

**CASE CONCERNING OIL PLATFORMS**  
**(ISLAMIC REPUBLIC OF IRAN v. UNITED STATES OF AMERICA)**  
**PRELIMINARY OBJECTION**

**RESPONSE OF THE ISLAMIC REPUBLIC OF IRAN TO  
VICE-PRESIDENT SCHWEBEL'S QUESTION**

*"In these proceedings, both Parties cite documents from the ratification processes of treaties of friendship, commerce and navigation to shed light on their intentions in concluding the 1955 Treaty of Amity, Economic Relations and Consular Rights in the terms in which it was concluded.*

*In its Judgment of 22 July 1952, on the Preliminary Objection of Iran in the Anglo-Iranian Oil Company case, the Court found what was the intention of Iran in drafting the terms of its declaration of adherence to the compulsory jurisdiction of the Court under Article 36, paragraph 2 (I.C.J. Reports 1952, pp. 104-107).*

*To what extent, if any, do the Parties in the case now before the Court find the holdings of the Court in the jurisdictional phase of the Anglo-Iranian Oil Company case instructive ?"*

In Iran's view, the Court's holdings in the Anglo-Iranian Oil Company case are instructive in so far as they differentiate the principles of interpretation that may be involved in interpreting unilateral declarations accepting the Court's jurisdiction under Article 36(2) of the Court's Statute from those that are involved in interpreting bilateral treaties forming the basis of the Court's jurisdiction under Article 36(1) of the Statute.

First, the Court reaffirmed the general principle pursuant to which a reason and meaning should be attributed to every word in a legal text (effet utile) when interpreting the text of a treaty. Since the Iranian Declaration was not a treaty and had not resulted from negotiations between two or more States, it was not necessary to apply this principle. It was more important to ascertain the unilateral intent behind Iran's Declaration :

*"It may be said that this principle should in general be applied when interpreting the text of a treaty. But the text of the Iranian Declaration is not a treaty text resulting from negotiations between two or more States. It is the result of unilateral drafting by the Government of Iran, which appears to have shown a particular degree of caution when drafting the text of the Declaration" (I.C.J. Reports 1952, p. 104, emphasis added).*

Second, the Court even so placed principal reliance on the actual words of Iran's Declaration in order to ascertain the intention of Iran with respect to the scope of the Court's jurisdiction.

The Court found that the "manifest intention" of Iran had been to exclude from the jurisdiction of the Court disputes relating to the application of treaties or conventions accepted by it before the ratification of its Declaration. According to the Court, this intention "found an adequate expression in the text of the Declaration so interpreted above by the Court" (*ibid.*, p. 106).

Third, to the extent that the Court had recourse to the internal Iranian law by which the Iranian Majlis had approved the Declaration, this was only to confirm the interpretation which flowed from the text of the Declaration itself. Given that the interpretation of a unilateral declaration was at stake, the Court deemed that recourse to Iranian law was entirely appropriate to shed light on Iran's intention.

The United Kingdom contended that this kind of evidence should be rejected because the Iranian law was a "purely domestic instrument, unknown to other governments" (*ibid.*). The Court refused to accept this argument, stating that it was unable to see why it should be prevented from considering the Iranian law for purposes of shedding light on Iran's intention when it signed its Declaration (*ibid.*).

The situation presented in the Anglo-Iranian Oil Company case was thus very different from that presented in the present case. Here, the interpretation and application of a bilateral treaty - the 1955 Treaty of Amity - is at issue rather than the interpretation of a unilateral declaration under Article 36(2) of the Statute. It follows that it is the common intent of the Parties as expressed in the Treaty which is important rather than the unilateral views that either Party may have expressed before their own legislative bodies after the Treaty had been signed.

Shabtai Rosenne, in his work on The Law and Practice of the International Court (2nd revised edition, 1985) confirms this important distinction. He notes :

"As applied to the interpretation of declarations accepting the compulsory jurisdiction, the effect of this is that the Court will seek out the underlying intention of the State making the declaration, the declaration itself being the expression of a unilateral act of policy - to recognise as compulsory the jurisdiction of the Court for the disputes covered by it" (p. 406).

In contrast, with respect to treaty interpretation, the author observes that the emphasis is quite properly placed on the "joint intention" of the parties as expressed in the Treaty :

"That is a normal feature of the process of treaty interpretation, which is always concerned with the elucidation of the combined intention of two or more Parties to the treaty. But with a declaration, the whole process is stamped by the particular quality of the declaration as a unilateral act, the product of unilateral drafting. That also explains why in several cases the Court has been so careful to explore the reasons which led the declarant government to insert special reservations into its declaration, and to give effect to them" (*ibid.*, pp. 406-407).

It is in the light of this distinction that the references by the Parties in the present case to documents from the United States' ratification process of FCN treaties must be viewed. Concerned, as they were, with the ratification of various FCN treaties after they had been signed, these documents do not constitute travaux préparatoires within the meaning of Article 32 of the Vienna Convention on the Law of Treaties.

Bearing in mind that the present case involves the interpretation of a bilateral treaty not a unilateral declaration, the United States cannot rely on documents relating to its own ratification procedures to support its own interpretation of the Treaty. Unlike in the Anglo-Iranian Oil Company case, it is the common intent of the Parties as expressed in the Treaty which controls.

In accordance with Article 31(1) of the Vienna Convention on the Law of Treaties, Iran's interpretation of the individual provisions of the 1955 Treaty of Amity at issue in this case is based on the "ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Iran also invoked, ex abundanti cautela, the circumstances in which the Treaty was concluded as a supplementary means of interpretation under Article 32 of the Vienna Convention to confirm the meaning that resulted from the application of Article 31. To the extent Iran has cited from the United States' ratification procedures, it has done so simply to show that the ex post assertions by the United States as to its understanding of the 1955 Treaty of Amity, or as to what it "really intended", do not stand with the internal records of the United States itself (*see*, in general, CR 96/17, pp. 53-54, Professor Crawford).



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**RESPONSE OF THE ISLAMIC REPUBLIC OF IRAN TO  
JUDGE AD HOC RIGAUX'S QUESTION**

*"According to Iran, the NIOC was still delivering oil to the United States at the time of the destruction of the oil platforms which are the subject of the dispute.*

*Were these supplies interrupted after President Carter's Executive Order in November 1979 ? If so, for how long ? When were they resumed and when did they cease ?"*

1. - Restrictions on oil supplies and other commercial relations with Iran were imposed by the United States pursuant to a series of Proclamations and Executive Orders in November 1979 and April 1980, in particular :

- Proclamation No. 4702 dated 12 November 1979
- Executive Order No. 12170 dated 14 November 1979
- Executive Order No. 12205 dated 7 April 1980
- Executive Order No. 12211 dated 17 April 1980

In particular, Proclamation No. 4702 stated in Section 1 (a) that "... no crude oil produced in Iran ... or unfinished oil or finished products refined in possessions or free trade zones of the United States from such crude oil, may be entered into the customs territory of the United States".

2. The Algiers Declarations were made on 19 January 1981. Under paragraph 10 of the General Declaration, the United States agreed to "revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date" (see, 1 Iran-U.S. Claims Tribunal Reports, at p. 10).

Pursuant to this undertaking, Executive Order No. 12282 was signed by President Carter on 19 January 1981 lifting such trade sanctions. The lifting of these sanctions was confirmed by President Reagan through Executive Order No. 12294 dated 24 January 1981.

3. Thereafter, no restrictions on oil trade between Iran and the United States were imposed by the United States until 29 October 1987, ten days after the first United States' attacks on Iranian oil platforms.

During the intervening period, there was substantial trade in oil between Iran and the United States. This is confirmed by a White House Fact Sheet dated October 26, 1987, which is included in Exhibit 2 to Iran's Observations and Submissions filed on 1 July 1994, and which reads in relevant part as follows :

- "- U.S. purchases from Iran in 1986 totalled some \$ 600 million, \$ 500 million in petroleum and \$ 100 million in other products. Oil earnings by Iran from sales to the U.S. from January through July of 1987 are estimated to be over one billion dollars.
- Imports of Iran crude oil into the U.S. and its territories averaged 90,000 barrels per day (bpd) in 1986 ; they jumped to an average of 250,000 bpd in the first seven months of 1987 (620,000 bpd in July alone). Estimates for August are 468,000 bpd and for September 345,000 bpd. The rise can be explained, in part, by increased Iranian production to obtain additional revenue for the war effort."

4. On 29 October 1987, President Reagan issued Executive Order No. 12613, Section 1 of which reads as follows :

"Except as otherwise provided in regulations issued pursuant to this Order, no goods or services of Iranian origin may be imported into the United States, including its territories and possessions, after the effective date of this Order."

However, the Order also stated that this prohibition did not apply to "petroleum products refined from Iranian crude oil in a third country" (see, Section 2 (b)). Thus, Iranian crude oil, albeit in the form of refined products, could still be imported into the United States. Moreover, the Order did not prevent the sale of Iranian crude oil to U.S. companies outside of the United States.

5. Following the 1987 Order, no significant change in the situation occurred. In 1990 and 1991 the State Department allowed certain imports of Iranian crude oil into the United States providing payments were made into the Security Account controlled by the Iran-U.S. Claims Tribunal. It should be noted that the sale of Iranian crude oil to U.S. companies continued until 1995 when the recent Presidential Orders were issued by President Clinton.

6. There was at no time, however, any restriction imposed by the Iranian Government on the sale of crude oil to U.S. companies.