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Public sitting

held on Monday 24 February 2003, at 3 p.m., at the Peace Palace,

President Shi presiding,

in the case concerning Oil Platforms
(Islamic Republic of Iran v. United States of America)

VERBATIM RECORD

ANNÉE 2003

Audience publique

tenue le lundi 24 février 2003, à 15 heures, au Palais de la Paix,

sous la présidence de M. Shi, président,

en l'affaire des Plates-formes pétrolières
(République islamique d'Iran c. Etats-Unis d'Amérique)

COMPTE RENDU

Present: President Shi
 Vice-President Ranjeva
 Judges Guillaume
 Koroma
 Vereshchetin
 Higgins
 Parra-Aranguren
 Kooijmans
 Rezek
 Al-Khasawneh
 Buergenthal
 Elaraby
 Owada
 Simma
 Tomka
 Judge *ad hoc* Rigaux
 Registrar Couvreur

Présents : M. Shi, président
M. Ranjeva, vice-président
MM. Guillaume
Koroma
Vereshchetin
Mme Higgins
MM. Parra-Aranguren
Kooijmans
Rezek
Al-Khasawneh
Buergenthal
Elaraby
Owada
Simma
Tomka, juges
M. Rigaux, juge *ad hoc*
M. Couvreur, greffier

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The PRESIDENT: Please be seated. I give the floor first to Mr. Bettauer.

Mr. BETTAUER:

7. INTRODUCTORY STATEMENT OF UNITED STATES CO-AGENT

7.1. Thank you, Mr. President. Mr. President, Members of the Court, it is an honour for me to appear before this Court as the Co-Agent of the United States. Mr. Taft unfortunately has been called to Washington, but expects to be back with us on Wednesday.

7.2. On Friday, the United States reviewed in some detail the events that occurred before 19 October 1987. Those events made necessary the first United States military action at issue in this case. To set the stage for our continued presentation, I shall briefly review those events: then I shall provide you with a road map for the presentation you will hear today.

7.3. As Mr. Beaver demonstrated, it is an indisputable fact — a matter on which there really is no room for reasonable people to disagree — that between 1984 and 1988 Iran conducted a systematic and devastating assault on United States and other neutral shipping in the Gulf. There were over 200 Iranian attacks on neutral vessels in the Gulf, vessels from at least 31 countries. Iran's responsibility for this was accepted by the world's most authoritative and respected shipping information services.

7.4. Mr. Mathias focused on Iran's use of mines against United States and other neutral shipping. He reviewed the conclusive evidence of Iran's mine attacks, and showed that Iran's use of mines extended far beyond the Khor Abdullah channel, the only place Iran admits to laying mines. British, Dutch, French, Kuwaiti and United States naval forces *all* concluded that there was no doubt that Iran was responsible for the attacks on United States and other neutral shipping. Mr. Mathias reviewed the proof obtained when United States naval forces caught Iran's minelaying vessel, the *Iran Ajr*, in the act of laying mines in international waters off the coast of Bahrain. The unique characteristics of Iran's mines clearly distinguished them from widely available Soviet mines and from mines used by Iraq. As Mr. Mathias said, Iran left its calling card — more of its distinctive mines — at or near the scene of its mine attacks on the *Marshall Chuikov*, the *Bridgeton*, the *Texaco Caribbean*, and the *Anita*.

7.5. Mr. President, Members of the Court, we also demonstrated that there can be no doubt that Iran was responsible for the missile attacks on the United States tankers *Sungari* and *Sea Isle City*. Mr. Neubauer and Mr. Moore reviewed the evidence in detail. Iran launched multiple missiles from the Faw area in the direction of Kuwait's Al-Ahmadi Sea Island terminal. Two of them struck the *Sungari* on 15 October 1987, and the *Sea Isle City* the next day. Kuwaiti military personnel observed the missiles flying from the direction of the Faw area towards the direction of the Al-Ahmadi Sea Island terminal. We also explained why Iraq could not have been responsible for these attacks.

7.6. We established that the missiles in question were HY-2 ground-launched missiles. We reviewed the physical evidence. We demonstrated that, due to the limitations of the HY-2 missile's guidance system, it was impossible for the missiles to have been fired from Iraqi-controlled territory in the Faw area. Moreover, an HY-2 missile flew approximately 100 km from the Faw area to south of Mina Abdullah, giving conclusive empirical evidence of its range.

7.7. Finally, we showed contemporaneous United States satellite imagery that proves that Iran had HY-2 missiles and related equipment deployed in the area it controlled in and around the Faw Peninsula. The images show that Iran controlled at least four HY-2 missile-launching sites in the Faw area. That is where the missiles that struck the *Sungari* and the *Sea Isle City* came from. Imagery also proves that Iraq did not have missile-launching sites in the Faw area.

7.8. Mr. President, Members of the Court, those were the events. As Mr. Taft said on Friday, Iran's record of conduct up to 19 October 1987 was, by any standard, appalling. But the United States did not resort to force without trying to persuade Iran to change its conduct by peaceful means.

7.9. Today, Mr. Mattler will review the repeated diplomatic efforts made by the United States — and by the international community — to bring an end to Iran's attacks, which posed such a threat to essential interests of the United States and many other nations. When those efforts failed, it became necessary for the United States to use force. But even the 19 October 1987 military action did not persuade Iran to end its attacks. Mr. Mattler will review the evidence that demonstrates that Iran continued its attacks and was responsible for laying the mine that was struck by the U.S.S. *Samuel B. Roberts* on 14 April 1988.

7.10. The effects of Iran's attacks on the international shipping community were significant. Following Mr. Mattler, Mr. Beaver will review those impacts for the Court. Mr. Beaver will review the extraordinary steps taken by shipping companies to avoid dangers posed by Iran's oil platforms — sailing as far as possible from Rostam, Sirri, and Sassan, because they knew that those platforms were used by Iran in its attacks on shipping.

7.11. Mr. President, by 19 October 1987, in the face of continued Iranian attacks on United States shipping, it became necessary to take military action to protect essential United States security interests in the Gulf. After Mr. Beaver's presentation, I will show that Iran's offshore oil platforms played an integral role in Iran's military campaign against neutral shipping in the Gulf. Then, I will describe, in some detail, the factors considered by the United States in making its decision to take military action against the Rostam, Sassan, and Sirri platforms in order to degrade and deter Iran's capability to attack United States and other neutral shipping in the Gulf.

7.12. The facts we reviewed on Friday and will review today have important legal implications. To wrap up our presentation today, Mr. Matheson will highlight those legal implications and thus lay the foundation for the legal argument that the United States will make on Tuesday and Wednesday morning.

7.13. Mr. President, this concludes my introductory remarks. Thank you for your attention. I now request that you call on Mr. Mattler.

The PRESIDENT: Thank you, Mr. Bettauer. I now give the floor to Mr. Mattler.

Mr. MATTLER:

**8. IRAN'S REJECTION OF UNITED STATES DIPLOMATIC EFFORTS TO RESOLVE
THE THREAT POSED BY ITS ATTACKS ON SHIPPING**

8.1. Thank you, Mr. President. It is a great honour and privilege for me both to appear before this Court and to represent the United States of America.

8.2. Mr. President, Members of the Court, as my colleagues demonstrated on Friday, Iran waged a relentless campaign of attacks on United States and other neutral shipping transiting the Gulf beginning in 1984. As the pace and lethality of Iran's attacks increased in late 1986 and early 1987, the United States made repeated efforts through diplomatic and other non-forceful means to

make Iran aware that its attacks harmed essential United States interests and to persuade Iran to stop these attacks. The United States was hardly alone in making such efforts. The record reflects that no fewer than 35 countries, in addition to the United Nations Security Council, the League of Arab States, and the Gulf Co-operation Council made similar efforts in relation to Iran's attacks. (Counter-Memorial and Counter-Claim of the United States, para. 1.11 and exhibits cited therein, Exhibit 40.) (All exhibit references are to numbered exhibits in the United States Counter-Memorial and Counter-Claim and Rejoinder of the United States unless otherwise noted.)

8.3. Unfortunately, Iran did not respond to these efforts by the United States and other members of the international community with any reduction in its attacks on United States and other neutral shipping. Rather, each diplomatic overture to Iran was met only with additional Iranian attacks, and with public statements by senior Iranian officials threatening still further attacks. During the course of my presentation I will outline for the Court this pattern of United States diplomatic efforts to resolve the threat posed by Iran's attacks and Iran's consistent rejection of them. For your reference, at tab A1 of your judges' folders, is a time line of the events I will be discussing.

Mid-1984: Iran's attacks begin and the United Nations Security Council condemns them

8.4. The United States was among the many countries around the world concerned about Iran's attacks on neutral shipping transiting the Gulf from the moment they began. Iran launched its first attacks on neutral vessels in May 1984, striking three tankers — two Kuwaiti and the other Saudi Arabian — in the space of two days. These attacks prompted the Governments of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates to request an urgent meeting of the United Nations Security Council. As the slide now displayed indicates, these governments asked the Council "to consider the Iranian aggressions on the freedom of navigation to and from the ports of our countries", and stated "such aggressions constitute a threat to the stability and security of the area and have serious implications for international peace and security" (Exhibit 189).

8.5. The Security Council responded on 1 June 1984, by passing resolution 552 (Exhibit 27), which condemned these Iranian attacks. The resolution demanded that such attacks cease forthwith

and that there be no interference with ships en route to and from States that were not parties to the hostilities between Iran and Iraq. It also expressed the Council's conviction that the attacks constituted a threat to the safety and stability of the area and had serious implications for international peace and security.

8.6. The Security Council debate on resolution 552 reflected the depth of international concern about Iran's attacks and their effects on the important interests of many States. The Permanent Representative of Jordan called upon the Council to condemn Iran's attacks, which he said were "illegal" and "illegitimate" and represented "a grave threat to the sovereignty, independence and welfare of States of the region, as well as to regional and international peace and security" (Exhibit 193).

8.7. The Representative of the Arab League told the Council

"Navigation in the international waters of the Arab Gulf has in fact been thwarted by acts of aggression by the Iranian Air Force, which has attacked tankers belonging to two Arab States on the Gulf . . . [T]hose acts, for which Iran is responsible, are acts of aggression against the sovereignty, security and integrity of the territorial waters of Saudi Arabia and Kuwait in violation of the norms of good-neighbourliness, the United Nations Charter and the Convention on the Law of the Sea." (Exhibit 181.)

8.8. The Representative of Morocco emphasized in particular the effect of Iran's attacks on developing countries, telling the Council

"[T]he Iranian aggressive action, which according to the Iranian authorities themselves can be expected to continue, is aimed at disrupting navigation in international waters in the Arab Gulf, paralyzing commercial and other forms of traffic in the region and creating new difficulties for the world economy. This threatens not only many developed countries but also a great number of third-world countries, which are beset by numerous economic problems and are sorely tested by the high cost of energy." (Exhibit 202.)

1985-1987: Iran's attacks intensify, and international community expands efforts to persuade Iran to stop them

8.9. Yet as the Court saw on Friday, Iran did not cease its attacks in response to the Security Council's call. Instead, Iran's attacks continued and intensified over the course of the next two years. As Mr. Beaver noted on Friday, in 1986, Iran attacked 42 neutral ships, more than it had attacked in 1984 and 1985 combined.

8.10. This increase in Iran's attacks further alarmed the international community and led to further protests. In September 1986, the United States joined a group of some 20 countries in making a joint *démarche* on Iran to urge it to end its attacks on shipping. The text of this *démarche* appears in your judges' folders at tab A6. The *démarche* stated that it was unacceptable to these countries that armed attacks continued to be directed against merchant vessels, and that such attacks undermined principles of unimpeded international trade and constituted a gross violation of the safety and personal integrity of the crews. It urged Iran to take steps to prevent further attacks in order to ensure that the Gulf remained open as a vital channel for communication and commerce. An identical *démarche*, made by the same countries, including the United States, was also made to Iraq (Exhibit 40).

8.11. But once again, Iran continued its assault on shipping, attacking no fewer than nine neutral vessels in the four months following this joint *démarche*, including an attack on a Panamanian tanker that killed ten seamen (Exhibit 9).

8.12. In response to the mounting damage in both human and economic terms Iran's attacks were inflicting, countries from around the world began in 1987 to intensify their efforts to address the threat from Iran's attacks. As Mr. Beaver explained on Friday, these efforts included the decisions of the Soviet Union, the United Kingdom, and the United States either to reflag Kuwaiti tankers or to charter their own flag tankers to the Kuwait Oil Tanker Company. They also included the decisions of many countries to despatch minesweepers and other naval vessels to the Gulf.

May 1987: Iran begins to attack efforts to protect shipping and the United States begins direct diplomatic approaches to Iran

8.13. How did Iran respond to these efforts? Mr. President, Members of the Court, it responded with attacks on the vessels carrying them out. As Mr. Mathias explained on Friday, in May 1987, Iran attacked the Soviet flagged tanker *Marshal Chuikov* during its voyage as the first Soviet charter vessel carrying Kuwaiti oil. Iran also threatened further attacks against these protective efforts: two weeks following the attack on the *Marshal Chuikov*, Iran's Ambassador to the United Nations stated on United States television "if my country has the intention of attacking a Kuwaiti tanker, it will continue with that policy regardless of whose flag it is carrying" (Exhibit 41).

8.14. At this point in May 1987, Iran had not yet launched an attack on a United States ship. The United States was nonetheless extremely concerned about Iran's attacks and the threat they posed to freedom of navigation in the Gulf, to the safety of ships and their crews, and to the free flow of oil from the Gulf to the world economy. Thus, despite the absence of diplomatic relations between the United States and Iran, the United States undertook efforts through diplomatic means to advise Iran directly of these concerns and to persuade it to end its attacks.

8.15. On 23 May 1987, the United States sent a message to Iran through the Swiss Government, which serves as the United States protecting power in Iran. The text of this message appears in your judges' folders at tab A9. The message set out clearly and in detail the United States interests threatened by Iran's attacks, and emphasized the United States desire to avoid a military confrontation with Iran. It reminded Iran of the longstanding commitment of the United States to the principle of free navigation and to keeping open the Strait of Hormuz for the free flow of oil. It emphasized that the United States observed neutrality with respect to the Iran-Iraq War. It assured Iran that United States ships did not carry arms destined for Iraq. It expressed concern about recent Iranian attacks on shipping in the Gulf, and Iranian steps to deploy anti-ship missiles, specifically HY-2, or Silkworm, missiles. It also expressed concern about statements by Iranian officials threatening to interfere with freedom of navigation through the Gulf. It urged Iranian authorities not to take provocative steps toward United States shipping and assured Iran that the United States intended also to follow a prudent and careful course (Exhibit 39). In sending this message, the United States sought to make clear to Iran the serious threat its attacks posed to United States interests.

8.16. How did Iran respond to this diplomatic approach? It responded by launching more attacks on neutral shipping. In the two months following this United States diplomatic Note, Iran launched no fewer than seven attacks on neutral vessels in the Gulf, targeting vessels from France, Kuwait, Liberia, Norway, and Spain (Exhibit 9). These attacks underscored the continuation of Iran's threat to neutral shipping in the Gulf.

July 1987: United States begins reflagging and escort operations, Iran begins campaign of attacks on United States ships

8.17. In the face of these continued attacks, the United States finalized its plans to reflag Kuwaiti tankers and provide them with military escorts when travelling through the Gulf. On the eve of the first voyage of a United States reflagged tanker through the Gulf, the United States again sent a diplomatic message to Iran. This message appears in your judges' folders at tab A10. The message advised Iran of the planned United States reflagging and escort operations in the Gulf. It emphasized that the reflagged vessels, like other United States vessels, would carry non-contraband goods between neutral ports, and would abide strictly by rules of international law. It assured Iran that United States naval and commercial vessels in the Strait of Hormuz and the Persian Gulf posed no threat to Iran and that they would refrain from taking provocative actions or initiating confrontation with Iranian naval forces. The Note also expressed United States concern over any acts that would threaten United States naval or commercial vessels, and indicated that the United States would take appropriate measures to protect and defend United States vessels from attack (Exhibit 42).

8.18. And how did Iran respond to this diplomatic approach? It responded not only with more attacks on neutral shipping generally, but with the start of a campaign of attacks specifically targeting United States shipping.

8.19. On 24 July 1987, six days after the United States message to Iran, the United States flag vessel the *Bridgeton* struck an Iranian mine in international waters near Iran's Farsi Island. At the time, the *Bridgeton* was on its way to Kuwait as part of the first convoy of United States flagged vessels transiting the Gulf under naval escort. Thus, in the same way it attacked the first Soviet operation to protect neutral shipping in the Gulf when it attacked the *Marshal Chuikov*, Iran attacked the first such United States operation when it attacked the *Bridgeton*. In so doing, it also again rebuffed United States efforts to resolve peacefully the increasingly dangerous situation for shipping in the Gulf.

8.20. Following Iran's attack on the *Bridgeton*, senior Iranian officials made public statements threatening further such attacks. Ali Akbar Hashemi-Rafsanjani, then the Speaker of the Iranian Majlis, threatened further "retaliation" against United States efforts to protect shipping and asked rhetorically, since "nothing can stop [Iran] from retaliating . . . [t]hen why is the United

States bothering to undertake such an expensive operation?” (Exhibit 50.) Similarly, Iranian President Ali Khomeini, warned the United States to pull its forces out of what he called the “dangerous whirlpool” of the Gulf and then made a direct threat to the United States: “They had better leave the region, otherwise we shall strike them so hard they will regret what they have done.” (Exhibit 51.)

8.21. And, indeed, Iran did continue to strike United States and other neutral shipping. Ten days after President Khomeini’s statement, the United States chartered tanker the *Texaco Caribbean* struck an Iranian mine at the Khor Fakkan anchorage outside the Strait of Hormuz. Five days later, a UAE registered motor supply vessel, the *Anita*, was sunk by an Iranian mine in the same vicinity. As Mr. Mathias explained on Friday, Iran’s responsibility for these attacks was established when British and French naval forces discovered a field of Iranian mines in the location where the *Texaco Caribbean* and the *Anita* were struck.

8.22. Mr. President, Members of the Court, let us review the story to this point. In response to the growing threat posed by Iran’s attacks on shipping, the United States undertook diplomatic efforts, including two diplomatic Notes sent to Iran, to advise Iran of the United States interests threatened by its attacks, and to persuade Iran to stop them. The United States also sought to protect its security interests by taking lawful, non-threatening steps to protect United States flagged shipping from Iranian attack. Many other countries also undertook similar steps. Iran responded by intensifying its attacks on neutral shipping generally, by specifically attacking efforts to protect neutral shipping, and by initiating attacks on United States vessels. Iran thus demonstrated both its rejection of diplomatic efforts to persuade it to stop its attacks, and its determination to challenge any efforts by the international community to protect vessels against its attacks.

August-September 1987: United States protests Iranian mine attacks, Iran engages in further minelaying

8.23. The United States did not respond to these latest Iranian attacks — including the first attacks on United States vessels — by using force. Rather, the United States continued its efforts to resolve the threats posed by Iran’s attacks through diplomatic means.

8.24. In the month following Iran’s mine attack on the *Texaco Caribbean*, the United States sent Iran two diplomatic Notes expressing concerns about Iranian minelaying, one on

12 August 1987 and one on 31 August 1987. The text of the 31 August Note appears at tab A13 in your judges' folders. That Note advised Iran that the United States had ample evidence of Iran's responsibility for laying mines in the Gulf in locations where they threatened United States ships. It noted the serious concern of the United States over these incidents, which constituted clear, dangerous violations of international law. The Note again emphasized that United States vessels were strictly neutral with respect to the Iran-Iraq war, that they carried no cargo of any kind for Iraq, and that they posed no threat to Iran. The Note urged Iran to cease its minelaying activities, and stressed that the United States would consider further Iranian efforts to lay mines so as to endanger United States vessels as an extremely dangerous escalation and a direct military threat (Exhibit 56).

8.25. And how did Iran respond to these United States diplomatic approaches? It responded by laying more mines. On 21 September 1987, just three weeks after this most recent United States diplomatic Note, United States forces captured the Iranian naval vessel, *Iran Ajr*, while it was in the act of laying mines in international waters off the coast of Bahrain. As Mr. Mathias explained on Friday, the apprehension of the *Iran Ajr* served to further confirm the already well-established fact that Iran was using mines to attack neutral shipping in the Gulf. It also further manifested Iran's rejection of United States diplomatic approaches to resolve the threat posed by its attacks on shipping.

8.26. Thus the pattern continued. The United States again pursued diplomatic means to persuade Iran to end its attacks, and Iran again responded only with more attacks.

September-October 1987: United States diplomatic efforts continue, Iran attacks the *Sungari* and the *Sea Isle City*

8.27. Nonetheless, the United States continued with its diplomatic efforts. After United States forces seized the *Iran Ajr* to prevent it from engaging in further minelaying activities, the United States on 22 September 1987 transmitted yet another diplomatic Note to the Government of Iran. This Note appears at tab A14 in your judges' folders. The Note stressed United States concern over the threat of immediate danger to United States and other neutral shipping posed by the *Iran Ajr*'s laying of mines in shipping lanes in international waters in the Gulf. It advised Iran that these actions constituted a direct threat against United States interests and against freedom of

navigation in the Persian Gulf. It also noted the numerous previous efforts made by the United States to communicate its concern about Iran's actions to interfere with freedom of navigation in the Gulf. The Note advised Iran that the United States reserved the right to take all necessary measures against similar threats in the future (Exhibit 76).

8.28. Thus, again confronted with Iran's relentless attacks on United States and other neutral shipping, the United States sought once more through diplomatic means to resolve the threat to its interests posed by those attacks.

8.29. Iran rendered its response less than a month later when it launched missile attacks on two United States vessels, the *Sungari* and the *Sea Isle City*. As Mr. Neubauer and Mr. Moore explained on Friday, Iran's responsibility for the attacks on the *Sungari* and the *Sea Isle City* was clear, and was reported by numerous authoritative maritime information services.

8.30. Again, Mr. President, Members of the Court, let us review. In the five months prior to these attacks, the United States sent Iran five diplomatic Notes advising it of the essential United States interests damaged by Iran's attacks and urging Iran to cease them. The United States also joined with other nations in both diplomatic efforts and defensive military deployments to protect against further Iranian attacks on shipping. Iran responded to these approaches by initiating a campaign of attacks on United States vessels, striking four such vessels in less than four months, and threatening to carry out still further attacks. Following Iran's attacks on the *Sungari* and the *Sea Isle City*, the United States took necessary and proportionate military actions against certain Iranian offshore oil platforms which Iran used in its attacks on neutral shipping. These actions will be described later this afternoon by Mr. Bettauer.

8.31. Mr. President, Members of the Court, the events I have covered in my presentation thus far take us up to the point where our story left off on Friday. As the Court will see in the next portion of my presentation, following these events, the United States and other countries continued with their efforts to persuade Iran through peaceful means to cease its attacks on neutral shipping. Unfortunately, as the Court will see, Iran continued to reject all such approaches.

October 1987-June 1988: Iran's attacks continue in spite of ongoing diplomatic protests

8.32. On 22 October 1987, less than one week after its missile attacks on the *Sungari* and the *Sea Isle City*, Iran launched an additional similar missile attack from territory it controlled in the Faw area, striking Kuwait's Al-Ahmadi Sea Island terminal (Exhibit 82). This latest Iranian missile attack again sparked protests from many governments. Following the attack, the President of Egypt issued a statement which referred to "the Iranian aggression against Kuwait", and condemned Iran's act of aggression "with the utmost vigour". The Egyptian statement went on to underscore the gravity of the threat posed by Iran's actions. It said

"[T]his act of aggression compels the Arab nation, more than ever before, to react collectively and with vigour against a policy designed to perpetuate and intensify the war and extend it beyond national and regional borders. This escalation of the conflict is so serious that it can no longer be passed over in silence. Its effects are extremely serious for Arab national security and indeed for the very existence and future of the Arab nation." (Exhibit 191.)

The Ministerial Council of the Gulf Co-operation Council issued a similar condemnation of this attack, and of Iran's practices of attacking neutral shipping more generally.

8.33. Around the same time, President Reagan underscored the continuing United States concern about Iran's attacks on neutral shipping. On 26 October 1987, in announcing the United States decision to impose an embargo on the import into the United States of certain Iranian-origin goods including petroleum, President Reagan stated that these measures were

"a direct result of the Iranian Government's own actions, including its unprovoked attacks on U.S. forces and U.S. merchant vessels, its refusal to implement UN Security Council Resolution 598, its continued aggression against nonbelligerent nations of the Persian Gulf, and its sponsorship of terrorism there and elsewhere in the world."

His statement went on to say "The United States hopes that more normal relations with Iran will evolve as Iranian belligerence and tensions in the area diminish."

8.34. Unfortunately, however, Iranian belligerence against neutral shipping did not diminish. According to Lloyd's Maritime Information Service, in the six months following its attacks on the *Sungari* and the *Sea Isle City*, Iran was responsible for no fewer than 57 attacks on neutral vessels in the Gulf. These Iranian attacks, more than two per week on average for the six-month period, included attacks on three United States owned tankers, the *Lucy*, the *Esso Freeport*, and the *Diane*.

8.35. Iranian forces attacked the *Lucy* on 15 November 1987. Fast Iranian patrol boats fired on the tanker off Al Khasab in northern Oman. The *Lucy* sustained damage to her starboard engine

room and lost power. On the next day, Iranian gunboats fired rocket propelled grenades at the *Esso Freeport*, hitting the vessel five times. At the time, the *Esso Freeport* was fully loaded with a cargo of crude oil and was en route from Saudi Arabia to the United States. Later, on 7 February 1988, an Iranian frigate attacked the *Diane* with cannon and small arms fire, causing extensive damage to the vessel, including to its hull, decks, steering gear, electrical instruments, piping, and compartments. In each of these attacks, the Iranian attack boats approached close enough to their targets that they could be visually identified, leaving no room for doubt that Iran was responsible for the attacks. Lloyd's Maritime Information Service attributed responsibility for each of these attacks to Iran (Exhibit 9).

8.36. Iran's attacks during this period continued to draw protests from the international community and appeals for the attacks to cease. On 22 December 1987, the Greek Government delivered a protest to the Iranian Ambassador in Athens, complaining of a series of attacks against Greek vessels (Exhibit 199). Similarly, in February 1988 Norway's Ambassador to Tehran issued a protest to the Iranian Deputy Foreign Minister, Hossein Sheikholeslam, over a series of Iranian attacks on Norwegian vessels. The Norwegian Ambassador sent a telegram to the Norwegian Foreign Ministry reporting on the Iranian Deputy Foreign Minister's response to this protest. This telegram, and an English translation of it, appear in your judges' folders at tab A17. The Deputy Foreign Minister's response is telling, and I will quote from it at length:

"Sheikholeslam did not deny that Iran was indeed responsible for the attacks on *Happy Kari*, *Berge Big*, *Igloo Espoo*, and *Petrobulk Ruler*. He said that he regretted that Norwegian ships had been targeted in such attacks, and added that Iran's purpose was not to harm Norwegian shipping. It was the cargo these ships were carrying that was the real target. Sheikholeslam stressed that Iran was determined to continue attacking — whenever possible — all ships carrying cargo to or from docks in Saudi Arabia or Kuwait. When I argued that these are flagrant violations of international law, he somewhat arrogantly responded that he was fully aware of that. Sheikholeslam mentioned that the Iranian Navy had been instructed to seek to avoid the loss of human lives during the attack. If this is the case, I asked, why is machine gun fire directed towards the ship's superstructure and crew areas. That is to scare away the crew from the side which is being attacked, he said — a reply that hardly needs any comment." (Exhibit 198.)

8.37. Mr. President, Iran has provided the Court with an affidavit prepared for the purposes of this case by its then Deputy Foreign Minister saying that he has no recollection of making these statements. But Iran has given the Court no explanation as to why the Norwegian Ambassador

would provide an inaccurate report on his conversation to his Foreign Ministry, particularly in terms as potentially inflammatory as those used in his telegram.

8.38. In a diplomatic Note which appears at tab A18 of your judges' folders, the Government of Norway has confirmed the authenticity of its telegram. It further confirmed that, based on archival research and interviews with the personnel involved at the time, it is not in possession of any information which gives it reason to doubt the accuracy of the reporting in the telegram. On the contrary, the Government of Norway confirmed that "Norwegian authorities relied on [the telegram] in their analysis of the serious situation facing international shipping in that area at the time, and which to a considerable extent adversely affected Norwegian interests and endangered Norwegian seamen's lives." This Court cannot fail to find the contemporaneous report of the Norwegian Ambassador, prepared in the course of his official duties and uncoloured by any interest in the outcome of this case, more credible than the self-serving affidavit prepared years later by Iran for the purposes of this proceeding.

8.39. Mr. President, Members of the Court, the Iranian Deputy Foreign Minister's response to the Norwegian protest provides vivid confirmation of what the Court has already seen from my presentation. Iran did not care that the international community was concerned about its attacks on neutral shipping. Iran did not care that its attacks violated international law. Nor did Iran care that its attacks killed and maimed sailors and threatened the vital interests of countries around the world. In the words of its Deputy Foreign Minister, Iran was determined to continue its attacks, whenever possible, regardless of the grave consequences those attacks had for others.

8.40. And Iran did continue its attacks in the months following the Norwegian protest. These continuing attacks included yet another serious attack on a United States vessel, the U.S.S. *Samuel B. Roberts*.

April 1988: Iran attacks the U.S.S. *Samuel B. Roberts*

8.41. On 14 April 1988, the United States warship, U.S.S. *Samuel B. Roberts* struck an Iranian mine in international waters near the Shah Allum Shoal in the central Gulf. As you can see, the mine blew a large hole in the *Roberts* hull. Ten United States sailors were injured in the mine explosion. The *Roberts* required \$50 million in repair work following the Iranian attack; and these

repairs took 18 months to complete (Exhibit 121). At the time of the attack, the *Roberts* was returning from a voyage escorting United States flag vessels to Kuwait as part of the ongoing United States efforts to protect shipping from Iranian attack.

8.42. Iran's responsibility for the attack on the *Roberts* was clear. As the Court has already seen, Iran has made a practice of attacking ships involved in the multinational efforts to protect shipping transiting the Gulf, including by attacking the Soviet vessel the *Marshal Chuikov* and the United States vessel the *Bridgeton*. Iraq was not known to lay mines in the central Gulf where the *Roberts* was struck, and would have found it difficult to do so without being detected, given that the location of the attack was around 300 miles from its nearest territory or naval base. Iran, by contrast, had demonstrated its ability to lay mines in the central Gulf: the Iranian naval vessel the *Iran Ajr* was intercepted laying mines in the central Gulf just 50 nautical miles from the location of the attack on the *Roberts*. Lloyd's Maritime Information Service, the Norwegian Shipowners' Association, analysts writing in *Jane's Intelligence Review*, and other sources attributed responsibility for the attack to Iran (Exhibits 4, 9 and 11).

8.43. Further confirmation of Iran's responsibility for the attack came in the form of a public statement made by a senior Iranian military official on the day of the attack. In the statement, Commodore Mohammad Hoseyn Malekzadegan, Commander of the Iranian Navy, acknowledged that the Iranian Navy had been engaged in "a wholehearted task . . . over the past year, comprising indirect blows in particular to the U.S. fleet, affecting both its warships and its merchant vessels, with mines or missiles . . ." (Exhibit 13). As the U.S.S. *Samuel B. Roberts* was the first United States warship to fall victim to an Iranian attack, this statement amounted to an Iranian admission of responsibility for the attack. Such statements by senior Iranian officials are entitled to substantial weight under the practice of the Court.

The presence of Iranian mines in the U.S.S. *Samuel B. Roberts* minefield

8.44. While these factors all clearly indicated Iran's responsibility for the attack on the U.S.S. *Samuel B. Roberts*, any doubts about Iran's responsibility disappeared as a result of discoveries made by United States, Belgian, and Dutch naval forces.

8.45. On the day after the mine attack on the U.S.S. *Samuel B. Roberts*, United States Navy explosive ordnance disposal divers from the U.S.S. *Trenton* dove into the waters near the location where the *Roberts* was struck in an effort to discover the source of the attack. What did they find there? Let me show you. This is what they found. This is one of two Iranian mines discovered by United States divers at the scene of the attack on the *Roberts*, photographed in place by the divers who found it. This photo appears in your judges' folders at tab A22. As you can see, the mine bears the distinctive serial numbering system previously seen on the mines found aboard the *Iran Ajr*, described by Mr. Mathias on Friday. The absence of any marine growth on the mines obscuring the serial numbers indicated to the divers that the mines had been laid in the water recently (Exhibit 37).

8.46. In the following days, mine-clearing forces from Belgium and the Netherlands found additional Iranian mines in the same vicinity. A Dutch Navy team discovered five Iranian mines in the area (Exhibit 47). Each of the mines was observed to have full or partial serial numbers matching the distinctive numbering system used on Iranian mines. The Belgian and Dutch forces, working together with United States forces in the area, safely detonated each of the five mines discovered. In addition, the Belgian and Dutch forces recovered a mine anchor from the field and brought it aboard their ship. The anchor had a deep bowl shape, matching the shape of the anchors of the mines found aboard the *Iran Ajr* (Exhibit 65). Three additional mine anchors without mines attached to them were also discovered, but were left in place in the water.

8.47. In sum, in the days following the mine attack on the U.S.S. *Samuel B. Roberts*, a total of seven mines bearing the distinctive Iranian serial number were found in the vicinity where the *Roberts* was struck. And a mine anchor recovered in the same area bore the same distinctive characteristics of the anchors of the mines found aboard the *Iran Ajr*. The presence once again of Iran's calling cards — additional Iranian mines at the scene of the attack — thus established Iran's responsibility for attacking the U.S.S. *Samuel B. Roberts* just as it had previously established Iran's responsibility for the mine attacks on the *Marshal Chuikov*, the *Bridgeton*, the *Texaco Caribbean*, and the *Anita*.

8.48. Last week, counsel for Iran appeared to suggest that this evidence of Iran's responsibility for the *Roberts* attack was somehow incomplete because it did not indicate the serial

number of the mine the *Roberts* struck — that is, the one that exploded when the *Roberts* struck it. Mr. President, I believe the absurdity of this suggestion is self-evident.

8.49. Iran's attack on the U.S.S. *Samuel B. Roberts* provided still further confirmation that Iran was determined to attack neutral shipping in the Gulf, and the efforts to protect it, in spite of the repeated efforts of the United States and the international community to persuade it not to do so. As Mr. Bettauer will explain during his presentation, following this latest Iranian attack on a United States ship, the United States again took military actions against certain Iranian offshore oil complexes in a further effort to prevent Iran's continuing attacks on United States and other neutral shipping.

Conclusion

8.50. Mr. President, Members of the Court, as my presentation has illustrated, the United States did not seek to use force against Iran. Indeed, the United States made repeated efforts to resolve through peaceful means the threat Iran's attacks posed to important United States interests. It joined in United Nations and other multilateral diplomatic efforts calling on Iran to cease its attacks. It sent Iran five diplomatic Notes in a five-month period protesting Iran's attacks and advising Iran that these attacks harmed essential United States interests. It also undertook lawful defensive military deployments to protect neutral shipping from attack. Nations from around the world, whose interests were also harmed by Iran's attacks, joined the United States in these efforts.

8.51. As the Court has seen, Iran rebuffed all such efforts. It responded to these efforts by intensifying its attacks on neutral shipping generally, by specifically attacking vessels that were part of the multinational efforts to protect shipping, and by initiating a campaign of attacks on United States vessels. In addition, senior Iranian officials made repeated statements both publicly and in diplomatic exchanges making clear Iran's intention to carry out further such attacks whenever possible. These Iranian actions made abundantly clear that further United States diplomatic efforts would be futile, and made necessary the actions taken by the United States against Iran's offshore oil platforms.

8.52. Mr. President, Members of the Court, you have now heard in some detail about Iran's responsibility for numerous attacks on neutral commercial shipping and the effects of those attacks on the essential interests of the United States and of many other States. Iran's attacks also had serious consequences for the international shipping community. I ask that you now call again on Mr. Paul Beaver, who will describe these consequences and the efforts of shipping companies to avoid them. Thank you.

The PRESIDENT: Thank you, Mr. Mattler. I now give the floor to Mr. Beaver.

Mr. BEAVER: Thank you, Mr. President.

9. THE EFFECTS OF IRAN'S ATTACKS ON NEUTRAL SHIPPING

9.1. Mr. President, distinguished Members of the Court, as Mr. Mattler just mentioned, Iran's campaign of attacks on neutral shipping was enormously damaging and disruptive to commercial shipping companies operating in the Gulf.

9.2. The damage wrought by Iran's attacks begins in human terms: Iran killed at least 63 people through its attacks, and injured at least 99 more. As noted previously, Iran's practice of targeting the crew compartments of ships in its attacks suggests that these casualties were not incidental effects of Iran's attacks, but rather that they formed part of Iran's purpose in launching the attacks (Exhibit 9).

9.3. Iran's attacks also caused significant damage to and loss of ships and cargo, totalling in the hundreds of millions of dollars. A few examples will illustrate the nature of this damage. Iran's mine attack against the United States flagged tanker *Bridgeton* ripped a hole in the *Bridgeton's* hull that required 150 tons of steel to repair. The cost of this repair was over \$2.3 million; further losses were incurred by the ship's owner due to the loss of the ability to hire out the ship during the time it was under repair (tab B1). Iran's mine attack against the United States chartered tanker *Texaco Caribbean* caused over \$3 million in damage to the ship; 57,000 barrels of light crude, also valued at approximately \$1.7 million, spilled into the Gulf of Oman. Iran's mine attack on the U.S.S. *Samuel B. Roberts* blew a hole in the ship's hull. The United States incurred nearly \$50 million in the costs associated with the rescue, transport, and repair of the ship (tab B2).

9.4. Because Iran's attacks were so damaging, both in human terms and in economic terms, shipping companies were forced to take a range of measures to avoid Iran's attacks, and to render those attacks less damaging when they did occur. I will describe these measures to you during the course of my presentation. These measures affected every aspect of shipping operations in the Gulf, from the routes that ships sailed, to the staffing and salaries of their crews, to the way ships were maintained and equipped. Taking these measures cost shipping companies millions of dollars. Importantly, the Court will see that the principal focus of these measures was to avoid sailing near Iran's offshore oil platforms because of their well-known role in Iran's attacks on shipping.

9.5. Mr. President, Members of the Court, these are not the types of steps that profit-minded shipping companies take lightly or on casual speculation about the possibility of attacks on their ships. Shipping companies took these steps because they knew that Iran was attacking their ships. They were advised to take these steps by the most authoritative and respected shipping information services and by their governments. These steps taken by shipping companies reflected their grave concern about the danger Iran's attacks posed to their ships, cargoes, and crews.

Avoiding daylight transit in the Gulf

9.6. A primary step taken by shipping companies as a result of Iran's attacks was to avoid transiting the Gulf during daylight hours. Shipping information services recommended that ships sail only at night because Iranian aircraft and helicopters would be less able to see, identify and target them effectively, during the period of darkness. One example of such a recommendation was a safety circular issued by the International Association of Independent Tanker Owners in February 1986, which advised shippers:

“The Iranian attack pattern indicates that vessels calling at Kuwaiti ports can be possible selected targets. Attacks from helicopters are expected during daylight and in good visibility. Vessels detecting helicopters should order the crew to take shelter. The increased Iranian attacks on merchant shipping should be noted. As a safety precaution, vessels' night transit off Dubai coast should be considered.” (Exhibit 3; tab B3.)

9.7. The Kuwait Oil Tanker Company (KOTC) began restricting its transit of the Gulf to night-time hours shortly after Iran began its campaign of attacks on neutral shipping in 1984. Its

actions in this regard are explained in the statement of Colin Eglington, who at the time was KOTC's General Superintendent of Operations (Exhibit 31). Mr. Eglington notes that in mid-May 1984, the KOTC began instructing its tankers to transit certain areas of the northern Gulf only at night, in response to a series of attacks by Iranian aircraft on tankers in the area. The next series of maps on the screen, and which appear in the judges' folders at tab B4, shows the progression of night-time routes sailed by KOTC tankers.

9.8. Vessels were instructed to leave Kuwait at dusk and travel at full speed to an anchorage position off Jubayl, Saudi Arabia, where they would arrive at about 6 a.m. The vessels would remain at the Jubayl anchorage during daylight hours, then continue their transit through the Gulf beginning at dusk.

9.9. Shortly after this change in the KOTC's sailing routes, Iran began attacking ships travelling farther south in the Gulf. On 10 June 1984, Iran attacked the KOTC vessel *Kazimah* while it was travelling north-east of Bahrain, much farther south than the location of previous attacks. In response to this shift in Iran's attacks, the KOTC again revised its sailing routes, directing ships to leave the Jubayl anchorage at dusk and to travel only as far as an anchorage near Halul Island in Qatar's territorial sea, which they would reach at about 6 a.m. They would remain at Halul during daylight hours, waiting until dusk to continue their transit through the Gulf.

9.10. Limiting transit of the Gulf to hours of darkness was expensive for shipping companies. Each extra day at sea cost shipping companies additional money in operations costs, insurance premiums, danger pay, and loss of use of capital. These costs were significant. The Chevron Shipping Company, which also limited its ships' transit of the Gulf to hours of darkness, incurred US\$ 30,000 to US\$ 40,000 in costs for every extra day the one of its vessels was in operation in the Gulf. It also incurred increased capital costs from the delay in Chevron's ability to make productive use of the US\$ 50 to US\$ 75 million in oil loaded aboard each of its vessels (Exhibit 180).

Revised routes through the Gulf

9.11. Shipping companies also changed the routes they followed through the Gulf in an effort to avoid Iran's attacks on neutral shipping. As I explained on Friday, during the Iran-Iraq

war commercial shipping traffic was restricted to a relatively narrow channel through the Gulf. Both sides of the Gulf were restricted. Routes to the north of this channel were effectively off limits because Iran had declared a wartime exclusion zone ranging from 12 to 60 nautical miles from Iran's coast. Routes to the south of this channel were generally off limits because shallow water there created risks that ships would run aground. The narrow sailing area through the Gulf made it easy for Iran to locate neutral shipping for attack.

9.12. Of particular significance in this regard were Iran's Rostam, Sassan, and Sirri offshore oil platform complexes. The narrow route through the Gulf normally followed by commercial shipping during the Iran-Iraq war carried vessels within 15 nautical miles of the Rostam and Sirri complexes and within 30 nautical miles of the Sassan complex. In most conditions, Mr. President, that would put any vessel in view of observers on these platforms.

9.13. As a result, these platform complexes were ideally located to monitor the movements of and direct and stage attacks on neutral shipping transiting the Gulf. Because of the location of Iran's oil platforms, they did not need sophisticated equipment to monitor shipping.

9.14. During the war, Iran attacked 45 to 50 vessels within 50 nautical miles of Rostam, 35 to 40 vessels within 50 nautical miles of Sassan, and 35 to 40 vessels within 50 nautical miles of Sirri (Counter-Memorial and Counter-Claim of the United States, para. 1.91; tab B5).

9.15. The revised routes followed by shipping companies were designed generally to deviate from the regular route which Iranian forces might expect shipping to follow. They were also designed specifically to avoid transit near the Rostam, Sirri, and Sassan oil platform complexes because shipping companies knew that Iran used them to attack shipping. Colin Eglington's statement describes the steps taken by the KOTC in this regard:

“Because of the Iranian exclusion zone and our need to sail in a deep water channel, our regular route had our ships transiting between Qatar and UAE passing close by the Iranian off shore oil platforms at Sirri, Sassan and Rostam. We believed that these platforms monitored the movement of our ships so that the Iranians knew when we would be passing through the Gulf. This belief was based on the observations of our crews and were reinforced [*sic*] by the fact that our ships never saw C-130 overflights in the region around the platforms. [Mr. President for your clarification, the C-130 is a transport aircraft but it was being used by Iran as a spotter for attacks on neutral shipping.] Because of our concerns about Iran's platforms, we charted new routes that would take our vessels much further south where they would be least expected — into as shallow water as we could given the ships' 'draft' between

18 and 22 metres. We wanted to keep the vessels as far away from Iran and its oil platforms as possible.” (Exhibit 31; tab B6.)

9.16. The Norwegian Shipowners’ Association encouraged its members similarly to revise their routes to avoid Iran’s oil platforms. Captain Christen Feyer Puntervold, who was an official in the Association’s Contingency Planning Section during the Iran-Iraq war, notes in a statement provided to the Court that the Association

“learned from different shipping sources, including ship masters and shipping company officials located in the Gulf, that Iranian forces were using the Rostam, Sirri, and Sassan platforms for military purposes — specifically, to launch small boat and helicopter attacks on neutral shipping during the period 1985-1988. This information was shared with shipping companies and merchant shipping organization [*sic*] so that shipmasters could navigate accordingly to minimize the risk of being attacked.” (Exhibit 11; tab B7.)

9.17. The revised routes adopted by shipping companies took them into shallow waters to the south of Iran’s oil platforms. Following these routes involved additional risks and costs to the shipping companies. The shallow waters created an increased risk that the ships could run aground. This risk was especially acute because reliable navigational surveys did not exist for the shallow waters of the new routes. The Chevron Shipping Company considered travelling in these waters to be a significant deviation from its standard navigational practice of avoiding risks presented by well-known navigation hazards. As is noted in the statement of Thomas Moore, President of Chevron Shipping Company, Chevron decided to take these risks because it considered risks of Iranian attack in deeper waters to be even greater (Exhibit 180). In some cases, travel in shallow waters also required companies to load their tankers at less than full capacity to reduce their risk of running aground, thereby reducing the revenue produced by each voyage.

9.18. These new routes also added time to the vessels’ journey through the Gulf because they were less direct than the routes ordinarily followed. This extra time at sea further increased the costs incurred by shipping companies.

On-board safety measures

9.19. Shipping companies took a range of additional steps to protect their ships and crew in the event that Iran did attack their ships. The Chevron Shipping Company required all its crew members upon entering the Gulf to confine their activities to the ship’s bridge, living quarters and control rooms, in an effort to minimize their exposure to attack. This measure required Chevron to

curtail certain maintenance activities on its ships. In addition, Chevron cleaned oil residue from all of its empty oil tankers before they entered the Gulf to reduce the risk of explosion in the event of an Iranian missile or mine attack. This measure added approximately US\$ 50,000 to Chevron's costs for each voyage into the Gulf (Exhibit 180).

9.20. The United Kingdom Government advised shipping companies, in light of the dangers posed by Iranian fast patrol boat attacks in the Gulf, to develop a safety area at the centre of accommodation areas of their ships and to protect this area with sandbags (Exhibit 2). Chevron ordered all crew members to congregate on the bridge of their vessels during the most dangerous parts of the Gulf transit and installed Kevlar screens on the bridges of its vessels to protect its personnel from shrapnel and glass shards in the event of an Iranian attack (Exhibit 180).

9.21. These measures added still further to the costs incurred by shippers in the Gulf and disrupted the ability of ships' crews to perform their regular functions in connection with the safe operation and maintenance of their ships.

Increased insurance and danger pay rates

9.22. Mr. President, Members of the Court, the increased risk to shipping in the Gulf from Iran's attacks was also reflected in insurance and danger pay rates. Because insurance rates are based on the destination to which a ship is travelling, it is possible in some cases to attribute increases in insurance rates directly to Iran's attacks. In August 1987, *Lloyd's List* reported that recent rises in hull insurance rates for voyages to Kuwait were directly attributable to Iran's attacks. According to the report, "[a]fter Iran showed that it was singling out for attack vessels either flying the Kuwaiti flag or trading with Kuwait, hull rates first rose 50% from 0.225% to 0.375% in February and then by one third to 0.5% in June for a 14-day voyage" (Exhibit 7; tab B8). Similarly, the report noted that war risk premiums for insurance on cargoes moving to and from Kuwait had increased from 0.2 per cent to 0.375 per cent.

9.23. These increases meant that shippers' insurance costs for voyages to Kuwait nearly doubled as a result of Iran's attacks. As summarized by *Lloyd's List*,

"The movements over the last year in war risk premiums for both hull and cargo have affected ships sailing to Kuwait most dramatically. A year ago, a vessel with an insured value of \$10m and picking up a \$40m oil cargo at the Kuwaiti port Mina al

Ahmadi would have had to pay \$105,000 in war risk surcharges. Today the figure would at \$200,000 be almost double.” (Exhibit 7; tab B9.)

9.24. The dangers created by Iran’s attacks on shipping also meant that shipping companies increased the danger pay bonus for personnel aboard their ships. The Chevron Shipping Company gave each of its crew members the option of leaving the ship before its entry into the Gulf in light of the dangers involved. Those who chose to stay with the ship received a 100 per cent danger pay bonus during the time the ship was in the Gulf (Exhibit 180).

9.25. As previously noted, the need for ships to sail only at night and to follow indirect routes through the Gulf to avoid Iranian attacks added substantially to the time ships spent in the Gulf. This, in turn, added substantially to the periods of time for which shippers incurred these increased insurance and danger pay rates.

9.26. Mr. President, Members of the Court, in summary the devastation to commercial shipping from Iranian attacks during the Iran-Iraq war can hardly be overstated. Iran’s attacks killed and maimed seamen. They caused hundreds of millions of dollars in damage to ships and their cargo. They forced ships to travel only under cover of darkness and in shallow waters for which they lacked reliable navigational charts. Ships’ crews were forced to defer performing regular maintenance on their ships. Ships’ crew members were forced to huddle in reinforced areas in the centres of their ships to protect themselves from Iran’s attacks. Shipping companies incurred millions of dollars in increased insurance rates, danger pay rates, and operations costs; as well as safety precautions for their ships, cargo, and personnel. Again, the Court should reject Iran’s efforts to diminish the devastating effects that its attacks had on neutral shipping in the Gulf.

9.27. The steps taken by shipping companies also reflected their understanding of the role Iran’s offshore oil platforms played in Iran’s attacks on shipping. Their revised routes were specifically designed to avoid passing close to the platforms, even at the risk of sailing into dangerously shallow waters, because of the grave danger they knew Iran’s oil platforms posed to their ships and crews.

9.28. Mr. President, this concludes my presentation. Thank you very much for your attention. Mr. President, the next speaker for the United States is Mr. Bettauer, who will detail for the Court Iran’s use of its offshore oil platforms to attack shipping and the decision of the United States to target them. Thank you very much.

The PRESIDENT: Thank you, Mr. Beaver. I will give the floor to Mr. Bettauer after the break. The hearing is now suspended for 15 minutes.

The Court adjourned from 4.05 p.m. to 4.25 p.m.

The PRESIDENT: Please be seated. I now give the floor to Mr. Bettauer.

Mr. BETTAUER:

10. IRAN’S USE OF ITS OFFSHORE OIL PLATFORMS IN ITS ATTACKS ON NEUTRAL SHIPPING AND THE UNITED STATES DECISION TO TARGET THEM

Introduction

10.1. Thank you, Mr. President. My task today is twofold. First, I will demonstrate to the Court that Iran’s offshore oil platforms played an integral part in Iran’s military campaign against neutral shipping. I will show that these platforms played an important role in Iran’s deliberate efforts to disrupt commerce, impede navigation, and threaten shipping throughout the Persian Gulf. I will review the key evidence — including eyewitness accounts, reports of international shipping services, documents seized from the Rostam oil platform and the *Iran Ajr* — which proves, beyond any conjecture, that Iran’s oil platforms were used to conduct a military campaign against neutral shipping in general and United States shipping in particular.

10.2. Second, I will review for the Court, and discuss in some detail, those factors that led the United States to take the decision, in light of Iran’s actions, to target Iran’s oil platforms and thereby stop them from providing offensive military support against shipping interests in the Gulf.

The platforms were located in a strategic position in the Gulf channel

10.3. Iran, in its written pleadings, claimed that these oil platforms were exclusively commercial in nature. Iran also told the Court in categorical terms that “the platforms played no offensive role in relation to the conflict in the Persian Gulf” (Reply and Defence to Counter-Claim of Iran, para. 3.88). Iran took the same position last week. But the facts demonstrate that Iran’s oil platforms played a unique role, and occupied a pivotal place in Iran’s campaign to disrupt and destroy shipping in the Gulf. So, let us examine Iran’s claim against the facts to determine whether or not it is true. And let us begin with geography.

10.4. It is a fact — we need only look at the map now on the screen and at tab B5 in the judges' folders — that Iran's offshore oil platforms were strategically located and thus uniquely well situated for use in attacks on neutral shipping. As you can see, these platforms sit within the narrow shipping channel that was available to commercial vessels transiting the Gulf. As Mr. Beaver explained, routes to the north of the platforms were off limits to vessels not going to or from Iranian ports because Iran had declared a wartime exclusion zone at the beginning of the Iran-Iraq war. In fact, the pre-war main shipping channels were located inside Iran's wartime exclusion zone. Routes to the south of the platforms were not available because shallow water created risks that fully loaded tankers would run aground. Vessels transiting the Gulf were forced, therefore, to travel a route that carried them fewer than 15 nautical miles from the Sirri and Rostam platforms, and fewer than 30 nautical miles from the Sassan platform.

10.5. In effect, ships transiting the Gulf were required to run the gauntlet between Iran's exclusion zone to the north, shallow waters to the south, and the oil platforms in the middle of the Gulf. Iran seized on this circumstance of geography to incorporate the platforms into its military structure and to use the platforms in its attacks on shipping in the Gulf. Mr. Beaver reviewed for you that there were between 35 and 50 attacks within 50 nautical miles of each of the three platforms.

The platforms were equipped for use in attacks on shipping

10.6. Not only were the platforms well placed to launch attacks against neutral shipping, they were also sufficiently equipped to support these attacks. They had the means at their disposal to contribute to Iran's efforts to disrupt commerce, interfere with navigation, and support attacks on neutral shipping. As Iran acknowledged in its Reply, each of the platform complexes contained landing pads to support the launching of helicopters (Reply and Defence to Counter-Claim of Iran, para. 3.42). Each of the complexes had radio communications equipment linked to other Iranian military units (*ibid.*, para. 3.41). Iran has admitted that the Rostam platform was equipped with a Decca navigational surface radar with a range of up to 48 nautical miles (*ibid.*, para. 3.35); and Iranian documents indicate that the Sirri platform was also equipped with radar (Exhibit 203, p. 20).

10.7. Twelve to 15 military personnel were situated on each platform. Iran has admitted this in its pleadings (Reply and Defence to Counter-Claim of Iran, Vol. IV; Statement of Mr. Sehat, paras. 20-21, concerning Rostam; Statement of Mr. Salmanian, paras. 1 and 8, concerning Rostam; Statement of Mr. Ebrahimi, paras. 5-6, concerning Sassan; and Statement of Mr. Alagheband, paras. 12-13, concerning Sirri), and in its statements to the Court last week (CR 2003/6, 18 February 2003, p. 46, paras. 34-35). Moreover, it is beyond dispute — and in a moment I will review the evidence that proves this — that these military personnel used communication equipment on the platform to communicate with other elements of the Iranian navy.

10.8. Iran has argued that this Court should find comfort in the fact that the equipment is usual for commercial oil installations and that the equipment was minimal and unsophisticated. However, as Mr. Beaver just noted, the platforms did not need sophisticated equipment to support Iran's attacks on neutral shipping.

10.9. Iran cannot deny that the platforms' helicopter pads *could* be used to launch helicopters to attack ships. Nor could Iran deny that the radar on the platforms *could* be used to track the movements of ships for the purpose of attacking them. Moreover, Iran could hardly deny that the platforms' communications equipment *could* be used to communicate orders and information to Iranian military units engaged in attacks on shipping. The issue here is not the level of sophistication of the equipment on the platforms. What matters is that Iran *did* use the equipment and personnel that was on the platforms in its attacks on neutral shipping.

Eyewitness accounts and reports of shipping services on Iran's use of the platforms in attacks on neutral shipping

10.10. Iran denies that the platforms were used as offensive military facilities. What does the evidence say?

10.11. Let us begin with the eyewitness accounts — not from Iranian observers or even United States sources — but eyewitness accounts from ordinary seaman from third countries who reported at the time what they saw as they sailed through the Gulf.

— On 4 March 1986, the French vessel the *Chaumont* was transiting the Gulf. At around 6 o'clock in the evening, as it came near the Rostam platform, a crew member on board saw two unidentified helicopters take off from two rigs in the Rostam oilfield. He then saw one of

the helicopters open fire. According to the seaman, the *Chaumont* was “hit by a missile on the rear starboard side, level with deck 2” (Exhibit 110).

Two weeks later there is another report of an eyewitness account:

- On 29 March 1986, a crew member sailing aboard the Norwegian vessel the *Berge King* reported that he “saw two helicopters on the Iranian off-shore installation, Rostam Island”. The reference to an offshore “installation” makes clear that the reference is to the Rostam platform. He then saw one of them lift off the platform and he watched as it began to fire on his ship. Fortunately, the first missile missed its mark. He then reports that he saw another helicopter take off after the first one returned to the platform. It, too, fired a missile, but this time it scored a hit and struck the air conditioning room of his ship (Exhibit 17).

10.12. Eyewitness accounts persuaded the international shipping community that Iran was using its oil platforms to target and attack neutral shipping in the Persian Gulf. Authoritative and independent sources, whose job it is to collect and disseminate information pertinent to shippers worldwide, and whose reports are relied upon by those shippers, reported on widespread and indiscriminate attacks emanating from the Iranian oil platforms. These reports speak for themselves. Let me quote five of them. They will be displayed on the screen, and can be found at tabs C1-C5 of the judges’ folders.

- In April 1986, the International Association of Independent Tanker Owners reported that “[a]t least 14 ships are reported to have been attacked from this installation called Rostam Island, located about 100 km from the Iranian shore line” (Exhibit 17).
- *Jane’s Defence Weekly*, relying on British shipping sources, reported that “Iran is reported to be operating helicopters from an oil platform to mount strikes against vessels in Gulf shipping lanes . . . The Rostam Island platform, 65 nm from the Iranian mainland, has been the base for at least 14 strikes this year. . . ” (Exhibit 109.)
- In May 1986, the General Council of British Shipping reported:

“Iranian attacks have been concentrated in a more southerly position . . . Attacks in this area have mainly been by helicopter launched missile, with intelligence reports indicating that the Iranians are operating helicopters from their oil platforms in the area. These are understood to be in the Rostram [*sic*] Field (25° 50' N 52° 53' E) and more recently in the Sassan Field (25° 30' N 53° 08' E).” (Exhibit 104.)

— In March 1987, *International Defense Review* reported that “[t]o extend their range and time on station, Iranian helicopter pilots make use of forward operating bases. These have been known to include the disused Rostam oil production platform in the Central Gulf . . .” (Exhibit 14.)

In sum, the Norwegian Shipowners’ Association concluded, “Iranian forces were using the Rostam, Sirri and Sassan platforms for military purposes — specifically, to launch small boat and helicopter attacks on neutral shipping during the period 1985-1988.” (Exhibit 11.)

10.13. There was no debate, no disagreement, no dispute among these sources. It was understood, agreed and confirmed that Iran was using its oil platforms for offensive military purposes — namely, to attack ships sailing within the vicinity of the Rostam, Sirri and Sassan platforms.

10.14. Despite the eyewitness accounts and despite the numerous, independent, third party reports, Iran still claims that these platforms played no offensive military role in relation to the conflict in the Persian Gulf. It has failed, however, to give any persuasive reason why this Court should not believe these eyewitness accounts and the many reports of the most authoritative, independent reporting services in the world.

Shippers’ efforts to avoid the platforms

10.15. As we have already heard, shipping companies around the world certainly believed the reports of shipping services and the accounts of eyewitnesses. As Mr. Beaver explained, shippers designed new routes through the Gulf — as far as possible from the oil platforms, even though those new routes involved substantial additional costs and navigational dangers to the ships.

10.16. As Mr. Beaver noted in his presentation, shipping companies do not take such costly steps lightly or based on casual speculation about possible threats to their ships. They took these steps because they knew from their own experience that Iran was using its oil platforms to attack neutral shipping. Faced with the choice between sailing near Iran’s oil platforms and incurring hundreds of thousands of dollars in additional costs, the shippers accepted the additional costs because they knew the dangers posed by Iran’s oil platforms were too great to allow them to do otherwise.

Documentary evidence of Iran's use of the platforms for offensive military activities

10.17. Mr. President, eyewitness accounts and many reports from shipping services worldwide should be enough to establish that the platforms played an offensive military role in Iran's war on neutral shipping. However, there is more. There are documents — Iran's documents taken from the Rostam platform and the *Iran Ajr* — that confirm that these platforms were an integral part of Iran's campaign against neutral shipping.

Iranian documents found aboard the *Iran Ajr*

10.18. The first set of documents comes from the Iranian minelaying vessel, the *Iran Ajr*. As Mr. Mathias noted, on 21 September 1987, United States forces seized the *Iran Ajr* after catching it in the act of laying mines in international waters off the coast of Bahrain. On board the *Iran Ajr*, United States forces found a copy of the Operations Plan for the Iranian navy's Joint Sea-Coast 1 Combat Group. The document, over 120 pages long, written in Persian was marked "TOP SECRET" — Iran's classification — and indicated that it was copy 32 of 50 copies of the document in existence.

10.19. This Operations Plan bears close scrutiny by the Court. First, the document shows that Iran's offshore oil platform complexes were integrated into the operations structure of the Iranian military. Moreover, the platforms were assigned specific operational responsibilities. Let me review items in the Operations Plan itself — you can follow this on the screen, and at tab C6 in the judges' folders.

— First, you will see at the top of the slide that the platforms are designated as 1st Naval District Naval Facilities, part of the Joint Sea-Coast 1 Combat Group. Reshadat and Nasr refer to two of the platforms at issue here, the platforms we call Rostam and Sirri. The Plan contains a list of army and marine units that are part of the Joint Sea-Coast 1 Combat Group. Under item 7 on the list, Rostam and Sirri appear as being 1st Naval District Naval Facilities.

— Next, let me review what the Plan provides. Point 4, at the bottom of the screen, calls for reporting on ship movements. It contains the following language:

“Oil Platforms subordinate to the Sea-Coast 1 Combat Group are to report the following information as soon as it is received:

— Any movement of foreign vessels near the Oil Platforms.”

10.20. Thus, the Operations Plan indicates that the platforms' intelligence gathering role was not limited to tracking the movements of military vessels. Rather, the platforms were charged with reporting on the movements of all foreign shipping, including the neutral commercial vessels that were the focus of Iran's attacks, and not merely Iraqi vessels. This information confirmed beyond any doubt that Iran was prepared to use its oil platforms to monitor the movements of neutral shipping in the Gulf and to communicate information on such movements to the Iranian military.

10.21. Finally, the Operations Plan also made clear that the military role of the platforms in Iran's plans was not limited to gathering and reporting information. I draw your attention to the language from this Plan that is now on the screen. According to the Plan, the 1st Naval District Installations Command, which includes the Rostam and Sirri platforms, was charged with — and I quote from point 1 on the slide — “conduct[ing] visual and radar surface and air surveillance for the 1st Naval District”.

10.22. The Operations Plan went even further. Point three, at the bottom of the slide, provides that these platforms must “[b]e prepared to conduct joint operations with the ships and Marine Brigade” (Exhibit 203). From the reports of eyewitnesses and shipping sources we know that, in fact, these platforms carried out “joint operations” with small boats, speedboats, helicopters, and other assets of the Iranian Navy as Iran attacked neutral shipping in the Gulf. Contemporaneous United States Naval observations and intelligence also confirmed this (Exhibit 48, Statement of Vice Admiral Anthony Less, paras. 11-12, 14-15).

10.23. Iran has claimed that the Operations Plan can be disregarded because it was a four-year-old contingency plan. That ignores the fact that it was found among the documents aboard an active Iranian military vessel at the time that that vessel was engaged in military operations. Moreover, we know from the eyewitness accounts I just discussed and other documents found aboard the *Iran Ajr* that aspects of the plan were put into effect.

10.24. The Operations Plan was not the only document found on board the *Iran Ajr*. United States forces also recovered records of messages between the *Iran Ajr* and the Rostam platform complex. These messages are collected and presented at United States Exhibits 70 and 71. Iran has argued that the messages are innocuous. That misses the point. These messages confirm beyond any doubt that the Rostam platform served as a communications link to active Iranian naval

units, including minelaying vessels such as the *Iran Ajr*, and that the platforms were performing functions identified in the Operations Plan we have just discussed, despite Iran's protestations last week that it was just a contingency plan.

Documents taken from the Rostam platform

10.25. But we need not rely solely on documents seized from the *Iran Ajr* because there are other documents — documents recovered from the Rostam platform complex itself — that illustrate, again beyond any doubt, that Iran's assertions that the oil platforms had no offensive military role is false.

10.26. Among the documents found on the Rostam platform is one document entitled "Instructions for Deployment of Observers on the Oil Platforms in the Persian Gulf (Reshadat Platform)". It is United States Exhibit 115 and it too bears a careful examination. On the screen I will show you excerpts from this document, which are also at tab C7 of the judges' folders.

10.27. While the title of the document might suggest that its application was limited to what we call the Rostam platform, these instructions, in fact, order Iran's First Naval District to deploy military observation posts on the Rostam, Rakhsh, Sassan, and Sirri oil platforms.

10.28. The mission of the so-called observers on the platforms is spelled out in this document. Their purpose was straightforward — and again the language from the document is displayed on the screen. Their purpose was:

"To establish communications between the observers deployed on the Salman, Rostam, Rakhsh, and P.P. (Production Platform) [or Sirri] oil platforms and the Islands of Sirri and Lavan and from these islands to Fleet Headquarters and 1st Naval District (Bandar Abbas)."

And the observers' "goal" was clear and unambiguous:

"The immediate exchange of intelligence from the oil platforms to Sirri and Lavan using the radios of observers on the platforms and then, the immediate and secure transmission of these messages from the islands to Fleet Headquarters and the 1st Naval District (Bandar Abbas)."

Yet, Iran sought to keep the role of the platforms in its offensive military operations hidden in 1987, just as it seeks to deny it before the Court today. Thus, the instructions provided that: "The observers will pass as NIOC employees and will not use military uniforms."

10.29. I stated at the beginning of my presentation that these platforms played an integral part and were an important link in Iran's military campaign against neutral shipping. These instructions confirm that conclusion beyond any measure of doubt. Now, Iran argues that they were issued in 1980, implying that they were not current. But those instructions were on the Rostam platform in October 1987. Why would they be there if they were not currently in use?

10.30. We also know, based on the documents recovered from the Rostam complex, that Iran's oil platforms actually implemented and carried out the instructions that we have just reviewed. United States forces recovered paper tape records of messages transmitted from the Rostam platform. These include messages reporting on the composition, location, movement, and speed of shipping convoys travelling in the Gulf. The transcripts of these messages are reproduced as United States Exhibit 119 and they, too, bear close scrutiny.

10.31. Of particular note is a message dated 8 August 1987, that was sent from the Rostam platform to Iranian military officials. It concerns a convoy of United States flagged tankers transiting the Gulf under escort of United States naval vessels. Among the tankers was the *Sea Isle City*. As explained in the United States Rejoinder, we know this from reviewing the ship logs of the vessels in this convoy (Rejoinder, paras. 1.43-1.45 and map 2). The message is now on the screen and can be found at tab C8 of the judges' folders. Paragraph 2 reads: "2. THE CONVOY AT 172327 WAS SEEN ON RADAR AT BEARING 096 DISTANCE 48 MILES FROM THE PLATFORM AND WAS TRACKED AND PLOTTED." As you can see, paragraph 3 reports the number of ships, their formation, their position, their distance from the platform, and their course and speed. Paragraph 4 reads:

"4. IF APPROVED, THE PLATFORM WILL TURN OFF THE RADAR, AND ONCE EVERY 15 OR 30 MINUTES, WILL TURN ON THE RADAR AND PLOT THE CONVOY. FACTS ARE REPORTED FOR INFORMATION AND NECESSARY ACTION." (Exhibit 119.)

10.32. Now, Iran argued to the Court last week that the messages the United States found show nothing. Let me review what this message shows. *First*, the message shows without any doubt that Rostam was in fact tracking neutral vessels. *Second*, the message shows that there was communication between the platform and the Iranian military. *Third*, contrary to Iran's efforts to suggest that the radar on the Rostam platform did not work properly, the message makes clear that

the radar was in fine working order. *Fourth*, it demonstrates that the radar was capable of tracking movements of shipping up to 48 miles from the platform. *Fifth*, it shows that the platforms actually performed functions specified in the Operations Plan. And *finally*, it is worth noting that just over two months later, the *Sea Isle City* again passed within 15 nautical miles of the Rostam platform on a voyage to Kuwait's Al-Ahmadi terminal. And five days later, Iran attacked it with an HY-2 missile.

10.33. Mr. President, I would recall for the Court yet again that Iran has repeatedly argued that its platforms played no offensive military role. I ask the Court to weigh this assertion against the accounts of eyewitnesses, the reports of authoritative shipping services, the decisions of shipping companies to reroute their ships, and Iran's official documents taken from the *Iran Ajr* and the Rostam platform, not to mention the observations of the United States navy reported in the Statements of General Crist and Admiral Less. The conclusion is inescapable. Iran's oil platforms played an active, ongoing, and important part in Iran's war against neutral shipping in the Gulf and contributed significantly to the threat posed to the essential security interests of the United States.

The United States decision to target the platforms

10.34. Mr. President, let me now turn to the second part of my presentation, namely to describe and review the factors that led the United States to target for military action Iran's offshore oil platforms. The decision, of course, began with a determination that Iran's actions in the Gulf region, directed against neutral shipping in general and United States shipping in particular, were a threat to and, in fact, had harmed the essential security interests of the United States. In fact, senior United States officials, including the President, had made clear the threat Iran's attacks posed to United States interests months before the United States moved against the platforms.

10.35. In May 1987, President Reagan appeared before reporters at the White House. He said that he wanted "to speak directly this afternoon on the vital interests of the American people . . . that are at stake in the Persian Gulf". He recalled the impact that the Middle East oil crisis of the mid-1970s had had on the United States economy, producing shortages, rationing, escalating energy prices, double-digit inflation, and "enormous dislocation that shook our economy

to its foundations". He then noted that these same effects could result if "Iran was allowed to block the free passage of neutral shipping" in the Gulf (Exhibit 230).

10.36. Around the same time, United States Secretary of Defence Caspar Weinberger issued a statement on United States security interests in the Gulf. The report emphasized the United States interests in freedom of navigation and the free flow of oil from the Gulf. The report stated that —

"The unimpeded flow of oil through the Gulf is critical to the economic health of the western world, and we have an important stake in non-belligerent freedom of navigation there; we have a vital economic stake in seeing that this supply of oil continues, given Western reliance upon Gulf oil imports, the overwhelming proportion of world oil reserves held by the Gulf countries, and the deep and growing interdependence of Western economies." (Exhibit 231.)

10.37. It was against this background that the United States viewed with increasing alarm the number and severity of attacks initiated by Iran against neutral shipping in general and United States shipping in particular. By the fall of 1987, the alarm was at a high pitch.

10.38. Recall that in July 1987, the United States flagged *Bridgeton* struck an Iranian mine; in August 1987, the *Texaco Caribbean* struck an Iranian mine; in September 1987 United States forces captured the *Iran Ajr* as it was actually laying mines in the Gulf; and finally in October 1987, Iranian missiles hit two United States ships, the *Sungari* and the *Sea Isle City*.

10.39. Iran has argued that the United States attacked the platforms out of a general hostility towards Iran. But that is not the case. As we demonstrated in our earlier presentation, by October 1987 every reasonable means short of the use of force had been tried to stop the Iranian war on neutral shipping. Diplomatic overtures, United Nations condemnations, minesweeping vessels, and organized convoys had all failed to deter Iran. In fact, Iran's response to such efforts was to accelerate the pace of its attacks and to go after the very vessels that were deployed as part of these protective efforts. Moreover, at every turn, Iranian officials threatened further attacks on neutral shipping in the Gulf and United States shipping in particular.

10.40. Faced with this unrelenting belligerence, and even more aware of the mounting damage being done to its essential security interests in the region, the United States decided that it was necessary to use force to protect those interests.

10.41. Of course, the United States had a number of military options it could pursue. It could have targeted Iranian missile sites in the Faw area, and it considered that option (Exhibit 44, Statement of General George Crist, para. 10). It could have targeted an Iranian ordnance storage site north of Bandar Abbas or port facilities there, and it considered those options (Exhibit 48, Statement of Vice-Admiral Less, para. 10). Had the United States wished to inflict severe damage to Iran's oil infrastructure, it could have targeted one of Iran's principal oil storage facilities, for example at Kharg Island or at Sirri Island, but it had no such intention. Many options were considered, but in the judgment of the United States, a limited attack on selected oil platforms that were being used to support attacks on neutral vessels offered the most appropriate way to address an obvious and real threat to its essential security interests.

10.42. As explained by General George Crist, Commander-in-Chief of United States forces in the Middle East at the time of the United States action, the United States sought to identify targets "directly related to Iranian belligerence against United States flag shipping, but not disproportionate" to Iran's acts of aggression. He further noted:

"In considering potential targets, my priority in general, as Theatre Commander, was to protect our forces [and to] recommend Iranian targets that would degrade Iran's capability to attack U.S. flag ships by reducing their ability to strike U.S. Navy warships and the oil tankers they were escorting . . . Concurrently, I hoped to avoid further escalation of the war with Iran and maintain our status as a non-belligerent."

10.43. General Crist's full affidavit is submitted as Exhibit 44, and is at tab C9 in the judges' folders. It demonstrates the careful consideration that went into the decision to target the oil platforms and it sets forth the criteria on which that decision was based.

10.44. These criteria ruled out a number of targets that were potential sites for United States military action. As I noted a moment ago, Iranian missile sites in the Faw area were considered but as General Crist notes: "Such an attack could have been construed as direct involvement in the Iran-Iraq war, since these sites were located on an active battlefield of that war." The United States had no interest in inserting itself in the midst of an active Iran-Iraq battlefield. Similarly, attacks on Iran's naval base at Bandar Abbas would have represented a significant strike at a key military installation that again could have affected the outcome of the Iran-Iraq war. Moreover, a strike at Bandar Abbas would have entailed substantial military risks for United States personnel. It most likely would have required air attacks to suppress Iranian air defences, and it would likely have led

to loss of a number of Iranian lives on the ground. Finally, an attack on any one of Iran's major oil facilities would not have addressed the direct and present threat to shipping emanating from the oil platforms themselves and would have caused more damage.

10.45. When considered in the light of all alternatives, the United States concluded that an attack on the oil platforms would meet the threat directly posed to United States interests particularly, and to neutral shipping in general. Such an attack would help to put an end to Iran's use of these platforms for its escalating war against neutral shipping. The platforms were offshore, and thus would not involve actions on Iranian territory or on an active battlefield in the Iran-Iraq war. They could also be targeted with minimal risk of civilian casualties, and without endangering United States forces.

10.46. As General Crist noted, it was precisely because Iran used these platform complexes "to identify, track, monitor, and target merchant shipping and communicate that information to other Iranian naval commands, including Iran's naval headquarters at Bandar Abbas" that targeting these platforms would be an appropriate and effective means to deter further Iranian attacks on shipping.

10.47. The Statement of Vice-Admiral Anthony Less, who was responsible for all United States forces in the Gulf, provides further significant insight into United States planning of its actions against the platform (Exhibit 48; tab C10 in the judges' folders). Vice-Admiral Less explains that all options involving attacking Iranian land territory were discarded because this could escalate the conflict and cause unacceptable United States and Iranian casualties (para. 16).

10.48. Now, while not relevant to this case, Iran has raised the question of United States actions against the Iranian frigate *Sabalan*. Between January 1987 and March 1988, Iranian frigates attacked approximately 25 neutral ships (Exhibit 9). As a result, one of those frigates was included among the targets for United States action on 18 April 1988. As explained in the Perkins article on which Iran itself relies (Exhibit 132), and in the Statement of Vice-Admiral Less (Exhibit 48, tab C10 in the judges' folders), after the United States actions against *Sassan* and *Sirri*, both United States navy and neutral commercial ships were *fired upon* by Iranian military vessels. The United States ships returned fire in these incidents, sinking two of these vessels and disabling

the *Sabalan*. United States forces did not take further action against the *Sabalan*, as originally planned, because of the prior sinking of the two other ships.

10.49. Iran has also argued that the United States explanation of why it targeted the Sassan and Sirri platforms on 18 April 1988 should be discounted, because the Perkins article described the Sassan and Sirri platforms as only fallback targets if the United States primary target, the *Sabalan*, could not be found. While the United States acknowledges that Iran's interpretation of the one paragraph in the article it cites is colourable, it is clear from the rest of Captain Perkins's article, as well as from a closer reading of that paragraph, that that is not what he meant at all. Rather, United States forces were ordered to take action against *both* the Sassan and Sirri platforms, on the one hand, and the *Sabalan*, on the other hand and — if the *Sabalan* could not be found — they were to take action against the Rakhsh platform as well. This conclusion is inescapable for a number of reasons. First, a separate group of vessels was assigned to each of the three targets, Sassan, Sirri and the *Sabalan*. Second, all three groups began their operations simultaneously, but no United States vessels approached the Rakhsh platform until it appeared that the *Sabalan* could not be found. Third, United States forces carried out their operations against the platforms in a deliberate, systematic and co-ordinated manner, which is wholly inconsistent with Iran's assertion that these attacks were undertaken in a moment of frenzy and in violation of their orders. This explanation is confirmed in the Statement of Vice-Admiral Less (Exhibit 48, paras. 11-17; tab C10 in the judges' folders).

United States military action against the platforms

10.50. Now that I have explained the targeting decision, let me briefly review what happened in each of the military actions by United States forces. The first occurred on 19 October 1987. Iran's attacks on the *Sungari* and the *Sea Isle City* only a few days before 19 October confirmed that Iran was determined to continue its attacks on United States shipping and made clear that further United States diplomatic efforts to persuade it to cease such attacks would be futile.

10.51. The first action was directed at the Rostam offshore oil platform complex. At that time, it should be noted that the Rostam complex was not engaged in any commercial activity. It was not engaged in the extraction of petroleum having been previously damaged by Iraqi air

strikes. Rostam, however, had provided a staging point for helicopter assaults, as well as being used to track the movements of commercial shipping throughout that part of the Gulf and to communicate with other units of the Iranian military. United States forces took action against two of the platforms in the Rostam complex, R7 and R4. R7 had a helicopter landing pad. R4 had a surface search radar.

10.52. Before any United States military operations began, Iranian personnel were warned by loudspeaker in both Persian and English to depart the complexes. United States forces then conducted a search of the abandoned complex, during which they discovered Iranian naval documents, communications, and equipment that further confirmed the role played by Rostam in Iran's attacks on neutral shipping. Following this search, United States forces used artillery and explosives to damage platform structures to prevent their continued use in Iran's attacks on shipping. United States forces did not take action against the undersea pipeline that connected the platform complex to Iran's petroleum processing facility at Lavan Island. In accordance with Article 51 of the United Nations Charter, the United States promptly reported this action to the United Nations Security Council.

10.53. Unfortunately, in the period following the United States military action against the Rostam platform, Iran's attacks on United States shipping persisted and increasingly involved attacks by Iranian naval frigates. Mr. Mattler has reviewed these events for the Court. To summarize, according to Lloyd's Maritime Information Service, Iran was responsible for attacks on no fewer than 57 neutral vessels in the Gulf between October 1987 and mid-April 1988. Three of these attacks were directed against United States owned vessels the *Lucy*, the *Esso Freeport*, and the *Diane*.

10.54. On 14 April 1988, the U.S.S. *Samuel B. Roberts* struck an Iranian placed mine as the *Roberts* was returning from a mission escorting United States flagged tankers through the Gulf. Ten United States sailors were injured and the ship suffered substantial damage.

10.55. Once again the United States had to confront the question of what to do in light of Iran's ongoing and direct assault on its essential security interests. And once again, the United States determined — not to escalate or widen the conflict — but to take limited and necessary

measures against Iran's oil platforms in order to address the immediate threat posed to its essential security interests.

10.56. Thus, on 18 April 1988, four days after the attack on the *Samuel B. Roberts*, the United States took actions against the Sirri and Sassan oil platform complexes. As I have shown, Iran also used these platforms in its attacks on United States and other neutral shipping. United States commanders, to quote General Crist,

“knew that the offshore oil platforms at Sassan and Sirri were engaged in military activities. Like Rostam, they were used to identify, track, monitor, and target merchant shipping and communicate that information to other Iranian naval commands, including Iran's naval headquarters at Bandar Abbas.”

I refer you to paragraph 17 of General Crist's Statement, which is at tab C9 in the judges' folders, and to paragraphs 11 to 15 of Vice-Admiral Less's statement, which is at tab C10 in the judges' folders. Vice-Admiral Less explains in detail why he was confident that the Sassan and Sirri platforms were being used to target neutral shipping in the Gulf (Exhibit 44, Statement of General George Crist, para. 17; Exhibit 48, Statement of Vice-Admiral Anthony Less, paras. 11-15). It is notable that at the time of the United States action, neither Sirri nor Sassan were engaged in commercial activity with the United States. Indeed, because the United States imposed an embargo on imports of Iranian origin petroleum in October 1987, there was no trade in petroleum at all between Iran and the United States at the time of these actions.

10.57. Once again, prior to taking action against these facilities, United States forces warned personnel on the Sirri and Sassan platforms, in both English and Persian, to evacuate the complex. United States forces then used rockets and gunfire to damage platform structures to preclude their further use in attacks on shipping. United States forces did not take action against the undersea pipelines that connected these platform complexes to Iran's petroleum processing facilities at Sirri and Lavan Islands. Again, the United States promptly reported these actions to the United Nations Security Council in accordance with Article 51 of the United Nations Charter.

10.58. Following the United States actions against the Sirri and Sassan platform complexes, Iran's attacks on United States and other neutral shipping in the vicinity of these complexes all but ceased. During the remainder of the Iran-Iraq war, Iran only attacked two more commercial vessels within 50 nautical miles of these complexes — neither of them was a United States ship.

Though still at risk, the essential security interests of the United States were now better protected as a result of the necessary measures taken by the United States military.

Conclusion

10.59. Mr. President, I began this presentation with a request that the Court test Iran's assertion that its oil platforms played no offensive military role in relation to the conflict in the Gulf. We submit that the result of that test is clear. Iran used its offshore oil platform complexes to support its attacks on neutral shipping in the Gulf, to interfere with navigation, to disrupt commerce, and to threaten the essential security interests of the United States. Eyewitnesses saw the platforms being used to launch attacks on neutral shipping. Shipping services issued alerts to shipping lines around the world warning them literally to steer clear of Iran's oil platforms. Shipping companies that operated in the Gulf took costly steps to put as much distance between their ships and the platforms as possible. The secret plans, orders, and communications issued by the Iranian Navy confirm both that Iran maintained a policy of using its platforms for military purposes, and that it did so in fact. And United States military commanders were reasonably and fully convinced of this.

10.60. Mr. President, as I have also outlined, the United States was ultimately compelled, after many peaceful efforts had failed, to use force in an effort to prevent further Iranian attacks on United States and other neutral shipping. On two separate occasions, the United States took necessary and proportionate military actions against certain offshore Iranian oil platform complexes used by Iran in its attacks on United States and other neutral shipping.

10.61. The evidence demonstrates that United States officials had ample reason for concluding that actions against Iran's offshore complexes would provide an appropriate and effective response to Iran's relentless attacks. Given the past use of the platforms for such attacks, and the clear evidence that Iran had integrated the platforms into its military operations structure for this purpose, the platforms made an important contribution — an important contribution — to Iran's ability to attack shipping. The correctness of this judgment was borne out by the effectiveness of the United States actions against the platforms. Iran's attacks on neutral shipping in the platforms' vicinity virtually ceased.

10.62. Mr. President, that concludes my presentation. I would now request that you call on Professor Matheson, who will review for the Court the legal significance of the United States factual presentation.

The PRESIDENT: Thank you, Mr. Bettauer. I now give the floor to Professor Matheson.

Mr. MATHESON:

11. SUMMARY OF THE FACTUAL PRESENTATION

11.1. Mr. President and distinguished Members of the Court, it is again my great honour to appear before you on behalf of the United States. Today it will be my task to summarize briefly the main points of the factual presentation that has been made thus far by the United States team, and to suggest the ways in which those facts will form the basis of the legal case that we will make in the remainder of our first round. I will deal with five general issues: *first*, the overall Iranian campaign of attacks on United States and other neutral shipping in the Gulf; *second*, the laying of mines by Iran; *third*, the Iranian missile attacks on United States and other neutral targets; *fourth*, the efforts of the United States to resolve the situation through peaceful means; and *fifth*, the use by Iran of its oil platforms to support these various attacks and the United States actions against those platforms.

The overall Iranian campaign of attacks on United States and other neutral shipping in the Gulf

11.2. Let me begin then with the overall Iranian campaign of attacks on United States and other neutral shipping in the Gulf. According to counsel for Iran, the United States allegation that Iran committed attacks against neutral shipping was “unfounded as a matter of fact and irrelevant as a matter of law” (CR 2003/7, p. 42). Mr. President, we strongly disagree. We described in some detail the deliberate and systematic attacks carried out by Iran against neutral ships transiting the Gulf. We have shown that these attacks were in no way limited to ships carrying Iraqi war materiel, or to ships that had refused to submit to visit and search, or to ships flying the flags of States that Iran considered to be belligerents. More than 200 merchant ships were attacked from more than 30 neutral countries.

11.3. The United States was a particular target of these attacks. Iranian forces deliberately singled out United States merchant ships and warships for attack, and Iranian leaders openly boasted of their intention to use such actions to drive American shipping from the Gulf. Among the victims of these attacks were the merchant vessels the *Bridgeton*, the *Texaco Caribbean*, the *Sungari*, the *Sea Isle City*, the *Lucy*, the *Esso Freeport* and the *Diane*, and the warship *Samuel B. Roberts*.

11.4. These attacks had a heavy impact on United States and other neutral shipping. They caused serious injury and loss of life among the crews of these ships. They caused heavy damage to the ships themselves and their cargoes, resulting in severe economic losses. They forced neutral shippers to make very costly changes in their routing and navigation practices, as well as to incur considerable additional expense for security, insurance and other requirements. The United States and its nationals suffered particularly heavy losses, including property damage, increased operating and capital costs, military deployments and personal injuries.

11.5. Taken as a whole, these attacks seriously threatened and damaged the fundamental interests of many neutral nations, and particularly those of the United States. These nations depended heavily on the flow of oil in the Gulf for their economic well-being and the maintenance of their military forces. Their nationals and merchant fleets were put seriously at risk. Many neutral States protested these Iranian actions through diplomatic channels and through the United Nations Security Council, which strongly condemned the Iranian attacks and demanded their cessation. Many neutral States were compelled to deploy significant naval forces to the Gulf to protect their essential interests. This was especially true in the case of the United States, which was a particular target of Iranian attack and which had serious strategic interests in the region.

11.6. Several important legal conclusions flow from these facts, as we will explain in detail during the remainder of our first round. *First*, Iran's culpable conduct in attacking United States and other neutral vessels, without any semblance of legal justification, precludes it from any right to the relief it seeks from this Court. As we will show, the principle of reciprocity precludes Iran from prevailing on alleged United States violations of the freedoms of commerce and navigation protected by the 1955 Treaty when Iran had itself grossly violated those freedoms. Certainly Iran cannot complain about United States actions that were the direct and natural result of Iran's

unlawful conduct, as was the case here. And most certainly, the Court should not reward Iran by compensating it for measures that were made necessary by its own unlawful actions.

11.7. *Second*, Iran's attacks on neutral shipping, and in particular on United States vessels, seriously damaged and threatened essential security interests of the United States, including its interest in the flow of oil in the Gulf, its interest in the protection of neutral States in the region, and its particular interest in protecting United States nationals, vessels and military forces from attack. As we will show, this meant, pursuant to Article XX, that the Treaty did not preclude the United States from taking measures necessary to protect these essential security interests.

11.8. *Third*, these Iranian actions against United States vessels and nationals constituted an armed attack against the United States that triggered the right of self-defence pursuant to Article 51 of the United Nations Charter. In fact, it is not necessary for the Court to rule on this point in the present case, given that United States actions fell within Article XX and were therefore not precluded by the Treaty in any event. However, for the record, we will confirm that the Iranian attacks entitled the United States to take necessary and proportionate measures in self-defence.

11.9. *Fourth*, Iran's attacks on United States flagged and United States owned vessels entitle the United States to maintain a counter-claim in this proceeding for the loss, damage and injury that resulted from these attacks. As we will show, Iran's attacks were a clear violation of the freedoms of commerce and navigation protected by Article X of the Treaty. They resulted not only in serious injury and property damage aboard the vessels attacked, but also caused considerable expense to United States shippers generally in the form of increased operational, insurance and maintenance costs.

The laying of mines by Iran

11.10. Let me next turn to the laying of mines by Iran. Here we have demonstrated in some detail that Iran was in fact responsible for the laying of extensive minefields in waters which were frequently used by neutral vessels in transit to and from neutral ports, resulting in heavy damage to a number of these vessels. In particular, we have presented clear proof that the mines which struck the United States flagged *Bridgeton*, the United States chartered *Texaco Caribbean*, and the United States warship *Samuel B. Roberts* were Iranian in origin, and we have shown that all available

evidence points to the conclusion that Iran deliberately laid mines for the specific purpose of damaging or destroying United States ships. We have shown that Iran's alternative suggestion that these mines had been laid by Iraq was wholly improbable and contrary to all the evidence. Iran's laying of mines presented serious dangers for United States and all other neutral shipping in the Gulf, and compelled all shippers to take measures that drastically impeded and increased the cost of their operations.

11.11. These facts lead to several important legal conclusions. *First*, they again demonstrate that Iran specifically violated the 1955 Treaty by taking actions that inevitably interfered in a severe way with maritime navigation and commerce between the territories of the two parties. These actions were also in direct violation of the law of armed conflict.

11.12. *Second*, these facts show that the threat to United States security interests was severe and immediate, presenting serious danger to neutral shipping generally, and to United States nationals and United States vessels in particular, including United States warships. This threat was particularly acute in the immediate aftermath of the mining attack on the *Samuel B. Roberts*, when it became clear that Iran had both the means and the intention to destroy United States vessels and severely to disrupt maritime activity by the United States in the Gulf. As we will show later in this first round, this amounted to a clear threat to essential United States security interests for the purpose of Article XX.

11.13. *Third*, these facts show that the United States, even with its considerable naval capability, could not ensure that its vessels would be safe from such mine attacks simply through passive measures of mine detection and destruction, or through defensive measures limited to the minelaying vessels themselves. Even United States warships could not reliably detect all such mines while engaged in convoying operations, and there was no way reliably to detect and destroy in advance all Iranian vessels that might lay such mines. Military action was clearly necessary against the Iranian facilities that were supporting such attacks and conducting surveillance of United States and other neutral targets. Accordingly, as we will argue later, such military action fell within the provisions of Article XX.

The Iranian missile attacks on United States and other neutral targets

11.14. Next is the question of the Iranian missile attacks on United States and other neutral targets. We have demonstrated that Iran was in fact responsible for the launching of a series of HY-2 anti-ship missiles against targets in the vicinity of Kuwait, and in particular that Iran launched the missiles that struck the United States owned *Sungari* and the United States flagged *Sea Isle City*. We have shown that Iran's alternative suggestion that these missiles were launched by Iraq is both contrary to the facts and highly unlikely as a matter of Iraqi interest and motivation.

11.15. These facts lead to the following legal conclusions. *First*, they demonstrate Iran's total disregard for the safety of maritime navigation and its obligations concerning neutral commerce. Very destructive missiles were repeatedly fired at long range toward an area in which many neutral vessels were present—missiles that would therefore inevitably strike indiscriminately and without any hope of distinguishing between lawful and unlawful targets. As such, these actions constituted clear violations of the 1955 Treaty, as well as the law of armed conflict.

11.16. *Second*, these facts show that United States and other neutral vessels in the Gulf were under severe and continuing threat of attack by missiles that were perfectly capable of destroying these vessels and killing their crews. This was, without any doubt, both a severe interference with United States maritime navigation and commerce and a serious threat to essential United States security interests in the safety of American vessels and the flow of oil generally from Kuwait and elsewhere in the Gulf. These threats were particularly acute in the immediate aftermath of the attack on the *Sea Isle City*, by which point it had become clear that Iran had every intention and capability of conducting sustained and devastating missile attacks against United States and other neutral shipping. As such, these attacks clearly triggered the provisions of Article XX of the Treaty.

11.17. *Third*, these facts demonstrate that the United States could not have relied on passive measures of defence against the missiles themselves, since it was simply not feasible to detect missile launches in time to deploy naval assets to the scene, nor could United States forces have had any reasonable confidence in being able to shoot down such missiles in flight. Clearly it was necessary to take further military action, and the facilities that provided support and targeting

information — notably, the Iranian platforms — were an appropriate target for such military action. Such measures therefore fell within Article XX of the Treaty.

The efforts of the United States to resolve the situation through peaceful means

11.18. Let me next turn to the efforts of the United States to resolve through peaceful means the serious situation created by Iran's attacks. We have now demonstrated in some detail that the United States — and indeed, a great many neutral countries — went to considerable lengths to attempt to persuade Iran to desist from its attacks on neutral shipping in the Gulf. The United States in particular made a number of diplomatic *démarches* to Iran, stressing that United States maritime commerce in the Gulf was in no way a threat to Iranian interests, that the United States would strictly respect any legitimate exercise by Iran of its rights under the law of armed conflict, and that United States naval forces in the Gulf would only use force against Iran if compelled to do so by continuing Iranian attacks.

11.19. These facts have important legal consequences. *First*, they show that the United States had in good faith exhausted all reasonable peaceful means of protecting its essential security interests, leaving only the use of force as a last resort. Accordingly, as we will demonstrate, military measures were a necessary and appropriate course of action for the United States which fell within the provisions of Article XX, and were therefore not precluded by the Treaty.

11.20. *Second*, these facts confirm the culpability of Iran in continuing its attacks on neutral shipping in violation of international law and the 1955 Treaty, even after being reassured that its interests would not be threatened by peaceful commerce and its rights under the law of armed conflict would be respected. They show that Iran had a conspicuous disregard for its international obligations with respect to neutral commerce and navigation, including in particular its obligations under the Treaty.

The use by Iran of its oil platforms to support its various attacks and the United States actions against those platforms

11.21. Finally, let me deal with the use by Iran of its platforms to support its various attacks and the United States actions against those platforms. We have now demonstrated that Iran was using its oil platforms — and specifically the platforms against which the United States took

action — for military purposes that went well beyond their defence against hostile attack. In particular, we have reviewed the evidence indicating that these platforms were used as a base for helicopter and gunboat attacks, for surveillance of neutral vessels that were then marked for attack, and for the transmission of military radio traffic that was involved in co-ordinating mining and other hostile activities against neutral shipping.

11.22. In addition, we have shown that the United States did not — as Iran has alleged — take military action against the platforms for the purpose of causing maximum economic damage to Iran, or having maximum influence on the conduct of the Iran-Iraq war. On the contrary, military action against the platforms presented a much lesser risk of civilian loss or injury, and of involvement by the United States in the ongoing conflict between Iran and Iraq, than would attacks on other possible Iranian targets. If the United States intention had simply been to cause maximum economic damage, it would have destroyed the substructure and pipeline connections of the platforms, or attacked more important facilities such as those at Kharg Island and Sirri Island. If the intention had been to have maximum impact on the outcome of the Iran-Iraq war, the United States would have attacked Iranian forces in the Faw area or major bases on the Iranian mainland. Instead, United States forces acted against platforms that had been directly involved in supporting attacks against United States and other neutral shipping, and against those parts of the platform complexes that were capable of supporting such attacks.

11.23. The legal implications of these facts are clear. *First*, as we will later demonstrate, the United States actions against the platforms cannot be a valid basis for any claim under Article X of the 1955 Treaty, because those actions in no way interfered with the freedom of commerce between the United States and Iran. For various reasons, no oil from the platforms could have entered into commerce with the United States in the relevant time period. The only way in which the platforms affected such commerce at all was as a military base to support actions against maritime commerce.

11.24. *Second*, the facts demonstrate that Iran is actually attempting in this case to recover for the consequences of its own violations of international law and the 1955 Treaty. The United States actions against the platforms only occurred because Iran was using them to support attacks against neutral shipping — attacks that interfered with the freedoms of navigation and commerce between the United States and Iran in violation of the Treaty, as well as violating the law of

neutrality and the law of armed conflict. As we will show, this deprives Iran of any right to seek relief in this Court for the results of its own misconduct and for alleged United States violations of the very same obligations that Iran had grossly violated.

11.25. *Third*, these facts confirm that the platforms were a lawful and appropriate target for United States action. As we will later argue, the United States reasonably determined that military action was necessary to protect essential United States security interests and to defend the United States against armed attack, and that the platforms were a legitimate objective for such military action, particularly in light of their involvement in attacks against United States and other neutral shipping. Indeed, the platforms were the most appropriate choice for a military response from the point of view of minimizing civilian damage and the risk of exacerbating the conflict.

Conclusion

11.26. To summarize my presentation today, the facts established by the United States during the past few days lead directly to the legal arguments that we will present during the remainder of our first round. Iran unlawfully damaged and endangered United States and other neutral shipping in the Gulf in an extended and massive series of attacks that included highly dangerous and indiscriminate methods of warfare. These attacks presented a clear threat to the essential security interests of the United States and justified military action, particularly to protect United States vessels, United States forces and United States lives. The platforms against which the United States acted were being used to support the Iranian attacks and were a lawful object of military action.

11.27. These facts have clear legal consequences for this case. Iran may not prevail on a claim before this Court based on alleged United States violations of the same obligations that Iran violated on a massive scale. The actions of the United States did not violate Article X and were in any event appropriate measures to protect essential United States security interests for the purposes of Article XX. Iran itself violated Article X of the Treaty, and is therefore liable to the United States for the losses caused by its attacks on United States vessels.

11.28. Mr. President, this concludes our presentation for today. We thank the Court for its attention.

The PRESIDENT: Thank you, Professor Matheson. The Court now adjourns until tomorrow morning, when the sitting begins at 10 o'clock.

The Court rose at 5.55 p.m.
