

**CASE CONCERNING OIL PLATFORMS
(Iran v United States)***

I. BACKGROUND¹

Generally, this case concerned the Treaty of Amity, Economic Relations and Consular Rights between Iran and United States signed in Tehran on 15 August 1955 that entered into force on 16 June 1957. On 2 November 1992, Iran instituted proceedings against the United States regarding a dispute arising from United States naval attacks on 19 October 1987 and 18 April 1988 that destroyed three offshore oil production complexes owned and operated for commercial purposes by the National Iranian Oil Company. Iran contended that the acts constituted a “fundamental breach” of various provisions of the Treaty including international law.

To found the Court’s jurisdiction, Iran had relied on Article XXI(2) of the Treaty. The United States raised a preliminary objection to this jurisdiction under Article 79(1) of the 1978 Rules of Court. In a judgment dated 12 December 1996 (Preliminary Objection judgment), the Court rejected the United States preliminary objection on the ground that although the Treaty did not provide any specific basis for jurisdiction, it could be based on Article XXI(2) while Iran’s claims could be entertained under Article X(1).

In its counter memorial, the United States claimed that Iran’s actions in the Gulf in 1987-1998, *inter alia*, involved the mining and other attacks on its vessels (flagged or owned). By Order of 10 March 1998, the Court found this counter claim to be admissible, forming part of the proceedings.

II. CLAIMS AND COUNTER CLAIMS

Iran requested the Court to reject all contrary claims and submissions of the United States, and adjudge and declare the following:

* This case is based on the Summary of the Judgment delivered on 6 November 2003 available at <www.icj-cij.org/>.

¹ Judgment of the Court paras 1-20.

1. In attacking and destroying the oil platforms, the United States breached its obligations to Iran under Article X(1), resulting in responsibility.
2. Accordingly, the United States had an obligation to make full reparation to Iran for violating its international legal obligations and for the injury it caused. The reparation was to be in a form and amount to be determined by the Court at a subsequent stage of the proceedings, the right being reserved to Iran to provide the Court in due course with a precise evaluation of the reparation owed by the United States.
3. Any other remedy the Court deemed appropriate.

In reply, the United States requested the Court to adjudge and declare the following:

1. The United States did not breach its obligations to Iran under Article X(1).
2. Accordingly, Iran's claims should be dismissed.
3. In attacking vessels in the Persian Gulf with mines and missiles and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the territories of the parties, Iran had breached its obligations to the United States under Article X(1).
4. Accordingly, for breaching the Treaty Iran had an obligation to make full reparation to the United States in a form and amount to be determined by the Court at a subsequent stage of the proceedings.

III. BASIS OF JURISDICTION²

The Court's earlier judgment of 12 December 1996 had impacted on the parties' submissions on jurisdiction in this case where both of them raised certain questions on the precise significance or scope of that judgment. The Court had earlier based its jurisdiction to entertain both the claim and counter claim on Article XXI(2) of the Treaty.

The Court noted that if the Treaty had been breached, it had to draw the appropriate consequences according to the submissions presented.

² Ibid paras 21-26.

Further, both the claim and counter claim would be upheld if a breach or breaches of Article X(1) could be shown. This required Article X(1) to be interpreted because Article X(1) provides that “[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”

In relation to the counter claim, the Court had by Order of 10 March 1998 indicated that the facts alleged and relied upon by the United States could fall within Article X(1) as interpreted by the Court. Accordingly, the Court had jurisdiction to entertain the counter claim in so far as the facts alleged could have prejudiced the freedoms guaranteed by that provision.³ In this respect, since other questions had arisen on the significance and scope of that Order, the Court would address them too.

IV. FACTUAL BACKGROUND⁴

Generally, the facts of the case were not disputed since they were a matter of historical record. The actions giving rise to the claim and counter claim had occurred in the Persian Gulf, an international commercial route that was also an important line of communication during the armed conflict between Iran and Iraq from 1980-1988. In 1984, Iraq began attacking ships in the Gulf, notably tankers carrying Iranian oil. They were the first incidents that later became known as the “Tanker War”. During this period, when the naval forces of the United States and Iran as belligerent parties had operated in the region, many commercial vessels and warships of various nationalities, including neutral vessels, were attacked by aircraft, helicopters, missiles or warships, or struck mines in the Gulf. While Iran had denied responsibility for any actions other than the incidents involving vessels refusing a proper request for stop and search, the United States had attributed responsibility for certain of these incidents to Iran, but Iran had suggested that Iraq was responsible for them.

There were two specific attacks on shipping of particular relevance. On 16 October 1987, near Kuwait harbour a missile had hit the Kuwaiti tanker *Sea Isle City* that had been re-flagged to the United States.

³ Refer [1998] International Court of Justice Reports 204 para 36. The freedoms were related to commerce and navigation.

⁴ Judgment of the Court paras 21-26.

Attributing this attack to Iran, the United States attacked two Iranian offshore oil production installations in the Reshadat/Rostam complex three days later. On 14 April 1988, the United States warship *USS Samuel B Roberts* struck a mine in international waters near Bahrain when returning from an escort mission. Four days later, the United States navy responded by attacking and destroying simultaneously Iran's Nasr/Sirri and Salman/Sassan oil complexes. Iran claimed that these attacks breached the Treaty. In reply, the United States claimed that the attacks were acts of self-defence consequent upon Iran's attack on *Sea Isle City* and *USS Samuel B Roberts*.⁵ It claimed further that Iran's claims should be dismissed because Iran had acted unlawfully.⁶

V. APPLICATION OF ARTICLE XX(1)(d) OF THE 1955 TREATY⁷

After finding that it had jurisdiction under Article XXI(2),⁸ the Court proceeded to entertain Iran's claim that the United States had breached Article X(1). The Court held that other provisions of the Treaty could be relevant if they affected the interpretation or application of that provision. For example, the United States had relied on Article XX(1)(d) claiming that this provision is determinative on the existence of a breach of obligations under Article X, while Article XX(1)(d) provides that the Treaty should not preclude the application of measures "necessary to fulfil 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."

In the Preliminary Objection judgment, the Court had ruled that Article XX(1)(d) does not afford an objection to admissibility but was "confined to affording the Parties a possible defence on the merits."⁹ Pursuant to Article XXI(2), the Court had to interpret and apply Article XX(1)(d) in light of the United States' defence based on "essential security interests".

⁵ Note that the United States counter claim was not limited to those attacks.

⁶ Judgment of the Court paras 27-30.

⁷ *Ibid* paras 31-78.

⁸ This provision states: "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."

⁹ [1966] II International Court of Justice Reports 811 para 20.

To uphold Iran's claim, the Court also had to be satisfied on two counts: (a) that the United States' actions had infringed freedom of commerce between the territories of the parties guaranteed by Article X(1); and (b) that the actions were not justified to protect the United States' essential security interests as contemplated by Article XX(1)(d). Further, the Court had to examine Article XX(1)(d) first, before examining Article X(1).

The original dispute between the parties had concerned the legality of United States actions in the context of the international law on the use of force. However, when the actions were committed, neither party had mentioned the Treaty. Instead, the United States had contended that its attacks on the oil complexes were justified as acts of self-defence, in response to what it regarded as armed attacks by Iran. On that basis, it had given notice of its actions to the Security Council on 18 April 1988 under Article 51 of the United Nations Charter (Security Council notification).

In addition, the United States had argued the following before the Court:

1. it was justified in acting as it did in exercise of the right of self-defence;
2. even if the Court were to find that its actions fell outside Article XX(1)(d), its actions were not wrongful since they were necessary and appropriate actions in self-defence;
3. the self-defence issues presented in the case raised matters of the highest importance to all members of the international community; and
4. both parties agreed that the implications of the case on the use of force were very important even though they drew opposite conclusions from this observation.

On the relationship between self-defence, Article XX(1)(d), and the Court's jurisdiction, the Court held that this was a matter of treaty interpretation. The question was whether the parties to the Treaty, which provided that it should "not preclude the application of measures ...necessary to protect [the] essential security interests" of either party, had intended this to be the effect of the Treaty even when those measures involved a use of armed force. And if so, whether they had

contemplated or assumed a limitation that such use should comply with the conditions laid down by international law.

The Court considered that its jurisdiction under Article XXI(2) to determine any question of interpretation or application of Article XX(1)(d), *inter alia*, extended to the determination whether action alleged to be justified under that provision was or was not an unlawful use of force by reference to applicable international law as found in the United Nations Charter and customary international law. Consequently, the principle on the prohibition in international law of the use of force, and its qualification constituted by the right of self-defence, had to be considered. Under this provision, a party to the Treaty could be justified in taking certain measures that it considered to be “necessary” to protect its essential security interests.

In this case, the question whether the measures were “necessary” had overlapped the question of their validity as acts of self-defence. As a result, the Court observed as follows:

1. it was not disputed that neutral shipping in the Persian Gulf had caused great inconvenience and loss, and grave damage, during the Iran-Iraq war;
2. the presence of mines and minefields laid by both in the area had been responsible for this to a large extent;
3. although it had no jurisdiction to enquire into the extent to which Iran and Iraq had complied with the international legal rules of maritime warfare, it could note the circumstances that the United States had regarded as relevant to its decision to take action against Iran to protect its essential security interests;
4. the legality of the United States’ actions had to be judged by reference to Article XX(1)(d) in light of the international law on the use of force in self-defence; and
5. the United States had never denied that its actions against the oil platforms amounted to a use of armed force.

Following this, the Court examined whether each action complained of met the conditions of Article XX(1)(d) as interpreted by reference to relevant rules of international law.

(a) *Attacks on Reshadat Complex (19 October 1987)*¹⁰

Those attacks represented the first wave of United States attacks, but when they happened, the oil platforms in this complex were actually not in production because of damage sustained during earlier Iraqi attacks. However, Iran had maintained that repair work had been close to completion in October 1987, which the United States challenged. Iran also claimed that the attacks that almost completely destroyed one platform while severely damaging another had stalled oil production in the complex for many years.

When considering this submission, the Court relied on the facts to determine the validity of the United States claim on the right of self-defence. When the United States was in “self defence” mode, it had provided the Security Council notification referring to “a series of unlawful armed attacks by Iranian forces against [itself], including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation”. It referred in particular to the missile attack on its tanker *Sea Isle City* as the specific incident leading to the attacks on Reshadat, and asserted the relevance of the other attacks.

The Court noted that the United States had not claimed that it was exercising collective self-defence on behalf of neutral states engaged in shipping in the Persian Gulf. To show that it was legally justified in attacking Iran’s oil platforms in exercise of the right of individual self-defence, the Court required the United States to show that:

1. Iran was responsible for the attacks made upon it;
2. the attacks were of such a nature that they qualified as “armed attacks” within the meaning of that expression in Article 51 of the United Nations Charter and as understood in the customary international law on the use of force;
3. its actions were necessary and proportional to the armed attacks Iran had made upon it; and
4. the oil platforms were a legitimate military target open to attack in the exercise of self-defence.

¹⁰ Judgment of the Court paras 46-64.

After examining all the evidence and arguments presented, the Court held that the United States evidence on Iranian responsibility for the *Sea Isle City* attack was insufficient to support its submission. In other words, the United States had failed to discharge the burden of proof on the existence of an armed attack by Iran on the United States in the form of the missile attack on that vessel.

The Court then examined the Security Council notification including the additional submission that the *Sea Isle City* attack had been “the latest in a series of such missile attacks against United States flag and other non-belligerent vessels in Kuwaiti waters in pursuit of peaceful commerce”. However, the Court found that, even if the incidents were taken cumulatively and reserving the question of Iranian responsibility, they were insufficient as an “armed attack” on the United States.

(b) *Attacks on Nasr and Salman Complexes (18 April 1988); “Operation Praying Mantis”*¹¹

Those attacks represented the second wave of United States attacks, which Iran claimed had caused severe damage to its production platforms in Nasr and Salman. For example, the activities of Salman complex were totally interrupted for four years, its regular production resuming only in September 1992 and reaching normal level in 1993. The activities of the entire Nasr complex were also interrupted and not resuming until four years later.

As noted above, the United States had communicated those attacks and their nature in the Security Council notification. It contended *inter alia* that it had “exercised [its] inherent right of self-defence under international law by taking defensive action in response to an attack by the Islamic Republic of Iran against a United States naval vessel in international waters of the Persian Gulf”, a reference to the mining of *USS Samuel B Roberts*. It argued that this incident was “but the latest in a series of offensive attacks and provocations Iranian naval forces ha[d] taken against neutral shipping in the international waters of the Persian Gulf”.

¹¹ Ibid paras 65-72.

After considering the evidence, the Court concluded that the United States attacks were not an isolated operation aimed simply at the oil platforms, as had been the attacks on *Reshadat*. Instead, they were part of a more extensive military action designated “Operation Praying Mantis” that regarded the platforms as “legitimate military targets”. The United States had used armed force and damaged a number of targets, including destroying two Iranian frigates and other Iranian naval vessels and aircraft.

The Court found that the same issue on the burden of proof arose here, namely, did the United States discharge the burden by showing that *USS Samuel B Roberts* was the victim of a mine laid by Iran? The mines had been laid during the Iran-Iraq war, which made evidence of Iranian mine-laying operations inconclusive, impacting on the issue of responsibility. The main United States evidence to show that the mine that struck *USS Samuel B Roberts* had been laid by Iran was the discovery of moored mines in the same area with serial numbers matching other Iranian mines, especially those found on board the Iranian vessel, *Iran Ajr*. However, the Court held that although this evidence was highly suggestive, it remained inconclusive.

Further, the Court found that the United States had not shown other evidence of attacks on United States-flagged vessels (as distinct from United States-owned vessels) besides *Sea Isle City* and *USS Samuel B Roberts*. The question therefore was whether the incident involving the latter vessel by itself amounted to an “armed attack” to justify action in self-defence. On this point, the Court did not exclude the possibility that the mining of a single military vessel could be sufficient to activate the “inherent right of self-defence”. However, in the circumstances and including the inconclusiveness of the evidence on Iran’s responsibility for the mining, the Court held that the United States attacks on *Salman* and *Nasr* were unjustified responses to Iran’s alleged “armed attack” on the United States in the form of the *USS Samuel B Roberts* incident.

(c) *Necessity*¹²

The Court stated that the issue, whether certain action was “necessary”, arose because necessity was a relevant element of self-defence in

¹² *Ibid* paras 73-77.

international law. Necessity was also relevant based on the actual terms of Article XX(1)(d) since the Treaty did “not preclude...measures ...necessary to protect [the] essential security interests” of either party. The Court therefore dealt with this element in the context of the nature of the target of the force. On this point, the Court concluded that it was not sufficiently convinced by United States contentions on the significance of the military presence and activity in the Reshadat complex, and no such evidence was offered regarding the Salman and Nasr complexes. Even if United States contentions were accepted for discussion purposes, the Court could not hold that the attacks on the complexes were justified as acts of self-defence since it was not satisfied that the attacks were necessary as responses to the *Sea Isle City* and *USS Samuel B Roberts* incidents.

(d) Proportionality¹³

If the United States had shown that the *Sea Isle City* incident was an armed attack committed by Iran, the Court stated that the United States action in Reshadat could be deemed to be proportionate. However, the attacks on Salman and Nasr were different. They had been conceived and executed as part of a more extensive operation called “Operation Praying Mantis”. However, as a response to the mining of a single United States warship that did not sink (albeit severely damaged), and that was committed by an unidentified agency with no loss of life, the Court held that the Operation as a whole could not be deemed a proportionate use of force in self-defence.

(e) Conclusion¹⁴

In light of the above findings, the Court concluded that United States actions against Iranian oil complexes in Reshadat, Nasr and Salman could not be justified as measures “necessary” to protect the “essential security interests” of the United States under Article XX(1)(d). This was because the actions constituted recourse to armed force not qualifying as acts of self-defence under international law. Further, the actions did not fall within the class of measures contemplated by a correct interpretation of Article XX(1)(d) as intended by the Treaty.

¹³ Ibid.

¹⁴ Ibid para 78.

VI. IRAN'S CLAIM UNDER ARTICLE X(1)¹⁵

Article X(1) provides that “[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.” In the Preliminary Objection judgment, the Court had occasion to interpret this provision. It had noted that since Iran had not alleged that the military action had affected freedom of navigation, the only question left to be decided was whether the United States actions had the potential to affect “freedom of commerce” as guaranteed by that provision.¹⁶ After examining the parties’ submissions on the meaning of the term, the Court had held:¹⁷

[I]t would be a natural interpretation of the word ‘commerce’ in Article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general, not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce.

The Court had emphasised in the Preliminary Objection judgment that Article X(1) did not strictly speaking protect “commerce” but “freedom of commerce”, adding:¹⁸

Unless such freedom is to be rendered illusory, the possibility must be entertained that it could actually be impeded as a result of acts entailing the destruction of goods destined to be exported, or capable of affecting their transport and storage with a view to export.

In the present case, the Court noted that Iran’s oil production was a vital part of Iran’s economy and an important component of its foreign trade. On the material before it, the Court could not determine if and to what extent the destruction of Iranian oil platforms had affected the export trade in Iranian oil. It therefore concluded that if Iran could establish this, the Iranian claim under Article X(1) could succeed.

¹⁵ Judgment of the Court paras 79-99.

¹⁶ [1996] II International Court of Justice Reports 817 para 38.

¹⁷ Ibid 819 para 49.

¹⁸ Ibid 819 para 50.

In the Preliminary Objection judgment, the Court had contemplated the possibility that freedom of commerce could be impeded not only by “the destruction of goods destined to be exported”, but also by acts “capable of affecting their transport and their storage with a view to export”.¹⁹ As such, the activities of the oil platforms were to be generally regarded as commercial in nature. However, it did not necessarily follow that interference with the activities would impact on freedom of commerce between the territories of the parties.

In the present case, the Court stated that where a state destroyed another’s means of production, means of transport of goods destined for export, or means ancillary or pertaining to such production or transport, there was in principle an interference with freedom of international commerce. In destroying the platforms, whose function as a whole was precisely to produce and transport oil, the military actions had made commerce in oil impossible at that time and from that source, and to that extent had prejudiced freedom of commerce. Although the oil, when it left the platform complexes, was not ready for safe export, the fact was that it could be at a stage destined for export, and the destruction of the platform had prevented further treatment necessary for export. As a result, the Court held that the protection of freedom of commerce under Article X(1) applied to the oil platforms attacked by the United States, such attacks impeding Iran’s freedom of commerce.

This led to the next question: was there an interference with freedom of commerce “between the territories of the High Contracting Parties” in this case? The United States contended that there was no breach of Article X(1) and no interference with freedom of commerce between their territories, even if the attacks had caused some interference with freedom of commerce. The arguments were as follows:

1. The Reshadat platforms were being repaired as a result of an earlier attack on them by Iraq. Consequently, they were not engaged in, or contributing to, commerce between the territories of the parties.
2. In relation to the Salman and Nasr platforms, United States Executive Order 12613 signed by President Reagan on 29

¹⁹ [1966] II International Court of Justice Reports 819 para 50.

October 1987 had prohibited, with immediate effect, the import into the United States of most goods (including oil) and services of Iranian origin. Owing to the embargo imposed by the Order, there was already no commerce between the territories of the parties that could be affected, and consequently there was no breach of the Treaty protecting this.

Responding, Iran contended (and not denied by the United States) that there was a market for Iranian crude oil imported directly into the United States. Until Executive Order 12613 was issued, Iranian oil exports had been the subject of “commerce between the territories of the High Contracting Parties” within the meaning of Article X(1).

On this point, the Court observed that when Reshadat was attacked, no oil was being produced or processed there because the oil platforms had been disabled earlier by Iraqi attacks. While it was true that the United States attacks caused a major setback to restoring the platforms, the platforms were not at the time producing or processing oil in the context of “commerce” between the parties.

The Court noted that the embargo imposed by Executive Order 12613 was in force before the attacks on Salman and Nasr were carried out. This was a significant factor concerning the interpretation and application of Article X(1). Although the Court found that Iran had not shown that Reshadat and Resalat platforms could have resumed production before the embargo was imposed, it did not question Iran’s view that during the embargo, petroleum products had been reaching the United States in considerable quantities derived in part from Iranian crude oil. Therefore, the Court had to determine: (a) whether something designated “Iranian” oil could enter the United States in some form during the embargo; and (b) whether there was “commerce” in oil between the territories of the parties during the embargo within the meaning given to that word in the Treaty.

In this respect, what seemed to the Court to be determinative was the nature of the successive commercial transactions involving oil, instead of the successive technical processes that it underwent. What Iran had deemed to be “indirect” commerce in oil between the parties had involved a series of commercial transactions: a sale by Iran of crude oil to a customer in Western Europe or some third state other than the

United States; possibly a series of intermediate transactions; and ultimately the sale of petroleum products to a customer in the United States. The Court held that this was not “commerce” between Iran and the United States, but commerce between Iran and an intermediate purchaser; and “commerce” between an intermediate seller and the United States. As a result, the Court concluded:

1. when Reshadat was attacked, there was no commerce between the territories of the parties in respect of oil produced by Reshadat and Resalat platforms as they were under repair and inoperative;
2. the attacks could not infringe the freedom of commerce in oil between the territories of the parties protected by Article X(1), particularly given the date of entry into force of the embargo in Executive Order 12613; and
3. when Salman and Nasr were attacked, all commerce in crude oil between the territories of the parties had been suspended by the embargo, which meant that the attacks could not be said to have infringed the rights of Iran under Article X(1).

For the above reasons, the Court dismissed Iran’s submissions that by attacking the oil platforms, the United States had breached obligations to Iran under Article X(1). Accordingly, the Court dismissed Iran’s claim for reparation.

VII. THE UNITED STATES COUNTER CLAIM²⁰

In its Order of 10 March 1998, the Court had held the United States counter claim to be admissible and found that the counter claim formed part of the current proceedings.²¹

(a) *Iran’s Objections*

Iran argued that the earlier Court Order did not decide every preliminary issue listed in the United States counter claim because the Court had: (a) only ruled on the admissibility of the counter claim

²⁰ Judgment of the Court paras 101-124.

²¹ Iran had objected to the Court’s jurisdiction regarding the counter claim : *ibid* paras 103-116.

under Article 80 of the Rules of Court only and had declared it admissible “as such” only; and (b) reserved the subsequent procedure for further decision. As a result, Iran argued that the Court should not deal with the merits of the counter claim and presented five objections.

First, Iran argued that the Court could not entertain the counter claim because it was presented without any prior negotiation, and it did not relate to a dispute “not satisfactorily adjusted by diplomacy” as contemplated by Article XXI(2) of the Treaty. The Court rejected this, stating that it was established that a dispute had arisen between the parties on the issues raised in the counter claim, and the Court could satisfy itself on the issue of diplomatic adjustment.

Secondly, Iran argued that the United States was in effect submitting a claim on behalf of third states or foreign entities when it had no title to do so. The Court dismissed this argument as devoid of any object.

Thirdly, Iran contended that the counter claim extended beyond Article X(1), the only text in respect of which the Court had jurisdiction. Consequently, the Court could not uphold any submissions falling outside the terms of that provision. The Court noted that in presenting its final submissions on the counter claim, the United States did not rely on Article X as a whole but on paragraph 1 of that Article. The United States had recognised that the territorial limitation of Article X(1) referred specifically to the military actions that were allegedly “dangerous and detrimental to commerce and navigation” between the territories of the parties, and did not refer generally to “military actions that were dangerous and detrimental to maritime commerce”. By limiting the scope of its counter claim in its final submissions, the United States had in effect deprived Iran’s third objection of any object, which led to its dismissal by the Court.

Fourthly, Iran maintained that the Court had jurisdiction to rule only on the counter claim concerning Iran’s alleged violation of the freedom of commerce as protected under Article X(1), not on the counter claim alleging a violation of freedom of navigation as protected by the same provision. The Court noted that Iran seemed to have changed its position and recognised that the counter claim could be based on a violation of freedom of navigation. The Court observed that it had concluded in 1998 that it had jurisdiction to entertain the United States

counter claim in so far as the facts alleged could have prejudiced the dual freedoms guaranteed by Article X(1), namely, the freedom of commerce and of navigation. For this reason, the Court rejected this Iranian submission.

Finally, Iran had argued against using only part of the counter claim. It complained that the United States had broadened the subject matter of its claim beyond the submissions set out in its original counter claim by belatedly adding complaints on the freedom of navigation to the complaints on the freedom of commerce, and by adding new examples of breaches of freedom of maritime commerce in the rejoinder to the incidents already presented in the counter claim. The Court stated that the issue was whether the United States was presenting a new claim. If so, this meant that the Court had to identify what was “a new claim ” including what was merely “additional evidence relating to the original claim”. The reason was because parties in a case were not permitted to “transform the dispute brought before the Court into a dispute that would be of a different nature” after proceedings had begun. The Court’s jurisprudence was also well established on this point.

Dealing with the objections, the Court referred to its Order of 10 March 1998, stating that although Iran could not raise objections on issues addressed earlier in the Order, it could now raise objections to jurisdiction on the counter claim or to its admissibility, which the Court would consider in the present proceedings. This was because the Order did not address any question on jurisdiction and admissibility that was not directly linked to Article 80.

The Court also referred to that Order on the counter claim alleging “attacks on shipping, the laying of mines, and other military actions said to be ‘dangerous and detrimental to maritime commerce’.”²² Subsequent to this Order, the United States had given detailed particulars of further incidents substantiating its original claims. The Court held that this did not transform the subject of the dispute originally submitted to the Court, nor did it modify the substance of the counter claim, which remained the same. The Court therefore rejected Iran’s objection once more.

²² [1998] International Court of Justice Reports 204 para 36.

*(b) Merits of the Counter Claim*²³

Having disposed of the issues on jurisdiction and admissibility, the Court turned to the merits of the case. It stated that to succeed on the counter claim, the United States would have to show that freedom of commerce or navigation between the territories of the parties was impaired, and the acts that allegedly impaired one or both freedoms were attributable to Iran.

The Court held that Article X(1) did not protect freedom of commerce between the parties or freedom of navigation in general. As noted above, this provision had an important territorial limitation. To enjoy protection, the commerce or navigation should take place between the territories of the parties. In this respect, the United States had the burden to show that its ships when attacked by Iran were engaged in commerce or navigation between the territories of the parties.

The Court examined each alleged attack on the ships in chronological order within the context of the Treaty. The United States had presented its claims in a generic way, asserting that the following Iranian actions were breaches of Iran's obligation on freedom of commerce and navigation under Article X(1): (a) Iran's cumulative attacks on ships belonging to the United States and others; and (b) Iran laying mines and otherwise engaging in military actions in the Persian Gulf thereby making the Gulf unsafe. To this end, the Court held that neither ship described by the United States as being damaged was engaged in commerce or navigation "between the territories" of the parties. Therefore, the Court concluded that Iran did not breach Article X(1) in relation to those specific attacks.

While it was a matter of public record that the Iran-Iraq War had increased risks to navigation in the Persian Gulf, this by itself was insufficient for the Court to decide that Iran had breached Article X(1). The United States had the burden to show that there was an actual impediment to commerce or navigation between the territories of the two parties, but this burden had not been discharged. Further, an examination of the specific incidents showed that the parties had not interfered with commerce and navigation as protected by the Treaty.

²³ Judgment of the Court paras 119-123.

Accordingly, the generic and specific aspects of the United States counter claim failed under Article X(1), including the claim for reparation. Consequently, the Court was not required to consider the issue of attribution in this case.

VIII. THE ORDERS²⁴

The Court made a number of Orders.

By 14:2 votes,²⁵ the Court:

1. held that the United States' actions against Iranian oil platforms on 19 October 1987 and 18 April 1988 could not be justified as measures necessary to protect its essential security interests under Article XX(1)(d) of the Treaty, as interpreted in the light of international law on the use of force;
2. rejected Iran's submission that those actions constituted a breach of United States obligations under Article X(1) on freedom of commerce between the territories of the parties; and
3. accordingly, could not uphold Iran's claim for reparation.

By 15:1 votes²⁶ the Court also held that:

1. the United States counter claim on Iran's breach of obligations under Article X(1) on freedom of commerce and navigation between the territories of the parties could not be upheld; and
2. accordingly, it could not uphold the United States counter claim for reparation.

²⁴ Ibid para 125. Ranjeva V-P and Koroma J delivered Separate Declarations; Higgins, Parra-Aranguren, Kooijmans, Buergenthal, Owada, Simma JJ and Rigaux J ad hoc delivered Separate Opinions; Al-Khasawneh and Elaraby JJ delivered Dissenting Opinions.

²⁵ In favour: Shi P; Ranjeva V-P; Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Buergenthal, Owada, Simma, Tomka JJ; Rigaux J ad hoc. Against: Al-Khasawneh and Elaraby JJ.

²⁶ In favour: Shi P; Ranjeva V-P; Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Tomka JJ; Rigaux J ad hoc. Against: Simma J.