Revolution, relations between the United States and Iran were at their closest. These relations were political, military and strategic, and not just commercial. Iran was, with Saudi Arabia, one of the "twin pillars" of U.S. foreign policy in the Middle East[4].

1.12 One of the most important areas of cooperation was oil. Reference was made above to the connection between the signing of the Treaty of Amity and the conclusion of the Consortium Agreement which granted U.S. companies a share in the exploitation of Iran's largest onshore oilfields. U.S. oil companies bringing claims before the Iran-U.S. Claims Tribunal were at pains to

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4 In 1977 the U.S. Senate Committee on Energy and Natural Resources noted in a paper on "Access to Oil - The United States' Relationships with Saudi Arabia and Iran" that the "U.S. stake in Iran and Saudi Arabia is unprecedented and reflects geostrategic and energy interests of great magnitude". Exhibit 4.

stress the equally close connection between the Treaty and the development of Iran's offshore fields in the Persian Gulf, including specifically those fields and facilities which are relevant to this dispute[5]. The development of these fields began immediately after the entry into force of the Treaty of Amity on 16 June 1957. On 31 July 1957, Iran adopted the Iranian Petroleum Act which announced that offshore areas under Iran's jurisdiction in the Persian Gulf would be opened up for exploration, development and production of petroleum resources by NIOC in participation with foreign oil companies.

1.13 The first agreement reached pursuant to the Petroleum Act was signed in 1958 between NIOC and Amoco, a U.S. oil company. Further bids were sent out in 1963, and in 1965 two agreements were entered into which are relevant to this case. One was signed on 17 January 1965 by NIOC and Phillips Petroleum Company, an American oil company, and two other foreign companies. Pursuant to this agreement, known as a Joint Structure Agreement or JSA, an Iranian company, IMINOCO, was formed to explore for and develop petroleum resources in the Persian Gulf[6]. As a result of IMINOCO's efforts, two fields were discovered - Rostam (renamed Reshadat after the Revolution), and Rakhsh (renamed Resalat). The positions of these oilfields, in the continental shelf of Iran and within its Exclusive Economic Zone, are shown on Map 1, facing page 10, to the south of Lavan Island. After development of the facilities, commercial production began in Rostam on 19 September 1969 and in Rakhsh in February 1971.

1.14 A diagram of the Reshadat and Resalat platforms is shown in Exhibit 5. The two main complexes, Reshadat (R7) and Resalat (R1), both consisted of three linked platforms: a drilling platform, a service platform and a production platform. Another single platform (R4) was also developed on the Reshadat field, containing drilling, services and production facilities. Together

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5 The U.S. oil company claimants, like many other U.S. claimants, based their claims before the Iran-U.S. Claims Tribunal on the investment protection provisions set out in Article IV(2) of the Treaty of Amity. To support their case, the U.S claimants filed affidavits of the U.S. negotiators of the Treaty in order to show that it was precisely the U.S. companies' interests in Iran's offshore oilfields that the United States had in mind when drafting Article IV(2).

6 This company was 50% owned by NIOC and 50% by the foreign oil companies and was subject to joint management. The foreign oil companies provided the technical support and finance for the development of the oilfields and in exchange gained rights to 50% of the produced oil, subject to the payment of tax and royalties to Iran.

these platforms, which were linked to some 40 separate wells, were designed to deal with levels of production up to 200,000 barrels per day.

1.15 It can be seen from the same diagram attached in Exhibit 5 that all oil pumped from either the Reshadat or the Resalat complexes passed through a central producing platform on the Reshadat (R7) complex before being pumped by subsea line from there to the oil terminal on Lavan island. A photograph of the R7 complex prior to the U.S. attack is shown facing page 44. It is significant that it was this platform that was the focus of the U.S. attack. Destruction of this platform, as the United States knew full well at the time, effectively put both the Reshadat and Resalat oilfields out of action.

1.16 The second Joint Structure Agreement relevant to this case was signed on 18 January 1965 between NIOC and four U.S. oil companies (Atlantic Refining Company, Murphy Oil Corporation, Sun Oil Company and Union Oil Company of California), and another Iranian joint stock company, LAPCO, was formed. The Sassan field (renamed Salman) discovered by LAPCO was declared commercial on 12 November 1966. Thereafter, the necessary platforms and facilities were built, and commercial production began in June 1968. Further development of the Salman facilities took place in 1977-78.

1.17 The Salman complex was located south of Lavan Island (see, Map 1, facing this page), in the continental shelf of Iran and within its Exclusive Economic Zone, and was connected to the oil terminal on Lavan by subsea line. The complex consisted of 7 connected platforms (1 facilities, 1 drilling, 2 production, 2 living quarters and 1 pumps and generators) linked to some 38 wells and capable of producing over 220,000 barrels per day of crude by both primary and secondary recovery methods[7]. A photograph of the Salman complex appears facing page 50.

1.18 The Sirri fields (renamed Nasr) were developed through rather different arrangements with Elf Aquitaine pursuant to a 1966 Service Agreement. These fields are also located in Iran's continental shelf and within its Exclusive Economic Zone to the southwest of Sirri Island (see, Map 1), and oil is

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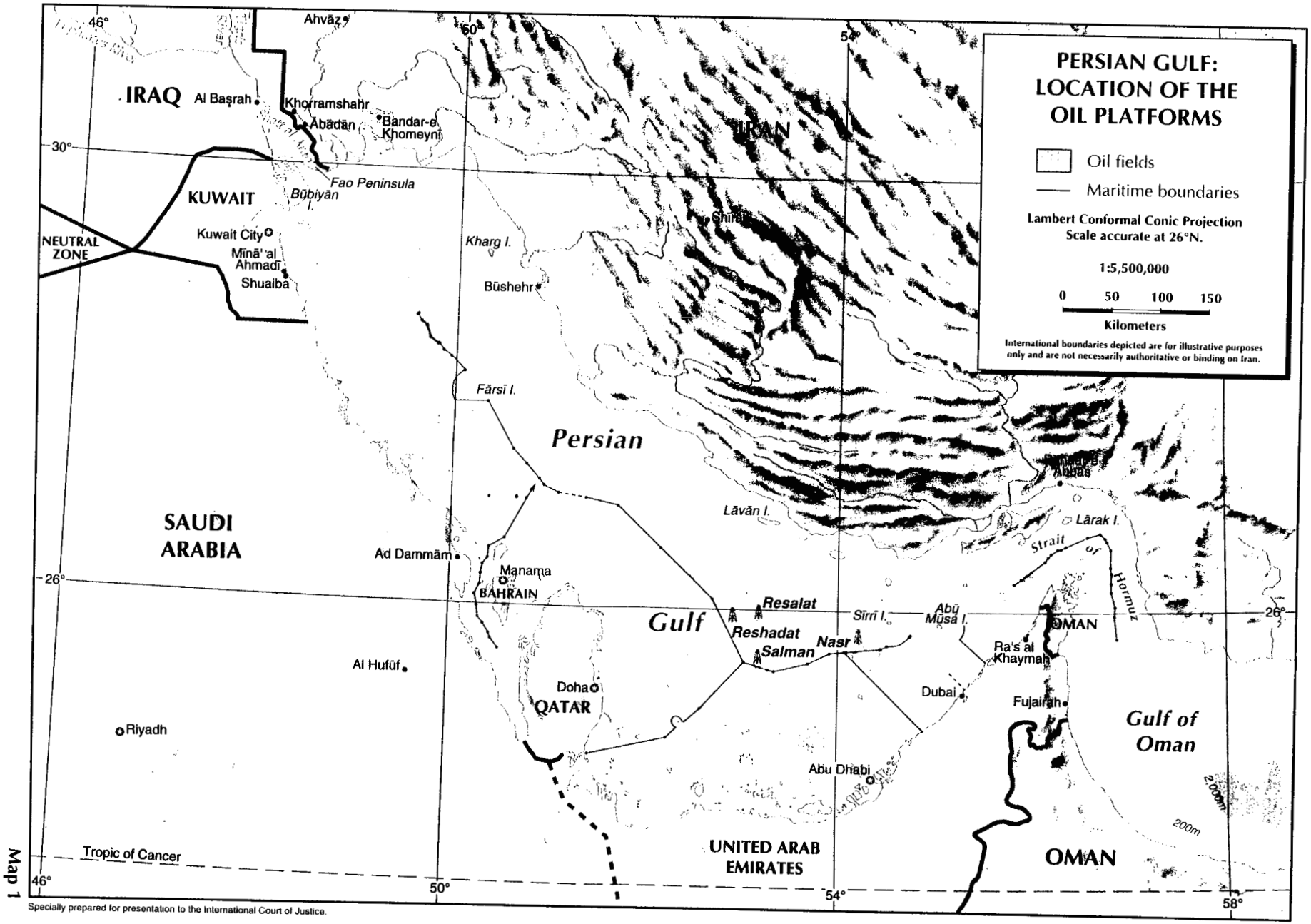
7 Primary recovery is crude produced by natural pressure in the reservoir. Secondary recovery involves the injection of gas or water to increase pressure in the reservoir and thus force out the oil. Secondary recovery requires the much more extensive facilities found on the Salman complex.




Map 1

Specially prepared for presentation to the International Court of Justice.

produced by seven multi-well platforms (platforms A, B, C and D on the Sirri D field and platforms E and F on the Sirri C field and the Nosrat platform). The total production capacity of these platforms is approximately 100,000 barrels of crude per day. As can be seen from the diagram attached in Exhibit 6, the central structure is platform A which gathers oil from all the other platforms before transporting it by subsea line to Sirri island. Platform A includes a central production platform, a well platform and a flare system (see, the photograph of platform A following page 50). It was this structure which was destroyed by the United States thus rendering all of the other platforms useless.

1.19 By the time of the events of 1978-79, each of these oilfields had been producing for several years, and the foreign oil companies had made substantial profits from their exploitation.

## SECTION C The Islamic Revolution and the Change in Relations Between the United States and Iran After 1979

1.20 The main events of 1978-79 and the Islamic Revolution are matters of public knowledge. The popular resentment which exploded at this time was directed as much against the Shah as against the United States. It was recognized that the Shah had been reinstated on his throne in 1954 by a coup d'état directly organized, financed and carried out by the U.S. Government. Massive U.S. political support, as well as more covert forms of assistance, had continued throughout the Shah's regime. Resentment against U.S. involvement in Iranian affairs was strongest in the oil industry, the lifeblood of Iran's economy and, particularly since the time of Dr. Mossadegh, a focus for Iranian political aspirations.

1.21 The Shah's departure from Iran at the beginning of 1979 coincided with the departure of nearly all U.S. companies and their personnel, including the U.S. oil companies. During 1979, relations between the new Islamic Republic and the United States worsened. Increased publicity given to CIA involvement in Iran in the past (both in connection with the downfall of Dr. Mossadegh and in the control of the Shah's hated secret police, the SAVAK), combined with fear of attempts by the United States to take steps to overthrow the new Government and reinstate the Shah after the Shah's admission to the United States, precipitated the events of November 1979 at the U.S. Embassy in

Tehran[8]. While harbouring the Shah, the United States also froze Iranian assets in the United States, imposing an embargo on virtually all trade with Iran. Finally, it sought redress before this Court concerning the events at the U.S. Embassy. During the pendency of those proceedings, the United States also chose to attempt a military rescue operation which was subsequently characterized by the Court as "calculated to undermine respect for the judicial process in international relations[9]".

1.22 Although relations between the two Parties reached a low point during this period, it is important to recall that they were able to settle their disputes peacefully by means of the Algiers Declarations of 19 January 1981[10]. Indeed, as the preamble of the General Declaration states, the Algiers Declarations were entered into in order to seek "a mutually acceptable resolution of the crisis in ... relations" between the two States. Under these Declarations, provision was made to settle all claims relating to the seizure of 50 United States nationals on 4 November 1979 and the surrounding events[11]. As a result, the Diplomatic and Consular Staff case was subsequently withdrawn from the Court by the United States on the basis that all aspects of the case had been settled. On the Iranian side, provision was made for the return of Iranian assets and the removal of U.S. economic sanctions. In Point I of the General Declaration, the following commitment was also given:

> "1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs."

Finally, the Iran-U.S. Claims Tribunal was established to settle the claims of nationals of each Party against the Government of the other Party, as well as intergovernmental claims, arising out of events arising prior to 1981.

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8 These aspects of the crisis are discussed in Stempel, J.D.: Inside the Iranian Revolution, Indiana University Press, 1981, pp. 223-241, and Carter, J.: Keeping Faith: Memoirs of a President London, Bantam Books, 1982, pp. 457-470 and 483-489. Kermit Roosevelt's book Countercoup: The Struggle for the Control of Iran (see, fn. 3 above), which revealed CIA involvement in Iran in more detail than ever before, was published in 1979, during the Revolution.

9 United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 43, para. 93.

10 The full text of the Declarations is printed in 1 Iran-U.S. C.T.R., 1981-82, pp. 3, et seq.

11 See, paragraph 11 of the General Declaration. Ibid., p. 6.

1.23 Despite the deterioration in Iran-U.S. relations that occurred in the wake of the Revolution, the Treaty of Amity survived these events. This Court, for example, found that the Treaty was still in force and part of the corpus of law existing between the two States after the events of 1979[12]. The Iran-U.S. Claims Tribunal set up pursuant to the Algiers Declarations reached the same finding and continued to apply the Treaty. As a result, U.S. claimants have benefited in literally hundreds of cases before the Iran-U.S. Claims Tribunal from application of the Treaty's provisions[13]. Both States now rely on the Treaty, and neither has sought to terminate it[14].

## SECTION D U.S. Oil Companies' Claims Before the Iran-U.S. Claims Tribunal

1.24 Many U.S. companies, and in particular the oil companies, brought claims before the Iran-U.S. Claims Tribunal for losses allegedly arising as a result of the events in Iran of 1979[15]. The U.S. partner to the IMINOCO JSA, which operated the Resalat and Reshadat fields, and the four U.S. companies which together held a 50% share in the LAPCO JSA, which operated the Salman field, all pursued claims before the Iran-U.S. Claims Tribunal[16]. These claims, which were for billions of dollars of compensation, were based in part on provisions of the Treaty of Amity. According to the oil companies, compensation was required for lost profits that would have been obtained from continued exploitation of the fields and facilities from 1979 until the end of the century - in other words, during and beyond the period in which the same fields and facilities were attacked and destroyed by U.S. military forces.

1.25 On the question of liability, both sides agreed that events of force majeure existed in Iran in early 1979. However, there was disagreement about at what point these events came to an end. The U.S. companies alleged that the force majeure events associated with the Islamic Revolution came to an

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12 United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 28, para. 54.

13 See, paras. 2.03-2.08 below.

14 Ibid.

15 As a non-American company, recourse to the Claims Tribunal was not open to Elf Aquitaine. However, an amicable settlement was reached with Elf after the Revolution.

16 These were Case No. 39 and Case Nos. 20, 21, 22 and 23 (heard together) on the Tribunal's Register.

end by April 1979 and that they were illegally prevented from returning to Iran after the situation was normalised. Iranian respondents argued that the former contractual agreements had been frustrated due to changed circumstances or terminated by mutual agreement of the Parties concerned.

1.26 Contrary to the impression often given by U.S. sources, the Iran-U.S. Claims Tribunal found no wrongdoing was committed either by NIOC or the Government of Iran in respect of these contracts. In the Tribunal's only two substantive awards on these issues, arguments by the oil companies that NIOC or the Government of Iran had unlawfully expropriated the oil companies' property were rejected. In the Amoco International Finance case, the Tribunal found there had been a lawful nationalization of the U.S. company's interests[17]. In the Consortium case, which concerned by far the largest of Iran's oil agreements, the Tribunal found there was no expropriation or nationalization, but rather that the parties had mutually agreed to terminate their contractual relationships in an amicable settlement[18]. Indeed, the Tribunal found that these cases had only arisen because contacts between the parties were interrupted as a result of the events of November 1979. Although Iran's and NIOC's actions were thus in conformity with international law, in the Amoco International Finance the Tribunal found that Iranian defendants were liable to pay compensation to the U.S. claimants under the terms of Article IV(2) of the Treaty of Amity. The Treaty was considered as a lex specialis, overriding any alternative standards of compensation applicable under general international law, and as still in force and binding on the Parties[19].

1.27 Iran and NIOC showed their utmost good faith during these proceedings and were successful in bringing all such claims to an amicable settlement. The settlements with the U.S. oil companies were presented to the Claims Tribunal and recorded as Awards on Agreed Terms.

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17 Amoco International Finance Corp. v. Iran et al., Award No. 310-56-3 dated 14 July 1987, reprinted in 15 Iran-U.S. C.T.R., 1987-II, at p. 189.

18 Mobil Oil Iran Inc. et al. v. Government of Iran and National Iranian Oil Company, Award No. 311-74/76/81/150-3 dated 14 July 1987, reprinted in 16 Iran-U.S. C.T.R., 1987-III, at p. 3.

19 Although the Tribunal recognized that customary law standards were still of relevance. See, Amoco International Finance Corp. v. Iran et al., Award No. 310-56-3 dated 14 July 1987, reprinted in 16 Iran-U.S. C.T.R., 1987-II, at p. 222.

## CHAPTER II IRAQ'S AGGRESSION AGAINST IRAN AND THE DEFENSIVE MEASURES TAKEN BY IRAN

### SECTION A Iraq's Aggression

1.28 On 6 March 1975, an agreement dealing principally with border issues was reached in Algiers between Iran and Iraq on "an ultimate and permanent settlement of all outstanding questions between the two countries[20]". A subsequent Treaty on International Borders and Good Neighborly Relations (together with Protocols on Border Security, Re-demarcation of Land Borders and Demarcation of Water Borders) was signed on 13 June 1975 in Baghdad by the President of Iraq and the Shah of Iran .

1.29 It was only in 1979 that Iraqi officials, taking advantage of what they perceived to be an uncertain situation in Iran, began with increasing frequency to denounce the 1975 Treaty and to make ever more extreme claims against Iran. For example, on 31 October 1979 the Iraqi ambassador in Beirut issued a declaration containing three demands: (1) the abrogation of the 1975 Treaty and the restoration to Iraq of its alleged territorial rights; (2) the evacuation by Iran of the Abu Musa and Tunbs islands in the Persian Gulf; and (3) the granting of autonomy to the Baluchis, Kurds and Arabs in Iran. As a result of such statements and other provocative actions by Iraq, relations between the two States deteriorated in 1979 and 1980, and an increasing number of border incidents occurred[21].

1.30 On 17 September 1980, President Saddam Hussein announced in Iraq's Parliament that the Government of Iraq had formally and unilaterally abrogated the 1975 Treaty and had restored its full sovereignty over the Shatt al-Arab waterway[22]. On 22 September 1980, Iraq launched simultaneous strikes against Iranian airfields (including Tehran airport), while its armies advanced along a 450-mile front into Iran's Khuzistan province and other

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20 See, the preamble of the Treaty on International Borders and Good Neighborly Relations (done at Baghdad, June 13, 1975), International Legal Materials, Vol. XIV, No. 5, September 1975, p. 1133. Exhibit 7.

21 See, Keesing's Contemporary Archives, 7 August 1981, pp. 31005-31007. Exhibit 8.

22 Ibid., p. 31006. Exhibit 8.

western areas of Iran[23]. The area invaded included Iran's most important onshore oilfields, responsible for over 90 percent of Iran's oil production. On 23 September, Iraqi forces were reported to have encircled Abadan and Khorramshahr, two important cities and two of Iran's principal oil centres. On 24 September, the Iraqi advance continued and Iraq reported having attacked and set fire to Iran's main oil terminal on Kharg island in the Persian Gulf[24]. Iraq's aggression against Iran and its occupation of Iranian territory was to continue until the United Nations cease-fire agreement, accepted by Iran on 18 July 1988, was finally accepted by Iraq on 20 August 1988[25].

1.31 Iraq prosecuted its aggression against Iran by the continuous occupation of Iranian territory, indiscriminate attacks on civilian populations, the illegal use of chemical weapons against both military and civilian targets, and the expansion of the conflict by attacks on shipping and oil installations in the Persian Gulf.

1.32 As early as 1981, Iran protested Iraq's attacks on Iranian civilian targets to the Security Council[26]. Iran was obliged to make hundreds more such protests in the coming years, including protests against Iraq's chemical weapon attacks against civilian populations. At the initiative of the Secretary-General, and at the repeated request of Iran, independent experts were called to visit both States to investigate these protests. All the reports made on this subject (in 1984, 1985, 1986, 1987 and 1988) provided conclusive proof of Iraq's continuous use of chemical weapons against military and civilian targets. None of these reports found any evidence of chemical attacks by Iran[27]. Such attacks continued even after Iran's full acceptance of Resolution 598 on 18 July 1988[28].

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23 Ibid.. See, also, Sick, G.: "Trial by Error: Reflections on the Iran-Iraq War", Middle East Journal, Vol. 43, No. 2, 1989, p. 230. Exhibit 9.

24 Keesing's Contemporary Archives, 7 August 1981, p. 31007. Exhibit 8.

25 See, Sick, G.: op. cit., pp. 242-243. Exhibit 9.

26 Yearbook of the United Nations, Vol. 35, 1981, p. 239. Exhibit 10.

27 See, for a record of these reports, the extracts from the Yearbook of the United Nations included in Exhibit 11.

28 "Report of the Mission Dispatched by the Secretary-General to Investigate Allegations of the Use of Chemical Weapons in the Conflict between the Islamic Republic of Iran and Iraq", 19 August 1988 (S/20134). Exhibit 12.

1.33 Iraq also extended the war into the Persian Gulf. In early October 1980, Iraq had declared the area of the Persian Gulf north of 29°30'N a "prohibited war zone"[29]. In 1981, it began attacking vessels in the Persian Gulf[30]. The reason for these attacks was, of course, that the Persian Gulf represented Iran's main trading link with the outside world. In particular, all Iranian oil was shipped from Iranian ports and oil terminals along the Persian Gulf. Iraq, on the other hand, had largely been deprived of access to the Persian Gulf (through its port at Umm Qasr, north of Bubiyan island, or through Basra via the Shatt al-Arab) early on in the war. As a result, Iraq was forced to use Kuwaiti ports or to transport more of its crude oil by pipeline.

1.34 In mid-August 1982, Iraq went further, declaring as a "naval total exclusive zone" an area north and east of a line joining the following positions: 29°30'N, 48°30'E; 29°25'N, 49°09'E; 28°23'N, 49°47'E; 25°23'N, 51°00'E. The extent of Iraq's exclusion zone is shown on Map 2, facing page 18. Iraq stated that it would "attack all vessels" appearing within this zone and that "all tankers docking at Kharg Island, regardless of nationality [would be] targets for the Iraqi Air Force"[31].

1.35 Iraq's attacks increased in violence and in number as the war continued, in particular after Iraq obtained access to Exocet missiles in 1983. The attacks themselves were directed against both Iranian vessels and those of third States, and were directed against ships trading with Iran as well as with third States. In carrying out these attacks, Iraq did not distinguish between commercial and military vessels. The attacks were thus totally indiscriminate. No attempt was made to identify the vessel beforehand or to carry out search and visit

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29 See, Roach, J.A.: "Missiles on Target: Targeting and Defense Zones in the Tanker War", Virginia Journal of International Law, Vol. 31, 1991, p. 593, at pp. 604-605. Exhibit 13. A selection of articles concerning the so-called "tanker war" are included in this Memorial. Many of these articles are highly inaccurate, and the majority rely on U.S. government briefings, not first-hand information. The use of these reports by Iran is not an endorsement of their evidentiary value. They are simply provided to the Court to give some "flavour" of the situation in the Persian Gulf at the time.

30 See, the graph produced in The Washington Post, 13 October 1987. Exhibit 14. This shows that Iraqi attacks started in 1981 and continued until 1984 without response from Iran. However, see, Chapter II, Section B, below for a discussion of the so-called "attacks" by Iran.

31 Roach, J.A.: op. cit., at pp. 604-605. Exhibit 13.

procedures or to establish the nature of its trade[32]. A number of ships were also damaged by mines laid by Iraq in the Persian Gulf. By the end of 1984, at least seven vessels had been damaged by Iraqi mines. For example, on 7 June 1984 an Iraqi mine blew a hole in a Liberian tanker, the Dashaki, in the Strait of Hormuz on its way from the Iranian port of Bandar Abbas to Saudi Arabia[33]. Iraq openly vaunted its attacks, declaring that it considered itself fully justified in attacking vessels of any nationality engaged in trade with Iran. Because such vessels were allegedly engaged in assisting the enemy's war efforts, Iraq claimed that they were legitimate targets[34].

1.36 Iraq's approach to the war changed significantly, however, in 1986 after Iran captured a portion of the Fao peninsula and threatened the Iraqi city of Basra. This was a dramatic reversal for Iraq, particularly in the light of Iranian successes in the north where substantial parts of Iranian territory were liberated[35]. Faced with an increasingly desperate situation, Iraq took ever more extreme actions in the land war in its use of chemical weapons and attacks on civilian populations. For example, in March 1988, after Iran had captured the Iraqi town of Halabja, Iraq attacked the town with chemical weapons killing over 5,000 of its own citizens[36].

1.37 At the same time and for the same reasons, Iraq took more extreme actions in the Persian Gulf in an effort to internationalize the conflict and draw in help from western forces. Up until this time, the United States and other western powers, like many Arab States, had endeavoured to play down their support for Iraq which had taken a largely covert form. This policy was apparently dictated by the view that it was acceptable to let both States weaken each other by continuing the conflict. However, Iran's successes of 1986, coupled

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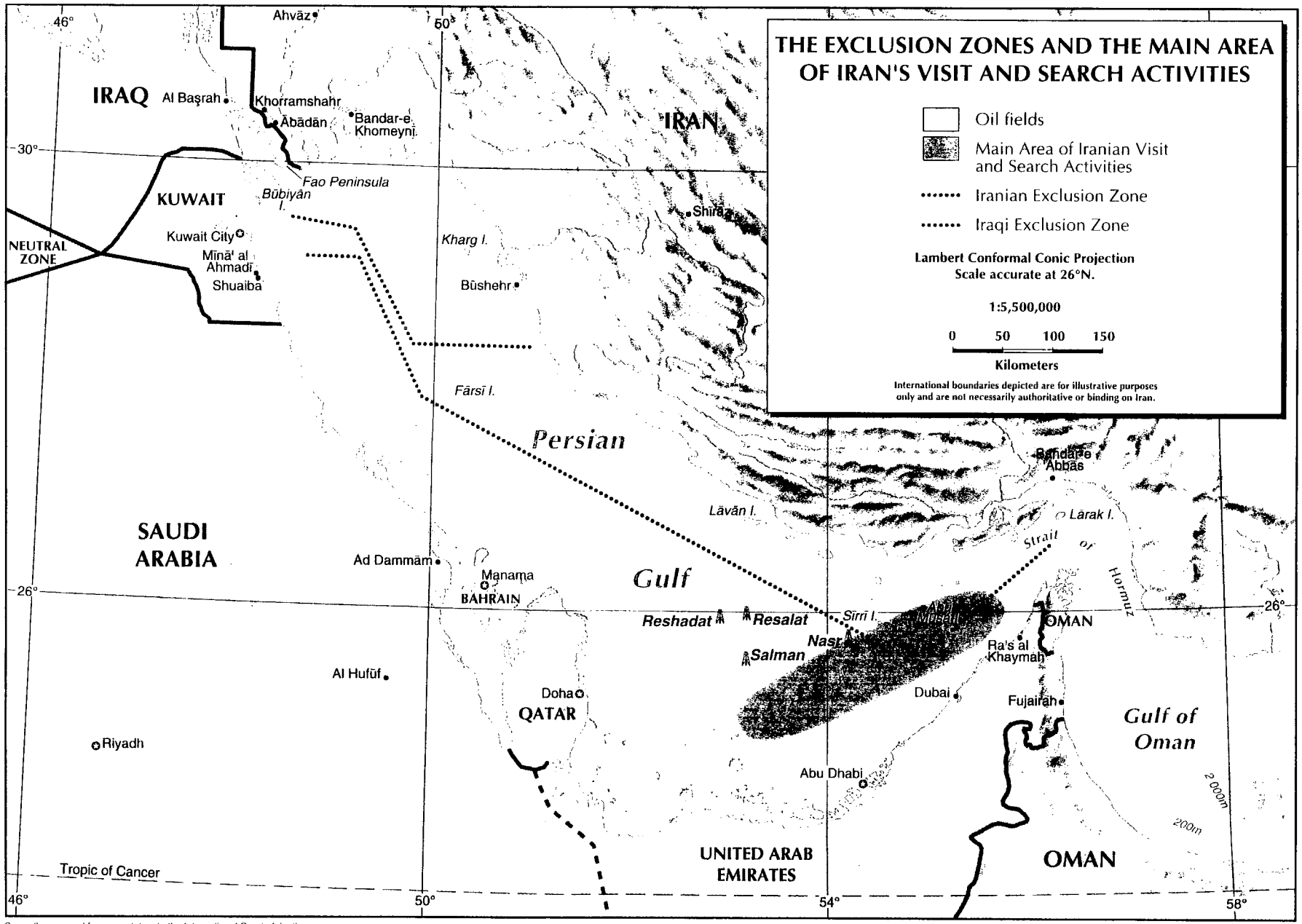
32 One author described Iraqi policy as "shoot first - identify later". McCartan, B.: "The Tanker War", Armed Forces Journal International, November 1987, p. 74. Exhibit 15. Roach, J. A.: op. cit., p. 606, notes that "few Iraqi ship attacks were preceded by visual identification". Exhibit 13.

33 See, Danziger, R.: "The Persian Gulf Tanker War" in Proceedings/Naval Review, 1985, p. 165. Exhibit 16.

34 See, for example, Yearbook of the United Nations, Vol. 39, 1985, p. 248, Exhibit 17, and Vol. 40, 1986, p. 235. Exhibit 18.

35 See, Keesing's Contemporary Archives, Vol. XXXII, July 1986, pp. 34515-34516. Exhibit 19.

36 Keesing's Contemporary Archives, Vol. XXXIV, September 1988, p. 36168. Exhibit 20.




Map 2

Specially prepared for presentation to the International Court of Justice.

with Iraq's efforts to destabilize the Persian Gulf, brought about a reversal of this policy and led western powers and certain Arab States to line up more firmly behind Iraq.

1.38 Iraq's effort to internationalize the conflict involved a dramatic increase in its attacks on shipping in the Persian Gulf. Many attacks took place in the main shipping lanes, outside of Iranian waters, and were directed even against the shipping of Iraq's allies[37]. This was the inevitable result of Iraq's "shoot first - identify later" policy. The most well-known incident of this kind was the Iraqi attack on a U.S. naval vessel, the U.S.S. Stark, in international waters of the Persian Gulf in May 1987 (the Stark's location when it was hit can be seen on Map 3, facing page 38)[38]. Either by design or by mistake, attacks were also made on Saudi and Kuwaiti vessels, although in theory both these States were assisting Iraq in its war effort[39]. Iraq was apparently ready to risk attacking its allies in the hope that Iran would be held responsible and would be viewed as a greater danger than Iraq. The aim was to force third States to take more determined action against Iran.

1.39 It was also during this period that Iraq stepped up its mining of the Persian Gulf. This was carried out by various means: sophisticated seabed mines laid from the air, older contact mines laid by small boats, and mines simply set adrift in the northern waters of the Persian Gulf and allowed to follow the current through the shipping lanes. Some of these mines eventually found their way as far as the Indian Ocean where they were spotted by passing shipping. Later, during the Kuwaiti conflict, Iraq was able to sow thousands of such mines in the Persian Gulf. Iran, whose vessels were as much at risk as any others from these mines, was forced to carry out extensive mine-sweeping activities throughout the duration of the conflict.

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37 Iraq started attacking vessels in the shipping lanes because these lanes were also used by Iranian vessels. Many Iranian vessels had ceased using Iranian waters because there they were open targets for Iraq.

38 See, paras. 1.92-1.93 below.

39 As early as 1984, The Middle East Economic Survey (MEES) reported on this extraordinary feature of Iraqi attacks. See, MEES, Vol. XXVII, No. 25, 2 April 1984. Exhibit 21. See, also, para. 1.105 below on Iraqi Silkworm attacks on Saudi and Kuwaiti vessels in 1988.

1.40 In this period, Iraq also began to attack Iran's oil installations in the southern Persian Gulf, including the oil terminals at Lavan, Sirri and Larak islands, and Iran's offshore oil platforms. Despite the distance of these installations from Iraqi territory, Iraqi planes were able to use refuelling facilities to assist in the attacks. It is clear that Iraq regarded these installations as prime targets because of their economic importance to Iran[40].

## SECTION B The Defensive Measures Taken by Iran

1.41 The existence of Iraqi aggression threatening Iran's sovereignty and territorial integrity was clear. On 17 September 1980, Saddam Hussein had illegally denounced the 1975 Treaty governing the two States' relations and boundaries[41]. This act, combined with Iraq's invasion, threatened Iran's very existence, and forced Iran to resort to self-defence. This involved attempts by Iran to liberate territory captured by Iraq and to force Iraq to uphold the 1975 Treaty and renounce its claims to Iranian territory. During the war, Iran was able to capture parts of Iraq's territory and, as indicated above, in 1986 substantially to reverse the overall situation in the conflict. However, throughout the war parts of Iranian territory remained under Iraqi occupation.

1.42 Iran also responded by taking defensive measures against Iraq's attacks on Persian Gulf shipping. Specifically, Iran protested Iraq's attacks, promised to keep the Strait of Hormuz open to neutral commercial ships, and took steps to protect commercial shipping from Iraqi attacks[42]. As a further defensive measure, on 22 September 1980, immediately after Iraq launched its attack, Iran declared a defence exclusion zone around its coasts[43]. The extent of this zone is shown on Map 2, facing page 18. Iran called on vessels, after passing through the Strait of Hormuz, to follow a course keeping 12 miles south of Abu Musa Island, Sirri Island, Cable Bank lighthouse and Farsi Island, thence west of a line connecting the points 27°55'N, 49°53'E and 29°10'N, 49°12'E, and thereafter south of the line 29°10'N as far as 48°40'E. With regard to vessels following this course, Iran called on them to hoist the flag of their original nationality in

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40 See, paras. 1.101 and 1.114 below.

41 See, paras. 1.28-1.30 above.

42 See, Yearbook of the United Nations, Vol. 34, 1980, pp. 315-316. Exhibit 22. See, also, Yearbook of the United Nations, Vol. 38, 1984, p. 233. Exhibit 23.

43 See, Roach, J.A.: op. cit., pp. 600-601. Exhibit 13.

accordance with international law, and to respond to requests to visit and search by the naval forces of Iran. These measures were not intended to, and did not, interfere with the shipping lanes through the Persian Gulf. Indeed, because of Iran's reliance on maritime trade through the Persian Gulf, both for its oil and for other exports, it was inevitable that Iran's interests lay in keeping the Persian Gulf safe for shipping[44].

1.43 Throughout the first four years of the war, Iran took no action against commercial shipping, a point which is fully accepted by U.S. Government sources. On the other hand, and despite Iran's repeated protests, Iraq's indiscriminate attacks against shipping in the Persian Gulf passed almost without comment in the international community. The Security Council's first and only full discussion of the issue took place in 1984 at a meeting presided over by Jordan, one of Iraq's main supporters, and requested by Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates to consider what they called "Iranian aggression on the freedom of navigation to and from the ports of their countries[45]"! This request was made despite the fact, pointed out by Iran, that there had only been a couple of incidents between Iranian forces and allegedly commercial vessels trading with these countries, whereas Iraq had already carried out over 70 direct attacks on commercial shipping[46]. The resulting Resolution (No. 552) reaffirmed the right of free navigation "to and from all ports and installations of the littoral States that are not parties to the hostilities" and condemned what it described as recent Iranian attacks on "commercial ships en route to and from the ports of Kuwait and Saudi Arabia[47]". Iran has never accepted responsibility for these attacks. Any incidents that took place at this time involved vessels carrying contraband or refusing to obey Iran's legitimate requests to visit and search.

1.44 Quite inexplicably, Resolution 552 made no comment on Iraq's attacks on commercial vessels trading with Iran, nor on Iraq's argument that attacks on any ships trading with the enemy, irrespective of whether they were trading in contraband or commercial goods, were legitimate. Indeed, in

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44 On the legality of Iran's actions, see, Part IV below.

45 Yearbook of the United Nations, Vol. 38, 1984, p. 234. Exhibit 23.

46 Ibid., p. 233.

47 Security Council Resolution 552 (1984) of 1 June 1984. A complete set of the Security Council's Resolutions adopted in relation to the conflict is included in Exhibit 24.

failing to comment on such attacks, the Security Council implicitly legitimized them. This gave rise to a regrettable situation which Iran strongly protested at the time, pointing out that Resolution 552 effectively gave Iraq a licence for further aggression[48].

1.45 As a result of this situation, Iran was forced to increase the scope of its visit and search activities, in particular because it had become open knowledge that Iraq was receiving war contraband through shipments to friendly Persian Gulf States. Iraq falsely claimed that these States had more to fear from Iran's Islamic Revolution than from Iraq itself and even carried out attacks on these States' shipping, while alleging Iranian responsibility, in order to increase the pressure. As a result, a number of the Persian Gulf States, and particularly Kuwait and Saudi Arabia, pledged their political and economic support to Iraq in the war and actively supported Iraq's war effort[49]. Iraq continued to exercise pressure on and threaten other Persian Gulf States throughout the conflict in order to extract assistance from them.

1.46 In addition to political support, financial support was also forthcoming. For example, a Kuwaiti newspaper dated 16 April 1981 reported that the Persian Gulf States had undertaken to lend Iraq the equivalent of $14,000 million - $6,000 million from Saudi Arabia, $4,000 million from Kuwait, $3,000 million from the U.A.E. and $1,000 million from Qatar[50]. This assistance continued throughout the war[51]. Under the War Relief Crude Oil Agreement of February 1983, Saudi Arabia and Kuwait also committed themselves to transfer to Iraq the sales proceeds from the Khafji oilfields in the Neutral Zone[52].

1.47 Certain Persian Gulf States also opened up their ports to allow the transportation of goods, which included both commercial and military items, to Iraq. It is well-known that the tonnage of goods passing through Kuwaiti

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48 Yearbook of the United Nations, Vol. 38, 1984, p. 236. Exhibit 23.

49 See, in general, Keesing's Contemporary Archives, 7 August 1981, pp. 31009-31010. Exhibit 25.

50 Ibid., p. 31010.

51 Keesing's Contemporary Archives, 10 December 1982, p. 31848, reports that by 1982 the loans had increased to U.S. $24,000 million. Exhibit 26.

52 Mehr, F.: "Neutrality in The Gulf War", Ocean Development and International Law, Vol. 20, No. 1, 1989, pp. 105-106. Exhibit 27.

ports during this period increased massively because of Kuwaiti aid to Iraq. Iraqi forces were also using Kuwait's Bubiyan island. Overflight and refuelling facilities also assisted Iraq in making its long-range attacks on Iranian oil installations in the southern Persian Gulf.

1.48 A number of these points, insofar as they concerned Kuwait, were borne out by a November 1987 Report to the U.S. Senate Committee on Foreign Relations, which stated explicitly that Kuwait had "chosen to serve as Iraq's entrepot and thus as its de facto ally[53]". The same Report noted that "from the beginning of hostilities ... Kuwait put aside its past differences with Iraq" and entered into a "'strategic marriage of convenience' with Baghdad[54]":

> "Kuwait permitted the use of its airspace for Iraqi sorties against Iran, agreed to open its ports and territory for the transshipment of war material (mostly of French and Soviet origin), and joined with the Saudis in providing billions of dollars in oil revenues to help finance the Iraqi war effort. In clear and unmistakable terms, Kuwait took sides[55]."

1.49 Despite the intensity of this provocation, Iran exercised considerable restraint. As noted above, from 1980-1984 Iran took no action of any kind against commercial shipping - indeed, it took positive steps to protect such shipping, by instigating its own protective convoy system and carrying out its own mine-sweeping operations[56]. In 1984, in particular after the adoption of Resolution 552, Iran was forced to take more effective defensive measures. However, Iran concentrated its efforts on its legitimate right of visiting and searching vessels. As a result of these efforts, suspected vessels were searched, and many were detained and their cargoes impounded when they were found to be trading in contraband[57]. Iran was eager to limit its actions to defensive

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53 See, "War in the Persian Gulf: The U.S. Takes Sides", a Staff Report to the Committee on Foreign Relations of the U.S. Senate, November 1987, 100th Congress, 1st Session, Washington, U.S. Government Printing Office, 1987, p. 27. Exhibit 28.

54 Ibid., p. 36.

55 Ibid., p. 37.

56 See, Keesing's Contemporary Archives, 10 December 1982, p. 31850. Exhibit 29.

57 See, Peace, D.L.: "Major Maritime Events in the Persian Gulf Between 1984 and 1991: A Juridical Analysis", Virginia Journal of International Law, Vol. 31, 1991, pp. 549-551. Exhibit 30. Again, this Exhibit is furnished simply to corroborate facts stated in this Memorial. Iran does not necessarily endorse the author's views on this subject or accept the accuracy of other facts stated by him.

measures aimed at deterring further support for Iraq. These steps were justified by the laws of war and neutrality and are supported in U.S. practice[58].

1.50 Starting in late 1986, after Iraq's position in the war started to deteriorate, the naval presence of several foreign powers, in particular the United States, increased in the Persian Gulf. By September 1987, there were some 60 foreign warships operating in the Persian Gulf (40 American and 20 British, French, Italian, Belgian and Dutch). While the proclaimed aim of these forces was to protect international shipping, no steps were taken to prevent Iraqi attacks on such shipping despite the fact that Iraq had started the tanker war and had dramatically increased the scale of its attacks.

1.51 As a result of this presence, more and more commercial vessels were encouraged by U.S. forces to refuse Iran's right of visit and search. These vessels relied on the presence of foreign forces or sailed in convoy under their direct protection. Although Iran's right of visit and search had previously been widely recognized, Iran was now being prevented from implementing it[59].

1.52 The presence of U.S. air and naval forces in the Persian Gulf also effectively prevented Iranian forces from carrying out normal operational activities. Iranian aircraft were intercepted on hundreds of occasions and the constant patrolling of U.S. naval forces, even in Iranian waters, prevented any significant naval activity[60]. This situation was particularly provocative in the case of the Kuwaiti oil tankers reflagged by the United States which from July 1987 sailed under the protection of U.S. naval convoys. These tankers were known by the United States to carry oil whose sales proceeds were one of Iraq's main sources of income, and were being used to support Iraq's war effort.

1.53 The reality of the situation was clearly seen by Senator Sam Nunn, Chairman of the Committee on Armed Services of the U.S. Senate, in his Report of 29 June 1987. Senator Nunn observed that -

> "... the challenges to freedom of navigation originate with Kuwait's ally Iraq. It is difficult to justify U.S. actions on this principle when

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58 See, Part IV below.

59 See, Peace, D.L.: op. cit., pp. 550-551 and 553-554. Exhibit 30.

60 These actions were the subject of constant protest by Iran. See, the U.N. Security Council Documents contained in Exhibit 31.

> America is indirectly protecting the interests of Iraq who started the 'tanker war' and who has conducted about 70 per cent of the ship attacks, including attacks on vessels of America's allies. ... The U.S. decision to protect Kuwaiti tankers is viewed in the region as a clear alignment with Iraq and its Gulf allies. Iran is certain to see Washington's commitment in these terms. Iran is not likely to acquiesce to a situation in which Iraq's war against Tehran's economic shipping and oil installations is unconstrained while Iran's ability to retaliate is frustrated by the United States[61]."

1.54 Iran's position is that, in the circumstances, the actions of its naval forces in the Persian Gulf were fully justified by the laws of neutrality and their validity is recognized in U.S. practice. For example, the U.S. Navy's Commander's Handbook on the Law of Naval Operations states that allegedly neutral vessels may be treated as enemy vessels, and thus legitimate targets, if they operate on behalf of the enemy or if they resist an attempt to establish identity, including visit and search[62]. Many vessels were effectively doing both.

1.55 Iran, however, had no interest in continuing the conflict in the Persian Gulf on which, unlike Iraq, it depended almost exclusively for its own trade. Iraq, on the other hand, in its desperate situation in 1986-1988, simply attacked vessels indiscriminately with any means at its disposal. The spread of the conflict to the Persian Gulf was entirely Iraq's doing, and in Iraq's interest because it threatened Iran's trade and brought western powers into the area. Iranian shipping and trade were by far the heaviest sufferers in the war[63].

1.56 The "tanker war" and Iran's alleged role in it became a propaganda tool for the United States to justify its stand in support of Iraq. Although the widening of the conflict into the Persian Gulf was regrettable, the danger was often greatly exaggerated. U.S. Government reports confirm that only 1 percent of shipping passing through the Persian Gulf during the conflict was affected and a much smaller percentage of shipping suffered any serious damage. U.S. sources also acknowledge that Iraq was responsible for well over 70

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61 26 I.L.M., 1464 (1987), at p. 1469. Exhibit 32.

62 See, Roach, J.A.: op. cit., pp. 599-600. Exhibit 13.

63 See, The Washington Post, 13 October 1987. Exhibit 14. This list shows Iranian ships as the second heaviest sufferer. However, a large majority of the vessels of other nationalities hit were engaged in trade with Iran.

percent of these incidents[64]. These figures, however, misrepresent Iran's role because they define as "attacks" incidents where Iran exercised its right to visit and search vessels and incidents involving vessels carrying illegal contraband[65].

1.57 Repeatedly the United States released stories about the situation in the Persian Gulf which blamed Iran but hardly mentioned Iraq's role. As one historian noted in reviewing the role of the U.S. forces in the Persian Gulf -

> "... the Iranians are the party most interested in keeping the [Persian] Gulf open to tankers. It has been Iraq, not Iran, that over the years has attacked and disrupted by far the most shipping, for the simple reason that Iran depends completely on the [Persian] Gulf and the Strait of Hormuz to export all its oil, while Iraq sends its oil abroad by pipeline. The United States could do far more to pacify the [Persian] Gulf, if that is what it really wants to do, by persuading Iraq to stop its attacks on Iranian shipping, which are what started and perpetuate the naval war in the [Persian] Gulf[66]."

## SECTION C The Approach of the Security Council to the Conflict and the Vindication of Iran's Defensive Posture

1.58 Iran's position throughout the war was that it was the subject of a continuing aggression by Iraq and that it was acting in self-defence. As will be shown below, Iran's position has now been fully vindicated.

1.59 There was no doubt at the time the conflict began that Iraq had committed an act of aggression against Iran. The facts were well-known and were brought to the attention of the international community. For example, in a speech in October 1980, President Jimmy Carter described the Iraqi forces as "intruders" and their actions as "aggression"[67]. In the same speech President

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64 See, Senator Nunn's Letter and Response to the Weinberger Report concerning the Administration's Security Arrangements in the Persian Gulf, dated 26 June 1987, in 26 I.L.M. 1464 (1987), at p. 1467. Exhibit 32.

65 It should be noted that "Iraq claimed more successful strikes than were confirmed independently" and that Iranian responsibility for attacks was often "surmised" rather than proved. See, Keesing's Contemporary Archives, Vol. XXXI, April 1985, p. 33560. Exhibit 33.

66 Keddie, N.R.: "Iranian Imbroglios: Who's Irrational?", World Policy Journal, Winter 1987-88, p. 46. Exhibit 34.

67 Keesing's Contemporary Archives, 7 August 1981, p. 31011. Exhibit 35.

Carter also recognized a U.S. obligation to "maintain Iran's territorial security and integrity"[68].

1.60 In Iran's view, such acts of aggression required the Security Council and the international community, as a priority, to take steps under Article 1 and Chapter VII of the Charter to assist Iran in suppressing the aggression. From the outset Iraq's actions should have been condemned and Iraq should have been held responsible for the damage and loss of life caused. As part of this process, the Security Council should have recognized the existence of an Iraqi aggression and taken action under Articles 39 and 40 of the Charter to bring it to an end. These were precisely the steps later to be so successfully insisted upon by both the United States and the international community after the Iraqi invasion of Kuwait.

1.61 The Security Council's first Resolution on the conflict, however, failed to take any of these actions. It failed to condemn Iraq's aggression; it failed even to recognize a breach of the peace under Article 39 of the Charter, referring merely to "the situation between Iran and Iraq", and while it called upon both States to refrain from the use of force, it did not demand the withdrawal of the invading Iraqi forces[69].

1.62 Brian Urquhart, then Under Secretary-General of the United Nations, described the Security Council's attitude in severe terms:

> "As it was, it was impossible to avoid the conclusion that the members of the Security Council, under strong Iraqi pressure, were sitting on their hands hoping that the Iraqi victory would be quick and total. This attitude, apart from being unprincipled, was based on a serious underestimate of the strength, both physical and psychological, of the Khomeini regime.
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> Waldheim, to his credit, called for Security Council consultations the day after the Iraqi invasion, and again two days later. These informal meetings dragged on in a depressing and undignified way, mostly late at night, as, under Iraqi pressure, the Council put off a public meeting or a vote on the war. The Security Council had seldom seemed less worthy of respect (...). When the Council finally did pass a resolution asking for a cease-fire, it did not

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68 Ibid.

69 Resolution 479 (1980) of 28 September 1980. Exhibit 24.

> demand the withdrawal of the invading Iraqi forces, thus ensuring that Iran would not take the Council seriously in the future[70]."

The Security Council's position did not substantially change until Resolution 598 of 20 July 1987. In its Resolutions during the intervening period, the Security Council constantly failed to acknowledge the existence of an Iraqi aggression or Iraq's responsibility for the conflict[71].

1.63 In Iran's view, the Security Council's failure to act resulted primarily from the United States' refusal to support passage of a Resolution condemning Iraq and its perception that the best course was to let the two States weaken each other in a protracted conflict. It was also Iran's view that if Iraq's aggression and its responsibility for the conflict was not recognized, and it was not recognized that there had been a breach of the peace, the Security Council's Resolutions could have limited value in resolving the conflict. Despite this, Iran made every effort to cooperate with positive steps to solve the dispute, in particular the special efforts taken by the Secretary-General of the United Nations. For example, in response to Resolution 582 (1986) Iran commented as follows:

> "Although unbalanced and inadequate on the whole issue of the war, the resolution was a positive step towards condemning Iraq as the aggressor and towards a just conclusion to the war ... [Iran] was prepared to continue cooperating with the Secretary-General in matters relating to the rules of international law and to his 1985 eight-point plan, as well as to prevent the expansion of the war and involvement of other countries in it.[72]"

1.64 The Security Council having determined in 1987 "that there exists a breach of the peace as regards the conflict between Iran and Iraq", Resolution 598 of 20 July 1987 was the first concerning the conflict to be adopted under Articles 39 and 40 of the Charter[73]. However, there was still no condemnation of Iraq, nor even a recognition of an act of aggression. The Resolution simply called for an immediate cease-fire and a withdrawal to internationally recognized boundaries. The only concession to Iran was

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70 Urquhart, B.: A Life in Peace and War, London, Weidenfeld and Nicolson, 1987, pp. 324-325. Exhibit 36.

71 See, Exhibit 24.

72 This précis of Iran's statement is taken from the Yearbook of the United Nations, Vol. 40, 1986, p. 220. Exhibit 37.

73 See, Exhibit 24.

paragraph 6 which requested the Secretary-General "to explore, in consultation with Iran and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict and to report to the Security Council as soon as possible"[74].

1.65 Resolution 598 had apparently been negotiated with Iraq by the United States before it was passed. Several reports from U.S. Government sources state that the then Assistant Secretary of State for Near East Affairs, Richard Murphy, met with President Saddam Hussein in Baghdad on 11 May 1987 and assured him that the United States would press for a resolution that Iran would find unacceptable, and then urge a mandatory U.N. arms embargo[75]. The United States, knowing full well that Iran would find this unacceptable, had also made it clear in negotiating the Resolution that it would not accept any language that named Iraq as the aggressor[76]. No such negotiations took place with Iran.

1.66 As a result of these circumstances, Iran was strongly critical of Resolution 598. In failing to refer to Iraq's aggression and stating simply that "there exists a breach of peace", the Resolution implicitly left open the possibility that Iran was in some way responsible for the conflict. Given the enormous sacrifice already exacted from the Iranian people by Iraq's aggression, and the continuing nature of that aggression, this implication was clearly unacceptable. However, contrary to what was alleged at the time by both Iraq and the United States, Iran did not reject the Security Council's initiative outright.

1.67 In its statement of its official position on Resolution 598 made to the Security Council on 11 August 1987, Iran made this clear[77]. It pointed out that the Resolution could not take immediate effect - the cease-fire obligation had already been violated by Iraq on several occasions since the adoption of the Resolution. It requested the immediate formation of a commission to determine responsibility for the conflict under paragraph 6 of the Resolution, a request which was dismissed by Iraq. It also stressed the need for

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74 See, Exhibit 24.

75 The Washington Post, 30 May 1987, reported a briefing by Murphy to this effect. Exhibit 38. See, also, Sick, G.: op. cit., p. 240. Exhibit 9.

76 Sick, G.: op. cit., p. 240. Exhibit 9.

77 Letter dated 11 August 1987 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (S/19031). Exhibit 39.

further negotiations with the Secretary-General on the implementation of other parts of the Resolution[78].

1.68 The Secretary-General himself was careful to point out that "with the adoption of the resolution, the work of achieving an Iran-Iraq settlement had just begun[79]". Negotiations with the Secretary-General to reach such a settlement continued throughout 1987.

1.69 Iran made further steps towards peace in 1988. In statements by the Foreign Minister of Iran, and in letters to the Secretary-General, Iran stated its readiness to accept Resolution 598 and gave its acceptance to the Secretary-General's implementation plan for a cease-fire, which was described as tantamount to the acceptance of Resolution 598[80]. Once again, however, it was Iraq which flouted the Security Council's Resolution by dramatically escalating the war with a massive Scud missile attack on Iranian cities on 29 February 1988. As one knowledgeable observer of the situation reported:

> "A total of more than 100 such missiles [i.e., Scuds] were fired in the following two weeks at Tehran, Qom, and Isfahan, together with extensive bombing raids against 37 Iranian cities, decisively ending any opportunity to test the Iranian offer of a negotiated cease-fire[81]".

1.70 Although it regarded Resolution 598 as unjust and unfair, Iran ultimately accepted its conditions in order to bring the war to an end. Thus, Iran unconditionally agreed to a cease-fire on 18 July 1988.

1.71 Although Iraq had previously claimed that it would abide by Resolution 598, it refused to accept the cease-fire and continued its attacks against Iran, making further incursions into Iranian territory and occupying even larger areas than it had been able to occupy in its September 1980 invasion[82].

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78 See, also, Sick, G.: op. cit., at pp. 240-241. Exhibit 9.

79 Yearbook of the United Nations, Vol. 41, 1987, p. 223. Exhibit 40.

80 These events are related in Sick, G.: op. cit., pp. 240-241. Exhibit 9. See, also, Malcki, A.: "Iran, Iraq and the U.N. Security Council", The Iranian Journal of International Affairs, Vol. I, No. 4, Winter 1989/90, at pp. 380-381. Exhibit 41.

81 Sick, G.: op. cit., p. 241. Exhibit 9.

82 Ibid., pp. 242-243.

Even in early August, Iraq launched a chemical attack on the Iranian town of Oshnoviyeh which caused many civilian casualties[83]. It was not until 20 August 1988 that a cease-fire was finally agreed with Iraq.

1.72 For eight years, Iran's position was that the war had been imposed upon it by Iraq and that Iraq was wholly responsible for the resulting aggression. Yet it was not until Security Council Resolution 598 was enacted in 1987 that the Secretary-General was even asked -

> "... to explore, in consultation with Iran and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict and to report to the Security Council as soon as possible[84]".

1.73 As a result of investigations carried out in implementation of Resolution 598, the Secretary-General issued a Report on 9 December 1991 which placed full responsibility for the entire conflict on Iraq. The Report began by noting that -

> "... the war between Iran and Iraq, which was going to be waged for so many years, was started in contravention of international law, and violations of international law give rise to responsibility for the conflict[85]".

It went on to note that the specific concern of the international community in this context was "the illegal use of force and the disregard for the territorial integrity of a Member State[86]".

1.74 The Report then gave its finding that the "outstanding event" under these violations was -

> "... the attack of 22 September 1980 against Iran, which cannot be justified under the Charter of the United Nations, any recognized rules and principles of international law or any principles of

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83 Ibid., p. 243. See, also, the Report of the Mission dispatched by the U.N. Secretary-General. Exhibit 12.

84 Resolution 598 (1987) of 20 July 1987, paragraph 6 (emphasis added). Exhibit 24.

85 Further Report of the Secretary-General on the Implementation of Security Council Resolution 598 (1987), 9 December 1991 (S/23273), para. 5. Exhibit 42.

86 Ibid.

international morality and entails the responsibility for the conflict[87]".

The Report pointed out that Iraq's explanations for its actions on 22 September 1980 "do not appear sufficient or acceptable to the international community" and added that Iraq's aggression against Iran "which was followed by Iraq's continuous occupation of Iranian territory during the conflict" was "in violation of the prohibition of the use of force, which is regarded as one of the rules of jus cogens"[88]. Iran's position, therefore, was fully vindicated, even if eleven years after the conflict began.

## CHAPTER III U.S. POLICIES AND ACTIONS DESIGNED TO SUPPORT IRAQ AND TO FRUSTRATE IRAN'S DEFENSIVE MEASURES

### SECTION A U.S. Obligations Under International Law

1.75 As the preamble to the General Declaration states, the Algiers Declarations had peacefully resolved the crisis in the relations between the United States and Iran. As a result, in the context of the war imposed on Iran by Iraq, there was no barrier to U.S.-Iranian relations. To the contrary, the United States had both general and special duties to Iran under international law. Its general duties under customary international law arising as a result of Iraq's aggression included, as a minimum standard, the duty of impartiality imposed by the laws of neutrality. Publicly, the United States declared itself to be neutral in the conflict. As late as 23 May 1988, the United States affirmed to the Security Council that it was "neutral in the conflict between Iran and Iraq, and will remain so[89]". The United States had similar obligations pursuant to the Security Council's Resolutions. The Security Council's first Resolution concerning the war called upon "all other States to exercise the utmost restraint and to refrain from any act which may lead to a further escalation and widening of the conflict"[90]. Virtually identical language was used by the Security Council in Resolution 598 of

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87 Ibid., para. 6.

88 Ibid., para. 7 (emphasis added).

89 Letter dated 23 May 1988 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (S/19896). Exhibit 43.

90 Resolution 479 (1980) of 28 September 1980. Exhibit 24.

20 July 1987 adopted under Articles 39 and 40 of the Charter. At a very minimum, this language imposed upon third States a duty of impartiality.

1.76 As the victim of armed aggression, Iran took the view that under the principles embodied in the U.N. Charter, the international community, including the United States, also had the duty to assist the victim of the aggression and to condemn the aggressor. Moreover, action should have been taken under the auspices of the Security Council, and against the aggressor, and not by individual States acting as "world policemen". Following Iraq's invasion of Kuwait, the United States itself publicly adhered to such views and was at pains to justify all its subsequent actions against Iraq, the aggressor in that conflict, on the basis that prior Security Council approval had been obtained.

1.77 As will be shown below, the United States fulfilled neither of these obligations in the Iran-Iraq conflict. It openly supported Iraq in violation of the laws of neutrality. It also repeatedly violated the U.N. Charter, taking unilateral actions, including the use of force, against the victim of the aggression, Iran, and actively supporting the aggressor - the opposite of its stance in relation to Iraq's later invasion of Kuwait. Needless to say it never sought prior Security Council approval for any of its actions.

1.78 The United States also had special bilateral obligations to Iran under both the Algiers Declarations and, of direct concern here, the Treaty of Amity. As mentioned earlier, in Point I of the General Declaration made in Algiers, the United States pledged "not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs". The U.S. obligations under the Treaty of Amity will be discussed in detail in Part III below. However, it must be clear that the existence of special provisions relating to amity, peace and friendship with Iran, provisions not existing between the United States and Iraq, imposed upon the United States, as a minimum, a strict duty of impartiality in the conflict.

1.79 It is not necessary to consider in detail the substance of these obligations because on any reading the U.S. Government openly violated them and has admitted doing so. As will be shown below, the United States tilted towards Iraq throughout the conflict. The period most relevant to this dispute, 1987-1988, saw an unprecedented degree of support for Iraq by the United States, and specific actions, including the use of force, taken against Iran.

## SECTION B The United States' Support for Iraq

1.80 In order to understand the U.S. attacks against Iran's oil platforms, it is necessary to view them against the background of U.S. support for Iraq and its determination that Iran should not emerge as victorious in the war. The United States' support for Iraq was diplomatic, political, economic and military. Caspar Weinberger, then U.S. Secretary of Defense, made clear that, while "official policy was to remain neutral", there was a hidden agenda of support for Iraq[91]. For his part, Henry Kissinger bluntly stated that:

> "The Reagan and Bush administrations supported Iraq against Iran[92]."

1.81 U.S. actions show clear support for Iraq. On the diplomatic and political side, the United States took Iraq off its list of nations supporting terrorism in March 1982 despite the fact that, according to the Defense Department's Director for Counter-Terrorism, there was no doubt about Iraq's continued involvement in terrorism[93]. The real reason for this action "was to help [Iraq] succeed in the war against Iran"[94]. The United States also renewed full diplomatic relations with Iraq in November 1984. Several high level political missions were sent to Iraq during the course of the conflict, and in the United Nations and the international community generally the United States showed its support for Iraq[95].

1.82 On the economic front, the United Sates removed sanctions against Iraq, with the result that trade between the two countries boomed during the conflict. The United States also authorized substantial loans to Iraq. Much of this economic help was of indirect military significance. Goods sold to Iraq were

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91 See, Weinberger, C.W.: Fighting for Peace, Warner Books, 1990, p. 358. Exhibit 44.

92 Newsweek, 1 February 1993, p. 12. Exhibit 45.

93 See, The Washington Post, 16 September 1990. Exhibit 46.

94 Ibid.

95 Ibid. See, also, Sick, G.: op. cit., p. 240. Exhibit 9.

often "dual-use" meaning that they could be used for military purposes. Loans could be used to purchase arms[96].

1.83 There was also specific military help in the form of intelligence-sharing agreements, under which the United States gave Iraq military intelligence to assist it in its pursuit of the war[97]. These facts are confirmed both by newspaper reports - in particular The Washington Post article of 16 September 1990 which appears as Exhibit 46 - as well as by U.S. Government documents[98].

1.84 In 1987, when there was a real fear that Iraq might lose the war, the United States increased its military presence in the Persian Gulf, reflagged Kuwaiti tankers, and increased its diplomatic and military contacts with Iraq[99]. It was also in 1987 that the United States increased the severity of its economic sanctions against Iran and conducted its first attacks on Iranian forces.

1.85 In itself, the increased presence of U.S. forces in the Persian Gulf could only support Iraq and frustrate the defensive measures being taken by Iran. In the circumstances, the reflagging of Kuwaiti tankers was a purely political step taken by the United States aimed solely at assisting Iraq. As many authorities have noted, it also allowed the United States to fulfil its long-term strategy of increasing its military presence in the Persian Gulf and gaining access to bases and other facilities in Persian Gulf States. Even within U.S. Government circles these steps were subject to severe criticism[100].

## SECTION C U.S. Actions Against Iran

1.86 Once again, it is appropriate to consider the U.S. attacks against Iran's oil platforms as demonstrating the increasingly aggressive attitude

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96 The Washington Post, 16 September 1990. Exhibit 46.

97 Ibid.

98 See, for example, Congressional Record - House of Representatives, 9 March 1992, H1109. Exhibit 47.

99 See, for example, the report in The Washington Post, 30 May 1987, of the meeting on 11 May 1987 in Baghdad between U.S. Assistant Secretary of State for Near East Affairs, Richard Murphy, and President Saddam Hussein. Exhibit 38.

100 See, Senator Nunn's Letter and Report in Response to the Weinberger Report concerning the Administration's Security Arrangements in The Persian Gulf, dated 29 June 1987, 26 I.L.M. 1464 (1987). Exhibit 32.

of the United States towards Iran, which contrasted sharply with the posture adopted towards Iraq. Unlike the situation between the United States and Iraq, the United States had no diplomatic relations with Iran. Moreover, U.S. economic sanctions against Iran increased in severity as the war continued. Thus, although the United States had withdrawn its sanctions against Iran pursuant to the Algiers Declarations, these were immediately reimposed (at least with respect to military items) by the Reagan Administration. During the war the United States was to extend the scope of these sanctions to virtually all economic goods. The United States also sought to convince the Security Council to adopt a U.N. sponsored arms embargo against Iran. Although this effort failed, from 1983 onwards the United States exercised its own unilateral embargo, called "Operation Staunch", which was designed to prevent arms or dual use equipment from anywhere in the world reaching Iran[101].

1.87 While the United States adopted a hostile and provocative attitude towards Iran, not least by the open assistance to Iraq described above, direct action was also taken against Iran. On hundreds of occasions, U.S. military forces violated Iran's territorial sovereignty, infringed its airspace and intercepted its aircraft and naval vessels. These actions prompted Iran to lodge repeated protests with the Secretary-General of the United Nations by Iran[102]. The United States consistently violated Iran's defence exclusion zone and conducted a number of direct attacks against Iran culminating in the attacks of October 1987 and April 1988.

1.88 On numerous occasions, Iran had reason to believe that the United States actively supported Iraqi attacks either by jamming Iranian communications, assisting Iraqi planes in finding targets, or timing U.S. attacks to coincide with Iraqi offensives[103]. The April 1988 attacks on the Salman and Nasr oil platforms, which resulted in the destruction of those platforms and, according

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101 See, Weinberger, C.W.: op. cit., pp. 421-424. Exhibit 44.

102 See, Exhibit 31.

103 Electronic jamming occurred on several occasions. See, for example, the statement by Iran's War Information Spokesman on 17 December 1987. Exhibit 48. See, also, the letter dated 10 May 1988 from the Charge d'Affaires A.I. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (S/19874), included in Exhibit 31.

to the United States, the destruction of half the Iranian navy, occurred simultaneously with one of the most important Iraqi offensives of the war[104].

1.89 The United States openly acknowledged its support for Iraq. In July 1987, a U.S. spokesman admitted that the United States had "an important stake in Iraq's continuing ability to sustain its defences"[105]. Vice-President Bush admitted at the time that the United States was looking for means "to bolster Iraq's ability and resolve to withstand Iranian attacks[106]".

1.90 The U.S. Assistant Secretary of Defense at the time, Laurence Korb, was even more explicit, stating in an interview on CNN on 2 July 1992 that -

> "... when the United States went into the [Persian] Gulf it was not simply just to escort Kuwaiti tankers. We wanted to ensure that Iran did not win that war. In other words, we became de facto allies of Iraq[107]."

Bearing in mind the scale of Iraq's aggression, Assistant Secretary Korb noted the "great irony" in this policy:

> "The great irony was [that] Iraq was destroying many more ships trying to get out of the [Persian] Gulf than Iran was at that time. But when we went in, we wanted to ensure that Iran didn't win that war from Iraq. That was our real objective, and so we were doing a lot of things to ensure that we could teach the Iranians a lesson[108]."

1.91 Fear of an Iranian victory was not the only motivation for U.S. policy. The United States also believed that its aim of increasing its military presence in the Persian Gulf was best served by supporting Iraq. To this end, the United States was willing to risk its naval forces in the conflict.

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104 See, para. 1.129 below.

105 Department of State Bulletin, July 1987, p. 66. Exhibit 49.

106 Congressional Record - House of Representatives, 2 March 1992, H 860. Exhibit 50.

107 Interview with Laurence Korb, Former Assistant Secretary of Defence, on CNN's Larry King Live, 2 July 1992. An extract from the transcript of this interview is included in Exhibit 51.

108 Ibid.

1.92 Another great irony of U.S. policy, with tragic consequences, occurred when U.S. forces were subject to an Iraqi attack. On 17 May 1987, the Stark, a U.S. guided-missile frigate, was patrolling in international waters in the Persian Gulf, hundreds of miles from Iraq's declared exclusion zone, when it was hit by an Exocet missile fired from an Iraqi F-1 Mirage fighter (see, Map 3, facing this page). The damage to the vessel was extensive and 37 sailors died. The attack was successful apparently only because the U.S. captain assumed the Iraqi plane to be friendly and thus had not placed his crew on standby[109].

1.93 The U.S. response to this attack was a measure of restraint. Diplomatic means were pursued to settle the dispute, compensation was requested from Iraq, and steps were taken to find ways of preventing the recurrence of similar incidents[110]. As will be seen below, U.S. reaction to alleged Iranian attacks was markedly different. Iranian forces were automatically treated as hostile and no such restraint was shown despite the fact that, according to U.S. Government officials and military personnel, Iranian forces were highly professional, showed a clear desire to avoid confrontation with U.S. forces and, in any event, lacked the sophisticated weaponry to make an attack of the kind made by Iraq against the Stark[111].

1.94 On 20 July 1987, Resolution 598 was passed. It will be recalled that this Resolution called upon third States to exercise the utmost restraint and to refrain from any act which might widen the conflict. Four days later, on 24 July the first U.S. convoy protecting the reflagged Kuwaiti tankers

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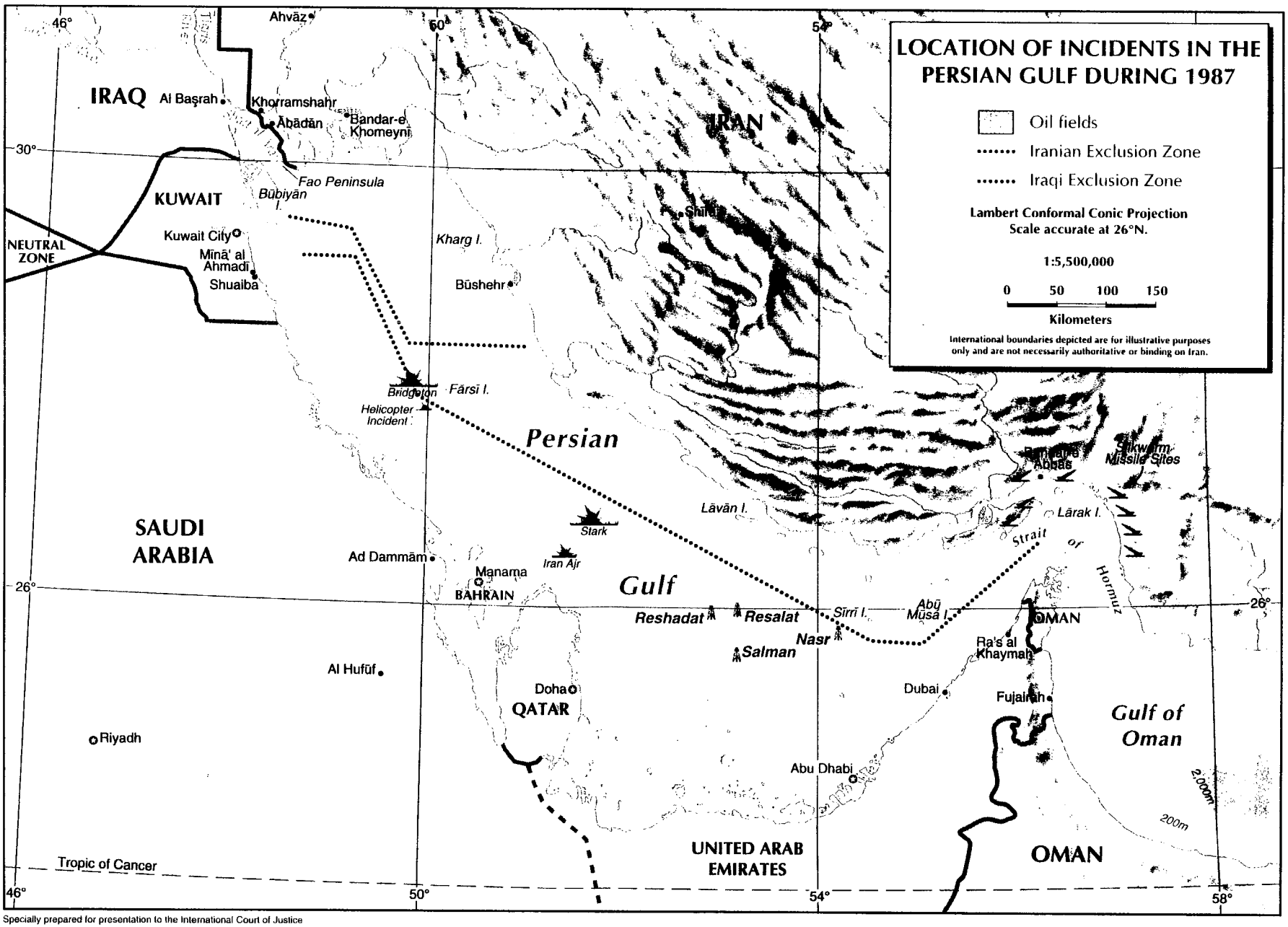
109 New York Times, 20 May 1987. Exhibit 52.

110 See, the letter from Secretary of State, George Schultz, to Congress, dated 20 May 1987, Department of State Bulletin, July 1987, published in 26 I.L.M. 1425 (1987). Exhibit 53.

111 Former U.S. Secretary of Defense, Caspar Weinberger, stated that Iranian forces demonstrated "a decided intent to avoid American warships" (Weinberger, C.W.: op. cit., at p. 401. Exhibit 44). Another U.S. official noted in May 1987 that "Iran has been careful to avoid confrontations with U.S. flag vessels", and that "Iran lacks the sophisticated aircraft and weaponry used by Iraq in the mistaken attack on the U.S.S. Stark" (Department of State Bulletin, July 1987, p. 60. Exhibit 54). The Commander of the U.S.S. Sides, Commander Carlson, who was stationed in the Persian Gulf during the Iran-Iraq war, commented that the conduct of Iranian military forces was "pointedly non-threatening", and that they were "direct and professional in their communications" (Proceedings/Naval Review, September 1989, p. 87. Exhibit 55).




Map 3

Specially prepared for presentation to the International Court of Justice

began its voyage. In the circumstances, this was just one more action showing that Resolution 598 was not respected by all countries[112].

1.95 On the first convoy, one of the reflagged tankers, the U.S.S. Bridgeton, hit a mine off Farsi Island in the northern part of the Persian Gulf (see, Map 3, facing page 38). There were no casualties and the vessel suffered only slight damage, allowing it to continue its voyage[113]. The United States was uncertain of the provenance of the mine[114]. Iran had laid no mines in the area where the Bridgeton was struck. Indeed, it is most probable from the nature of the damage inflicted on the Bridgeton that it was struck by a sophisticated seabed mine which is very difficult to detect, unlike the old, anchored floating mines. Iran had no such sophisticated mines; however, Iraq did.

1.96 On 10 August 1987, a supertanker carrying Iranian oil was struck by a mine off the port of Fujairah, and further mines were discovered during August. Iran protested this act[115]. An Iranian spokesman acknowledged that Iran had laid defensive mines, but was clear in denying all responsibility for the mines found off Fujairah and in the shipping lanes leading to Kuwait[116]. Iran had laid mines in Khor Abdullah in the northern part of the Persian Gulf in the channel north of Bubiyan island in order to protect Iranian forces on the Fao peninsula from encirclement by sea (see, Map 5, facing page 42). As already noted, Iranian shipping would have been at risk from mines laid anywhere else in the Persian Gulf and it was for this reason that Iran carried out extensive mine-sweeping activities throughout the conflict.

1.97 Apart from these incidents involving mining, the latter half of 1987 saw a number of incidents in which U.S. forces carried out attacks against Iranian vessels. On 21-22 September 1987, U.S. forces attacked an Iranian landing craft, the Iran Ajr, alleged to be laying mines in international waters in the Persian Gulf north-east of Bahrain (see, Map 3, facing page 38). There were

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112 For this reason, Iran does not deem it necessary to consider at this stage the question of the legality or illegality of the United States' reflagging.

113 New York Times, 25 July 1987. Exhibit 56.

114 The Financial Times, 12 August 1987. Exhibit 57.

115 Yearbook of the United Nations, Vol. 41, 1987, p. 235. Exhibit 58.

116 The Washington Post, 21 August 1987. Exhibit 59.

several casualties and the vessel was subsequently destroyed. The United States justified its actions as self-defence in a letter to the Security Council[117]. Iran has always denied that the Iran Ajr was involved in any illegal activity[118]. The Iran Ajr was a commercial vessel on charter to the Iranian navy, and was carrying mines from Bandar Abbas to Bandar Khomeini. The mines were to be used for defensive purposes around Khor Abdullah north of Bubiyan island. It was travelling in the southern part of the Persian Gulf because nearly all Iranian vessels used the main shipping lane on the southern side of the Gulf in the hope of avoiding Iraqi attack - any vessels found close to Iran's shore were obvious targets for Iraq. The Iran Ajr was not engaged in laying mines when attacked. Indeed, a landing craft of that kind is incapable of laying mines. As the mines being carried were to be used for defensive purposes, this attack was wholly unjustified.

1.98 The United States' aim in alleging that it had caught Iran red-handed in the act of laying mines was apparently to seek to embarrass Iran on the eve of President Khamenei's speech to the General Assembly of the United Nations and to diminish the impact of his speech. In fact, all the mines were still on board when the vessel was searched by U.S. forces, after the crew had complied with their requests to search the vessel. No evidence that the Iran Ajr had been laying mines was ever produced by the United States. After taking pains to destroy the vessel, the United States subsequently admitted that it had no photographs of the alleged minelaying[119]. In such circumstances, and after the crew of the Iran Ajr had submitted to U.S. requests, the United States had no possible reason or right to attack and then destroy the vessel.

1.99 On the night of 8 October 1987, U.S. helicopters attacked and sank three Iranian patrol boats near Farsi Island (see, Map 3, facing page 38). The United States again stated that it acted in self-defence, alleging that one

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117 Letter dated 22 September 1987 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/19149). Exhibit 60.

118 Letter dated 26 September 1987 from the Chargé d'Affaires A.I. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (S/19161). Exhibit 61.

119 Ibid.

of the Iranian boats had earlier fired on a helicopter[120]. This allegation is denied by Iran. There were no U.S. casualties and no evidence that the U.S. helicopter had been hit in any way[121].

1.100 It was in these circumstances of U.S. aggression towards Iran that the attacks on the platforms occurred. They are considered below in Chapter IV.

## CHAPTER IV THE ATTACKS OF OCTOBER 1987 AND APRIL 1988

### SECTION A The October 1987 Attack on the Reshadat Platforms

#### 1. The status of the platforms prior to the attacks

1.101 The Reshadat and Resalat platforms and facilities are described at paragraphs 1.14-1.15 above. Iraq considered these platforms as vital economic targets[122]. Reshadat was first attacked in October 1986. Reshadat and Resalat were attacked by Iraq again in July 1987. Further Iraqi attacks occurred in August 1987[123]. Although the platforms had not been producing oil immediately prior to the U.S. attacks due to damage inflicted by Iraq, repair work was close to completion when the U.S. attacks put both platforms out of action.

1.102 At the time of the U.S. attacks there were 9 low-ranking naval personnel on the Reshadat platforms. There were also a number of civilians, primarily employees of the Iranian Offshore Oil Company, responsible for carrying out the repair work. The 9 naval personnel were armed with one 23mm. machine gun, stationed on the R7 complex. Their role was purely defensive and the 23mm. gun was exclusively a defensive weapon[124]. The naval personnel had means of communication with Lavan Island's defensive operating

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120 Letter dated 9 October 1987 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/19194). Exhibit 62.

121 The Washington Post, 9 October 1987. Exhibit 63. The New York Times, 9 October 1987. Exhibit 64.

122 Dow Jones News Wire, 14 July 1987. Exhibit 65.

123 For details of Iraqi attacks, see, Exhibit 66.

124 The effective vertical range of this gun is 2,500 metres. It was for use only against approaching Iraqi attack by air.

station and acted as look-outs for Iraqi planes flying low to avoid radar detection which were reported to Lavan Island.

1.103 No other military use was made of the platforms. Various allegations have been made by the United States that these platforms were used for mining operations or for refuelling helicopters which were allegedly involved in attacks on neutral shipping. These allegations are totally false. It is impossible to use these platforms for mining and far too dangerous to keep fuel or mines on the platforms. Nor is it possible to use these platforms as bases for small boat attacks.

### 2. The attacks, the damage caused and the reactions of the Parties

1.104 On 16 October 1987, the Sea Isle City, a Kuwaiti tanker reflagged by the United States, was hit by a missile while in Kuwaiti territorial waters some 5 miles off the Kuwaiti terminal at Shuaiba (see, Maps 4 and 5, facing this page)[125]. As will be shown below, the U.S. attempted to justify its attack of 19 October 1987 on the Reshadat platform as a retaliation for the attack on the Sea Isle City. It was alleged that this ship was hit by a Silkworm missile fired from Iranian-held territory on the Fao peninsula.

1.105 Iran did not fire a Silkworm at the Sea Isle City. As much publicized U.S. reports repeatedly asserted at the time, Iran's Silkworms were positioned in the Strait of Hormuz, hundreds of miles to the south[126]. It was precisely the alleged Silkworm threat in the Strait of Hormuz area that the United States used to justify its increased military presence in the Persian Gulf. The area of Iranian-held territory on the Fao peninsula was in any event too far from Kuwait harbour for shipping in that area to be reached by a Silkworm, as can be seen from Map 5. The maximum effective range of a Silkworm is about 85

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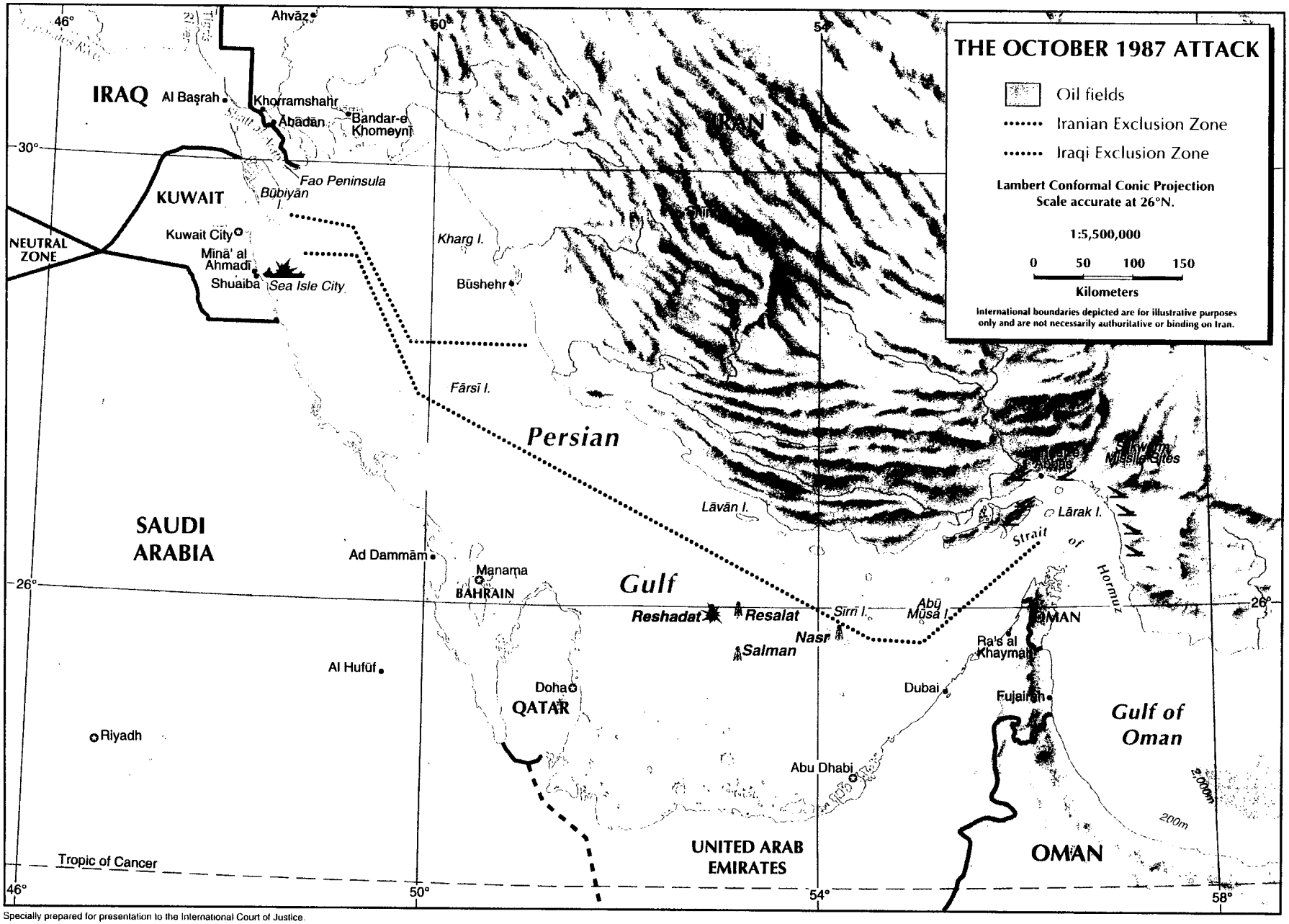
125 Iran has reason to believe that the Sea Isle City was stationed even further south than alleged by the United States and Kuwait. However, for the purposes of showing that it was out of range of Iranian Silkworms, even if Iran had had Silkworms on Fao, Iran will assume that the location given by U.S. and Kuwaiti sources off the port of Shuaiba is accurate.

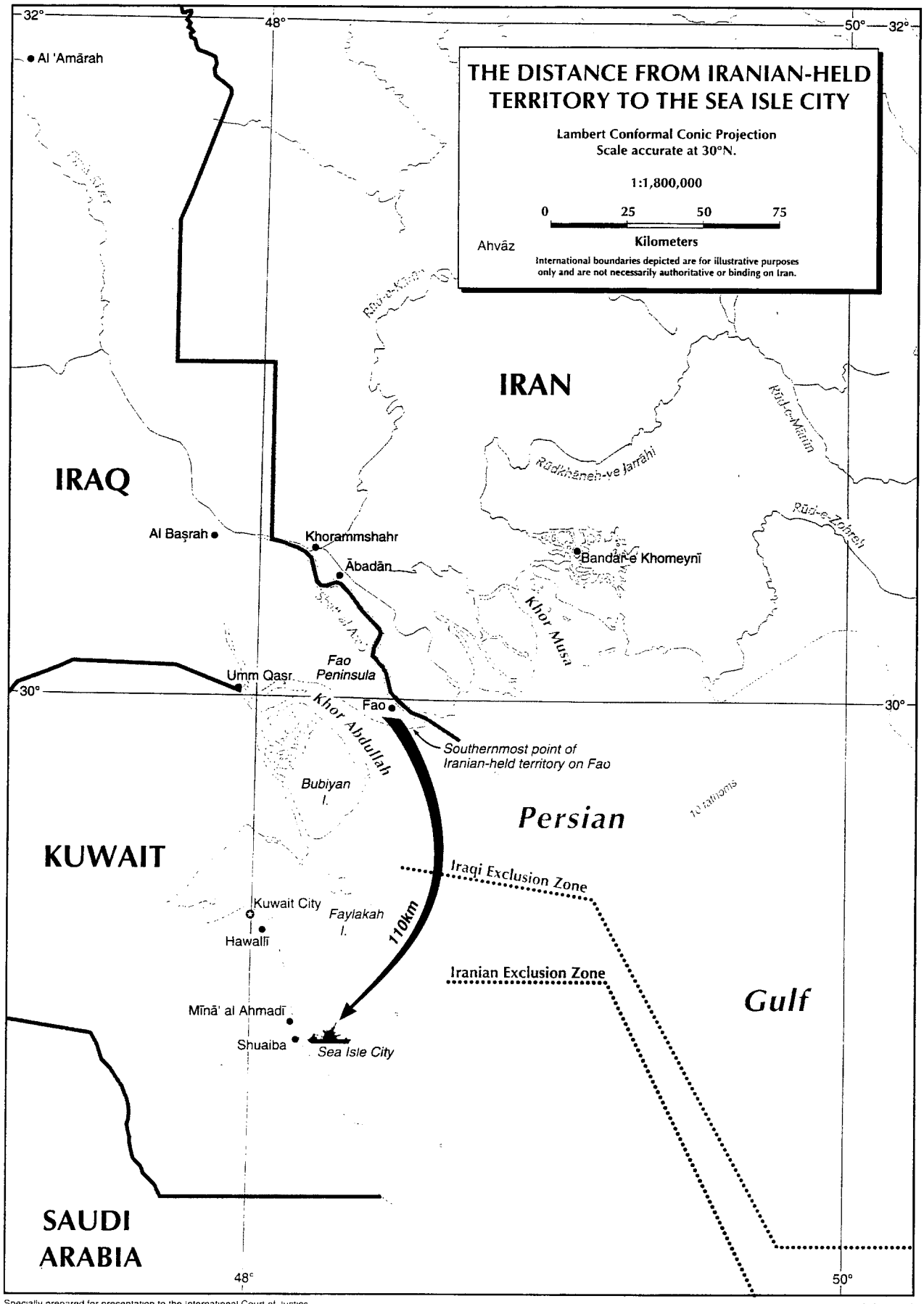
126 In October 1987, at exactly the same time as the United States' alleges that Iran fired a Silkworm from Fao, the U.S. Department of State published a map showing Iran's Silkworm missiles positioned in the Strait of Hormuz. Department of State Bulletin, October 1987, p. 43. Exhibit 67.




Map 4

Specially prepared for presentation to the International Court of Justice.

(the distance from Sea Isle City to the Reshadat oil platform is approximately 565 km)




Specially prepared for presentation to the International Court of Justice

Map 5

kilometres[127]. The Sea Isle City was at a distance of almost 110 kilometres from Iranian-held territory when it was struck. Only Iraq, which, unlike Iran, had Silkworms which could be fired from aircraft, was in a position to fire this missile. One can only surmise that this attack was either a case of mistaken identity or one of the many attempts by Iraq to internationalize the conflict by pressurizing the Persian Gulf States to redouble their efforts against Iran. Similar Iraqi attacks on vessels of "friendly" States had occurred throughout the conflict and these included Silkworm attacks. For example, The Washington Post of 4 July 1988 reported incidents in February of that year in which -

> "Iraqi bombers on successive nights dropped air-launched Silkworm missiles. One of them crashed into a fully loaded Danish supertanker that had just left the port of Iraq's ally, Saudi Arabia. Two other Silkworms dropped the following night roared past a U.S.-led convoy of reflagged Kuwaiti tankers before they crashed into the sea. Kuwait is also an Iraq ally.[128]"

1.106 The United States made no formal attempt to ascertain reponsibility for the attack on the Sea Isle City as it had done after the Stark incident. Instead, three days later, on the morning of 19 October 1987, it launched an attack on the Reshadat platforms, at the other end of the Persian Gulf. By this time, full consultation had taken place in the United States, with Presidential approval, as to the nature of the U.S. retaliation[129]. The attack was carefully planned and involved a massive use of force. It was carried out by four U.S. naval destroyers, the Young, Hoel, Kidd and Leftwich. Support was provided by the frigate, U.S.S. Thach, the guided missile cruiser, U.S.S. Standley, two F-14 fighters and an E2C Hawkeye surveillance plane[130]. In contrast, it will be recalled that the platforms were manned only by 9 Iranian navy personnel with one 23mm. machine gun.

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127 Ibid.

128 Exhibit 68.

129 See, The Washington Post, 20 October 1987 (Exhibit 69), which reported that the decision to attack the platforms was made after hours of high-level debate on 16 and 17 October 1987, and that President Reagan decided late on 17 October that the Reshadat platforms would be the target. See, also, President Reagan's letter to Congress dated 20 October 1987 where Reagan stated that "These ... actions by U.S. forces were taken ... at my specific direction". Exhibit 70.

130 See, The Washington Post, 20 October 1987. Exhibit 69.

1.107. The U.S. attack began in the early afternoon and was focussed on the R7 complex. As already explained, this complex gathered oil from all wells serving the Reshadat and Resalat fields before pumping it to Lavan Island. Destruction of the R7 complex thus made production from both fields impossible.

1.108 According to U.S. reports, the 4 destroyers began pounding the platforms with gunfire, and 2 minutes later flames engulfed the structure. The ships went on firing for at least 45 minutes. Fire consumed the northern part of the structure. The southern part, however, was not destroyed by the fire, and so the Navy "decided to finish that off" using dynamite planted by a Navy boarding team[131]. The destruction was total. A Pentagon spokesman, Fred Hoffman, said that when the demolition team had finished, "all that remained was three pilings sticking up out of the water"[132]. Briefing reporters, White House spokesman Marlin Fitzwater said that the ships demolished "the two platforms at one location" and that "both collapsed"[133]. Photographs of the complex before and after the attack are shown following this page.

1.109 During the attack, U.S. military personnel claim to have noticed boats taking people off another platform (R4, also part of the Reshadat complex) about 5 nautical miles north of the R7 platform[134]. After the R4 platform was abandoned, U.S. Navy commandos went aboard, destroyed its equipment and left[135]. Pentagon spokesman, Fred Hoffman, said that this incident had not been planned with the other attack, but rather called this platform a "target of opportunity"[136].

1.110 The official U.S. justification for the attacks was given in two statements, one made by President Reagan to the U.S. Congress, the other made

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131 Ibid..

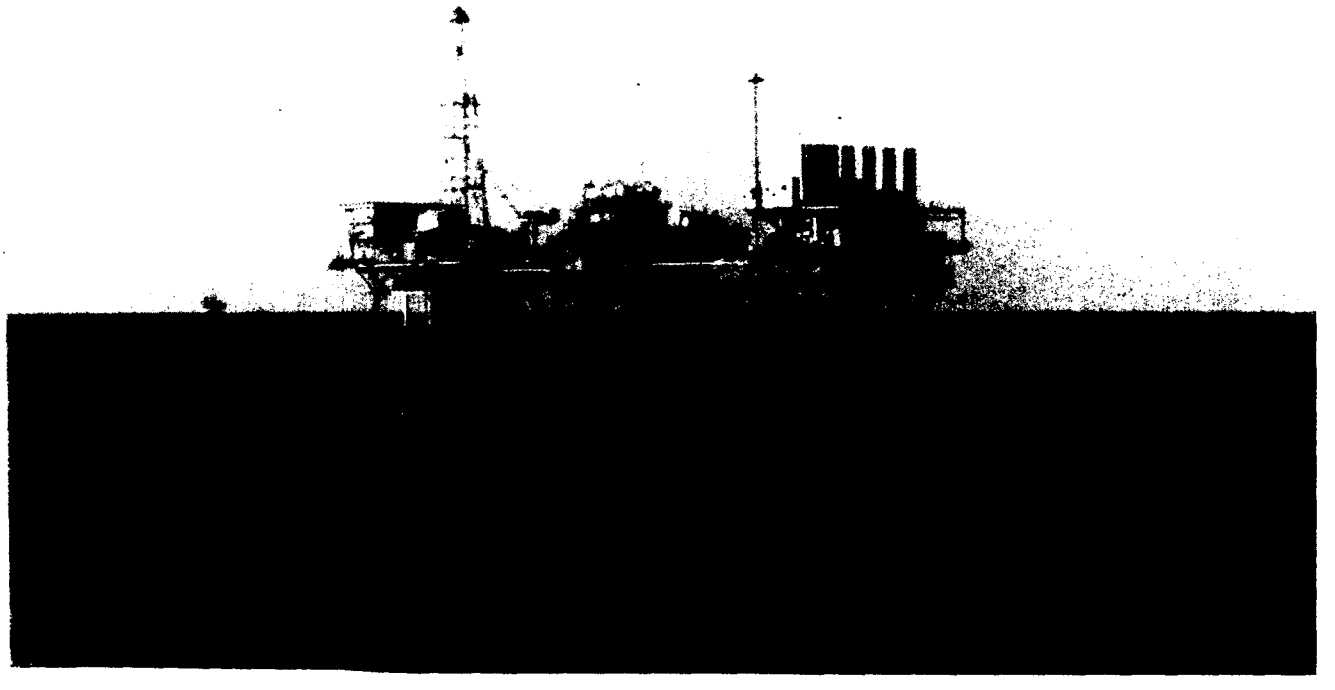
132 Ibid.

133 Associated Press, 19 October 1987. Exhibit 71.

134 See, the diagram attached as Exhibit 5.

135 See, Associated Press, 19 October 1987 and The Washington Post, 20 October 1987, both of which rely on the Pentagon spokesman, Fred Hoffman, as their source. Exhibits 72 and 69.

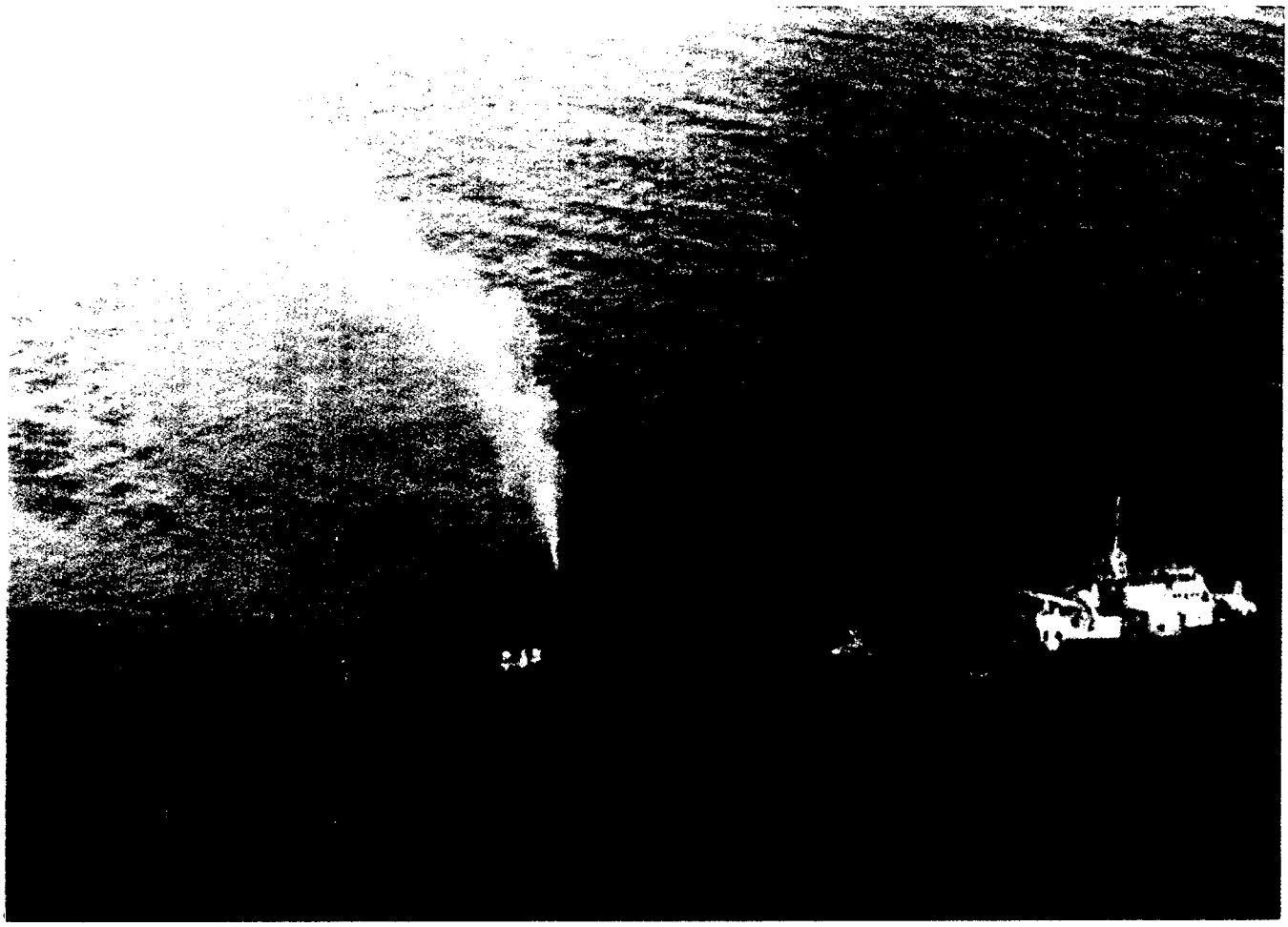
136 The Washington Post, 20 October 1987. Exhibit 69.

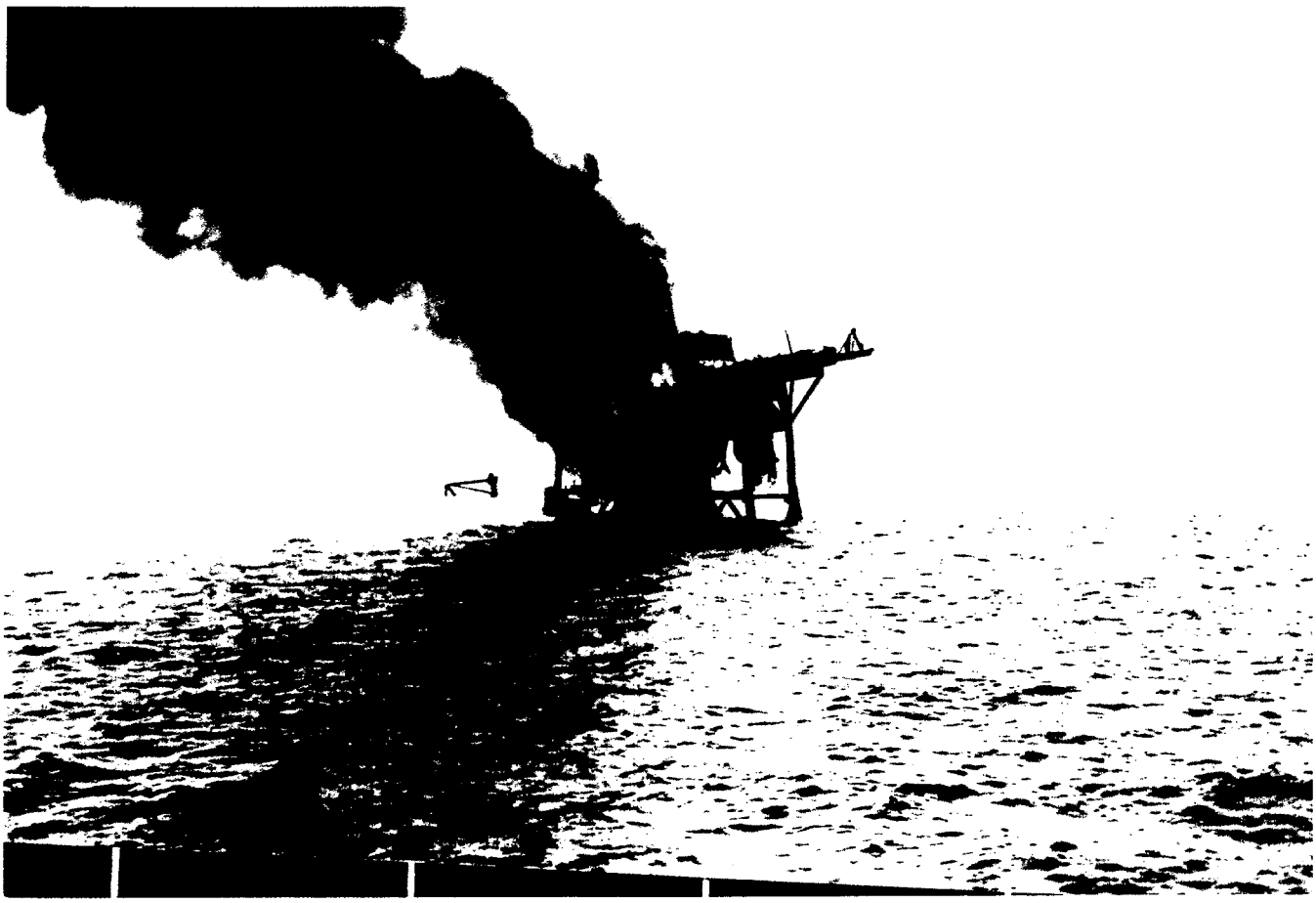


FACING PAGE: THE RESHADAT (R7) COMPLEX, WITH R4 IN THE BACKGROUND, PRIOR TO U.S. ATTACK

BACK PAGE TOP: A PENTAGON SPOKESMAN NOTED THAT AFTER THE U.S. ATTACK ALL THAT REMAINED OF THE R7 COMPLEX WAS A FEW PILINGS STICKING UP OUT OF THE WATER

BACK PAGE BOTTOM: THE R4 PLATFORM ALSO ATTACKED BY U.S. FORCES





to the Security Council. President Reagan's letter to Congress was given the following title: "United States Reprisal Against Iran[137]". However, the main text of the letter sought to justify the attack as an act of self-defence taken in accordance with Article 51 of the Charter. The letter referred to the attack on the Sea Isle City, and stated that it was the latest in a series of attacks "against targets in Kuwait, including neutral vessels engaged in peaceful commerce" as well as "the latest in a series of acts by Iranian forces against the United States[138]".

1.111 The letter went on to describe the attack as follows:

> "At approximately 7:00 a.m. (EDT) on October 19, 1987, Armed Forces of the United States assigned to the Middle East Joint Task Force, after warning Iranian naval personnel and allowing them to depart, attacked Rashadat Platform, an armed platform equipped with radar and communications devices which is used for surveillance and command and control. This platform, located in international waters, also has been used to stage helicopter and small boat attacks and to support mine-laying operations targeted against non-belligerent shipping in the Persian Gulf. It is now believed that this platform also was the source of fire directed at a U.S. helicopter on October 8, 1987. United States Navy ships fired upon and destroyed the platform. Additionally, U.S. forces briefly boarded another platform in the area, which had been abandoned by the Iranians when the operation began[139]."

1.112 The same points, both as to the legal justifications for the attacks and the nature of the target, were made in the United States' letter to the Security Council[140]. While the arguments raised by the United States to justify the attack will be discussed in more detail in Part IV, it is necessary to point out that both letters were factually inaccurate. The Reshadat complex had never been used in the way the United States alleged. The only specific incident to which the United States can refer to show the military use of these platforms is an "attack" said to have taken place against a U.S. helicopter on 8 October 1987. Apparently the helicopter had seen some shots being fired from the Reshadat

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137 Exhibit 73.

138 Ibid.

139 Ibid. The United States failed to point out that the platform was located in Iran's continental shelf and within its Exclusive Economic Zone.

140 Letter dated 19 October 1987 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/19219). Exhibit 73.

platform. However, at the time, the Pentagon stated that "the helicopter ... left the area without shooting back because it was not certain whether the gunfire was aimed at it[141]". The helicopter was not hit and any action taken by the forces on the platform was purely defensive. This incident, therefore, is strictly without relevance to the question of the legality of the U.S. attacks.

1.113 Iran's official reaction to the attack on the platforms was given in a letter dated 20 October 1987 to the Secretary-General of the United Nations. It is appropriate to quote this letter in extenso:

> "On 19 October 1987, the naval forces of the United States, illegitimately stationed in the Persian Gulf, attacked two Iranian oil platforms - Resalat and Reshadat - injuring a large number of civilian technical employees and inflicting heavy damages. The said platforms were purely economic installations operated and manned by the Ministry of Petroleum of the Islamic Republic of Iran.
>
> This latest act of aggression by the United States against the Islamic Republic of Iran represents an illegal resort to force against the sovereignty and territorial integrity of the Islamic Republic and once again illustrates the aggressive intent of the presence of the American armada in the Persian Gulf. Such presence - which can only exacerbate tension in the region - can never be justified by the United States Administration in the face of the series of aggressive acts it has carried out in the past month against the Islamic Republic of Iran, including its unwarranted attack and destruction of the unarmed Iran Ajr, its aggression against Iranian patrol boats defending Iranian territorial waters, and its most recent aggression against Iranian territory. It is clear beyond any doubt that by committing these acts of aggression, the United States is participating actively in the imposed war on the side of its aggressor clients in Iraq. This fact further deprives the United States of any legitimacy in participating in multilateral diplomatic efforts on this issue.
>
> We regret to note that when the United States embarked on its tension-generating policy of dispatching an unprecedented naval fleet to the Persian Gulf, and when it continued to illustrate its true aggressive intentions by attacking Iranian vessels and territory, the international community and particularly the United Nations Security Council remained silent[142]."

From this moment, there clearly existed a dispute between the two States concerning the illegality of the U.S. actions.

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141 New York Times, 9 October 1987. Exhibit 64. The Washington Post, 9 October 1987, Exhibit 63. See, also, The Sunday Times, 11 October 1987, which points out that the Iranians "might just have been testing their weapons". Exhibit 74.

142 Exhibit 75.

## SECTION B The April 1988 Attack on the Nasr and Salman Platforms

### 1. The status of the platforms prior to the attacks

1.114 A description of the Nasr and Salman platform complexes and associated facilities was given at paragraphs 1.16-1.18 above. The Salman complex, capable of handling 220,000 barrels per day of production, had been the subject of an Iraqi attack in October 1986[143]. However, repair work had begun immediately afterwards and the platform was being recommissioned in April 1988 when it was subject to U.S. attack. At the time of these attacks, the platform was actively producing crude.

1.115 The Nasr complex had never been attacked by Iraq. This complex, with a design capacity of 100,000 bpd, was also producing in April 1988. Twenty naval personnel were stationed on the Salman platforms and ten on the Nasr complex. There were also some 30 civilian oil company workers. Like the Reshadat complex, Salman and Nasr were each defended by one 23mm. machine gun for air-defence purposes. The naval personnel were engaged in exactly the same kind of limited defence operations as on the Reshadat platforms[144].

### 2. The attacks, the damage caused and the reaction of the Parties

1.116 According to the United States, its attacks on the Nasr and Salman complexes were in retaliation for Iran's mining of the Persian Gulf and, in particular, for an incident that occurred on 14 April 1988 in which a U.S. navy vessel, the U.S.S. Samuel B. Roberts, was struck by a mine and 10 crew-members were injured[145]. The Roberts was hit in an area east of Bahrain (see, Map 6, facing page 48). This area was under the constant surveillance of U.S., Bahraini, Qatari and Saudi forces and had repeatedly been swept of mines by U.S. forces. There was thus no possibility for Iran to have laid a mine in this area even if it had wanted to. However, this area was quite open to Iraqi planes and helicopters, and only Iraq had the type of mine that could be laid from the air. The waters in which the Roberts was hit are extremely shallow which suggests that the mine was laid on the seabed. Only Iraq had such sophisticated seabed mines.

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143 See, Associated Press, 16 October 1986. Exhibit 66.

144 See, paras. 1.102-1.103 above.

145 The Washington Post, 15 April 1988. Exhibit 76.

1.117 The U.S. attacks took place on 18 April, four days after the Roberts was damaged. Descriptions of the attacks were given in several official U.S. Government briefings and in articles by military personnel involved in the attacks to which the Court is referred[146]. A number of points emerge from these reports: first, the attacks were carefully planned and received the highest level of Government approval; second, the attacks were part of a much more extensive operation against Iranian forces which took place on the same day and in which, according to U.S. sources, half the Iranian Navy was destroyed; and, third, the attack coincided with one of Iraq's most important offensives of the war in which Iraq recaptured the Fao peninsula.

1.118 The attacks on the Salman and Nasr platform complexes were ordered by President Reagan himself[147]. The details of the operation, "Operation Praying Mantis", were planned by the Commander of the Joint Task Force Middle East, Rear Admiral Less, with other officers. The objectives of the operation were to destroy the Salman and Nasr oil platforms and to sink the Iranian Saam-class frigate Sabalan. In fact, Operation Praying Mantis had been developed some 10 months earlier by U.S. military forces who were merely looking for an opportunity to put it into operation[148].

1.119 Numerous U.S. war-planes and helicopters and 9 U.S. Navy ships were involved in the attacks, together with the aircraft carrier U.S.S. Enterprise and several patrol boats. The United States also made use of AWACS (airborne warning and control systems) facilites in the Southern Persian Gulf.

1.120 The two complexes were attacked simultaneously, at about 9.00 a.m. Persian Gulf time on 18 April 1988, by a group of 3 U.S. Navy ships. In each case, approximately 5 minutes' warning was given to allow the occupants of

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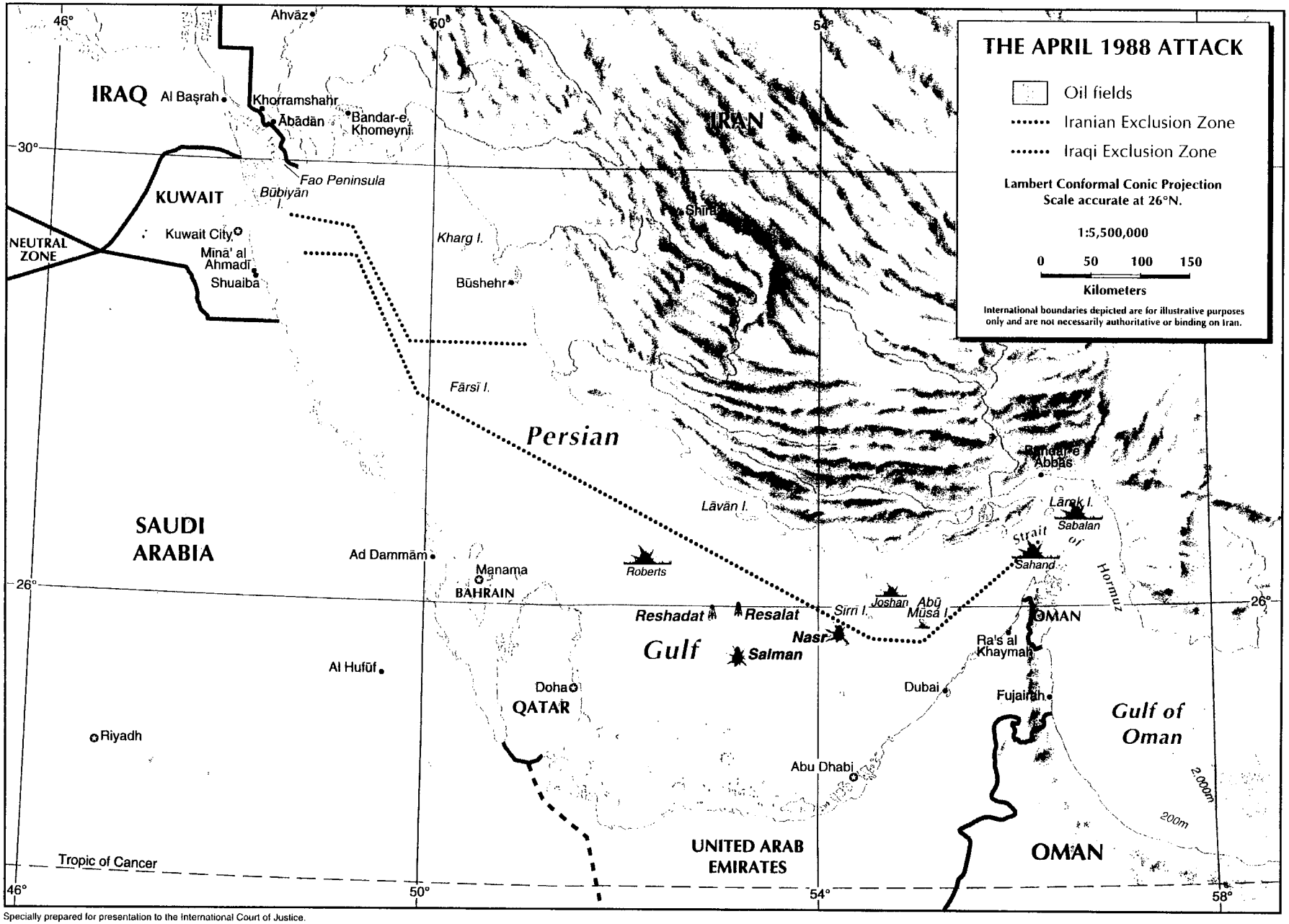
146 See, Exhibits 77-91.

147 See, Hearings before a Sub-Committee of the Committee on Appropriations, Department of Defense Appropriations for 1989, House of Representatives, 100th Congress, 2nd Session, Washington, U.S. Government Printing Office, 1988, p. 185 (Testimony of Admiral Gee), Exhibit 77; and, the statement by Marlin Fitzwater, spokesman for the White House, quoted verbatim by United Press International 1988, 18 April 1988. Exhibit 78. See, also, Facts on File World News Digest, 22 April 1988. Exhibit 79.

148 See, Perkins, Capt. J.B., U.S. Navy: "Operation Praying Mantis: The Surface View", Proceedings/Naval Review, May 1989, at p. 68. Exhibit 80. See, also, para. 4.82 below.




Map 6

Specially prepared for presentation to the International Court of Justice.

the platforms to leave. In each case, the U.S. ships commenced heavy fire against the platforms before they had been fully evacuated[149]. According to Captain J.B. Perkins, who commanded the attack on the Salman complex, the occupants of the complex pleaded for more time, but were informed that their "time was up". The U.S. ships then commenced firing[150].

1.121 The Salman complex was attacked by the U.S.S. Merrill, U.S.S. Trenton and U.S.S. Lynde McCormick. According to U.S. sources, about fifty rounds of gunfire were fired at the complex. The remaining occupants were then allowed to leave, following which U.S. Marines boarded the complex. 1,500 pounds of explosives were subsequently planted on board, and were detonated approximately 2 hours later, destroying the complex[151].

1.122 Much of the Salman complex lying above water was destroyed. In the words of Captain Perkins, "the destruction was complete"[152]. One report described the remains of the Salman complex as "a smoking mound of twisted metal"[153], an account which is borne out by the photographs following page 50. Several Iranian personnel suffered injuries.

1.123 The Nasr complex was attacked by the U.S.S. Wainwright, U.S.S. Bagley and U.S.S. Simpson. This complex was set on fire when one of the initial rounds hit a compressed gas tank, causing a huge fire which destroyed much of the complex[154]. There were a number of casualties and injured. The fires on the Nasr complex were so intense that the U.S. Marines were unable to

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149 Ibid.. See, also, Facts on File World News Digest, 22 April 1988, Exhibit 79; Newsday, 19 April 1988, Exhibit 81; Platt's Oilgram News, 19 April 1988, Exhibit 82.

150 Perkins, Capt. J.B.: op. cit., p. 68 (Exhibit 80); see, also, The Guardian, 20 April 1988, which pointed out that it was hardly surprising that the Iranians suffered casualties since one Iranian could still be heard protesting about his lack of orders as an American warned him that his "time was up" and the shelling would commence in less than a minute. Exhibit 83.

151 Perkins, Capt. J.B.: op. cit., at p. 69. Exhibit 80.

152 Associated Press, 23 April 1988, Exhibit 84.

153 The Washington Post, 19 April 1988. Exhibit 85.

154 Perkins, Capt. J.B.: op. cit., p. 69. Exhibit 80.

board it[155]. Instead, the Wainwright destroyed it with 1,000 rounds of gunfire[156]. The whole of the central producing platform of the Nasr complex was destroyed[157].

1.124 After the destruction of the Nasr complex, the U.S. ships involved in the attack patrolled the area for several hours. In the afternoon of the same day they approached an Iranian Kaman patrol boat, the Joshan. The U.S.S. Simpson and U.S.S. Wainwright fired 6 missiles at the Joshan, scoring direct hits with 5 of them, and then sank the ship with gunfire[158]. There were 11 killed and 33 injured.

1.125 Shortly before this, an Iranian F-4 plane approaching the area was struck by a missile fired from the Wainwright[159]. In a separate incident at around the same time, near the Mubarak oil-field, U.S. A-6 war planes sank a small Iranian patrol boat with Rockeye bombs. Two further small patrol boats were disabled by the U.S. war planes[160]. According to press reports, authorisation to fire on the boats was given by President Reagan after the boats were reported to have raided the Mubarak oilfield[161]. In fact, this oilfield is owned by Iran and jointly operated with the U.A.E., and thus never would have been raided by Iran.

1.126 A third group of U.S. warships, the U.S.S. Jack Williams, U.S.S. O'Brien and U.S.S. Joseph Strauss, had originally been assigned the task of sinking the Iranian frigate, Sabalan. The Sabalan could not initially be located. Later in the day, however, a similar Saam-class frigate, the Sahand, was discovered in the Strait of Hormuz.. Several U.S. A-6 war planes, together with the U.S.S. Joseph Strauss, fired numerous bombs and missiles at the Sahand,

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155 The Washington Post, 19 April 1988 (Exhibit 85); Aviation Week and Space Technology, 25 April 1988. Exhibit 86.

156 The Washington Post, 19 April 1988. Exhibit 85.

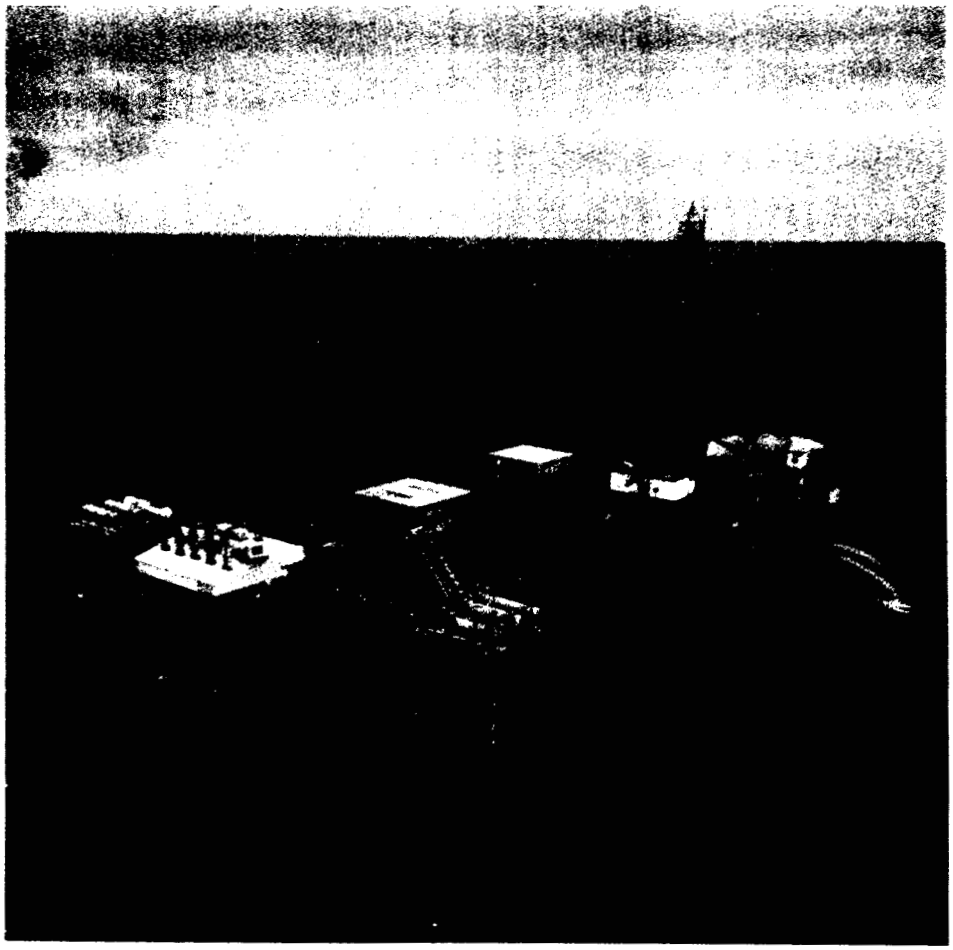
157 Associated Press, 18 April 1988. Exhibit 87. See, the photographs following this page.

158 Perkins, Capt. J.B.: op. cit., p. 69. Exhibit 80.

159 Ibid., p. 70.

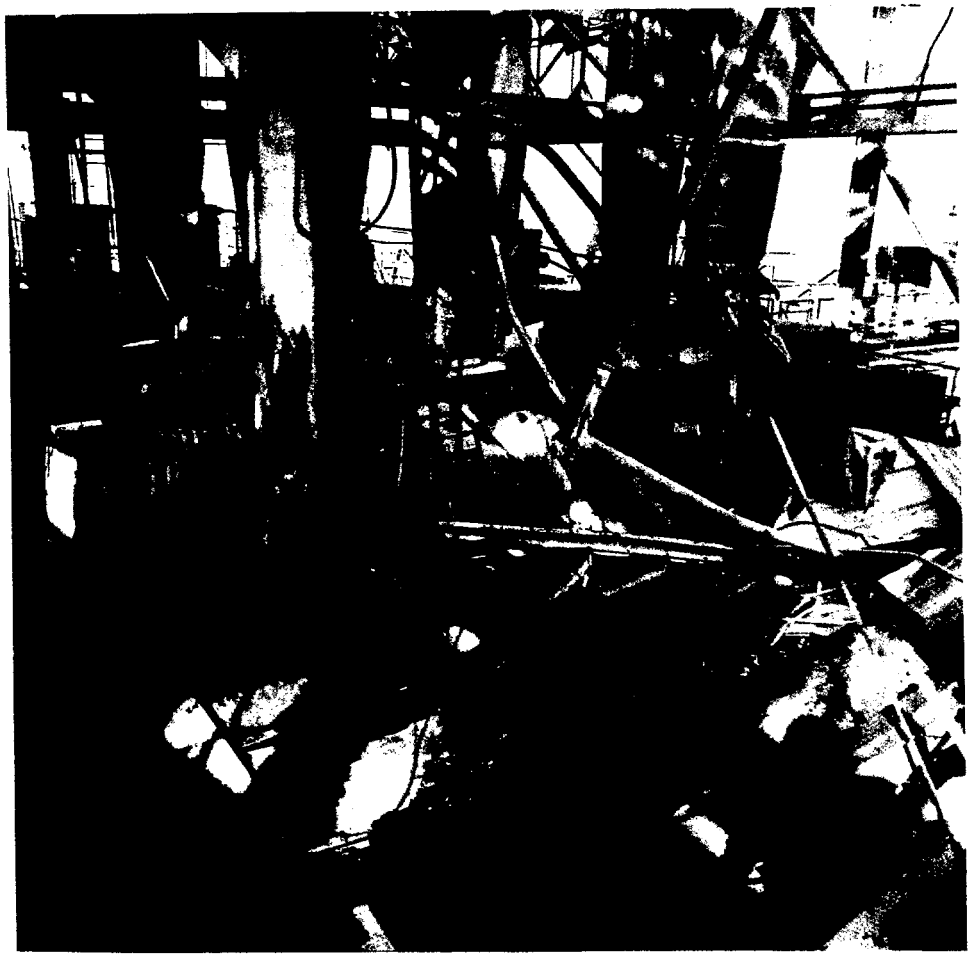
160 See, Facts on File World News Digest, 22 April 1988. Exhibit 79.

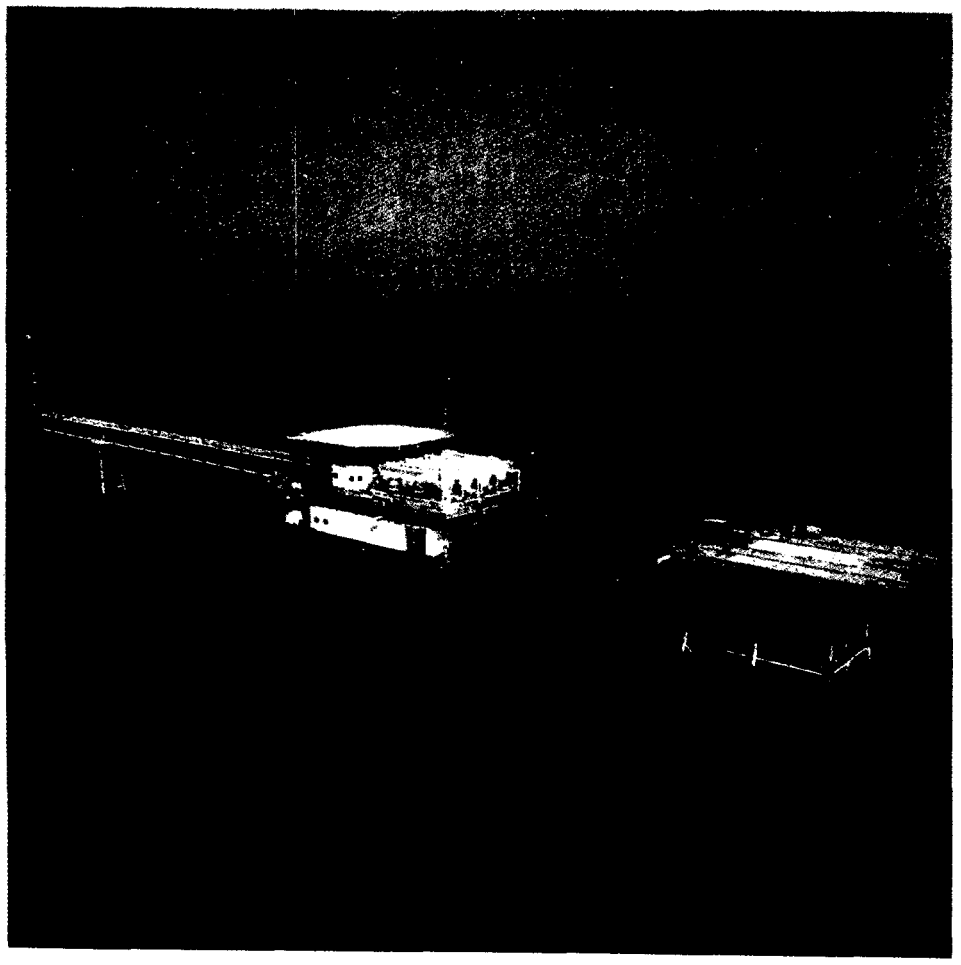
161 Ibid. See, also, The Sunday Times, 24 April 1988. Exhibit 88.



FACING PAGE: THE SALMAN COMPLEX SHOWING 6 OF THE 7 CONNECTED PLATFORMS

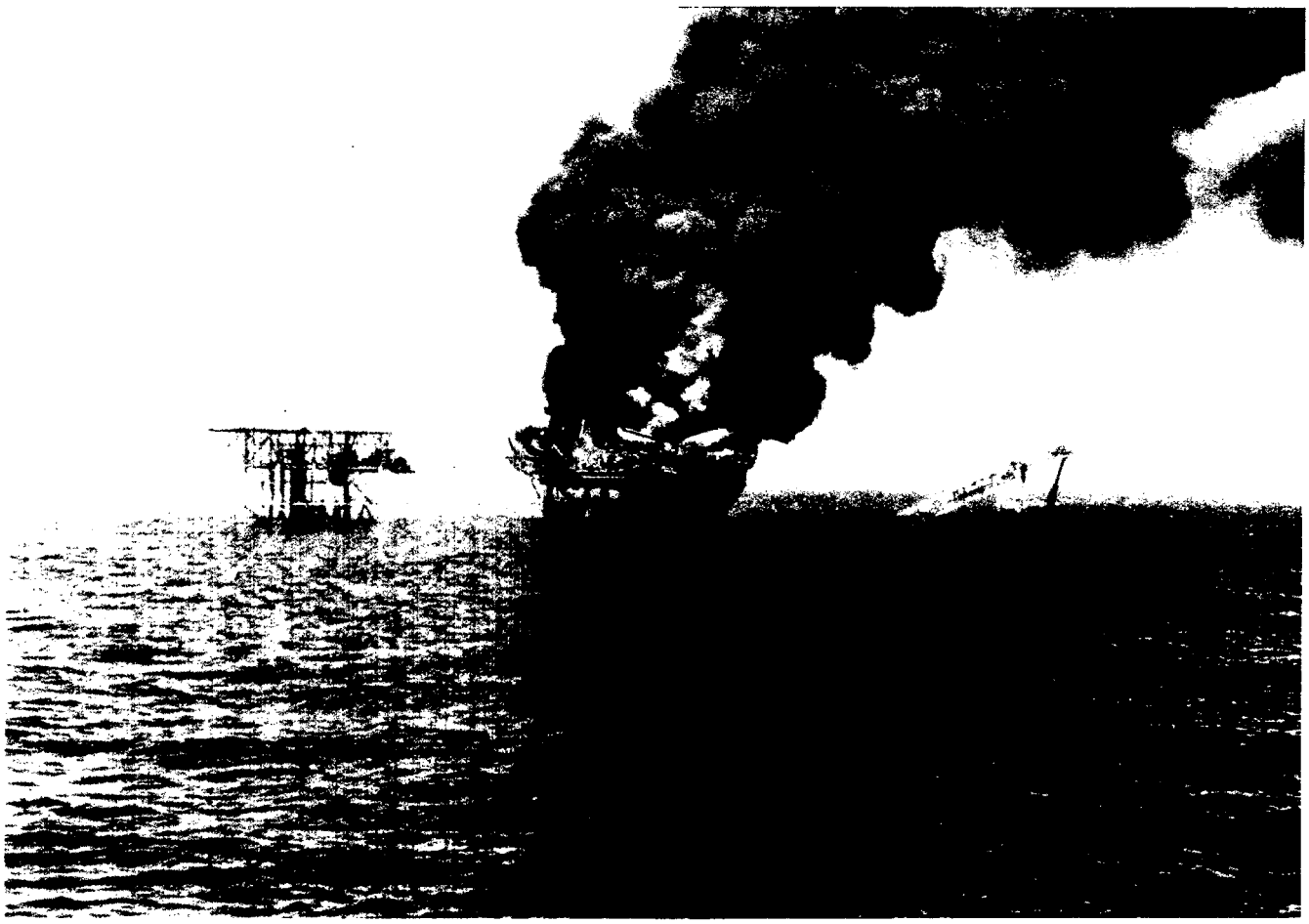
BACK PAGE: DAMAGE TO THE SALMAN COMPLEX CAUSED BY U.S. ATTACKS





FACING PAGE: THE CENTRAL NASR COMPLEX (PLATFORM A) PRIOR TO U.S. ATTACK

BACK PAGE: THE CENTRAL NASR COMPLEX AFTER U.S. ATTACK - THE U.S. ATTACK FOCUSED ON THE MAIN PRODUCING PLATFORM WHICH GATHERED OIL FROM ALL THE SURROUNDING FIELDS



which sank a few hours later[162]. In this attack, there were 45 killed and 87 injured.

1.127 About an hour and a half later, the Sabalan was located on the north side of the Strait of Hormuz[163]. A U.S. A-6 war plane crippled the Sabalan with a laser-guided bomb, leaving it dead in the water. Subsequently, however, higher authority - reportedly, Defence Secretary Frank Carlucci[164] - called off the Navy, ordering it not to sink the Sabalan, which was ultimately towed into Bandar Abbas[165]. 29 Iranian naval personnel were injured. The location of all these incidents is shown on Map 6 facing page 48.

1.128 Operation Praying Mantis thus achieved more than its objective. In the words of former Defence Secretary, Caspar Weinberger, "on a single day nearly half the Iranian Navy was destroyed[166]". In total, one frigate (the Sahand) was sunk, another frigate (the Sabalan) severely damaged, two patrol boats (the Joshan and one Boghammer) sunk, and two further patrol boats (also Boghammers) disabled. One Iranian F-4 plane was also damaged. In addition, heavy Iranian casualties resulted from the U.S. attacks on the platforms and vessels. The Guardian newspaper, on 20 April 1988, commented that "although Washington may have intended no more than a 'measured response' ..., it seems as if local American commanders were looking for a fight and needed only the slightest pretext from the Iranians"[167]. Allegations by the United States that in some of the incidents referred to above the Iranians fired first were dismissed by the same report as "no more than prudent self-justification by a trigger-happy American commander."[168]

1.129 This attack was devastating for Iran not only because of the severe military and economic damage it caused. Timed to coincide with one of

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162 Langston, Capt. B., and Bringle, Lieut. Commander D.: "Operation Praying Mantis: The Air View", Proceedings/Naval Review, May 1989, p. 54, at p. 59. Exhibit 89.

163 The Guardian, 20 April 1988. Exhibit 83.

164 Facts on File World News Digest, 22 April 1988. Exhibit 79.

165 Langston, Capt. B, and Bringle, Lieut. Commander D.: op. cit., p. 59. Exhibit 89.

166 See, Weinberger, C.W.: op. cit., at p. 425. Exhibit 44.

167 The Guardian, 20 April 1988. Exhibit 83.

168 Ibid.

the most important Iraqi offensives of the war, it showed that the United States was ready to support Iraq's aggression on an unprecedented scale[169].

1.130 As noted above, the United States sought to justify its attacks on the basis of self-defence against alleged Iranian mining and specifically the incident involving the U.S.S. Roberts[170]. It claimed that its attacks were against "legitimate military targets". Without referring explicitly to the attacks on the platforms in its letter to the Security Council, the United States also alleged that its targets had "been used for attacks against non-belligerent shipping in international waterways of the Gulf[171]".

1.131 Iran also wrote to the Secretary-General on 18 April 1988 protesting the attacks and pointing out that the platforms had no military value[172]. As in the case of the October 1987 incident, it is clear from the first reactions of the two States that the legality of the U.S. actions was a matter of dispute. In the event, the Security Council took no further action on the matter, and the disputes are now before the Court pursuant to the compromissory clause of the Treaty of Amity, Article XXI(2).

1.132 The facts related above show that prima facie the U.S. attacks on Iran's oil platforms were illegal. There had been no prior attack by Iran on U.S. forces and, in any event, the platforms were inappropriate targets for actions taken in self-defence. These actions can only be understood against the backdrop of U.S. support for Iraq in the conflict and as the culmination of a series of aggressive actions taken by the United States against Iran. That these actions represented violations of the Treaty of Amity and that there is no excuse for such actions will be shown in detail in Parts III and IV of this Memorial. The

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169 The U.S. actions were simultaneous with the major Iraqi offensive of this period of the war in which Iraq was able to recapture the Fao peninsula. While not waiving its claims for reparation concerning the attacks on the Iranian warships and for the loss of lives and injuries to naval personnel arising out of Operation Praying Mantis, Iran has limited its claims in this action to the losses arising from the attacks on the oil platforms.

170 See, letter dated 18 April 1988 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/19791). Exhibit 90.

171 Ibid.

172 See, letter dated 18 April 1988 from the Acting Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (S/19796). Exhibit 91.

## PART II

## THE JURISDICTION OF THE COURT ON THE BASIS OF THE TREATY OF AMITY

2.01 Article XXI(2) of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States provides as follows:

> "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means[173]."

Iran relies on this compromissory clause as a basis of jurisdiction in the present case and submits that, under its provisions, the Court is empowered to adjudicate the claims that Iran has advanced relating to the destruction of its oil platforms.

2.02 In the following Chapters, Iran will show that there is a dispute between itself and the United States relating to the interpretation or application of the Treaty, that the Court has jurisdiction ratione materiae over this dispute, that it has not been satisfactorily adjusted by diplomacy and that the Parties have not agreed to settle the dispute by some other pacific means. All the requirements of Article XXI(2) thus being satisfied, jurisdiction vests in the Court to decide the dispute.

### CHAPTER I THE TREATY REMAINS IN FORCE BETWEEN THE PARTIES

2.03 At the outset, it should be noted that the Treaty of Amity was at the time of the incidents, and remains today, a treaty in force between the Parties. Under the terms of Article XXIII of the Treaty, termination can only occur in the following circumstances:

> "2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.
>
> 3. Either High Contracting Party may, by giving one year's written notice to the other High Contracting Party, terminate the

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173 Treaty of Amity, Economic Relations, and Consular Rights between the United States and Iran, signed on 15 August 1955, 284 U.N.T.S. (1957-1958), p. 109. Exhibit 92.

> present Treaty at the end of the initial ten-year period or at any time thereafter."

2.04 Article 54 of the Vienna Convention on the Law of Treaties provides that termination should take place "in conformity with the provisions of the treaty". Notwithstanding the Islamic Revolution in Iran, neither Party has acted to terminate the Treaty. To the contrary, throughout the period relevant to this case, the U.S. State Department has listed, and continues to list, the Treaty as valid and binding in its official publication, Treaties in Force[174].

2.05 Moreover, the Legal Adviser of the State Department prepared a white paper for the U.S. Congress in October 1983 entitled "Application of the Treaty of Amity to Expropriations in Iran" which reiterated that the Treaty remained valid and binding on the Parties. The paper concluded:

> "Because it has not been terminated in accordance with its terms of [sic] the provisions of international law, the Treaty of Amity remains in force between the United States and Iran[175]."

2.06 It is also significant that the Iran-United States Claims Tribunal in The Hague, as well as U.S. courts, have upheld the continuing validity of the Treaty of Amity after 1979. For over ten years, U.S. claimants before the Claims Tribunal have repeatedly invoked the Treaty of Amity in support of their claims and the Tribunal has upheld numerous claims based on the application of the Treaty to events that occurred after 1979. Moreover, as recently as 1989, the U.S. District Court for the District of Columbia ruled that the Treaty was still in force and constituted a "controlling legal standard" as to issues of compensation in the event of expropriation or nationalization[176].

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174 See, United States Department of State, Treaties in Force, 1992, p. 118. Exhibit 93.

175 See, Exhibit 94. The U.S. State Department maintained this stance in a second paper concerning "The Application of International Law to Iranian Foreign Exchange Regulations" prepared in February 1984. Exhibit 95.

176 Foremost McKesson Inc., v. Islamic Republic of Iran, Civ. action No. 82-0220 (D.D.C. 18 April 1989), reprinted in Iranian Assets Litigation Reporter, 28 April 1989, at pp. 17177-17178. This finding was affirmed by the United States Court of Appeals (D.C. Cir., 15 June 1990), reprinted in Iranian Assets Litigation Reporter, 16 July 1990, at pp. 19093, et seq.

2.07 This Court has also held that the Treaty of Amity remained in force after 1979. In its Judgment in the United States Diplomatic and Consular Staff in Tehran case, the Court stressed this point in the following terms:

> "It is precisely when difficulties arise that the treaty assumes its greatest importance, and the whole object of Article XXI, paragraph 2, of the 1955 Treaty was to establish the means for arriving at a friendly settlement of such difficulties by the Court or by other peaceful means. It would, therefore, be incompatible with the whole purpose of the 1955 Treaty if recourse to the Court under Article XXI, paragraph 2, were now to be found not to be open to the parties precisely at the moment when such recourse was most needed. Furthermore, although the machinery for the effective operation of the 1955 Treaty has, no doubt, now been impaired by reason of diplomatic relations between the two countries having been broken off by the United States, its provisions remain part of the corpus of law applicable between the United States and Iran[177]."

2.08 In the light of the above, it is clear that the Treaty remains in force between the Parties.

## CHAPTER II THE SATISFACTION OF THE REQUIREMENTS OF ARTICLE XXI(2)

### SECTION A The Existence of a Dispute as to the Treaty's Interpretation or Application

2.09 The fact that there is a dispute between the Parties in the present case as to the interpretation or application of the Treaty of Amity can hardly be challenged. The positions advanced by Iran and the United States show without any doubt that the Parties hold profoundly divergent views as to the legality of the incidents on which Iran's claims are based.

2.10 Ever since the 19 October 1987 attack on the Reshadat oil platforms, Iran has consistently maintained that there was no justification for the United States' actions under international law. In contrast, the United States has asserted that its conduct was justified as a legitimate exercise of self-defence, an argument that was repeated after the United States destroyed the Nasr and Salman complexes in April 1988.

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177 United States and Diplomatic Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 28, para. 54.

2.11 The Court has frequently been called on to decide whether a dispute exists as to the interpretation and application of a treaty between parties to a given case. In this connection, the classic definition of a dispute was given by the Permanent Court in the Mavrommatis case, where it ruled that -

> "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons[178]."

2.12 In the case concerning Certain German Interests in Polish Upper Silesia, the Permanent Court further clarified this definition when it affirmed that -

> "... a difference of opinion does exist as soon as one of the Governments concerned points out that the attitude adopted by the other conflicts with its own views[179]."

In the Interpretation of Peace Treaties case, this Court stressed that the objective factual situation is central in evaluating whether a dispute exists in a particular case. It observed:

> "Whether there exists an international dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence ... There has thus arisen a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations. Confronted with such a situation, the Court must conclude that international disputes have arisen[180]."

2.13 It is also apparent that for a dispute as to the interpretation or application of a treaty to exist, it is not necessary for the express terms of the treaty to be invoked in the course of negotiations. As the Court stated in its 1984 Judgment in the Nicaragua case, "it does not necessarily follow that, because a State has not expressly referred in negotiations with another State to a particular treaty as having been violated by conduct of that other State, it is debarred from

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178 Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 11.

179 Certain German Interests in Polish Upper Silesia, Jurisdiction, Judgment No. 6, 1925, P.C.I.J., Series A, No. 6, p. 14.

180 Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 74.

invoking a compromissory clause in that treaty[181]". What is of importance is that a dispute as to the legality or illegality of certain actions under international law should exist.

2.14 In the present case, there can be no doubt that ever since the incidents took place, the United States has been well aware of Iran's allegation that the United States breached international law. Iran's position was clearly stated in letters addressed to the Secretary-General of the United Nations after the incidents in which Iran informed the Secretary-General that the conduct of the United States violated fundamental rules of international law. Iran also made its position clear in the course of numerous public announcements.

2.15 With respect to the destruction of the first set of installations in October 1987, Iran's Foreign Minister denounced that destruction as an "illegal resort to force against the sovereignty and territorial integrity of the Islamic Republic[182]". One day earlier, the United States had sought to justify its actions by arguing that U.S. forces had "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[183]".

2.16 In April 1988, the United States again argued that its actions were "necessary and ... proportionate to the threat posed by ... hostile Iranian actions[184]". In contrast, the Acting Permanent Representative of Iran described these actions as "premeditated acts of aggression [which] constitute the most serious breach of the peace and a grave threat to regional and international security[185]".

2.17 From these statements, it clearly emerges that a dispute arose between the Parties from an early stage as to the legality under international law of the incidents of 19 October 1987 and 18 April 1988.

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181 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 428, para. 83.

182 See, S/19224, 20 October 1987. Exhibit 75.

183 See, S/19219, 19 October 1987. Exhibit 73.

184 See, S/19791, 18 April 1988. Exhibit 90.

185 See, S/19796, 18 April 1988. Exhibit 91.

2.18 Subsequently, the Treaty of Amity was specifically invoked by Iran on 7 July 1992 when, as has been explained in Iran's Application, the Director of Iran's Bureau of International Legal Services raised the matter of the destruction of the oil platforms with his U.S. counterpart, the Legal Adviser to the State Department. After reverting to his Government for instructions, the Legal Adviser informed Iran on two separate occasions - 13 August 1992 and 15 October 1992 - that the United States refused to negotiate the issue or to agree to some other pacific means of settlement.

2.19 In this context, it is appropriate to recall the argument advanced by the United States in the Diplomatic and Consular Staff case where Counsel for the United States argued that the mere fact that one State charges the other with breaching provisions of the Treaty of Amity "inevitably requires the interpretation or application of the Treaty[186]".

2.20 Counsel in that case also argued that the absence of "formal diplomatic exchanges" between the United States and Iran did not make the existence of a dispute as to the Treaty's application or interpretation any less apparent. To the contrary, such a rigid approach would be contrary to the realities of modern international relations and, in the words of U.S. Counsel, "would suggest a stultifying formalism inconsistent with the jurisprudence of this Court and with the realities of international life[187]".

2.21 Thus, under criteria established by the Court and accepted by the United States, a dispute clearly exists between the Parties as to the Treaty's interpretation and application to the events in question.

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186 Oral argument of Mr. Schwebel, I.C.J. Pleadings, United States Diplomatic and Consular Staff in Tehran (U.S.A. v. Iran), p. 285. Indeed, the U.S. Memorial in the same case went so far as to contend that:

> "... if the Government of Iran had made some contention in this Court that the United States interpretation of the Treaty was incorrect or that the Treaty did not apply to Iran's conduct in the manner suggested by the United States, the Court would clearly be confronted with a dispute relating to the 'interpretation or application' of the Treaty."

U.S. Memorial, ibid., p. 153.

187 Oral Argument of Mr. Schwebel, I.C.J. Pleadings, United States Diplomatic and Consular Staff in Tehran (U.S.A. v. Iran), p. 277.

## SECTION B The Scope of the Court's Jurisdiction Ratione Materiae

2.22 In Part III below, Iran will show that the United States breached specific provisions of the Treaty, including:

- Article I, providing for the maintenance of "enduring peace and sincere friendship" between the Contracting Parties;

- Article IV(1), stating that each Party at all times shall grant "fair and equitable treatment" to nationals, property and enterprises of the other;

- Article X(1), providing for freedom of commerce and navigation between the Parties.

2.23 In the light of these provisions, the scope of the Treaty is clearly wide enough to embrace the kind of claims made by Iran involving the legality of the United States' use of force against commercial installations. It follows, as will be shown below, that the Court has jurisdiction ratione materiae in the present case.

2.24 In this connection, it is not open to the United States to argue, as it has in other cases, that the Court lacks subject-matter jurisdiction because the scope of the Treaty is limited to commercial relations between the two States stricto sensu. The plain language of the Treaty and the Court's past pronouncements on similar treaty provisions confirm that the Treaty includes far broader considerations encompassing principles relating to peace and friendship, freedom of commerce and navigation, protection from discrimination and the pledge of equitable treatment of nationals, property and enterprises.

2.25 The context within which the Treaty was signed is also instructive in this respect. As pointed out in Chapter I of Part I, the 1955 Treaty was one of a series of similar treaties of friendship, commerce and navigation that the United States entered into following World War II for political and strategic, as well as economic, reasons. As has been observed by the former U.S. State Department Adviser on Commercial Treaties, Herman Walker, who played a leading role in negotiating those treaties:

> "This type of treaty is an instrument widely used by nations over the years to provide the juridical basis for their economic intercourse and to strengthen ties of good neighborliness in their everyday relations[188]."

2.26 The label "commercial" applied to this kind of bilateral treaty is misleading, since their scope ratione materiae goes far beyond purely commercial issues. As one commentator has pointed out:

> "Aside from strict legalism, questions of policy arise, and in their basic objectives the bilateral commercial treaties should be considered in relation to promotion of commercial and cultural exchange, to the provision of foreign economic assistance, and to the purposes of the United Nations[189]."

2.27 These wider aims of the Treaty were also emphasised by Mr. Kalijarvi, U.S. Deputy Assistant Secretary of State for Economic Affairs, who stated:

> "Although the principal immediate incentive in the negotiation of these treaties, is the desire to help create conditions favorable to foreign private investment, the treaties have a broader purpose which is to establish a general legal framework for the maintenance of economic and other relations between the parties to the treaties[190]."

2.28 Because the Treaty is broad in scope, it is obvious that disputes over its interpretation or application involve issues other than of an exclusively commercial nature. In the Diplomatic and Consular Staff case, for example, the United States itself invoked the Treaty of Amity as a basis of jurisdiction despite the fact that that case had nothing to do with commercial relations between the two States.

2.29 In its Judgment in the jurisdictional phase of the Nicaragua case, the Court went further, ruling that it had jurisdiction over the merits of a

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188 Walker, H: "Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice", American Journal of Comparative Law, Vol. 5, 1956, p. 230. Exhibit 96.

189 Wilson, R.R.: "Property - Protection Provisions in United States Commercial Treaties", American Journal of International Law, Vol. 45, 1951, p. 105 (Emphasis added). Exhibit 97.

190 Commercial Treaties with Iran, Nicaragua and The Netherlands: Hearings Before the Senate Committee on Foreign Relations, 84th Congress, 2d session 1 (1956), p. 2. Exhibit 98.

dispute between the United States and Nicaragua involving the legitimacy of the use of armed force under virtually identical treaty provisions to those being invoked by Iran in this case. Subsequently, at the merits stage, the Court held that the acts of force perpetrated by the United States against Nicaragua's ports, airports and territorial waters contravened specific provisions of the treaty. Accordingly, the scope of the treaty was interpreted by the Court as being far broader than simply "commercial".

2.30 In this connection, it should be noted that the Court also has competence over any dispute concerning the interpretation or application of Article XX(1)(d) of the Treaty, which provides that the Treaty "shall not preclude the application of measures ... necessary to protect [a Party's] essential security interests". In paragraph 222 of its Judgment of 27 June 1986, the Court found that it had jurisdiction over an identical provision in the Treaty between Nicaragua and the United States, and rejected any suggestion that the necessity of measures to protect essential security interests was a matter for unilateral determination by one party which could not be reviewed by the Court[191]. The fact that the Court has jurisdiction over such issues in itself confirms that the Treaty has a far wider application than to purely commercial issues.

2.31 As will be discussed in greater detail in Part III, to the extent that certain provisions of the Treaty of Amity make reference to or even incorporate principles of general international law, the Court has jurisdiction to address those issues as well. The rationale behind this conclusion finds confirmation in the Court's 1986 Judgment in the Nicaragua case where it held:

> "A State may accept a rule contained in a treaty not simply because it favours the application of the rule itself, but also because the treaty establishes what that State regards as desirable institutions or mechanisms to ensure implementation of the rule. Thus, if that rule parallels a rule of customary international law, two rules of the same content are subject to separate treatment as regards the organs competent to verify their implementation, depending on whether they are customary rules or treaty rules[192]."

2.32 In the present case, Article XXI(2) thus provides for the Court's jurisdiction to decide any dispute relating to the interpretation or

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191 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 116, para. 222.

192 Ibid., pp. 95-96, para. 178.

application of the Treaty, including any principles of customary international law to which direct or indirect reference is made in the provisions of the Treaty[193].

2.33 By the same token, it is also apparent that the jurisdiction of the Court provided for by Article XXI(2) extends to questions of reparation[194]. As the Court held in the Chorzow Factory case (and subsequently confirmed in its 1986 Judgment in the Nicaragua case):

> "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself.
>
> Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application[195]."

## SECTION C The Dispute Has Not Been Satisfactorily Adjusted by Diplomacy Nor Have the Parties Agreed To Settle It by Other Pacific Means

2.34 The only remaining condition provided for under Article XXI(2) for a dispute to be submitted to the Court is that it not be satisfactorily adjusted by diplomacy or settled by some other pacific means.

2.35 Pursuant to Article 31 of the Vienna Convention on the Law of Treaties, this provision must be interpreted in good faith and "in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". The ordinary meaning of Article XXI(2) clearly indicates that any dispute as to the interpretation and application

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193 Moreover, in the course of the negotiations leading up to the Treaty of Amity, the United States opposed any suggestion to suppress the term "application" from the wording of Article XXI(2), "precisely because the United States wanted to avoid any narrowing of the jurisdictional provision". I.C.J. Pleadings, United States Diplomatic and Consular Staff in Tehran (U.S.A. v. Iran), p. 153, note 14. The issue was viewed as "fundamental" by the U.S. negotiators as is evidenced by an official cable sent from the State Department to the U.S. Embassy in Tehran which stated that "deletion 'application' might seriously curtail means settlement disputes under US-Iran Treaty". Annex 50 to the U.S. Memorial, ibid., pp. 232-233.

194 This principle was accepted by the United States in relation to a similar treaty of amity in the Case Concerning Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy), Judgment, I.C.J. Reports 1989, p. 15.

195 Factory at Chorzow, Jurisdiction, Judgment No. 8, 1927, P.C.I.J. Series A, No. 9, p. 21.

of the Treaty may be submitted to the Court if it satisfies the dual condition of not having been previously adjusted by diplomacy or settled by some other pacific means.

2.36 In examining identical language found in the treaty between the United States and Nicaragua, several Judges drew attention to the fact that this language does not require prior negotiations between the parties for a dispute to be brought before the Court. For example, Judge Jennings observed that the compromissory clause of the the U.S.-Nicaragua treaty, which contains the same language as Article XXI(2) of the Treaty of Amity -

> "... merely requires that the dispute be one 'not satisfactorily adjusted by diplomacy'. Expressed thus, in a purely negative form, it is not an exigent requirement. It seems indeed to be cogently arguable that all that is required is, as the clause precisely states, that the claims have not in fact already been 'adjusted' by diplomacy. In short it appears to be intended to do no more than to ensure that disputes that have already been adequately dealt with by diplomacy, should not be reopened before the Court[196]".

Similarly, Judge Singh concluded -

> "... if the wording of the compromissory clause of the Treaty is examined, it would appear that negotiations or representations affecting the operation of the present Treaty are not prescribed as a condition precedent to invoking the jurisdiction of the Court... There is, however, no binding obligation to negotiate. The above conclusion would appear to be clearly justified from the wording [of the article][197]".

2.37 Judge Ago also noted that the requirements set forth in the compromissory clause of the Treaty could be met without resorting to prior negotiations. In analysing the provisions of the U.S.-Nicaragua treaty, he observed that it -

> "... does not make use of the wording to be found in other instruments which formally requires diplomatic negotiations to have been entered into and pursued as a prior condition for the

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196 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, I.C.J. Reports 1984, Separate Opinion of Judge Jennings, p. 556.

197 Ibid., Separate Opinion of Judge Singh, p. 445.

> possibility of instituting proceedings before an arbitral tribunal or court of justice[198]."

2.38 This interpretation also finds support in the Court's judgment in the Diplomatic and Consular Staff case, where the Court stated:

> "Article XXI, paragraph 2, of the Treaty establishes the jurisdiction of the Court as compulsory for such disputes, unless the parties agree to settlement by other means[199]".

Since, in the present case, the dispute has neither been satisfactorily adjusted by diplomacy nor settled by some other pacific means, it follows that the jurisdiction of the Court is established under the plain and ordinary meaning of Article XXI(2).

2.39 Although Article XXI(2) does not provide that prior negotiations are a pre-requisite for bringing a case before the Court, as pointed out above Iran did attempt such negotiations, referring explicitly to the Treaty of Amity. Moreover, even if such a requirement had existed, it would not be absolute, but would have to be considered in the context of all the relevant circumstances.

2.40 As the Permanent Court indicated in Mavrommatis, "negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches[200]". It added that the views of the parties as to whether negotiations are likely to lead to a resolution of the dispute play a crucial role, since they (the parties) "are in the best position to judge as to political reasons which may prevent the settlement of a given dispute by diplomatic negotiation[201]".

2.41 In these circumstances, the actual length of negotiations is irrelevant. As Judge Ago stated in his Separate Opinion in the jurisdictional phase of the Nicaragua case:

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198 Ibid., Separate Opinion of Judge Ago, p. 515.

199 United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 27, para. 52 (emphasis supplied by the Court).

200 Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2, p. 13.

201 Ibid., p. 15.

> "More generally speaking, I am in fact convinced that prior resort to diplomatic negotiations cannot constitute an absolute requirement, to be satisfied even when the hopelessness of expecting any negotiations to succeed is clear from the state of relations between the parties, and that there is no warrant for using it as a ground for delaying the opening of arbitral or judicial proceedings when provision for recourse to them exists[202]".

2.42 In the present case, since the United States has expressly refused to solve the present dispute by diplomacy or through negotiation, submission of the dispute to the Court is entirely appropriate. As the facts show, the exchange of views which occurred between the Parties before the United Nations and in direct communications between their legal representatives showed no realistic possibility that the dispute could be solved by other means.

## SECTION D Conclusions

2.43 In the light of these considerations, it may be concluded that:

- The Treaty of Amity remains in force between the Parties to this case;

- A dispute as to the Treaty's interpretation or application has arisen with respect to the destruction by the United States of Iran's oil platforms;

- The Court has jurisdiction ratione materiae over Iran's claims under the terms of the Treaty;

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202 Military and Parliamentary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, I.C.J. Reports 1984, pp. 515-516. As the Court noted in its Advisory Opinion on South West Africa, it is not the form of the negotiations that matters, but rather the views and positions of the parties:

> "In practice the actual length of negotiations is no test of whether the possibilities of agreement have been exhausted; it may be sufficient to show that an early deadlock was reached and that one side adamantly refused compromise."

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 44, para. 85.

- The language of Article XXI(2) does not provide that prior diplomatic negotiations are a precondition to the institution of proceedings before the Court;

- This interpretation has been consistently confirmed by the jurisprudence of the Court and by the United States itself;

- The failure of the United States to respond positively to the attempts made by Iran to negotiate the issue on the basis of the Treaty shows, in any event, that the dispute was not one which could be satisfactorily adjusted by diplomacy;

- Accordingly, there are no impediments to the Court's jurisdiction in the present case.

# PART III

# THE PROVISIONS OF THE TREATY OF AMITY VIOLATED BY THE U.S. ATTACKS OF OCTOBER 1987 AND APRIL 1988

## CHAPTER I METHODS AND PRINCIPLES APPLICABLE TO THE INTERPRETATION AND APPLICATION OF THE TREATY OF AMITY

### SECTION A Introduction

3.01 In the preceding Part, Iran has shown that the Treaty of Amity, Economic Relations and Consular Rights of 15 August 1955 remains a treaty in force between Iran and the United States. All its provisions were thus applicable in the relations between the two States at the time of the events which are the subject of Iran's Application before the Court, and are still in force today. Consequently, pursuant to Article 26 of the Vienna Convention on the Law of Treaties, the 1955 Treaty "... is binding upon the parties to it and must be performed by them in good faith". Accordingly, conduct attributable to one Contracting Party which represents a violation of an obligation under the Treaty is an internationally unlawful act, for which that Party is responsible vis-à-vis the other.

3.02 In the following Chapters, Iran will show that the conduct of the United States' armed forces on 19 October 1987 and 18 April 1988 seriously violated Articles I, IV(1) and X(1) of the Treaty of Amity. The interpretation of each of these provisions will be considered in turn in order to establish their precise meaning. In the light of this interpretation, Iran will then show that the United States' conduct was clearly in conflict with the international obligations imposed on it by these provisions.

3.03 Before concluding that these actions represent internationally illegal acts giving rise to the international responsibility of the United States towards Iran, and thus entailing the obligation to make reparation to Iran, this Memorial will examine one last question: whether such actions could be justified by the existence of special circumstances, i.e., those "circumstances excluding illegality" which are referred to in Articles 29, et seq., of the first part of the draft Articles on State Responsibility prepared by the International Law Commission of the United Nations. This point will be dealt with in Part IV below, where Iran will show that there is no such justification for the U.S. conduct, either

under Article XX(1) of the Treaty, or under customary or general international law.

## SECTION B The Limits of the Jurisdiction of the International Court of Justice Ratione Materiae and the Question of the Violation by One of the Parties of the Obligation Not To Deprive the Treaty of its Object and Purpose

3.04 As stated in general terms in Iran's Application, this case is concerned with the violation by the United States of specific provisions of the Treaty of Amity. In other words, Iran is requesting the Court to adjudge and declare that the actions of the United States represent internationally unlawful acts since they constitute violations of international obligations arising from the Treaty. In order to substantiate its claims, Iran will, in each of the Chapters that follow, begin by seeking to determine the exact interpretation of the provisions of the 1955 Treaty which it is invoking. This will be done by using the appropriate principles and criteria for treaty interpretation, in particular the principle set out in Article 33(1) of the Vienna Convention on the Law of Treaties according to which -

> "A treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

As will be seen below, the "object and purpose" of the Treaty has a particular importance in the present case - where it is necessary to identify the meaning of specific provisions of a treaty having the general object (as indicated by the Preamble) of "emphasizing the friendly relations which have long prevailed between their peoples" and then to apply those provisions to acts involving the use of force by one party to the Treaty against the other.

3.05 It is essential to stress at the outset, however, that in invoking the "object and purpose" of the Treaty of Amity in the present case, Iran is not making a claim that the military actions of the United States of 1987 and 1988 are internationally unlawful merely because they are in contradiction with the object and purpose of the Treaty, independently of whether they violated specific provisions of the Treaty. Although similar in other respects, the situation here is thus different from that adjudicated by the Court in 1986 concerning relations between Nicaragua and the United States.

3.06 In its 1986 Judgment on the merits of the Nicaragua case, the Court had the opportunity to rule on a series of claims by Nicaragua which were also based on a bilateral Treaty of Amity (the Treaty between the United States and Nicaragua of 21 January 1956). One allegation of the applicant State was that the respondent had, by its conduct, "deprived the treaty of its object and purpose, and emptied it of real content"; in other words, as the Court itself stated, Nicaragua invoked in that case "a legal obligation of States to refrain from acts which would impede the due performance of any treaties entered into by them[203]".

3.07 The Court went on to stress the following point in this regard -

> "... if there is a duty of a State not to impede the due performance of a treaty to which it is a party, that is not a duty imposed by the treaty itself. Nicaragua itself apparently contends that this is a duty arising under customary international law independently of the treaty, that it is implicit in the rule pacta sunt servanda. This claim therefore does not in fact fall under the heading of possible breach by the United States of the provisions of the 1956 Treaty, though it may involve the interpretation or application thereof[204]."

3.08 On the basis of this reasoning, the Court was anxious to point out that if it was able to proceed to examine the merits of the claim in question - the allegation that the U.S. conduct had deprived the treaty of its object and purpose - it could not do this under the provisions of the compromissory clause contained in the 1956 Treaty (which is formulated in exactly the same terms as that of the Treaty of Amity of 1955). This clause only conferred upon the Court the jurisdiction to rule upon disputes relating to the interpretation or application of the Treaty. However, in the event, no problem arose as to the Court's jurisdiction to consider this claim in the Nicaragua case, since the Court was empowered to examine any dispute between the parties pursuant to a much broader basis of jurisdiction - Article 36, paragraph 2, of the Statute of the Court.

3.09 This jurisprudence cannot affect Iran's position. As already emphasized, Iran's claims are not in any way based on the assertion that the

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203 Military and Paramilitary Actions in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 135, para. 270.

204 Ibid.

United States has violated "the object and purpose" of the Treaty, independently of the violation of specific provisions of the Treaty. On the contrary, Iran contends that the actions of the United States in 1987 and 1988 specifically violated Articles I, IV(1) and X(1) of the Treaty of Amity, as interpreted "in the light of its object and purpose". In other words, the object and purpose of the Treaty are invoked by Iran in order to interpret specific provisions of the Treaty, and not as part of a separate claim that the Treaty as a whole has been violated independently of the violation of specific provisions.

## SECTION C The Role of General International Law in the Interpretation and Application of the 1955 Treaty of Amity

3.10 Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties indicates that treaty provisions shall be interpreted not only in the light of their object and purpose, but also "... in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context ...". The same provision later specifies what is meant by "context", and expressly states that, in this respect, one should take into account not only subsequent practice by the parties in the application of the treaty, but also "... any relevant rules of international law applicable in the relations between the parties" (Article 31, paragraph 3(c)). In other words, it is necessary to adopt a "systematic" interpretation of the treaty, since the exact and complete meaning of its provisions cannot be established other than by placing them in the appropriate legal context, which is ultimately represented by the international legal order as a whole.

3.11 This is an elementary and fundamental concept which the Court has had occasion to stress, for example, in its Advisory Opinion of 21 June 1971 in the South West Africa case, where the famous dictum can be found, according to which -

> "... an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation[205]."

3.12 The provisions of the Treaty must thus be interpreted taking into account the rules of international law as a whole, both customary and

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205 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 53.

conventional, in force between Iran and the United States. Obviously, the fact that Article XXI(2) grants the Court exclusive jurisdiction to rule only on disputes between the Parties as to the interpretation or application of the Treaty of Amity does not in any way prevent the Court from referring to general principles of international law and other treaties binding on the Parties, to the extent that such reference is necessary in order to identify the content and scope of the obligations arising from the Treaty.

3.13 Indeed, a cursory examination of the text of the Treaty is sufficient to note that a large number of provisions use terms whose meaning can only be determined by reference to rules and concepts of international law which do not appear in the Treaty itself. This applies, to take just a few examples at random, in the case of the concept of "peace" (Article I), of "international peace and security" (Article XXI(1)(d)), of "nationals" and of "territory" of the Parties (Article II, III, IV, etc.), of "diplomatic or consular representatives" and of "credentials" (Articles II(4), XII, XII, XIV, etc.), of "high seas" (Article X), of the settlement of disputes by "diplomacy" or "other pacific means" (Article XXI), and so on.

3.14 In this respect, Article XXI(1)(d) deserves separate discussion. This Article exempts the Parties from compliance with the Treaty when measures "necessary to fulfil the obligations of a High Contracting Party for the maintenance or restoration of international peace and security" are taken. It is perfectly clear that in order to proceed to the interpretation or application of this clause one must refer to principles, rules and institutions of international law, both general and conventional, relating to the maintenance and restoration of peace and international security. Judge Jennings, in his Dissenting Opinion to the Court's Judgment of 1986, clearly took note of this interesting legal phenomenon in dealing with a clause drafted in identical terms to Article XX(1)(d) contained in the 1956 Treaty of Amity between the United States and Nicaragua. He stated that -

> "... there is ... nothing to prevent the Court, when it is dealing with matters covered by the jurisdiction clause of the FCN Treaty, from considering and applying, for example, Articles 2, paragraph 4 and 51 of the United Nations Charter or any other relevant multilateral treaties. Indeed, the first part of Article XXI(d) of the FCN Treaty ... clearly contemplates certain kinds of 'obligations of a Party'

arising from the United Nations Charter as being relevant to the interpretation and application of the treaty[206]."

This legal phenomenon is one which has often been highlighted in studies of bilateral treaties of amity[207]. Indeed, such treaties contain many expressions whose sense cannot be understood other than by reference to international law as a whole.

3.15 On the other hand, it must also be emphasized that the 1955 Treaty of Amity contains provisions imposing the specific obligation on the Parties to respect, in their mutual relations, rules of general international law, or other treaties already in force between them. In these cases, the rules referred to are, as it were, explicitly "incorporated" into the Treaty in the sense that the Treaty imposes on the Parties an obligation to observe them, and violation of these rules becomes also a violation of the Treaty, and thus constitutes a doubly unlawful act.

3.16 For example, Article IV(2) obliges the Parties to grant to the property of the other Party's nationals a protection and security "in no case less than that required by international law". Article XVI(3) grants to diplomatic officers and employees "all exemptions allowed them under general international usage". And Article VII refers to the adoption of certain provisions of the International Monetary Fund in specific situations.

3.17 In its Judgment of 27 June 1986 in the Nicaragua case, the Court discussed at length situations of this kind, resulting in particular from the fact that a number of treaties refer to the same rules of general international law. The Court stressed that, as a result of the incorporation of such rules in treaties, "... the States in question are bound by these rules both on the level of treaty-law and on that of customary international law[208]".

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206 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, Dissenting Opinion of Judge Jennings, p. 539.

207 See, in particular, Wilson, R.R.: The International Law Standards in Treaties in the United States, Harvard University Press, Cambridge (Mass.), 1956, pp. 5, et seq., pp. 12, et seq., pp. 17, et seq.

208 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 95, para. 178.

3.18 Many legal consequences arise from this phenomenon of "separate existence" which occurs when "two norms belonging to two sources of international law appear identical in content[209]". In Part II above, Iran has recalled an important passage of the Judgment of 27 June 1986 where the Court clearly identified one of these consequences - that the incorporation of rules of general international law has the effect that the mechanisms provided to ensure implementation of the treaty provisions can also be used for the implementation of customary rules which have become an integral part of the treaty. At this stage, it is important to emphasise another significant consequence: in such cases the violation of a rule of general international law constitutes at the same time a violation of the treaty, to the extent that compliance with the rule in question is specifically provided for by a provision of the treaty.

3.19 Obviously, this general statement is fully applicable to the 1955 Treaty. In every case where one of its provisions imposes an obligation on the Parties to comply with rules of general international law or other treaties in force between the Parties, the violation of such rules by one of the Parties constitutes at the same time a violation of the Treaty.

## CHAPTER II THE INTERPRETATION AND APPLICATION OF ARTICLE I

### SECTION A The Interpretation of Article I

#### 1. Preliminary remarks concerning the wording of Article I

3.20 Article I of the 1955 Treaty contains a general formulation which is at one and the same time concise and all-embracing:

> "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran."

3.21 The article in question opens the door to a number of observations concerning both its wording and the place that it occupies in the general structure of the Treaty.

3.22 The first observation concerns the first three words - "there shall be" - which strongly underline the binding nature of this provision. In other

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209 Ibid.

words, Article I does not merely formulate a recommendation or desire (which would have then led to the choice of a more flexible formulation, like "there should be"), but imposes actual obligations on the Contracting Parties, obliging them to maintain long-lasting peaceful and friendly relations.

3.23 The second observation concerns the pre-eminent position of Article I, the opening rule, which sets the general tone of the Treaty as a whole and places the other provisions, relating to economic relations and consular rights, in a broader context, thus showing that these provisions identify the way in which the fundamental goals of the Treaty are to be implemented in specific instances. It is hence Article I which prescribes in general but equally binding terms these fundamental purposes by asking the Parties to act in compliance with them in a permanent manner.

3.24 The third observation is that Article I imposes real obligations, by virtue of the fact that it compels the Contracting Parties to maintain relations which will enable them to achieve a "firm and enduring peace" and which are inspired by a "sincere friendship". While fully binding, these obligations are also formulated in terms which are general: indeed, Article I does not give specific details as to exactly what conduct is prescribed or forbidden. No further details on this matter appear in any other Articles of the Treaty either. It follows that, in order to identify concretely the content of these obligations, it is necessary to interpret Article I using the relevant methods and principles described in the preceding Chapter. In particular, reference must be made to the object and purpose of the Treaty and to its context.

### 2. The object and purpose of the Treaty in the light of its Preamble

3.25 It is obvious that a treaty of amity does not merely have the political object, however important, of strengthening friendly bonds between two States. The myriad of goals pursued, in particular with regard to the 1955 Treaty, is well spelled out in the Preamble, where the Parties clearly expressed their intent -

> "... of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and close economic intercourse generally between their peoples, and of regulating consular relations ....".

3.26 This list of goals is effectively a list of the matters covered by the Treaty. Indeed, each element of the list introduces a corresponding group of provisions. As to the first of the goals referred to, this is translated into the obligations set out in Article I. In other words, the desire of the Contracting Parties to "emphasize" their friendly relations, which appears in the Preamble, does not represent a simple declaration of intent without precise legal effect. On the contrary, it expresses the essential reason which led the Parties to enter into the obligation to behave in a friendly and peaceful manner in their mutual relations.

3.27 It must be noted that in the majority of bilateral treaties of amity concluded by the United States with other States the Preamble frequently refers to friendly relations as the purpose of the treaty[210]. By contrast, it is very rare to find provisions in the main body of these treaties obliging States party to the treaty to behave in a peaceful and friendly manner in their mutual relations. The research carried out by Iran on this subject both in the specialized literature and in the collections of treaties entered into by the United States with other States, has revealed that, among the roughly two-dozen treaties of friendship signed after 1945, only three contain a provision similar to that of Article I of the 1955 Treaty between Iran and the United States. The first of these treaties is the Treaty of Friendship, Commerce and Navigation between China and the United States of 4 November 1946, Article I(1) of which reads as follows:

> "There shall be constant peace and firm and lasting friendship between the Republic of China and the United States of America[211]."

3.28 The second treaty is that with Ethiopia of 7 September 1951, Article I of which stipulates:

> "There shall be constant peace and firm and lasting friendship between the United States of America and Ethiopia[212]."

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210 See, Wilson, R.R.: op. cit., p. 25; Walker, H.: "U.S. Commercial Treaties Today", in Deener, D.R. (ed.): De Lege Pactorum, Essays in Honour of R.R. Wilson, Duke University Press, 1970, pp. 266, et seq.

211 25 U.N.T.S. 90 (1949). Exhibit 99.

212 United States Treaties and Other International Agreements, Vol. 4, Part 2, 1953, p. 2137. Exhibit 100.

Finally, there is the Treaty of Amity, Economic Relations and Consular Rights between the United States and the Sultanate of Muscat and Oman, whose Article I states:

> "There shall be firm and enduring peace and sincere friendship between the United States of America and the Sultanate of Muscat, and Oman and Dependencies[213]."

3.29 It must be concluded that normally, when concluding a treaty of amity, the United States agrees to undertake precise obligations only in relation to specific fields having an economic, commercial or consular character. These treaties mention friendly relations in the preamble, not to increase further the parties' burden of obligations resulting from the specific provisions of the treaty, but solely in order to indicate the underlying purpose which inspires the treaty as a whole. Only in certain cases does the United States agree to undertake, in addition to the specific obligations frequent in this kind of treaty, broader obligations in the field of peaceful and friendly relations. This is precisely so in the case of the 1955 Treaty, Article I of which translates into real obligations distinct from those set forth in other treaties where the fundamental purpose of amity appears only in the Preamble and in the title of the Treaty.

### 3. The "contextual" interpretation of Article I of the 1955 Treaty: the obligation of the Parties to behave peacefully in their mutual relations

3.30 It remains to examine the precise obligations resulting for the Parties under the terms of Article I of the Treaty, which succinctly states that the Parties undertake to conduct their mutual relations in a peaceful and friendly manner. In the light of what Iran observed in the preceding Chapter, it is evident that reference must be made to general international law, as well as to other treaties in force between the Parties, in order to interpret the terms appearing in the Article in question.

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213 380 U.N.T.S. 196 (1960). Exhibit 101. This kind of provision finds a precedent in Article I of the Treaty between the United States and France of 30 September 1800, which reads:

> "There shall be a firm, inviolable and universal peace, and a true and sincere friendship between the French Republic and the United States of America, and between their respective countries, territories, cities, towns, and people, without exception of person or places."

See, Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, 1776-1969, compiled by Malloy, W.M., Washington, Government Printing Office, Vol. 1, 1910, p. 496. Exhibit 102.

3.31 The content of the obligation according to which "there shall be firm and enduring peace" between the Parties is straightforward. Article I cannot have any other sense than that of obliging the Parties in their mutual relations to respect the rules of customary and treaty law prohibiting the threat and use of force in international relations, except in cases of lawful self-defence resulting from Article 1, paragraph 4, and Article 51 of the United Nations Charter. Under the terms of Article I, therefore, the violation by one Party of these rules in its relations with the other Party represents at the same time a violation of the 1955 Treaty.

### 4. The "contextual" interpretation of Article I of the 1955 Treaty: the obligation of the Parties to conduct their mutual relations in a friendly manner

3.32 As to the obligation according to which "there shall be ... sincere friendship" between the Parties, contemporary international law permits its content to be identified without much difficulty. Undoubtedly, the most authoritative interpretation of the content of the obligation for States to maintain relations based on "sincere friendship" can be found in the Declaration of the General Assembly of the United Nations on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Resolution 2625(XXV)) adopted in 1970[214].

3.33 This proposition is non-controversial in as much as the Court itself has recognised on a number of occasions that Resolution 2625 reflects the opinio juris of States concerning what the General Assembly itself has called "basic principles" of international law[215]. In the Nicaragua (Merits) Judgment, for example, the Court repeatedly insisted on this point by stressing that -

> "... (t)he effect of consent to the text of such resolutions ... may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution ....[216]".

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214 The Resolution is reproduced in Exhibit 103.

215 See, for example, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, pp. 100, et seq., and in particular, paras. 188 and 191.

216 Ibid., p. 100, para. 188.

3.34 Particularly relevant is the following passage of the Nicaragua Judgment which deserves to be cited in extenso, since the Court there gave a summary of its opinion on the legal value of the Declaration and its role in the identification of the rules concerning friendly relations among States:

> "Texts like these, in relation to which the Court has pointed to the customary content of certain provisions such as the principles of the non-use of force and non-intervention, envisage the relations among States having different political, economic and social systems on the basis of coexistence among their various ideologies; the United States not only voiced no objection to their adoption but took an active part in bringing it about[217]."

3.35 In short, Resolution 2625 draws a comprehensive picture of the principles and rules of general international law, compliance with which is generally recognised as necessary in order to qualify relations between States as friendly. It is thus reasonable to think that these principles and rules underlay the object of the provisions appearing in Article I of the Treaty of Amity, which require the Parties to maintain relations based on "sincere friendship".

3.36 It must be made clear immediately that the fact that Resolution 2625 was adopted after the 1955 Treaty came into force does not detract from the force of this argument. This is so for two reasons.

3.37 The first is that in 1970 the General Assembly did not create ex nihilo the principles which it solemnly proclaimed: it recognised the validity, specified the scope, developed the implications and stressed the fundamental importance of principles which were already in force, resulting, for the most part, from the Charter of the United Nations[218].

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217 Ibid., p. 133, para. 264.

218 In this respect, see, for example, Jiménez de Aréchaga, E.: "International Law in the Past Third of a Century", Recueil des Cours de l'Académie de Droit International, Vol. 159, 1978, I, p. 1, at p. 32, who, after having stressed that Resolution 2625 "... was adopted on 24 October 1970 by acclamation and without a dissenting vote", continues as follows:

> "... it seems difficult to deny the legal weight and authority of the Declaration both as a resolution recognizing what the Members themselves believe constitute existing rules of customary law and as an interpretation of the Charter by the subsequent agreement and the subsequent practice of all its members."

See, also, Virally, M.: "Les actes unilatéraux des Organisations internationales", in Bedjaoui, M. (ed.): Droit international, bilan et prospectives, UNESCO, 1911, Vol. 1, p. 275; and Dupuy, P.-M.: Droit international public, Paris, Dalloz, 1992, pp. 281, et seq.

3.38 The second relates to the concept already referred to, according to which the meaning of a rule formulated in general terms, and not limited as to its duration, is not fixed and unchangeable but evolves in accordance with the evolution of the legal environment. In other words, the terms "sincere friendship" that appear in Article I of the Treaty must not be interpreted in the light of international law in force in 1955 but in the light of the law existing today.

3.39 In this respect, one may recall the dictum of the Court in its Advisory Opinion in the South West Africa case, according to which -

> "... an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation[219]."

The Court evoked this principle in that case in order to support the conclusion that the concepts embodied in Article 22 of the Covenant of the League of Nations "... were not static, but were by definition evolutionary[220]".

3.40 In its Judgment of 19 December 1978 in the Aegean Sea Continental Shelf case, in dealing with the interpretation of an expression which had a "general character" (in that case, the expression "territorial status"), the Court again insisted on the idea that "... the presumption necessarily arises that its meaning was intended to follow the evolution of the law and to correspond with the meaning attached to the expression by the law in force at any given time[221]". The Court went on to state that such expressions did not have "... a fixed content regardless of the subsequent evolution of international law", and "... must be interpreted in accordance with the rules of international law as they exist today, and not as they existed in 1931[222]".

3.41 In the light of these precedents, the meaning of the provisions of the Treaty of Amity, in particular the provisions set out in Article I

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219 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 53.

220 Ibid.

221 Aegean Sea Continental Shelf, Judgment, I.C.J. Reports 1978, p. 32, para. 77.

222 Ibid., and pp. 33-34, para. 80.

thereof, should not be conceived of as immutable. Rather such provisions must be interpreted and applied in the light and context of the present legal setting.

3.42 Among the principles relating to friendly relations proclaimed by Resolution 2625, it remains to be seen which are the most relevant to the present case. In this connection, it is a question above all of those principles concerning the prohibition of the threat and use of force, which, as has been seen, Article I reflects by means of its reference to the obligation of the Parties to entertain peaceful relations. Here, two principles stressed by Resolution 2625 are particularly relevant.

3.43 The first principle is that which defines a war of aggression as a "crime against the peace, for which there is responsibility under international law". By reference to this principle, it can be maintained that each Party to the Treaty of Amity has, in case of aggression against the other Party by a third State, at a very minimum the obligation not to support the latter's action, but rather to refrain from the threat or use of force as a means of solving international disputes.

3.44 The second establishes that "States have a duty to refrain from acts of reprisal involving the use of force". This principle has the consequence that, except in the case of lawful self-defence, the use of force as retaliation is prohibited even for a State which has previously been the victim of the use of force.

3.45 In addition to the principles relating to the use of force, Resolution 2625 underlines the importance of the principle that States should "live together in peace with one another as good neighbours" and the principle according to which "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind". In this context, a Party to the 1955 Treaty violates Article I if it takes measures against the other aimed at preventing the use of its sovereign right of lawful self-defence against aggression by a third party.

3.46 The above mentioned principle is only one of the corollaries of the more general rule of non-intervention, according to which - as stressed by Resolution 2625 - "No State or group of States has the right to intervene, directly

or indirectly, for any reason whatever, in the internal or external affairs of any other State". It is obvious that compliance with this principle is a conditio sine qua non of friendly relations amongst States. The importance of this principle, in so far as the relations between Iran and the United States are concerned, has been specifically confirmed by the Algiers Declaration of 19 January 1981, which in Point I of the General Declaration, states as follows:

> "POINT I: NON-INTERVENTION IN IRANIAN AFFAIRS
>
> 1. The United States pledges that it is and from now on will be the policy of the United States not to intervene, directly or indirectly, politically or militarily, in Iran's internal affairs[223]."

By this Declaration, the United States solemnly recognised, through a treaty committment, that its relations with Iran must be based on the strict observance of the principle of non-intervention. Such recognition clearly contributes to the identification of the obligations undertaken by the United States under Article I of the 1955 Treaty.

3.47 The Algiers Declarations are also significant because, as stated in the preamble of the General Declaration, their aim was to arrive at a mutually acceptable resolution of the crisis in the relations between the two States[224]. Thus, with effect from January 1981, the disputes arising out of the events of 1979 were solved and the Parties' relations could continue on the basis of the principles set out in the Treaty of Amity.

## SECTION B The Application of Article I

### 1. The general attitude adopted by the United States in favour of Iraq, the aggressor State, and against Iran, the victim of aggression, was in itself a violation of Article I of the 1955 Treaty

3.48 Undoubtedly, the general attitude adopted by the United States towards the war of aggression started by Iraq in 1980 against Iran, as analysed in Chapter III of Part I above, flagrantly violated the United States' obligations under the terms of Article I of the Treaty and general international law. In its support for Iraq, an aggressor State as recognized by the United Nations itself, and in obstructing the actions taken in lawful self-defence by Iran,

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223 See, 1 Iran-U.S. C.T.R., p. 4.

224 Ibid., p. 3.

the victim of Iraq's aggression, the United States clearly violated the principles of international law concerning friendly relations described above, and thus committed a violation of treaty obligations resulting from Article I of the 1955 Treaty.

3.49 In its Application, Iran has not entrusted the Court with a broad dispute bearing on the global responsibility of the United States towards Iran owing to the general position and actions adopted by the United States during the war started by Iraq in 1980. However, these broader aspects of the matter are invoked in order to place the U.S. military actions of 1987 and 1988, which do form the object of the present dispute, in their proper context.

### 2. The actions of the U.S. armed forces in 1987 and 1988 against Iran's oil platforms violated Article I of the 1955 Treaty

3.50 The actions of the U.S. armed forces to which Iran's Application refers, and which have been described in detail in Chapter IV of Part I, are unquestionably attributable to the United States since they represent acts of military organs of that State acting in their official capacity. Since they constituted a use of force against Iran, and took place in areas within Iran's jurisdiction (on Iran's continental shelf and within its Exclusive Economic Zone), these actions violated the obligations of the United States towards Iran resulting from general international law and from Article I of the 1955 Treaty. With respect to the Treaty, such actions were prima facie incompatible with the obligation undertaken by the United States to maintain peaceful and friendly relations with Iran.

3.51 In Part I, Iran referred to official documents addressed by both Iran and the United States to the United Nations Security Council in connection with the attacks in question. An analysis of these documents shows that the positions of Iran and the United States do not differ as to the following facts:

(a) Both Iran and the United States recognise that the attacks in question took place on the dates indicated and that they resulted in the damage and destruction of several Iranian platforms as described in Part I above;

(b) Both Iran and the United States recognise that the attacks in question were attributable to the United States;

(c) Both Iran and the United States recognise that the attacks in question represented a use of force by the United States against Iran.

3.52 Subject to what will be shown in the course of the present proceedings, Iran considers that these documents also imply that the only point of disagreement between the two States centers on the legal characterization of the U.S. actions in destroying the oil platforms in question. The issue is whether the U.S. actions were illegal under applicable international law or, as the United States has argued before the Security Council and Iran has disputed, they were justified as measures of lawful self-defence. This question will be dealt with in Part IV below. For present purposes, it suffices to note that by invoking self-defence to justify its actions, the United States clearly acknowledges that the facts in question did indeed occur and admits that it used force against Iran - a use of force which the United States would be forced to recognise as unlawful if the U.S. plea of self-defence were judged to be unjustified in the present case. As the Court has observed in this respect -

> "... the normal purpose of an invocation of self-defence is to justify conduct which would otherwise be wrongful. If advanced as a justification in itself, not coupled with a denial of the conduct alleged, it may well imply both an admission of that conduct, and of the wrongfulness of that conduct in the absence of the justification of self-defence[225]."

## CHAPTER III THE INTERPRETATION AND APPLICATION OF ARTICLE IV(1)

### SECTION A The Interpretation of Article IV(1)

3.53 The Treaty of Amity contains a number of provisions in the economic field protecting personal interests, property and the activities of nationals of each of the High Contracting Parties. In general, the guarantees provided for are those that each Party undertakes to grant in its own territory to the nationals of the other or to their economic or other interests. However, the terms of Article IV(1) are different. This Article reads as follows:

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225 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 45, para. 74.

> "Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws."

3.54 It will be noted that there is no limitation ratione loci in this clause, whether for the obligation that it imposes on the Parties to treat the nationals of the other and their property in a fair and equitable manner, or for the prohibition against submitting such nationals to unreasonable or discriminatory measures. This is not surprising, since Article IV is a general clause concerning the global protection of persons and property. In other words, Article IV(1) introduces the specific provisions appearing elsewhere in the Treaty relating to economic relations and sets forth the general principles which apply to these specific areas.

3.55 It is thus perfectly understandable that Article IV(1) obliges the Parties to maintain the favourable attitude provided for therein in all situations in which the exercise of State powers may affect the interests of the other Party wherever these interests are situated. Thus, for instance, the provisions of Article IV(1) must be taken into account by each Party in adopting measures, legislative or otherwise, which produce extra-territorial effects, and which are thus capable of affecting the interests of the other Party's nationals situated outside the territory of the State adopting the measures. This would be the case, for example, with respect to measures in the field of exchange restrictions, for which Article VII establishes a precise regime in application of the general principle established in Article IV(1). This would also be the case for the provisions relating to importation of goods (Article VIII), since unfair, unreasonable or discriminatory measures in this field would also cause damage to economic interests situated outside of national territory.

3.56 In the light of these considerations, it must be concluded that the general obligations provided for in Article IV(1) of the 1955 Treaty apply every time that one of the contracting Parties is in a position to exert State powers over the nationals or property of the other, whether within or without national territory. A fortiori, the armed forces of a State acting outside of their national territory are subject to the same legal constraints.

3.57 As to the content of the obligations provided for by Article IV, this must be determined on the basis of notions of "fair and equitable treatment" and of "unreasonable or discriminatory measures". Since these concepts refer to equity, reasonableness and fairness, they cannot be analysed in the abstract, but rather depend on an evaluation which must be carried out in the light of the circumstances of each case. In Iran's submission, if it is difficult to go beyond an abstract interpretation of Article IV(1), it is unquestionable that, at a minimum, measures adopted by one Party against the property of nationals of the other that are unlawful under international law are fundamentally incompatible with the provisions of Article IV(1).

## SECTION B The Application of Article IV(1)

3.58 The military actions taken by the United States against Iran's oil platforms and facilities in 1987 and 1988 killed and injured Iranian nationals, both military and civilian personnel, protected under Article IV(1). The attacks also damaged and destroyed Iranian property falling unquestionably under the protection of Article IV(1), since this belonged to an Iranian company, the National Iranian Oil Company. It is equally unquestionable that these actions were (i) not consistent with the principle of fair and equitable treatment; and (ii) were unreasonable and discriminatory measures against persons and property that impaired legally acquired rights and interests.

3.59 A priori, the illegal use of armed force by the United States in the October 1987 and April 1988 attacks must be considered as measures prohibited by Article IV(1). It cannot be argued that unlawful measures conform to the provisions of Article IV(1): in other words, measures taken by a Contracting Party in violation of either a provision of the Treaty of Amity itself or general international law, and affecting the nationals and companies of the other, as well as their property, are by definition unfair and inequitable and represent unreasonable and discriminatory measures. Iran has shown in Chapter II of this Part that the U.S. actions which are the subject of this case were illegal under the terms of the Treaty and general international law, subject to the existence of a justification based on lawful self-defence - a matter which is taken up in Part IV below. If, as Iran submits, the Court concludes that no such justification exists and that the U.S. actions were violations of the rules on the use of force and friendly relations among States reflected in the provisions of Article I of the Treaty of Amity, it is Iran's view that the United States would also have to be held to have violated the provisions of Article IV(1).

3.60 However, even if hypothetically the Court concluded that the actions of the U.S. armed forces did not violate Article I of the Treaty, it would still have to verify to what extent these actions were in conflict with Article IV(1). An unlawful measure is per se unfair, inequitable and unreasonable and thus a violation of Article IV(1); but a lawful measure can also be qualified in the same way, for example if it is excessive, too strict, too extreme, or if the goal pursued could be obtained by other, less damaging means. Iran submits that the complete destruction of property vital for a State's economy, and not used for aggressive purposes, constitutes in and of itself an inequitable and unfair measure. That the action was unreasonable and discriminatory can be seen from the totally different U.S. reaction to Iraqi attacks, in particular the Iraqi attack on the Stark.

## CHAPTER IV THE INTERPRETATION AND APPLICATION OF ARTICLE X(1)

### SECTION A The Interpretation of Article X(1)

3.61 Article X(1) contains a general formula, short but striking, relating to the freedom of commerce and navigation, which is drafted as follows:

> "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

3.62 In the present case, it is freedom of commerce that comes principally into play. Two questions are of special relevance here: the first concerns the interpretation of the term "freedom of commerce"; the second bears on the meaning of the words "between the territories of the High Contracting Parties".

3.63 As to the first question, one must start from the notion of commerce itself. Commerce has been defined as -

> "Intercourse by way of trade and traffic between different peoples or states and the citizens or inhabitants thereof, including not only the purchase, sale, and exchange of commodities, but also the instrumentalities and agencies by which it is promoted and the means and appliances by which it is carried on, and the

transportation of persons as well as of goods, both by land and by sea[226]."

Under the terms of Article X(1), the Parties undertook to allow the free exchange of goods and services: i.e., they have subscribed to the obligation not to submit such exchange to obstacles, restrictions or other types of constraints both direct and indirect.

3.64 However, it would be excessively restrictive to take the view that freedom of commerce could only be affected by measures obstructing exclusively the sale and distribution of goods. The very fact of preventing goods from reaching the stage of sale, by intervening in a previous phase through coercive or restrictive measures, equally represents a violation of the freedom of commerce. In other words, such a violation could be caused by obstacles blocking any of the processes of production, packaging, stockage, carriage or distribution of goods, and not only during the final part of this process. It follows that there would be a violation of freedom of commerce if the companies of one Party were prevented by the other Party from producing goods destined for commerce and export.

3.65 A clear confirmation of the validity of this analysis is found in the Court's 1986 Judgment in the Nicaragua case. In paragraph 11 of the dispositif, the Court held that the attacks launched by the United States against Nicaraguan territory, and not just the United States' general trade embargo against Nicaragua, constituted a violation of the obligations arising from Article XIX(1) of the Treaty of Amity between the two States (which contains exactly the same language as Article X(1) of the 1955 Treaty with Iran). The attacks referred to had been carried out against an underwater oil pipeline and an oil terminal (Puerto Sandino, 13 September and 14 October 1983), an oil storage tank containing millions of gallons of fuel (Corinto, 10 October 1983) and an oil storage facility (San Juan del Sur, 7 March 1984). This clearly implies that the Court endorsed the position according to which the protection of freedom of commerce also covers the production of goods destined for commercial exploitation before the sale and distribution stage.

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226 See, Black's Law Dictionary, revised 4th ed., 1968, West Publishing Company, St. Paul, Minn., pp. 336-337, which contains a number of very broad definitions of commerce adopted by U.S. Courts.

3.66 As to the second question, the Nicaragua case again provides relevant guidance. In interpreting the phrase "between the territories of the High Contracting Parties" appearing in Article X(1), the Court held that "... the mining of the Nicaraguan ports by the United States, is in manifest contradiction with the freedom of navigation and commerce guaranteed by Article XIX, paragraph 1, of the 1956 Treaty[227]". In reaching this decision, the Court was not concerned to verify whether the obstacles to commerce and navigation caused by the attacks on the oil terminals and other facilities mentioned above, and the mining of Nicaragua's ports, affected communications between the territory of Nicaragua and that of the United States. Indeed, the Court nowhere asked itself whether the oil in the terminal was destined for U.S. companies nor whether the ships sunk by American mines or which had to avoid stopping at mined Nicaraguan ports were directed towards American harbours or came from the United States. It is clear that for the Court freedom of commerce, as guaranteed both by Article XIX(1) of the Nicaragua-United States Treaty and by its twin, Article X(1) of the Iran-United States Treaty, is affected in substance as soon as one Party causes harm to the commercial activities of the other. This approach is perfectly logical since in the majority of cases it is impossible to know in advance to whom goods destined for commerce and export will be finally sold or resold, in the same way as it is impossible to foresee in which territory they will ultimately arrive.

## SECTION B The Application of Article X(1)

3.67 The actions of the U.S. armed forces in 1987 and 1988 clearly violated Article X(1) of the 1955 Treaty since they destroyed important petroleum installations used by Iran for the commercial exploitation of its natural resources, whose sales proceeds represent the main resource of the country's economy.

3.68 It is also significant that the oil produced from these oilfields was assigned to supply sales under specific contractual arrangements to specific customers (for example, customers would buy a specific number of tons of Salman crude, or Nasr crude). The destruction of the platforms necessarily interrupted these contracts and thus prevented Iran from exercising its freedom of commerce.

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227 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 139, para. 278.

3.69 By their very nature, these installations were no less important to Iran than were the oil pipelines, terminals and facilities belonging to Nicaragua that were destroyed by U.S. attacks in 1983 and 1984. Just as the U.S. attacks in that case were held to be violations of the provisions of the U.S.-Nicaragua treaty calling for freedom of commerce and navigation between the two countries, so also are the United States' use of force against Iran's oil platforms in breach of Article X(1) of the 1955 Treaty of Amity.

3.70 In each instance, fundamental economic and commercial activities including oil production, storage and transportation were affected. Subject to the demonstration that no justification exists which could exclude the illegality of the conduct in question (to be discussed in Part IV), this conduct would thus entail the international responsibility of the United States towards Iran, and would call for the obligation to make reparation to Iran for all the damages, losses and injuries which the United States has caused.

# PART IV

# THE LACK OF JUSTIFICATION FOR THE U.S. CONDUCT IN DESTROYING THE OIL PLATFORMS

## CHAPTER I THE LAW

4.01 The armed attacks by U.S. naval forces on the Reshadat complex in October 1987 and on the Nasr and Salman complexes in April 1988 were prima facie illegal acts, both by reference to the 1955 Treaty of Amity and the general rules of international law. What needs to be considered therefore, is whether the United States can justify this prima facie illegality, either under the Treaty of Amity or under general international law. This Chapter will deal with the question of justification as a matter of law, leaving to Chapter II the further question of whether, on the facts, the United States can bring its conduct within the heads of justification recognised in law.

### SECTION A Justification Under the Treaty of Amity

4.02 The United States has not attempted to advance such a justification, so this issue can be dealt with summarily.

4.03 The Treaty contains a provision in Article XX(1)(d) which reads as follows:

> "1. The present Treaty shall not preclude the application of measures:
>
> ...
>
> (d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests." (Emphasis added.)

4.04 The only point to be made is that it is not possible for the United States to argue that, by virtue of the last phrase, it possesses a justification for measures which are a prima facie breach of the Treaty and which involve the

use of force but go beyond measures in lawful self-defence[228].

4.05 The reason for this is apparent. The obligation imposed on all Members under Article 2(4) of the Charter is an obligation forming part of the jus cogens. In the course of its Judgment of 27 June 1986 the Court noted that this proposition was accepted by the United States:

> "The United States, in its Counter-Memorial on the questions of jurisdiction and admissibility, found it material to quote the views of scholars that this principle [the prohibition of force] is a 'universal norm' ... and a 'principle of jus cogens'[229]."

4.06 It follows, therefore, that if the obligation of Article 2(4) is jus cogens, it is not possible for the United States to invoke Article XX(1)(d) of the Treaty of Amity to justify conduct which is prima facie a breach of Article 2(4). The result is that in this case, because a use of force is involved, Article XX(1)(d) cannot be invoked as a separate justification irrespective of the limits on the use of force. The United States must justify its conduct under the conditions governing lawful self-defence precisely because Article XX(1)(d) has to be construed as not authorising conduct prohibited by Article 2(4).

4.07 This does not mean that the legality or illegality of the U.S. attacks is to be determined by general international law, and without reference to the Treaty (and therefore falls outside the compromissory clause). Both the prima facie illegality of the U.S. conduct and the scope of the exemption in Article XX(1)(d) remain matters of treaty interpretation. It is simply that this interpretation has to be made in the light of the overriding principles of jus cogens[230].

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228 In Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, pp. 115-117, paras. 221-224, and p. 130, para. 257, the Court dealt with the wording of Article XXI of the U.S./Nicaragua Treaty, identical to the wording of Article XX(1)(d) cited above. The Court accepted that, whilst the treaty provision might justify counter-measures other than self-defence, once the use of force was involved, the measures taken under the Treaty would have to be justified as self-defence.

229 Ibid., p. 101, para. 190.

230 See, ibid., p. 541 (Dissenting Opinion of Judge Jennings), and p. 253 (Dissenting Opinion of Judge Oda).

## SECTION B Justification Under General International Law

### 1. The United States has invoked the right of self-defence

4.08 Following the attack on the Reshadat complex on 19 October 1987, the United States reported these measures to the Security Council by letter dated 19 October 1987. The letter began as follows:

> "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[231]."

4.09 Following the attack in April 1988 on the Nasr and Salman complexes, the United States communicated to the Security Council by letter dated 18 April 1988 in virtually identical terms[232].

4.10 It is clear, therefore, that the United States sought to justify its armed attack on both occasions by reference to the right of self-defence. In the section that follows it will be necessary to set out the essentials for a plea of self-defence so that, in the following Chapter, one can examine whether, on the facts, the actions of the United States were consistent with such a plea.

### 2. The essential conditions for a plea of lawful self-defence

4.11 The preclusion of the wrongfulness of an act of a State by a lawful measure of self-defence is well-established and is reflected in Article 34 of the 1980 draft Articles on the Law of State Responsibility, prepared by the International Law Commission[233].

4.12 The conditions for a valid plea of self-defence are, however, a different matter. These can only be formulated on the basis of State practice, especially practice under the U.N. Charter, of judicial decisions such as the

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231 Exhibit 73.

232 Exhibit 90. The additional sentence stated that the actions taken were "necessary and ... proportionate to the threat posed by such hostile Iranian actions".

233 See, Yearbook of the International Law Commission, 1980, Vol. II, Part Two, p. 33.

Court's Judgment of 27 June 1986[234], and an extensive literature[235]. These conditions appear to be the following.

(a) **That a prior delict should have been committed against the State invoking self-defence by the "aggressor" State**

4.13 In all legal systems, self-defence is a reaction to unlawful conduct. There cannot be a legal right to self-defence against lawful conduct. Just as in municipal law there is no right of self-defence against the exercise of a lawful power of arrest, so, too, in international law a State cannot invoke self-defence against measures which are lawfully authorised sanctions (for example, measures properly authorised under Chapter VII of the Charter) or measures which are themselves lawful self-defence, or the lawful exercise of rights of visit and search.

4.14 The proposition does not appear controversial. As stated by Roberto Ago, as Rapporteur to the I.L.C. on the topic of State responsibility:

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234 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, pp. 14.

235 See, inter alios, Waldock, C.H.M.: "The Regulation of the Use of Force by Individual States in International Law", Recueil des Cours de l'Académie de Droit international, Vol. 81, 1952, II, pp. 451-515; McDougal, M.S. and Feliciano, F.S.: "Legal Regulation of Resort to International Coercion, Aggression and Self-Defence, in Policy Perspective", Yale Law Journal, Vol. 68, 1958-9, pp. 1057-1165; Brownlie, I.: International Law and the Use of Force by States, Oxford, 1963, pp. 214-308; Delivanis, J.: La légitime défense en droit international public moderne (le droit international face à ses limites), Paris, 1971; Schwebel, S.: "Aggression, Intervention and Self-Defense in Modern International Law", Recueil des Cours de l'Académie de Droit international, Vol. 136, 1972, II, pp. 411-497; Lamberti Zanardi, P.: La legittima difesa nel diritto internazionale, Milano, 1972; Zourek, J.: "La notion de légitime défense en droit international", Annuaire de l'Institut de Droit International, 1975, pp. 1-69; Taoka, R.: The Right of Self-Defence in International Law, Osaka, 1978; Ago, R.: Addendum to the Eighth Report on State Responsibility, Doc. A/CN.4/318/Add. 5-7, in Yearbook of the International Law Commission, 1980, Vol. II, Part One, pp. 51-70, paras. 82-124; Cassese, A.: "Commentaire à l'article 51", in Cot, J. and Pellet, A. (ed.): La Charte des Nations Unies, Paris, 1985, pp. 769-794; Combacau, J.: "The Exception of Self-Defence in U.N. Practice", in Cassese, A. (ed.): The Current Legal Regulation of the Use of Force, Martinus Nijhoff Publishers, Dordrecht, Boston, Lancaster, 1986, pp. 9-38; Dinstein, Y.: War, Aggression and Self-Defence, Grotius Publications Limited, Cambridge, 1988; Sicilianos, L.A.: Les réactions décentralisées à l'illicite, Paris, 1990, pp. 291-335; Arangio-Ruiz, G.: Third Report on State Responsibility, Doc. A/CN.4/440, Add.1, 14 June 1991 to be published Yearbook of the International Law Commission, Vol. II, Part 2, pp. 10-12.

> "L'état de légitime défense est la situation dans laquelle un Etat se trouve placé du fait d'une attaque armée, dirigée contre lui, en violation du droit international[236]."

4.15 The analysis of the situation where the State resorting to force invokes collective self-defence, and where the delict has been committed directly against some other victim State obviously becomes more complicated. The victim State must declare that it is the victim of an aggression. In addition, the State actually using force in collective self-defence must demonstrate a request for assistance from the actual victim, so that by virtue of that request the State invoking collective self-defence might be said to be entitled to treat the violation of the victim State's rights as a violation of its own rights[237]. Or the State invoking collective self-defence might be able to show that, by reason of the attack on the victim State, its own security was in fact endangered[238].

4.16 But this more complicated situation does not arise in the present case because the United States relies on attacks by U.S. vessels, and not on collective self-defence[239].

**(b) That the prior delict should take the form of an "armed attack"**

4.17 The limitation of the right of self-defence to situations in which the delict takes the form of an armed attack emerges clearly from the Charter and the Court's Judgment of 27 June 1986.

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236 Ago, R.: Eighth Report on State Responsibility, op. cit., p. 53, para. 87, and see, also, para. 88. The official English translation reads:

> "The State finds itself in a position of self-defence when it is confronted by an armed attack against itself in breach of international law."

237 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 105, para. 199.

238 See, for example, Bowett, D.W.: Self-defence in International Law, Manchester University Press, 1958, pp. 202-207, 237-248; but this is a minority view.

239 See, the letter by the United States of 19 October 1987 (Exhibit 73), referring to "attacks ... against United States vessels in the Persian Gulf"; and the letter of 18 April 1988 (Exhibit 90), referring to "an attack ... against a United States naval vessel ...".

"The exercise of the right of collective self-defence presupposes that an armed attack has occurred ...[240]."

"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[241]."

**(c) That there should be an immediate necessity to act, leaving the State invoking self-defence with no alternative means of protection**

4.18 This condition of lawful self-defence was reflected in the statement of U.S. Secretary of State Webster, in the celebrated Caroline case, regarded as the locus classicus of the customary right of self-defence[242].

4.19 The same condition was formulated by Roberto Ago in these terms:

"En soulignant l'exigence du caractère nécessaire de l'action menée en état de légitime défense, on veut insister sur le point que l'Etat agressé (ou menacé d'agression imminente si l'on admet la légitime défense preventive) ne doit en l'occurence pas avoir eu de moyen autre d'arrêter l'agression que le recours à l'emploi de la force armée[243]."

**(d) That the measures taken in self-defence must be proportionate and limited to the necessities of the case**

4.20 This condition, too, appears to be beyond any controversy. As the Court has stated, there exists in customary law a -

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240 Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 120, para. 232. The question whether the attack must be "actual", as opposed to "imminent" - and whether this gives rise to a right of "anticipatory" self-defence was not decided by the Court, since it did not arise on the facts. Ibid., p. 103, para. 194.

241 Ibid., p. 103, para. 195.

242 See, British and Foreign State Papers, Vol. XXX, p. 201: Webster called on Britain to show a "necessity of self-defence ... instant, overwhelming, and leaving no choice of means and no moment for deliberation". Exhibit 104.

243 Ago, R.: op. cit., p. 69, para. 120 (emphasis in original). The official English translation reads:

> "The reason for stressing that action taken in self-defence must be necessary is that the State attacked (or threatened with imminent attack, if one admits preventive self-defence) must not, in the particular circumstances, have had any means of halting the attack other than recourse to armed force."

> "... specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well-established in customary international law[244]."
>
> ...
>
> "The Parties also agree in holding that whether the response to the attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence[245]."

4.21 The concept of proportionality suggests an equation. On the one side of this question is the action taken in self-defence. But on the other side of the equation there are two possibilities: either the size and scope of the aggression, or the actual needs of self-defence. It was the singular contribution of Roberto Ago's study that he insisted that self-defence must be proportionate to the latter. Thus, it was not a question of proportionality measured against the delict, but rather of proportionality in terms of taking measures to halt and repel the attack, and thus protect the object that has been attacked:

> "L'exigence dite de la proportionnalité de l'action commise en état de légitime défense a trait, nous l'avons dit, au rapport entre cette action et le but qu'elle se propose d'atteindre, à savoir - nous ne le repéterons jamais assez - d'arrêter et de repousser l'agression ... Il serait par contre erroné de croire que la proportionnalité doive exister entre le comportement constituant l'agression armée et celui qu'on lui oppose[246]."

4.22 It follows from this that proportionality, even when conceived in relation to the needs of protection rather than the scale of the attack, relates to two quite different elements of the measures taken in self-defence, namely (i) the degree and form of the force to be used; and (ii) the target chosen for the measures in self-defence.

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244 Military and Paramilitary Activities in and against Nicaragua (United States v. Nicaragua), Merits, Judgment, I.C.J. Reports 1986, p. 94, para. 176.

245 Ibid., p. 103, para. 194.

246 Ago, R.: op. cit., A/CN.4/318, Add. 5-7, at p. 69, para. 121 (emphasis in original). The official English translation reads:

> "The requirement of the proportionality of the action taken in self-defence, as we have said, concerns the relationship between that action and its purpose, namely - and this can never be repeated too often - that of halting and repelling the attack ... It would be mistaken, however, to think that there must be proportionality between the conduct constituting the armed attack and the opposing conduct."

(i) **The degree and form of the force to be used**

4.23 Thus, for example, a State reacting in self-defence to a small-scale military incursion by land forces across its land frontier would not be entitled to respond with overwhelming force (i.e., a counter-attack by several divisions against an infiltration by three platoons)[247]. Nor would it be entitled to use its naval forces against the naval units of the aggressor, if the aggressor State's naval units had had no role in the land incursion.

(ii) **The target chosen for the measures in self-defence**

4.24 Thus, for example, whilst a counter-attack against the invading military force might be legitimate because it would be directly related to the protection of the State's territorial integrity against the military forces actually violating that integrity, an attack on the aggressor's military bases in a quite different part of the world would be illegitimate because directed at the wrong target.

4.25 A reflection of this requirement that legitimate measures in self-defence must be addressed to the right target - to the source of the threat - can be seen in the Court's treatment of U.S. attacks on Nicaraguan ports and installations, including the mining of ports, in the Nicaragua (Merits) case. The Court regarded such attacks as unable to meet the criterion of necessity because they could not be proportionate to the aid provided to the armed opposition inside El Salvador by Nicaragua[248]. In other words, the mining, attacks on ports and selected installations were the wrong target. The measures could not therefore be proportionate and limited to the necessities of the case.

4.26 As will be seen later, the disproportionality of the measures taken will invariably indicate that the measures are in the nature of reprisals, rather than self-defence.

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247 Examples of condemnation by the Security Council of large-scale military responses to minor illegal acts can be seen in Security Council Resolutions 7598 (1966); 248 (1968); and 280 (1970).

248 Military and Paramilitary Activities in and against Nicaragua (United States v. Nicaragua), Merits, Judgment, I.C.J. Reports 1986, p. 122, para. 237.

(e) **That the measures taken in self-defence be immediately reported to the Security Council**

4.27 This obligation, clearly spelt out in Article 51 of the Charter, was accepted by the United States in so far as it reported to the Security Council by letters of 19 October 1987 and 18 April 1988.

4.28 If these, then, are the conditions for lawful self-defence, it has to be noted that certain of them - i.e., prior delict, need for proportionality - apply also to reprisals under the traditional, pre-Charter law. However, the post-Charter treatment of armed reprisals serves to clarify what measures are properly regarded as reprisals - and therefore unlawful - rather than self-defence. The issue is of special relevance to the present case because, as will be seen, the U.S. actions in destroying Iran's offshore oil platforms were in fact characterised by the United States itself as reprisal actions rather than self-defence.

3. **The distinction between lawful self-defence and unlawful reprisals**

4.29 The proposition that reprisals involving the use of force are unlawful can be stated with confidence. In the words of the U.N. Declaration on Principles of International Law concerning Friendly Relations, adopted in General Assembly Resolution 2625 (XXV) on 24 October 1970:

> "States have a duty to refrain from acts of reprisal involving the use of force."

4.30 The distinction between lawful self-defence and unlawful reprisals is not, however, free from difficulty[249]. The core of the distinction is believed to lie in the aim or purpose of the action taken. Essentially, self-defence has a protective aim: in contrast, reprisals aim at retribution or punishment, operating as a sanction against the wrong committed. Roberto Ago saw the difference in these terms:

> "Par contre, l'action consistant à infliger une sanction constitue l'application ex post facto, à l'Etat auteur d'un fait internationalement illicite consommé de l'une des conséquences possible rattachées par le droit international à la commission d'un fait de cette nature. Le propre de la sanction est d'avoir un but

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249 See, Bowett, D.W.: "Reprisals Involving Recourse to Armed Force", American Journal of International Law, Vol. 66, 1972, pp. 1-36 and the substantial literature cited in Arangio Ruiz, G.: op. cit., p. 9.

> essentiellement afflictif ou répressif ... ou bien il peut être accompagné de l'intention de donner un avertissement contre une répétition possible d'agissements comme ceux que l'on châtie ..."[250].

Combacau takes essentially the same approach:

> "... the State which carries out reprisals ... [tries] ... to dissuade it [the other State], by a 'punitive' action, either from persisting in ... [the breach] or from reverting to it in the future; the aim is therefore entirely foreign to that of self-defence[251]."

4.31 It is possible to identify certain characteristics which denote that measures are punitive, and therefore reprisals, rather than protective, and therefore self-defence. These characteristics, which are indicative only (and not, per se, conclusive), appear to be the following:

**(a) Timing**

4.32 This is an obvious indication, for in the nature of things measures of defence against an armed attack have to be undertaken during the actual attack, or immediately prior to the attack (if one accepts the legality of actions of anticipatory self-defence). If they are taken ex post facto, after the event, they can scarcely serve as protection against that particular attack. As Roberto Ago put it:

> "Reste la troisième exigence, à savoir que la résistance par les armes contre une agression armée intervienne immédiatement,

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250 Ago, R.: op. cit., p. 54, para. 90 (emphasis in the original) : and see, ibid., footnote 215, citing in support Waldock, Quadri, Bowett, Zanardi, Strupp, and Wengler. The official English translation reads:

> "Action taking the form of a sanction on the other hand involves the application ex post facto to the State committing the international wrong of one of the possible consequences that international law attaches to the commission of an act of this nature. The peculiarity of a sanction is that its object is essentially punitive or repressive ... or else it may be accompanied by the intention to give a warning against a possible repetition of conduct like that which is being punished ...".

251 Combacau, J.: "The Exception of Self-defence in U.N. Practice" in Cassese, A. (ed.): The Current Legal Regulation of the Use of Force, op. cit., p. 9, at p. 27. Exhibit 105.

> c'est-à-dire lorsque l'action agressive est encore en cours, et non après qu'elle soit terminée[252]."

4.33 There may be circumstances in which the victim State has experienced a series of attacks, and apprehends further attacks, so that the measures taken, although taken after the last actual attack are designed to protect the State against future attacks. An illustration would be in the destruction of bases from which attacks had occurred in the past, and from which future attacks were anticipated. But, in general, this view of self-defence had been rejected in Security Council practice[253] and rightly so, because the apprehended future attacks, if not imminent, are hypothetical; and in any event the measures tend to be designed to "teach a lesson", to inflict retribution and to deter only by demonstrating that aggression does not pay.

### (b) Disproportionate force

4.34 Where the force used goes beyond the "necessities of the case", and is clearly excessive in relation to the need for protection, this is a clear indication that the purpose behind the measures is punitive - and therefore that the measures are reprisals. In the many cases in which the Security Council has condemned the use of force, thereby rejecting the argument that it was legitimate self-defence, the disproportionate nature of the measures has been emphasised.

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252 Ago, R.: op. cit., p. 70, para. 122 (emphasis in original). The official English translation reads:

> "There remains the third requirement, namely that armed resistance to armed attack should take place immediately, i.e., while the attack is still going on, and not after it has ended."

For a different view see Dinstein, Y.: op. cit., pp. 202-212 who argues that "defensive armed reprisals", carried out in cases where a time-lag occurs between the original armed attack and the counter-measure, should be regarded as legitimate. See, also, Schachter, O.: "The Right of States to use Armed Force", Michigan Law Review, Vol. 82, 1984, pp. 1620-1638.

253 See, Bowett, D.W.: op. cit., American Journal of International Law, Vol. 66, 1972, pp. 3-8: a prime example is the Security Council's condemnation of British air strikes on Yemeni bases in 1964: Security Council Resolution 188 (1964) of 9 April 1964. Resolutions condemning Israel, on the same reasoning, are numerous: see, Res. 101 (1953) of 24 November 1953; Res. 288 (1966) of 22 November 1966; Res. 265 (1969) of 1 April 1969; Res. 262 (1968) of 31 December 1968; Res. 280 (1970) of 19 May 1970; Res. 347 (1974) of 24 April 1974.

4.35 Thus, for example, the condemnation of Israel's attack on Jordan in the Hebron area on 13 November 1966 observed that the military action was "large-scale and carefully planned", and in consequence:

> "Emphasises to Israel that actions of military reprisal cannot be tolerated ...[254]."

(c) **The premeditated nature of the action**

4.36 Whilst States are entitled to prepare for necessary measures in self-defence, as the Corfu Channel case judgment recognised[255], it is clear that where responsive measures are pre-meditated and pre-planned, then - at least where carried out as planned - they cannot be truly protective. This is for the reason that they will rarely be limited to the necessities of the case, for the "case", the actual location, size and nature of the attack is not known.

4.37 Thus, the Security Council has frequently stressed the pre-meditated nature of a measure in condemning it as a reprisal[256]. Having surveyed U.N. practice, Combacau concludes that:

> "The word 'pre-meditated' is the key to the S.C.'s firmly-held conviction: that when the victim of the original use of force does not only retaliate while the adversary's attack is taking place, but prepares a further retaliation to take place at a later stage after the withdrawal of the attacking force, he goes beyond the limits of self-defence and takes on himself the function of repression which belongs to no one but the U.N.[257]."

In this sense, "retaliation", particularly in a form that has been carefully pre-planned, takes the form of a reprisal designed to punish or repress incompatible with the notion of self-defence.

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254 Security Council Resolution 228 (1966) of 25 November 1966. Exhibit 106.

255 Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 31.

256 See, for example, Res. 228 (1966) of 23 November 1966; Res. 248 (1968) of 24 March 1968; Res. 280 (1970) of 19 May 1970; Res. 262 (1968) of 31 December 1968.

257 Combacau, J.: op. cit., p. 28. Exhibit 105.

### (d) The selection of the "wrong" target

4.38 When a countermeasure is directed against a target which has no direct connection with the armed attack against which measures of self-defence might legitimately have been taken, this is clear evidence that the countermeasures are in fact reprisals. Their objective cannot be protection against the particular attack, because the target chosen has nothing to do with that attack, and therefore the objective is punitive or retaliatory.

4.39 The practice of the Security Council abounds with condemnation of military measures which target civilians or non-military objectives, precisely because they have no connection with the "armed attack" which is the alleged justification of those measures.

4.40 Thus, in 1972, the Council condemned "the repeated attacks of Israeli forces on Lebanese territory and population", and ten years later condemned the Israeli incursions into Beirut, reaffirming "the rights of the civilian populations" and repudiating "all acts of violence against those populations[258]".

4.41 And it is not simply a civilian population that can constitute the "wrong" target; indeed, military, quasi-military or governmental installations can also be the targets of reprisals. The Security Council's condemnation on 31 December 1968 of Israel's attack on Beirut's international airport, for example, was highly influenced by the fact that no convincing evidence had been advanced to prove that Beirut airport had anything to do with the prior attack on an Israeli aircraft in Athens by members of the Popular Front for the Liberation of Palestine[259]. This was so despite the fact that the airport had official as well as civilian uses.

## 4. The issues to be examined in relation to the facts of the present case

4.42 The preceding analysis of the relevant law enables us to identify the issues that have to be examined when the facts of the present case are considered. The issues are the following:

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258 See, Security Council Resolutions 316 (1972) of 26 June 1972 and 520 (1982) of 17 September 1982. Exhibits 107 and 108.

259 Security Council Resolution 262 (1968) of 31 December 1968.

(a) **Had Iran committed any armed attack on the United States that was properly characterised as a delict?**

It is in relation to this question that we shall need to examine whether a) the firing of the Silkworm missile on 16 October 1987 and b) the laying of mines in international waters in 1988 were in fact illegal acts attributable to Iran. If they were not, the matter ends there. Without a delict by Iran, constituting an armed attack against the United States, there can be no basis for any plea of self-defence by the U.S..

(b) **If yes, was the United States' response on both occasions, justifiable by reference to (i) proof of the immediate necessity to act and (ii) proof that the measures taken were proportionate?**

If the answer is negative, on either count, then the plea of self-defence fails and the United States is itself responsible for a delict against Iran.

(c) **If the answer to question (b) is not clear, is the unlawful character of the response, as a reprisal, made clear by the fact that the response was ex post facto, or disproportionate, or pre-meditated, or directed at the wrong target?**

In this situation, if an objective balancing of the relevant circumstances leads to the conclusion that the response was in the nature of a reprisal, the United States would still be responsible for a delict against Iran.

## CHAPTER II THE FACTS

### SECTION A Description of the Platforms

4.43 A more general description of the platforms is given elsewhere in this Memorial[260]. What is relevant here is a description of the specific features of the platforms - personnel, equipment and facilities, activities undertaken - which might even remotely be thought to justify measures of self-defence against these platforms.

4.44 On the Reshadat and Resalat platforms there were, in addition to NIOC's civilian staff, 9 naval personnel stationed on the R7 complex. They manned one 23mm. gun - a weapon with an effective vertical range of 2,500

260 See, paras. 1.14-1.18 above.

metres - designed primarily as a means of defence against aerial attack[261]. This contingent had radio communications with the shore, and their duties included giving early warning of Iraqi air attacks. It was the practice for attacking Iraqi aircraft to fly in low, so as to keep below the Iranian radar beams and thus avoid detection. These offshore platforms thus gave early warning of attacks which might have escaped detection by Iranian shore-based radar.

4.45 The Nasr and Salman platforms were similarly defended, and the latter had been previously attacked by Iraqi aircraft. There were 10 naval personnel on the Nasr complex and 20 on the Salman complex, with one 23mm. gun on each complex. They, too, had radio communications with the shore.

4.46 President Reagan was to describe the Reshadat platform as "an armed platform equipped with radar and communications devices which is used for surveillance and command and control. This platform, located in international waters, also has been used to stage helicopter and small boat attacks and to support mine-laying operations targeted against non-belligerent shipping ... (and) was the source of fire directed at a U.S. helicopter on October 8, 1987[262]".

4.47 The idea of a handful of low-ranking naval personnel constituting a "command and control" centre is frankly absurd. There is no evidence of any linkage between this small complement of men and the alleged small-boat attacks or mine-laying. Nor is there any evidence that these men fired on a U.S. helicopter[263]. And the U.S. President did not even suggest any connection with the Silkworm missile attack on the Kuwaiti tanker Sea Isle City

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261 U.S. Defence Department officials described this weapon as a heavy machine gun, normally used for anti-aircraft defence. Chicago Tribune, 19 April 1988, p. 25. Exhibit 109. Both the Reshadat and Resalat platforms had been subject to Iraqi aerial attacks. See, para. 1.101 above.

262 President's Letter dated 20 October 1987 to the Speaker of the House and the President Pro Tempore of the Senate, 23 Weekly Comp. Pres. Doc. 1159-60, 26 October 1987. See, Exhibit 70.

263 The New York Times, 9 October 1987 says "an American helicopter ... reported gunfire from Iranian forces on an oil rig in the southern gulf ... The helicopter was not hit and left the area without shooting back because it was not certain whether the gunfire was aimed at it, the Pentagon said." (Emphasis added.) Exhibit 64.

(re-flagged under the U.S. flag) off the Kuwaiti port of Shuaiba, which was the alleged justification for the attack on the platforms in "self-defence."

4.48 The Nasr and Salman platforms, attacked on 18 April 1988, were similarly described, without any evidence, as "command and control radar stations"[264], and the U.S. letter of 18 April 1988 to the Security Council alleged Iranian mine laying - specifically the mining of the U.S.S. Samuel B. Roberts - as the justification for this attack, although without any evidence to link these platforms with mine-laying[265].

## SECTION B The Complete Disassociation of the Platforms from the Activities Alleged by the United States To Justify Self-Defence

4.49 The description of the platforms of itself supports the view that these platforms could not have been the source of, or in any way connected with, an "armed attack" on the United States so as to justify recourse to self-defence against them.

4.50 But that is not the sole defect in the argument made by the United States before the Security Council. When one examines the alleged "justifications" for these so-called acts of self-defence, it will be found that the plea of self-defence is defective in virtually every other respect: there was no prior delict - an illegal armed attack by Iran -, the measures were directed against quite the wrong target, they were in any event totally disproportionate, and they were clearly designed and planned as measures of reprisal.

4.51 The alleged "armed attacks" by Iran fall to be considered under different heads.

### 1. The alleged attacks on shipping

#### (a) The so-called "attacks" by Iranian warships and gun-boats

4.52 One basis on which the United States has sought to justify its assertion that it acted in self-defence in attacking Iran's oil platforms is by

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264 Associated Press, 18 April 1988. Exhibit 110.

265 See, Exhibit 90.

reference to Iran's alleged "attacks" on "neutral shipping". However, even if such "attacks" had taken place, these would only be of relevance if made against U.S. ships. Thus, the general reference by the United States to alleged attacks on neutral shipping is, strictly speaking, without relevance to the question of self-defence. In any event, as will be explained below, Iran's actions towards neutral shipping were fully justified under international law.

4.53 In the face of Iraq's aggression, Iran's interest in maritime traffic through the Persian Gulf focussed on two essential aims: first, to keep the Persian Gulf open for maritime trade (for, unlike Iraq, Iran depended entirely on exporting its oil by sea, through the Persian Gulf); and, second, to ensure that Iraq itself did not benefit by the maritime traffic into and out of the Persian Gulf.

4.54 The actions taken by Iran in the face of Iraqi aggression were well within the accepted limits of State practice relating to belligerency at sea. On 22 September 1980, Iran issued a communiqué declaring "all waterways near the Iranian shores" to be "war zones", and at the same time announced that it would not allow any merchant ship to carry cargo to Iraqi ports. Prescribed routes for international traffic were announced. The effect of the Iranian claims has been summarised as follows:

> "A. Iranian coastal waters are war zones.
>
> B. Transportation of cargo to Iraqi ports is prohibited.
>
> C. Guidelines for the navigational safety of merchant shipping in the Persian Gulf are as follows:
>
> After transiting the Strait of Hormuz, merchant ships sailing to non-Iranian ports should pass 12 miles south of Abu Musa Island; 12 miles south of Sirri Island; south of Cable Bank Light; 12 miles south of Farsi Island; thence west of a line connecting the points 27-55 N 49-53 E and 29-10 N 49-12 E; thereafter south of the line 29-10 N as far as 48-40 E.
>
> D. The Government of Iran disclaims any responsibility for merchant ships failing to comply with the above instructions.

E. Iranian naval forces patrol the Gulf of Oman up to 400 kilometres from the Strait of Hormuz[266]."

4.55 As has been said with some authority by one author:

> "... this appears to have been a declaration of a naval blockade of Iraqi ports. It was not limited to contraband, or war material. It applied to all shipping, enemy as well as neutral. It seemed to meet the traditional requirements of establishment, notification, effectiveness and impartiality, and did not bar access or departure from neutral ports and coasts ... Iran left adequately wide and safe channels for navigation in the western half of the Persian Gulf, except for a narrow channel just west of Farsi island; thus her claim to exclude traffic from the eastern half of the Persian Gulf did not appear to be unreasonable[267]".

This "reasonable" claim was generally accepted by Maritime Powers, and Iran sought to enforce this claim by the traditional right of visit and search. This was in sharp contrast to Iraq's policy of attacking on sight any vessel found within (or sometimes outside) the "danger zone" proclaimed by Iraq in mid-August 1982[268].

4.56 Thus, Iran's general claim of surveillance over maritime traffic in the Persian Gulf was exercised by perfectly legitimate visit and search. The Iranian Navy searched many hundreds of ships, and seized contraband cargo in a small minority of cases.

4.57 Neutral vessels were obliged to submit to lawful visit and search. The normal immunity from attack by a belligerent Power enjoyed by neutral vessels was forfeited if the vessel resisted visit and search. Article 22(2) of

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266 Roach, J.A.: "Missiles on Target: Targeting and Defense Zones in the Tanker War", Virginia Journal of International Law, Vol. 31, 1991, p. 601. Exhibit 13.

267 Ibid., pp. 601-602. Roach was a Captain in the U.S. Navy, attached to the office of the Legal Adviser, U.S. Department of State.

268 See, Leckow, R.: "The Iran-Iraq Conflict in the Gulf: The Law of War Zones", International and Comparative Law Quarterly, Vol. 37, 1988, pp. 636-638, who concludes that "Under any analysis the Iraqi exclusion zone cannot be justified". Exhibit 111. The United States published a Special Warning No. 62 of 16 August 1982 summarising Iraq's announcement as follows:

> "... it will attack all vessels appearing within a zone believed to be north and east of a line [doglegged 50 miles from Kharg Island]. The Iraqi government has further warned that all tankers docking at Kharg Island, regardless of nationality, are targets for the Iraqi Air Force."

Cited in Roach J. A.: op. cit., p. 605. Exhibit 13.

the 1930 London Treaty, incorporated into the 1937 London Protocol relating to Rules of Submarine Warfare, provided:

> "... except in the case of persistent refusal to stop on being duly summoned, or of active resistance to visit or search, a warship, whether surface vessel or submarine, may not sink or render incapable of navigation a merchant vessel without having first placed passengers, crew and ship's papers in a place of safety[269]."

4.58 The immunity from attack was also forfeited where a neutral vessel engaged in "unneutral service" in the sense of actively assisting the enemy[270]. As one American author has recently put it:

> "I would suggest ... that the law ought to recognize that neutral shipping that sustains a belligerent's warfighting capability may be subject to interdiction by whatever platforms and weapons systems are available to the other side to accomplish that purpose[271]."

4.59 Indeed, the Commander's Handbook of the U.S. Navy lists the following circumstances in which neutral vessels acquire enemy character so as to be treated as enemy merchant vessels -

> "1. Operating directly under enemy control, orders, charter, employment, or direction; or
>
> 2. Resisting an attempt to establish identity, including visit and search[272]."

Thus, neutral vessels resisting visit and search or carrying cargoes directly related to sustaining the Iraqi war effort rendered themselves liable to attack. That Iran

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269 International Treaty for the Limitation and Reduction of Naval Armament, signed at London, April 22, 1930, L.N.T.S., Vol. CXII, 1931, No. 2608, p. 88. Exhibit 112. Both Iran and Iraq, as well as the United States, were parties to the London Protocol.

270 See, Whiteman, M.: Digest of International Law, Vol. 10, Washington, Government Printing Office, pp. 853-861; see, also, Mallison, W.T.: "Studies in the Law of Naval Warfare: Submarines in General and Limited Wars", International Law Studies, Vol. LVIII, 1966, Washington, Government Printing Office, 1968, pp. 129-130.

271 Grunawalt, R.: "The Rights of Neutrals and Belligerents", in "Conference Report: The Persian/Arabian Gulf Tanker War: International Law or International Chaos", Ocean Development and International Law, Vol. 19, No. 1, 1988, p. 308. Exhibit 113.

272 See, Roach, J. A.: op. cit., p. 600. Exhibit 13. The same U.S. Handbook, Document NWP-9, para. 7.4 defines neutral commerce as commerce between a belligerent and a neutral "that does not involve the carriage of contraband or otherwise sustain the belligerent's war-fighting capability". McNeill, J. H.: "Neutral Rights and Maritime Sanctions: The Effects of Two Gulf Wars", Virginia Journal of International Law, Vol. 31, 1991, pp. 633-634. Exhibit 114.

was justified in asserting a right of visit and search, as an incident of its broader right of self-defence, was recognised by several States. For example, the United Kingdom stated as follows:

> "Under article 51 of the United Nations charter there is a specific and inherent right of self-defence by stopping and searching foreign merchant ships on the high seas. The Iranians are using that specific right to stop merchant ships[273]."

4.60 This was not the attitude adopted by the United States. Although it had originally acknowledged the legality of Iran's visit and search operations, the United States later sought to interfere with and prevent the legitimate exercise of Iran's rights[274]. For example, it undertook naval convoys of traffic and asserted the ancient doctrine of "right of convoy". As described by one American writer:

> "In effect, the U.S. relied upon the ancient doctrine of 'right of convoy' under which belligerents cannot visit and search convoyed ships and are to be satisfied with the declaration of the commander of the convoy that no cargo which can be considered contraband is on board the convoyed ships. This action may actually have had three effects: 1) protecting the vessels from attack; 2) asserting the right of convoy; and 3) refusing to accept that Kuwaiti oil was a contraband surrogate[275]."

4.61 The so-called "right of convoy" has no general acceptance in the contemporary law of maritime belligerency. In the circumstances, the practice of the United States was designed quite deliberately to assist the aggressor, Iraq, and to frustrate the right of self-defence of Iran. Not surprisingly, Iran was not prepared to accept any assurance from the United States that cargoes in the convoy were not enemy cargoes, or contraband destined for the enemy.

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273 See, the Statement of the Minister of State, Foreign and Commonwealth Office, on 5 February 1986, H.C. Debs., Vol. 91, Col. 279. Exhibit 115.

274 See, paras. 1.51-1.52 above. The President Taylor, a U.S. merchant ship, had been visited and searched by Iran in January 1986, following which the U.S. State Department acknowledged Iran's right to take this action. However, after this incident the United States began to assert the right of convoy and interfere with Iran's rights of visit and search. See, for example, Peace, David L., "Major Maritime Events in the Persian Gulf between 1984 and 1991: A Juridical Analysis", Virginia Journal of International Law, Vol. 31, 1991, p. 550. Exhibit 30.

275 McNeill, J.H.: op. cit., at p. 635. Exhibit 114. Iran does not accept that these were the only effects of the U.S. assertion of the right of convoy. Moreover, Iran's main concern was with the importation of military and dual use items to Iraq.

4.62 It is in this light that the Iranian "attacks" on so-called "neutral" vessels have to be viewed. Were they "attacks"; or were they part of Iran's right of self-defence, in the form of legitimate actions against suspect vessels in circumstances in which Iran's right of visit and search was resisted? The Iranian attempt to enforce Iran's rights was, from 1986 onwards, based on surface vessels[276]:

> "By October 1986, the surface ship had become Iran's primary attack platform. These attacks were divided between regular Navy forces operating primarily from SAAM-class frigates and Revolutionary Guard forces using Swedish-made Boghammer patrol craft and other small boats. The Guards typically pulled alongside a tanker and let loose a barrage of anti-personnel weapons, such as rocket-propelled grenades and 50-calibre machine guns, directed at the ship's bridge. Unlike Iraqi pilots who tended to shoot first and identify later, Iranian forces conducted their attacks only after careful reconnaissance and specific vessel identification[277]."

4.63 Two things need to be noted about these so-called "attacks". First, as a form of self-defence they were not excessive or disproportionate[278]. Second, there is no evidence that the oil platforms destroyed by the United States in 1987 and 1988 had anything to do with these "attacks". Accordingly, Iran maintains that its actions in the face of Iraqi aggression were fully consistent with international law and it had committed no actions which would be characterized as unlawful attacks.

### (b) The alleged mining of the Persian Gulf by Iran

4.64 There is no question that Iraq possessed, and laid, mines in the Persian Gulf (as, indeed, Iraq was to do yet again during the 1991 conflict): Iraqi mines were dropped from the air into the Khor Musa channel connecting the Iranian ports of Bandar Khomeini and Bandar Mahshahr to the Persian

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276 Earlier use of helicopters had been discontinued because, again, largely due to U.S. efforts, the acquisition of spare parts became very difficult.

277 Peace, D.L.: op. cit., p. 549. Exhibit 30.

278 The comparison with the Exocet missile attacks by the Iraqi airforce is striking. It is quite extraordinary that the United States should have demonstrated so much concern over the Iranian "attacks", and virtually no concern over the Iraqi missile attacks against commercial shipping.

Gulf[279]. Iraqi mines also damaged vessels in the Strait of Hormuz and elsewhere in the Persian Gulf[280].

4.65 There is equally no question that Iran laid some mines. But Iran's admission that it did so related to minefields laid for defensive purposes near Khor Abdullah[281].

4.66 What is by no means clear is who was responsible for the indiscriminate sowing of seabed mines and unanchored, or floating, mines which were discovered in 1987 in various parts of the Persian Gulf[282]. Iran is clear that it was not Iran who was responsible. It was not in Iran's interest to risk the indiscriminate sinking of shipping using the Persian Gulf, for the Persian Gulf was Iran's lifeline in a way that was not true for Iraq. Iraq certainly had the mines and the capacity to release them into the Persian Gulf from the air. Moreover, Iraq, unlike Iran, clearly had the motive to lay mines in the Persian Gulf in order to damage Iranian commerce and to internationalize the conflict. In such circumstances, it is Iran's belief that Iraq must bear the responsibility for these events. Certainly, it is for the United States to prove the contrary.

4.67 The Bridgeton incident, for which Iran was not responsible, was discussed in Part I[283]. The United States had also relied on the incident involving the vessel Iran Ajr to support its allegation that Iran was responsible for indiscriminate mine-laying. On 22 September 1987, the United States reported to the Security Council that this Iranian vessel had been "discovered laying mines in shipping lanes used by United States and other vessels in international waters 50

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279 Danziger, R.: "The Persian Gulf Tanker War", Proceedings/Naval Review, 1985, p. 161. Exhibit 16.

280 See, para. 1.35 above.

281 The Washington Post, 21 August 1987. Exhibit 59.

282 Iran fully accepts the Court's dictum in the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, pp. 111-112, paras. 214-215. But that ruling may not, in its terms, cover situations of intense hostilities such as the Gulf Conflict, for the situation was not one of "peacetime". So far as the requirement of prior warning is concerned, the limited coastal areas within which Iran did lay mines lay within the "war zones" declared by Iran on 22 September 1980 and far from the prescribed "safety-routes" for shipping.

283 See, para. 1.95 above.

miles north-east of Bahrain[284]". The United States attacked the Iranian vessel with rockets and machine-gun fire, disabling the vessel and causing serious casualties.

4.68 In fact, the Iran Ajr was a commercial landing-craft, used by the Iranian Navy to transport mines and other supplies. It was not designed for mine-laying and, in fact, is a vessel so constructed as to be quite unsuitable for this purpose - with high sides to the vessel making the launching of mines impracticable. Moreover, the destruction of the vessel, coupled with the failure by the United States to gather, and produce as evidence, any of the mines alleged to have been laid, make verification of the U.S. claims virtually impossible.

4.69 Nevertheless, when the U.S.S. Samuel B. Roberts was struck by a mine on 14 April 1988, the United States wrongfully assumed that the mine was laid by Iran[285]. It was this incident which the United States then used to justify the attack, four days later on 18 April, on the Iranian oil platforms in the Sirri and Salman fields.

### (c) The alleged missile attacks against shipping in the Persian Gulf

4.70 Iran does not dispute that in 1986 it acquired a number of Silkworm missiles, as did Iraq. These were Chinese missiles with a maximum effective range of 85 km, and were located onshore, facing the Straits of Hormuz which as the narrowest part of the Persian Gulf represented a potential "bottleneck" which a foreign navy might close completely so as to bring all Iranian exports to a halt[286]. The Iranian missiles were designed to deter any such attempt. In fact no such attempt was made, and the Iranian missiles were never used against shipping passing through the Straits of Hormuz.

4.71 However, on 16 October 1987, the Sea Isle City, a Kuwaiti oil tanker reflagged under the American flag, was hit by a missile whilst off the

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284 Exhibit 60.

285 See, letter dated 18 April 1988 from the Acting Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/19791). Exhibit 90. This letter asserted "we have conclusive evidence that these mines were manufactured recently in Iran".

286 See, para. 1.105.

Kuwaiti port of Shuaiba. The U.S. President, Mr. Reagan, wrote to Congress four days later, on 20 October[287], identifying this missile as "a Silkworm missile fired by Iranian forces from Iranian-occupied Iraqi territory", and reported the attack by U.S. naval forces on Reshadat Platform on the previous day, 19 October, as action in self-defence. The Security Council had been notified of this attack "in accordance with Article 51" on the previous day, 19 October[288]. The alleged location of the Iranian missile sites was later said to be in the southern part of the Fao peninsula.

4.72 There is absolutely no question that no Silkworm missile could have hit a vessel at anchor off Kuwait from the Iranian missile-sites on Qeshm island in the Straits of Hormuz: the distance would be many times the maximum range of such a missile. How, therefore, could a missile (and presumably several such missiles) be moved hundreds of miles over difficult terrain, and located in the Fao peninsula without the United States being aware of this movement? Given the sophisticated aerial surveillance available to the United States, it is impossible to believe this transfer of missiles could have been achieved by Iran without the United States being aware of it. Moreover, as Map 5 facing page 42 shows, the Sea Isle City was well beyond the range of a Silkworm missile even if such missiles had been placed on Fao.

4.73 In any event, the logic of such a situation would suggest that the most likely countermeasure would be a U.S. air-strike against these newly-established Iranian missile-sites. But no such air-strike was ever made. When asked why not, in a Press Conference on 19 October, the White House Press Secretary replied "our purpose was to avoid casualties, not to cause them - but at the same time to make the important political and military point"[289]. For Iran this explanation makes no sense: there is no apparent reason why an attack on missile sites in the Fao peninsula would cause greater casualties than the attacks on oil platforms (where, in fact, there were large number of civilian personnel).

4.74 The true explanation is that the missile was never fired by Iran! There was, in fact, no Iranian missile-site in the Fao peninsula which the United States could have attacked. Iran's own conclusion is that the missile was

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287 Exhibit 70.

288 Exhibit 73. Press reports had no hesitation in describing the U.S. attacks as "reprisals".

289 Associated Press, 19 October 1987. Exhibit 72.

fired by Iraq, from motives no more devious than the Iraqi attack on the U.S.S. Stark, or the hundreds of attacks on vessels, including Kuwaiti vessels, by Iraqi aircraft and Iraqi Silkworm missiles during the previous five years[290].

4.75 Even if, arguendo, the attack on the Sea Isle City was attributable to Iran, it is Iran's position that this would not have given rise to a right of self-defence by the United States. On the one hand, the Sea Isle City was in Kuwaiti territorial waters under Kuwaiti protection, and not under the protection of the United States, at the time of the attack. More importantly, however, Iran does not accept that the Sea Isle City can be considered as having any connection with the United States. At the beginning of the conflict, Iran had insisted that vessels fly the flag of their original nationality and it has always treated the reflagging of Kuwaiti vessels as not only a violation of the laws of neutrality but as illegal and invalid in itself. In fact, the Sea Isle City had no connection with the United States and an attack on this vessel could not justify the exercise of the right of self-defence by the United States.

### 2. The implications of the facts: a complete negation of the U.S. claim to have acted in self-defence

4.76 When the facts are thus examined, the implications for the U.S. claim are clear: that claim has no basis in law or in fact. This appears quite clearly when the facts are related to the specific requirements of self-defence.

#### (a) The requirement of a prior delict by Iran in the form of an "armed attack"

4.77 There was, in fact, no such delict. The Iranian measures taken against shipping in the Persian Gulf were not unlawful. And Iran was not responsible for either the Silkworm attack on the Sea Isle City or the laying of the mine that damaged the U.S.S. Samuel B. Roberts.

4.78 Iran believes that it is important for these facts to be understood by the Court, because Iran would not wish the case to proceed on the basis of assumptions about Iranian responsibility which are false.

4.79 Legally, it makes no difference, because even if Iran had been responsible, which is not the case, the reactions of the United States in the

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290 See, paras 1.35, 1.38 and 1.105 above.

circumstances of the case were in any event armed reprisals, and not legitimate self-defence, as will be demonstrated below. But in terms of Iran's standing in the international community it is important to Iran that the whole assumption behind the U.S. policy towards Iran should be demonstrated to be false, unfair, and essentially contrived to placate U.S. domestic opinion and world opinion. The United States could not afford to admit publicly that it was assisting an aggressor against a State desperately engaged in a war of self-defence: hence the "inventions", the false assumptions, which the United States portrayed to the world as the justification for its conduct.

**(b) The lack of any immediate necessity to act**

4.80 It is quite clear that the two U.S. attacks on these Iranian platforms were not immediate and necessary responses to any "armed attack".

4.81 As regards the assumed Iranian missile attack on the Sea Isle City, four days elapsed (15-19 October 1987) between the missile attack on the vessel and the U.S. attack on the Reshadat platforms. The U.S. measures were clearly not spontaneous reactions: they were pre-planned and finally authorised by President Reagan himself[291]. Moreover, the U.S. attack could not have been "necessary" for the protection of the Sea Isle City. The Iranian platforms could have had nothing to do with any missile attack on the Sea Isle City. They were essentially the wrong target for any legitimate measure of self-defence. Doubtless they were an easy target, a soft option offering gunnery practice with no prospect of reply to the four modern U.S. destroyers. As pointed out earlier, a U.S. airstrike against targets in the Fao peninsula might at least have been consistent with the American story of how the Sea Isle City had been damaged. But that was not done, and so the fabrication lacks even the merit of consistency.

4.82 So, too, with the attack on the Nasr and Salman platforms on 18 April 1988, four days after the incident on 14 April 1988 when the U.S.S. Samuel B. Roberts struck a mine. This was a pre-planned response on President Reagan's direction. According to one of the U.S. officers involved in the attack

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291 See, the President's letter dated 20 October 1987 to the Speaker of the House and the President Pro Tempore of the Senate, 23 Weekly Comp. Pres. Doc. 1159-1160 (26 October 1987, Exhibit 70). Mr. Weinberger is reported to have said "It was carried out with highly professional skill and precision and accomplished everything we had planned". See, The Times, 20 October 1987, Exhibit 18.

"preparations for the 18 April 1988 Operation Praying Mantis began ... ten months earlier"[292]. The attack was clearly directed at the wrong target, for these platforms can have had nothing whatever to do with any mining activities, and the attack was therefore "unnecessary" in relation to any claim of self-defence based on the incident involving the U.S.S. Samuel B. Roberts.

4.83 The lack of necessity can be seen more clearly by comparison with the U.S. reaction to the attack on the Stark by an Iraqi Exocet and its failure to take any measures against indiscriminate Iraqi attacks on Persian Gulf shipping. After that incident, the United States pursued diplomatic means to ascertain Iraq's responsibility and to obtain compensation. No such efforts were made after the Sea Isle City and Roberts incidents. The double-standard of the United States is thus blatantly apparent - a double-standard which is fatal for the United States' self-defence argument.

**(c) The disproportionate and retaliatory nature of the U.S. response**

4.84 Iran does not dispute the value of the Sea Isle City, or of the Samuel B. Roberts. Nonetheless, even if Iran had been responsible for the damage sustained by these vessels, which it was not, the U.S. attacks on three Iranian offshore oil platform complexes were a totally disproportionate response, both in comparative terms and in terms of the complete disassociation of these platforms from the incidents used by the United States as pretexts for the attack.

4.85 The essential purpose of the United States was not to protect either the Sea Isle City or the U.S.S. Samuel B. Roberts: it was to "teach the Iranians a lesson", to punish them for their defiance of the United States, and to weaken their economic strength, so heavily dependent on oil production.

4.86 After the attack on the Reshadat platforms, U.S. Secretary of Defense, Caspar Weinberger, is reported to have said:

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292 Perkins, Capt. J.B.: "Operation Praying Mantis: The Surface View", Proceedings/Naval Review, May 1989, p. 66 (emphasis added). Exhibit 80. See, Hearings before a Sub-Committee of the Committee on Appropriations, Department of Defense Appropriations for 1989, House of Representatives, 100th Congress, 2nd Session, Washington, Government Printing Office, 1988, p. 185 (Testimony of Admiral Gee) Exhibit 77.

> "What is important is ... for Iran to realise that they cannot make unprovoked attacks on neutral, non-belligerent, legitimate shipping in the gulf without some cost to them[293]".

The "punitive" purpose behind the U.S. attack on the Nasr and Salman platforms was even more evident. The United States mounted a large naval operation, code-named "Operation Praying Mantis", far in excess of what was needed to destroy those virtually undefended platforms[294]. The objectives of this operation were described as follows:

> "Sink the Iranian Saam-class frigate Sabalan or a suitable substitute.
>
> Neutralise the surveillance posts on the Sassan and Sirri gas/oil separation platforms (GOSPs) and the Rahkish GOSP, if sinking a ship was not practicable[295]."

4.87 Of the 3 U.S. Surface Action Groups, one was assigned the Salman platform, one the Nasr platform, and one the Iranian frigate, Sabalan. The U.S. naval force not only destroyed the platforms; they also located and sank an Iranian patrol boat, the Joshan, several Iranian high-speed Boghammer launches, a frigate, the Sahand, as well as crippling a second frigate, the Sabalan. As Admiral Gee reported to the Congressional Sub-Committee:

> "All in all, for the day, about half of the Iranian Navy was, in fact, destroyed: two Vosper frigates, one Cayman PTG, and three Boghammers. Also two oil platforms were destroyed, and F-4's were repelled[296]".

There could scarcely be clearer proof that this was a pre-planned, large-scale, punitive operation.

4.88 The conclusions are both obvious and inescapable. The U.S. attacks were not lawful measures of self-defence: they were premeditated acts of "reprisal" (although based upon quite groundless allegations of a prior Iranian armed attack) and wholly illegal.

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293 Associated Press, 19 October 1987. Exhibit 71.

294 See, Langston, Capt. B., and Bringle, Lieut. Commander D.: "Operation Praying Mantis: The Air View", Proceedings/Naval Review, May 1989, p. 54 (Exhibit 89); and Perkins Capt. B.: "Operation Praying Mantis: The Surface View", ibid., pp. 66-70. Exhibit 80.

295 Perkins, Capt. J.B.: op. cit., at p. 68. Exhibit 80.

296 Department of Defense Appropriations for 1989, op. cit., p. 186. See, Exhibit 77.

# PART V

# THE REMEDIES SOUGHT BY IRAN

5.01 Iran has shown in previous Chapters of this Memorial that in destroying the oil plaforms in question, the United States violated its obligations under the Treaty of Amity and the rules of customary international law relevant to the Treaty's application or interpretation. Such violations entail the duty to make full reparation for the injury caused. As the Permanent Court recalled in the case concerning the Factory at Chorzow:

> "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in the adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself[297]."

5.02 Iran requests two forms of reparation for the violation by the United States of its international obligations. First, Iran requests that the Court adjudge and declare that the United States violated specific obligations under the Treaty of Amity and international law; second, it seeks compensation for the damages caused by the United States in destroying the oil platforms in a form and an amount to be assessed and established by the Court in a subsequent phase of the proceedings. These two requests are analysed in turn in Chapters I and II below.

## CHAPTER I REQUEST FOR A DECLARATION THAT THE UNITED STATES VIOLATED THE TREATY OF AMITY

5.03 The right of a State to obtain satisfaction for injuries caused to it by the unlawful conduct of another State is a widely accepted principle of international law. In accordance with this principle, Iran seeks satisfaction in the form of a declaratory judgment acknowledging the unlawfulness of the acts committed by the United States.

5.04 In Section A below, Iran will show that the Court is competent to make such a declaration; in Section B, Iran will set forth its specific requests.

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297 Factory at Chorzow, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21.

## SECTION A The Competence of the Court To Make a Declaration

5.05 Iran seeks a declaratory judgment in the sense described by the Permanent Court in the case concerning the Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzow), where the Court stated that the nature of such a judgment -

> "... is to ensure recognition of a situation at law, once and for all and with binding force as between the Parties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned[298]."

5.06 That the Court has competence to adjudicate this case under Article XXI(2) of the Treaty of Amity has been fully discussed in Part II above. By the same token, the Court also has the power to grant the declaratory relief requested by Iran - a principle that has been consistently recognized by doctrine and international tribunals. While this principle would appear to be beyond controversy, it is appropriate to note that Iran is seeking declaratory relief for essentially two reasons.

5.07 First, in accordance with the Court's jurisprudence, declaratory relief is the necessary precondition to an award of compensation for the violation by one State of its international obligations. This logical sequence was followed, for example, by the Court in its judgment on the merits in the Nicaragua case, where the Court held that the United States was under an obligation to make reparation to Nicaragua only after the Court had found that the United States had acted in breach of its international obligations[299].

5.08 Second, a declaration of the illegality of the United States' conduct under the Treaty of Amity is also essential in this case as an independent remedy, given the gravity of the wrong committed, in order to satisfy the dignity and honor of Iran.

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298 Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzow), Judgment No. 11, 1927, P.C.I.J. Series A, No. 13, p. 20.

299 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, pp. 146-148, para. 292 (dispositif).

5.09 The power to grant this kind of remedy has been recognized by international tribunals as well as by the Court. In the case of New Zealand against France (Chairman, Jiménez de Aréchaga), the Tribunal concluded that France had violated its international obligations to New Zealand and ordered reparation in the form of a declaratory judgment. It observed in this context that there exists -

> "... une habitude de longue date des Etats et des Courts et Tribunaux internationaux d'utiliser la satisfaction en tant que remède ou forme de réparation (au sens large du terme) pour les violations d'une obligation internationale[300]."

5.10 This form of reparation was also granted in the I'm Alone case, which arose when the U.S. coastguard sunk a Canadian ship. The case was tried before an American and a Canadian Commissioner who, in their joint Final Report, denied Canada compensation for the sinking of the vessel because it was owned by U.S. nationals even though it was registered in Canada (a situation rather close to that of the Sea Isle City, owned by a Kuwaiti company, but registered in the United States). Nonetheless the Commissioners declared that -

> "... the United States ought formally to acknowledge its illegality, and to apologise to His Majesty's Canadian Government therefor[301]."

Despite the fact that the Commissioners declined to award compensation for the vessel, they went on to make a monetary award for the loss and injury to the Canadian crew and for nominal injuries to the Canadian flag.

5.11 The Court itself has exercised its power to grant this kind of remedy on a number of occasions. In the Corfu Channel case, for example, the Court awarded both declaratory relief and damages to the United Kingdom as a result of Albania's responsibility under international law for certain minefield explosions that occurred in Albanian territorial waters which damaged two British

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300 Award of 30 April 1990, pp. 115-116, para. 122.

Unofficial translation:

> "... a long standing practice of States and of international courts and tribunals to use 'satisfaction' as a remedy or form of reparation (in the wide sense of the term) for violations of an international obligation".

301 Reports of International Arbitral Awards, Vol. III, p. 1618. Exhibit 117.

ships and caused loss of life. Albania, on the other hand, had only sought as satisfaction a declaration from the Court (but no request for monetary compensation) that the United Kingdom had violated Albania's sovereignty under international law as a result of the British Navy's mine-sweeping activities in the conduct of "Operation Retail". The Court granted this relief in its judgment, holding that in carrying out the operation in question, "the United Kingdom violated the sovereignty of the Peoples' Republic of Albania[302]".

5.12 On the basis of the foregoing, and in the light of the factual and legal elements of the case discussed above, Iran requests the Court as a first step to adjudge and declare that the United States acted unlawfully in destroying Iran's oil platforms in violation of the Treaty of Amity.

### SECTION B Specific Requests

5.13 Specifically, Iran calls upon the Court to determine the full legal responsibility of the United States arising out of the violation of its treaty obligations under the following provisions of the Treaty of Amity:

- Article I, providing for the duty to maintain "enduring peace and friendship between the Parties";

- Article IV(1), providing for the duty to accord fair and equitable treatment to the nationals and companies of each Contracting Party and to refrain from applying unreasonable and discriminatory measures that would impair legally acquired rights and interests;

- Article X(1), providing that there be freedom of commerce and navigation between the two Parties.

## CHAPTER II REQUEST FOR AN AWARD OF COMPENSATION AGAINST THE UNITED STATES

5.14 The conduct of the United States in its attacks of October 1987 and April 1988 violated the principles of friendly relations, equality of treatment and freedom of commerce and navigation between the Parties referred

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302 Corfu Channel, Merits, Judgment, I.C.J. Reports 1949, p. 36.

to in the Treaty of Amity, and caused direct injury to Iranian economic interests. In Section A below, Iran will examine the competence of the Court to make an award of compensation against the United States for its violations of the Treaty of Amity while in Section B, the specific elements of damage and interest claimed by Iran will be addressed.

## SECTION A The Basis of the Court's Competence To Make an Award of Compensation Against the United States

5.15 It is a widely recognized legal principle that a State which causes injury to another State in contravention of international law is under an obligation to make reparation. As the Permanent Court observed in the Chorzow Factory case -

> "... it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation[303]."

5.16 Similarly, in the Diplomatic and Consular Staff and the Nicaragua cases, the Court held that the finding of responsibility for an injury in breach of an international obligation entails the duty to make reparation for the injury caused[304].

5.17 As has been discussed in Part II, it is also well established that to the extent that the Court has jurisdiction under a treaty (in this case, the Treaty of Amity) to decide disputes over the treaty's interpretation or application, it also has jurisdiction to decide the nature and amount of the reparations due since "[d]ifferences relating to reparation, which may be due by reason of failure to apply a convention, are consequently differences relating to its application[305]".

5.18 In many instances, reparation takes the form of monetary damages. In the Chorzow Factory case, for example, the Permanent Court held

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303 Factory at Chorzow, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29.

304 United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, pp. 41-41, paras. 90; Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 149, para. 292 (14) (dispositif).

305 Factory at Chorzow, Jurisdiction, Judgment No. 8, 1927, P.C.I.J. Series A, No. 9, p. 21.

that reparation of a wrong may, when restitution in kind is not possible, consist of an indemnity corresponding to the damage suffered. The Court stated:

> "The essential principle contained in the actual notion of an illegal act - a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals - is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it - such are the principles which should serve to determine the amount of compensation due for an act contrary to international law[306]."

## SECTION B Elements of Compensation Claimed by Iran

5.19 Iran claims compensation for the following elements of damage resulting from the unlawful conduct of the United States:

1. Compensation for the destruction of the oil platforms and related facilities, including the loss suffered (damnum emergens) and the loss of proceeds or profit (lucrum cessans), such compensation to include, inter alia:

   a) Compensation for all expenses and costs incurred by Iran as a result of the attacks to the oil platforms and arising from rescue operations, extinguishing of fires on the platforms, etc.;

   b) Replacement costs and compensation for all expenses incurred for the reconstruction and recommissioning of the oil platforms; and

   c) Compensation for all loss of production, damage to the oil fields and other related elements;

2. Compensation to Iran for the injury to its legal interests, honour and dignity caused by the actions of the United

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306 Ibid., p. 47.

States and by the refusal of the United States to acknowledge the unlawful nature of such actions;

3. Compensation for the killing of and injuries to personnel on board the oil platforms at the time of the attacks, including, but not limited to, compensation for the life lost, injuries incurred, losses to the estate of the deceased and compensation for loss of contributions, personal services and personal belongings of the persons concerned;

4. Interest at prevailing rates from the time the claim arose until payment of the judgment;

5. Any and all other relief that the Court may deem appropriate.

5.20 While each element of damage will be briefly discussed in the following paragraphs, where it will be shown that in similar circumstances international tribunals have granted the kind of relief requested by Iran in the present case, Iran is specifically requesting that issues relating to the form and amount of the reparation due be postponed to a subsequent phase of the proceedings. Such a request is in perfect harmony with the Court's past practice which has tended to address questions of liability and responsibility before turning to the specific elements of compensation and their quantification[307].

5.21 Under Item 1(a), Iran requests reparation for all losses incurred as a result of the United States' actions. In this regard, Iran was forced by the U.S. conduct to incur substantial costs in mounting rescue operations (safeguarding personnel, putting out fires, controlling well blowouts, dispersing air and marine pollution) and other related activites.

5.22 Under Item 1(b), Iran requests monetary compensation arising out of the destruction of the oil platforms for all costs incurred to repair and reconstruct the facilities. In the present case, the attacks by the United States caused the destruction of the Reshadat complex on 19 October 1987 and the Nasr

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307 See, for example, the practice adopted in the Chorzow Factory, Corfu Channel and Nicaragua cases.

production platform and Salman complex on 18 April 1988[308]. As the photographs appearing in Part I attest, in the October 1987 attack, the main Reshadat complex (R7), consisting of three linked platforms with associated facilities, was totally destroyed. The nearby platform, R4, was also largely destroyed. In the April 1988 attacks, both the Nasr and Salman complexes and associated facilities were destroyed. In this regard, Iran's losses were exacerbated by U.S. sanctions and by the enforcement of Operation Staunch which made it difficult for Iran to obtain the necessary materials, services and personnel to reconstruct the platforms. In themselves these actions by the United States are breaches of the Treaty of Amity. Accordingly, Iran's losses in this regard represent an additional element of damage for which it should be compensated.

5.23 Under Item 1(c), Iran also claims as a direct damage all losses incurred as a result of the loss of production from the platforms destroyed as well as from damage to the underlying oil fields and reservoirs. It is undisputable that production completely stopped from the Reshadat, Nasr and Salman complexes due to the U.S. attacks. As is well known in the oil industry, Iran's losses were not limited to lost production alone, for the U.S. attacks also caused pressure loss and other irreparable harm to the oil fields themselves. These elements will be discussed in greater detail at a subsequent phase of the proceedings.

5.24 As a matter of law, each of these heads of damage is clearly compensable. As has been noted above, the fundamental principle of restitution for damages was articulated in the Chorzow Factory case where the Permanent Court held that reparation must, as far as possible, re-establish the situation in pristinum - i.e., as it would have been had the wrongful act not been committed. Ideally, this form of compensation might be obtained through a restitution in kind but, when that is not possible, reparation can be quantified with the "payment of a sum corresponding to the value which a restitution in kind would bear[309]".

5.25 This principle has found recognition in the draft Articles on State Responsibility proposed by Professor Arangio-Ruiz, Special Rapporteur to the International Law Commission. In Article 8(1), dealing with the issue of reparation by equivalent, the following text was suggested:

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308 See, Part I, Chapter IV above.

309 Factory at Chorzow, Merits, Judgment No. 13, 1928, P.C.I.J. Series A, No. 17, p. 47.

> "(ALTERNATIVE A). The injured State is entitled to claim from the State which has committed an internationally wrongful act pecuniary compensation for any damage not covered by restitution in kind, in the measure necessary to re-establish the situation that would exist if the wrongful act had not been committed.[310]"

5.26 Reparation must include not only compensation for damaged property, but also compensation for all losses between the date of injury and the date when the reparation is made. Such losses include elements of lucrum cessans which, in the present case, relate to Iran's loss of oil production as a result of the U.S. attacks[311].

5.27 With regard to the other heads of damage falling under Item 1, compensation should include all losses which are connected to the wrongful act by a link of proximate causality. This criteria has been explained by the U.S.-Germany Mixed Claims Commission in 1923 in the following way:

> "This is but an application of the familiar rule of proximate cause - a rule of general application both in private and public law - ... It matters not whether the loss be directly or indirectly sustained so long as there is a clear, unbroken connection between Germany's act and the loss complained of ... All indirect losses are covered, provided only that in legal contemplation Germany's act was the efficient and proximate cause and source from which they flowed[312]."

5.28 The U.S.-Venezuela Mixed Claims Commission recognised the same principle in the Dix case, noting that "Governments like individuals are responsible only for the proximate and natural consequences of their acts". Compensation is thus denied for "remote consequences[313]". However, losses arising as a direct consequence of an injury must be included in the calculation of damages. In other words -

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310 Arangio-Ruiz, G.: Second Report on State Responsibility, Doc. A/CN.4/425 and Add. 1, 9 and 22 June 1989, Yearbook of the International Law Commission, 1989, Vol. II., Part 1, p. 56, para. 191.

311 See, Jiménez de Aréchaga, E.: "International Responsibility", in Sorensen, M. ed.; Manual of Public International Law, MacMillan, London, 1968, where the author notes that "lost profits" (lucrum cessans) include profits "which would have been possible in the ordinary course of events" (p. 570 and case-law refered to therein).

312 Decision No. II, Reports of International Arbitral Awards, Vol. VII, Part One, pp. 29-30. Exhibit 118.

313 Dix case, Reports of International Arbitral Awards, Vol. IX, p. 119; at p. 121.

> "... all damages which can be traced back to an injurious act as the exclusive generating cause, by a connected, though not necessarily direct, chain of causation should be integrally compensated[314]."

Consequently, compensation for the material damage sustained by the injured party must include any expenditures necessary to re-establish the situation as it existed prior to the breach of the international obligation which resulted in the damage. In the Corfu Channel case, for example, the Court calculated as part of the reparation due not only the damage to two British warships, but also the costs for medical expenses arising from the casualties.

5.29 The Court also awarded consequential damages as part of the reparation due in the Nicaragua case and ruled that -

> "... Nicaragua's claim is justified not only as to the physical damage to its vessels, but also the consequential damage to its trade and commerce[315]."

5.30 In this case, the unlawful conduct of the United States in attacking the platforms was the direct cause of the losses referred to above - the destruction of the platforms themselves, the related replacement and reconstruction costs, the loss of proceeds to the Iranian oil industry, the damage to the underlying fields, and the costs involved in safeguarding the facilities and personnel after the attacks. As such, these heads of damage listed under Item 1 are fully compensable.

5.31 Under Item 2, Iran requests compensation for the non-material damage caused to its honour and dignity by the U.S. attacks and by the refusal of the United States to recognise the unlawful nature of its conduct.

5.32 Under international jurisprudence and doctrine, this kind of damage has been widely accepted as one of the consequences of a breach of an

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314 Eagleton, C.: The Responsibility of States in International Law, New York University Press, 1928, pp. 202-203. Exhibit 119.

315 Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 139, para. 278.

international obligation which directly affects a State's judicial interests[316]. As Judge Ago observed in his Second Report on State responsibility:

> "Every breach of an engagement vis-à-vis another State and every impairment of a subjective right of that State in itself constitutes a damage, material or moral, to that State[317]."

5.33 Reparations owing for this kind of damage can take a form of satisfaction quite distinct from monetary compensation stricto sensu. Thus, in the Francisco Mallén case, the Mexico-United States General Claims Commission, after awarding monetary compensation for the "physical injuries inflicted upon Mallén", went on to state that "an amount should be added as satisfaction for indignity suffered, for lack or protection and for denial of justice ..."[318].

5.34 The Tribunal in the New Zealand v. France case reached similar conclusions and recommended that France pay a sum of $EU 2 million into a special fund to promote good relations between the parties. The ratio of such a recommendation resided in France's violation of its obligations towards New Zealand and did not constitute compensation for material damage per se[319].

5.35 Accordingly, Iran submits that it is fully entitled as a matter of law to compensation for the damages claimed under Item 2. The appropriate amounts due in the circumstances will be taken up in subsequent proceedings.

5.36 Under Item 3, Iran seeks compensation for the death and injuries to Iranian personnel caused by the attacks on the platforms. Compensation for this element of Iran's claim should be based not only on an evaluation of the lives lost or persons injured, but also on the damage caused to the survivors from the loss of contributions and personal services provided to them by the deceased and for associated losses sustained by injured personnel.

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316 See, Arangio Ruiz, G.: Second Report on State Responsibility, op. cit., pp. 5-7, paras. 13-17.

317 Ago, R.: Second Report on State Responsibility, Doc. A/CN.4/233, 20 April 1970, Yearbook of the International Law Commission, 1970, Vol. II, p. 195, para. 54.

318 Reports of International Arbitral Awards, Vol. IV, pp. 179-180. Exhibit 120.

319 Award of 30 April 1990, pp. 118-119, paras. 124-128.

5.37 The relevant elements of compensation applicable here have been clearly spelled out by the United States-German Mixed Claims Commission in the Lusitania case. There, the Commission granted payment of amounts under three heads of damage:

> "(a) which the decedent, had he not been killed, would probably have contributed to the claimant, add thereto (b) the pecuniary value to such claimant of the deceased's personal services in claimant's care, education or supervision, and also add (c) reasonable compensation for such mental suffering or shock, if any, caused by the violent severing of family ties, as claimant may actually have sustained by reason of such death[320]."

5.38 In the event of wrongful death, compensation should be accorded for the loss of life regardless of whether the deceased was survived by dependents or not. Indeed, in the absence of immediate family, the estate of the deceased would normally go to the closest relative or, ultimately, to the State. International practice recognizes the validity of claims based on this principle. For instance, in the Mixed Claims Commission cases, the German Commissioner observed that Great Britain -

> "measured the damage caused ... by examining a 'considerable number of cases' on lines substantially the same as established by this Commission ... and that by thus reaching an average amount they valued the life of each civilian national on that basis regardless of whether the deceased left surviving dependents or not[321]."

In other words, compensation should be granted in case of wrongful death independently of income, the existence of dependents or the age or financial situation of the victim as a consequence of the loss incurred by the State for the killing of one of its nationals.

5.39 As noted above, under Item 3, Iran also requests compensation for the losses sustained by persons on board the platforms as a result of personal injuries. Such compensation should be granted in the form of damages including, but not limited to, the injured persons' medical and hospital

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320 Cited in Whiteman, M.M.: Damages in International Law, Washington, U.S. Government Printing Office, 1937, Vol. 1, p. 682. Exhibit 121. Detailed factors to be considered under this formula were also set out by the Commission and are reprinted by Whiteman.

321 Cited in Hackworth, G.H.: Digest of International Law, Washington, U.S. Government Printing Office, 1943, Vol. V, pp. 747-748 (emphasis in original). Exhibit 122.

expenses and the loss of earning capacity for the whole period during which they were disabled[322]. In this connection, the same principles recounted above relating to losses incurred as a result of wrongful death apply to individuals who have been either incapacitated or otherwise injured as a result of the attacks.

5.40 Finally, Iran claims for any other elements of damage which may be deemed appropriate in the circumstances due to the United States' unlawful conduct. For the reasons stated above, these elements are more practically addressed after the Court renders its decision on issues of liability and responsibility.

5.41 On the basis of the above, therefore, and as a result of its violation of the rules contained in the Treaty of Amity with Iran, the United States is under a duty to pay compensation for the damage suffered by Iran as a result of its unlawful acts, in a form and amount to be subsequently quantified.

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322 For an exhaustive review of the case law on personal injury, see, Whiteman, M.M.: op. cit., pp. 517-629.

## 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.

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(Signed) .....

Ali H. Nobari
Agent of the Government of
the Islamic Republic of Iran

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Exhibit

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- Resolution 588 (1986) of 8 October 1986;
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## CERTIFICATION

I, the undersigned, Ali H. Nobari, Agent of the Islamic Republic of Iran, hereby certify that the copy of each document attached in Volumes II to IV of the Memorial submitted by the Islamic Republic of Iran is an accurate copy.

(Signed)

Ali H. Nobari
Agent of the Islamic Republic
of Iran