



INTERNATIONAL COURT OF JUSTICE

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**Case concerning Oil Platforms
(Islamic Republic of Iran v. United States of America)**

The Court finds United States counter-claim admissible

THE HAGUE, 19 March 1998. The International Court of Justice (ICJ) found, by an Order released today in the case concerning Oil Platforms (Islamic Republic of Iran v. United States of America), that a counter-claim submitted by the United States against Iran is "admissible as such" and that it "forms part of the current proceedings".

In its counter-claim (submitted on 23 June 1997 in its Counter-Memorial), the United States requested the Court to adjudge and declare that "in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987-1988 that were dangerous and detrimental to maritime commerce", Iran "breached its obligations to the United States" under Article X of the Treaty of Amity, Economic Relations and Consular Rights between the two countries signed in Tehran on 15 August 1955. Accordingly, it requested the Court to say that Iran was "under 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".

The decision of the Court admitting the United States counter-claim means that the counter-claim will be examined by the Court simultaneously with the Iranian claims during the proceedings on the merits.

Pursuant to the Rules of the Court (Art. 80, para. 1), a counter-claim may be presented provided that it is directly connected with the subject-matter of the claim of the other Party and that it comes within the jurisdiction of the Court.

On 2 October 1997, Iran challenged the American counter-claim, saying that it had "serious objections" to its admissibility because it did "not meet the requirements of Article 80, paragraph 1, of the Rules". Both Parties were consequently asked to submit written observations. Having received these observations in which, *inter alia*, Iran requested a hearing on the subject and the United States objected to it, the Court found that it was sufficiently informed of the position of the Parties with regard to admissibility and that it was not necessary to hear the Parties further on the subject.

In its Order, the Court specified that the United States counter-claim was "directly connected with the subject-matter of the claims of Iran": the claims of both Parties rested on facts of the same nature forming part of the same factual complex, and the United States counter-claim fell under the jurisdiction of the Court "in so far as the facts alleged may have prejudiced the freedoms guaranteed by Article X, paragraph 1", of the 1955 Treaty (relating to the freedom of commerce and navigation).

Taking into account these conclusions, the Court directed the Parties to submit further written pleadings on the merits of their respective claims. Iran is to submit a Reply by 10 September 1998 and the United States a Rejoinder by 23 November 1999.

Judges Oda and Higgins appended separate opinions. Judge ad hoc Rigaux appended a dissenting opinion.

The operative paragraph of the Court's Order, summaries of the opinions of Judges, the terms of the counter-claim of the United States and the claims of Iran as stated in its Memorial, may be found in an Annex to this press release (available on the Website of the Court and by post on request).

History of the dispute

On 2 November 1992 the Islamic Republic of Iran filed an Application instituting proceedings against the United States with respect to the destruction of Iranian oil platforms.

Iran founded the jurisdiction of the Court on Article XXI, paragraph 2, of the Iran/United States Treaty of Amity, Economic Relations and Consular Rights, signed at Tehran on 15 August 1955.

In its Application Iran alleged that the destruction caused by several warships of the United States Navy, on 19 October 1987 and 18 April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. In this connection Iran referred in particular to Articles I and X, paragraph 1, of the Treaty which provide respectively: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran" and "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation".

By an Order of 4 December 1992 the President of the Court, taking into account an agreement of the Parties, fixed time-limits for the filing of the Memorial of Iran and of the Counter-Memorial of the United States. These time-limits were later extended to 8 June and 16 December 1993, respectively. The Memorial of Iran was filed within the prescribed time-limit.

On 16 December 1993 the United States filed a preliminary objection, contending that the Court had no jurisdiction to deal with the merits of the case. Iran filed a written statement on this issue and public sittings to hear the oral arguments of the Parties were held between 16 and 24 September 1996.

On 12 December 1996, the Court delivered its Judgment, finding that it had jurisdiction to entertain the claims made by Iran under Article X, paragraph 1, of the 1955 Treaty as the destruction of oil platforms was capable of having an adverse effect upon the "freedom of commerce" as guaranteed by that provision of the 1955 Treaty.

By an Order of 16 December 1996 the President of the Court, taking into account the agreement of the Parties, fixed 23 June 1997 as the time-limit for the filing of the Counter-Memorial of the United States. Within this time-limit, the United States filed its Counter-Memorial and a counter-claim.

Website address of the Court: <http://www.icj-cij.org>

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Operative paragraph of the Order of 10 March 1998 (para. 46)

For these reasons,

THE COURT,

(A) By fifteen votes to one,

Finds that the counter-claim presented by the United States in its Counter-Memorial is admissible as such and forms part of the current proceedings;

IN FAVOUR: *Vice-President Weeramantry, Acting President, President Schwebel, Judges Oda, Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek;*

AGAINST: *Judge ad hoc Rigaux;*

(B) Unanimously,

Directs Iran to submit a Reply and the United States to submit a Rejoinder relating to the claims of both Parties and *fixes* the following dates as time-limits for the filing of these pleadings:

For the Reply of Iran, 10 September 1998;

For the Rejoinder of the United States, 23 November 1999.

Judges ODA and HIGGINS append separate opinions to the Order of the Court.

Judge *ad hoc* RIGAUX appends a dissenting opinion to the Order of the Court.

Separate opinion of Judge Oda

Albeit reluctantly, Judge ODA voted in favour of the Order which was very nearly unanimously adopted but found it inappropriate that the Court should have decided, at this stage and in the form of a Court Order, that "the counter-claim presented by the United States in its Counter-Memorial is admissible as such and forms part of the current proceedings". He felt that the Court's decision in this Order set a rather unfortunate precedent in its jurisprudence relating to counter-claims.

Judge Oda examined the two precedents of the counter-claim in the jurisprudence of the present Court, namely, the *Asylum* case and the case concerning the *Rights of Nationals of the United States of America in Morocco*.

He then suggested that the purpose of the counter-claim is the proper administration of justice with a view to judicial economy to enable it to rule on any or all connected claims in a single proceeding, in other words, to avoid any inconvenience which might be caused by the other party or by a third party filing a fresh application on issues that are directly connected. In his view, however, an applicant State would be severely prejudiced if the scope of the issues, in the respondent State's counter-claim, was broadened beyond the original contention in the claim of the applicant State and the Court should not simply put what might have originally been somewhat distinct matters into one melting-pot without making a careful examination of the essential character of that claim.

Judge Oda wondered if, in the present case, it was quite proper to confirm the admissibility of the United States counter-claim and make it part of the whole proceedings without (i) affording the Parties, and in particular the Applicant, the opportunity to express their views on this matter in the written pleadings and (ii) without having oral hearings on the basis that the exchange of views indicated in the written proceedings had now been completed.

Past precedent seemed to him to indicate, in general, that the question presented by way of a counter-claim by the Respondent and the subject-matter of the Applicant were so interlinked that their direct connection could not be determined without careful study of the substance of the issues contained in their respective counter-claims. In the two past cases referred to above, some of the respective counter-claims submitted by the Respondents had been rejected by the Court but only after it had been proved, by a thorough examination through the written and oral pleadings, that the counter-claims were directly connected with the subject-matter of the claim of the other party. Whether or not there was a "connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party" was a matter that should have been open to analysis by Iran in the Reply which it was to prepare and, further, by the United States in its Rejoinder.

Judge Oda concluded that it was difficult to understand why the admissibility of the counter-claim should be determined *at this stage* before the Court had, at least, received Iran's Reply. He also failed to understand why that needed to be done so hastily in this case especially considering the careful manner in which the Court had proceeded in earlier years.

In addition, Judge Oda believed that the matter concerned, namely whether the (counter-)claim was admissible or not, should not be determined by the Court in the form of an Order but should rather be decided by the Judgment in the merits phase.

Separate opinion of Judge Higgins

Judge Higgins agrees with the Court's finding that the counter-claim is admissible as regards United States claims under Article X, paragraph 1, of the Treaty of Amity. However, in her separate opinion she contends that other matters should also have been addressed, whether to affirm them or dispose of them.

In particular Judge Higgins believes that questions of whether claims relating to warships are admissible under Article X, paragraph 1, and the question of whether Article X, paragraph 1, is restricted to commerce between the Parties, fall to be determined at this stage using the methodology decided upon by the Court in its Judgment on jurisdiction in the *Oil Platforms* case of 1996 (i.e., to assume *pro tem* the correctness of the claimant's allegations and to see whether claims might perhaps be sustainable under the various provisions cited. Had the Court done this, rather than leave these matters open to the merits, the two Parties would have been treated equally.

Judge Higgins contends in her opinion that some explicit answer should have been given as to whether the Court has jurisdiction over claims of the United States brought under Article X, paragraphs 2 to 5. Instead, the Court has merely said it has jurisdiction under Article X, paragraph 1. Any assumption that counter-claims must, to meet the requirement in Article 80, paragraph 1, of the Rules, be founded on the very same jurisdictional basis as the original claim, is in Judge Higgins's view wrong, for reasons she elaborates in her opinion.

Dissenting opinion of Judge ad hoc Rigaux

It appears from the written exchanges between the Parties that the only question referred to the Court was whether there were grounds for acceding to the Islamic Republic of Iran's request for oral proceedings to be held on the question of the non-apparent nature of the direct connection between the original claim and the counter-claims.

Instead of merely either complying with the request, as it would have been justified to do having regard to the complexity of the questions at issue between the Parties, or dismissing it and joining the question of the admissibility of the counter-claims to the merits, the Order draws its inspiration from the Order of 17 December 1997 (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*) to pronounce on the existence of a direct connection whereas the particular circumstances of the two cases are very different from one another. It is also regrettable that the question was dealt with in a procedural order.

Counter-claim of the United States of America of 23 June 1997 (Counter-Memorial)

With respect to its counter-claim, and in accordance with Article 80 of the Rules of the Court, the United States requests that the Court adjudge and declare:

1. That in attacking vessels, laying mines in the Gulf and otherwise engaging in military actions in 1987-1988 that were dangerous and detrimental to maritime commerce, the Islamic Republic of Iran breached its obligations to the United States under Article X of the 1955 Treaty, and
2. That the Islamic Republic of Iran is accordingly under an obligation to make full reparation to the United States for violating the 1955 Treaty in a form and amount to be determined by the Court at a subsequent stage of the proceedings.

The United States reserves the right to introduce and present to the Court in due course a precise evaluation of the reparation owed by Iran.

Claims of the Islamic Republic of Iran of 8 June 1993 (Memorial)

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".