

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE
AERIAL INCIDENT OF 3 JULY 1988

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

ORDER OF 13 DECEMBER 1989

1989

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DE L'INCIDENT AÉRIEN
DU 3 JUILLET 1988

(RÉPUBLIQUE ISLAMIQUE D'IRAN c. ÉTATS-UNIS
D'AMÉRIQUE)

ORDONNANCE DU 13 DÉCEMBRE 1989

Official citation :

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v. United States of America), Order of 13 December 1989,
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INTERNATIONAL COURT OF JUSTICE

YEAR 1989

13 December 1989

CASE CONCERNING THE
AERIAL INCIDENT OF 3 JULY 1988

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

ORDER

Present: President RUDA; Judges LACHS, ELIAS, ODA, AGO, SCHWEBEL, Sir Robert JENNINGS, BEDJAOUI, NI, EVENSEN, TARASSOV, GUILLAUME, SHAHABUDEEN, PATHAK; Registrar VALENCIA-OSPINA.

The International Court of Justice,

Composed as above,

After deliberation,

Makes the following Order:

Having regard to Article 48 of the Statute of the Court and to Articles 31, 44, 45, 48 and 79 of the Rules of Court; and

Whereas on 17 May 1989 the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America in respect of a dispute concerning the interpretation and application of the 1944 Convention on International Civil Aviation and the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, which arose from the destruction of an Iranian aircraft, and the killing of its 290 passengers and crew, on 3 July 1988;

Whereas the United States of America was on 18 May 1989 notified by the Registrar of the filing of the Application and a copy of the Application was transmitted to it by him;

Whereas at the time of filing of the Application the Islamic Republic of Iran notified the Court of the appointment as Agent of Mr. Mohammed K. Eshragh, and by letter dated 9 August 1989, received in the Registry on 14 August 1989, the United States of America notified the Court of the appointment as Agent of Mr. Abraham D. Sofaer;

Whereas at a meeting between the President of the Court and the Agents of the Parties, convened by the President, pursuant to Article 31 of the Rules of Court, and held on 1 September 1989, the Agent of the United States of America stated that, as indicated in a letter filed in the Registry the same day, his Government intended to file preliminary objections to jurisdiction and admissibility prior to the filing of a Memorial by the Applicant;

Whereas at a further meeting between the President of the Court and the Agents of the Parties held on 12 September 1989 the Agent of the Islamic Republic of Iran stated that his Government contended that a preliminary objection should not be filed before the Memorial, and requested that appropriate time-limits be fixed for the written proceedings; and whereas the President of the Court then invited the Parties to state their respective positions more fully in writing with a view to a decision by the Court on the procedural question thus raised;

Whereas by a letter dated 26 September 1989 the Agent of the United States confirmed his Government's intention, and explained what was in the contention of the United States the legal basis in the Statute and Rules of Court for the filing of a preliminary objection prior to the filing of a Memorial by the Applicant;

Whereas by a letter dated 11 October 1989 the Agent of Iran contended on behalf of his Government that, for reasons explained in the letter, the United States was estopped and time-barred from raising jurisdictional questions; that even if the United States were still entitled to raise preliminary objections there was, for the reasons stated in the letter, no legal basis for the submission of preliminary objections prior to the filing of the Memorial in the present case; and whereas the Agent of Iran therefore requested the Court to fix time-limits for the written proceedings;

Whereas the time-limit for filing a preliminary objection is fixed by Article 79 of the Rules of Court, which provides that such an objection shall be made "within the time-limit fixed for the delivery of the Counter-Memorial"; whereas the Court is not at the present time seised of a preliminary objection by the United States; and whereas accordingly the Court is not called upon, at the present stage of the proceedings, to pro-

nounce on the questions of preclusion and estoppel raised by Iran, whose views in this respect may be put forward later;

Whereas, in accordance with Article 79, paragraph 1, of the Rules of Court, while a respondent which wishes to submit a preliminary objection is entitled before doing so to be informed as to the nature of the claim by the submission of a Memorial by the Applicant, it may nevertheless file its objection earlier,

THE COURT,

Unanimously,

Fixes the following time-limits for the written proceedings :

12 June 1990 for the Memorial of the Islamic Republic of Iran;

10 December 1990 for the Counter-Memorial of the United States of America;

And reserves the subsequent procedure for further decision.

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

(Signed) José María RUDA,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

Judge ODA appends a declaration to the Order of the Court.

Judges SCHWEBEL and SHAHABUDDEN append separate opinions to the Order of the Court.

(Initialled) J.M.R.
(Initialled) E.V.O.