

CASE CONCERNING OIL PLATFORMS
(Iran v. United States of America)
ICJ Decision of 6 November 2003

61. [t]he Court...finds that the evidence indicative of Iranian responsibility for the attack on the *Sea Isle City* is not sufficient to support the contentions of the United States. The conclusion to which the Court has come on this aspect of the case is thus that the burden of proof of the existence of an armed attack by Iran on the United States, in the form of the missile attack on the *Sea Isle City*, has not been discharged.

62. In its notification to the Security Council, and before the Court, the United States has however not relied solely on the *Sea Isle City* incident as constituting the "armed attack" to which the United States claimed to be responding. It asserted that that incident was "the latest in a series of such missile attacks against United States flag and other non-belligerent vessels in Kuwaiti waters in pursuit of peaceful commerce"... Before the Court, it has contended that the missile attack on the *Sea Isle City* was itself an armed attack giving rise to the right of self-defence; the alleged pattern of Iranian use of force, it is said, "added to the gravity of the specific attacks, reinforced the necessity of action in self-defense, and helped to shape the appropriate response". ...

64. On the hypothesis that all the incidents complained of are to be attributed to Iran, and thus setting aside the question, examined above, of attribution to Iran of the specific attack on the *Sea Isle City*, the question is whether that attack, either in itself or in combination with the rest of the "series of...attacks" cited by the United States can be categorized as an "armed attack" on the United States justifying self-defence. The Court notes first that the *Sea Isle City* was in Kuwaiti waters at the time of the attack on it, and that a Silkworm missile fired from (it is alleged) more than 100 km away could not have been aimed at the specific vessel, but simply programmed to hit some target in Kuwaiti waters. Secondly, the *Texaco Caribbean*, whatever its ownership, was not flying a United States flag, so that an attack on the vessel is not in itself to be equated with an attack on that State. As regards the alleged firing on United States helicopters from Iranian gunboats and from the Reshadat oil platform, no persuasive evidence has been supplied to support this allegation. There is no evidence that the minelaying alleged to have been carried out by the *Iran Ajr*, at a time when Iran was at war with Iraq, was aimed specifically at the United States; and similarly it has not been established that the mine struck by the *Bridgeton* was laid with the specific intention of harming that ship, or other United States vessels. Even taken cumulatively, and reserving, as already noted, the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States, of the kind that the Court, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, qualified as a "most grave" form of the use of force (see paragraph 51 above).

71. As in the case of the attack on the *Sea Isle City*, the first question is whether the United States has discharged the burden of proof that the USS *Samuel B. Roberts* was the victim of a mine laid by Iran. The Court notes that mines were being laid at the time by both belligerents in the Iran-Iraq war, so that evidence of other minelaying operations by Iran is not conclusive as to responsibility of Iran for this particular mine. In its

communication to the Security Council in connection with the attack of 18 April 1988, the United States alleged that "The mines were laid in shipping lanes known by Iran to be used by U.S. vessels, and intended by them to damage or sink such vessels" (paragraph 67 above). Iran has claimed that it laid mines only for defensive purposes in the Khor Abdullah Channel, but the United States has submitted evidence suggesting that Iran's mining operations were more extensive. The main evidence that the mine struck by the USS *Samuel B. Roberts* was laid by Iran was the discovery of moored mines in the same area, bearing serial numbers matching other Iranian mines, in particular those found aboard the vessel *Iran Ajr* (see paragraph 63 above). This evidence is highly suggestive, but not conclusive.

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

73. As noted above (paragraph 43), in the present case a question of whether certain action is "necessary" arises both as an element of international law relating to self-defence and on the basis of the actual terms of Article XX, paragraph 1 (*d*), of the 1955 Treaty, already quoted, whereby the Treaty does "not preclude . . . measures . . . necessary to protect [the] essential security interests" of either party. In this latter respect, the United States claims that it considered in good faith that the attacks on the platforms were necessary to protect its essential security interests, and suggests that "A measure of discretion should be afforded to a party's good faith application of measures to protect its essential security interests". Iran was prepared to recognize some of the interests referred to by the United States -- the safety of United States vessels and crew, and the uninterrupted flow of maritime commerce in the Persian Gulf -- as being reasonable security interests of the United States, but denied that the United States actions against the platforms could be regarded as "necessary" to protect those interests. The Court does not however have to decide whether the United States interpretation of Article XX,

paragraph 1 (*d*), on this point is correct, since the requirement of international law that measures taken avowedly in self-defence must have been necessary for that purpose is strict and objective, leaving no room for any "measure of discretion". The Court will therefore turn to the criteria of necessity and proportionality in the context of international law on self-defence.

74. In its decision in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court endorsed the shared view of the parties to that case that in customary law "whether the response to the [armed] attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence" (*I.C.J. Reports 1986*, p. 103, para. 194). One aspect of these criteria is the nature of the target of the force used avowedly in self-defence. In its communications to the Security Council, in particular in that of 19 October 1987 (paragraph 46 above), the United States indicated the grounds on which it regarded the Iranian platforms as legitimate targets for an armed action in self-defence. In the present proceedings, the United States has continued to maintain that they were such, and has presented evidence directed to showing that the platforms collected and reported intelligence concerning passing vessels, acted as a military communication link co-ordinating Iranian naval forces and served as actual staging bases to launch helicopter and small boat attacks on neutral commercial shipping. ...

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

76. The Court is not sufficiently convinced that the evidence available supports the contentions of the United States as to the significance of the military presence and activity on the Reshadat oil platforms; and it notes that no such evidence is offered in respect of the Salman and Nasr complexes. However, even accepting those contentions, for the purposes of discussion, the Court is unable to hold that the attacks made on the platforms could have been justified as acts of self-defence. The conditions for the exercise of the right of self-defence are well settled: as the Court observed in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, "The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law" (*I.C.J. Reports 1996 (I)*, p. 245, para. 41); and in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court referred to a specific rule "whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it" as "a rule well established in customary international law" (*I.C.J. Reports 1986*, p. 94, para. 176). In the case both of the attack on the *Sea Isle City* and the mining of the USS *Samuel B. Roberts*, the Court is

not satisfied that the attacks on the platforms were necessary to respond to these incidents. In this connection, the Court notes that there is no evidence that the United States complained to Iran of the military activities of the platforms, in the same way as it complained repeatedly of minelaying and attacks on neutral shipping, which does not suggest that the targeting of the platforms was seen as a necessary act. The Court would also observe that in the case of the attack of 19 October 1987, the United States forces attacked the R-4 platform as a "target of opportunity", not one previously identified as an appropriate military target (see paragraph 47 above).

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

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