

**INTERNATIONAL COURT OF JUSTICE**  
**CASE CONCERNING OIL PLATFORMS**  
**(ISLAMIC REPUBLIC OF IRAN V. UNITED STATES OF AMERICA)**

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**VIEWS ON IRAN'S "REQUEST FOR HEARING IN RELATION  
TO THE UNITED STATES' COUNTER-CLAIM PURSUANT TO  
ARTICLE 80(3) OF THE RULES OF COURT"**

**SUBMITTED BY**

**THE UNITED STATES OF AMERICA**

**DECEMBER 18, 1997**

**VIEWS OF THE UNITED STATES OF AMERICA ON IRAN'S  
"REQUEST FOR HEARING IN RELATION TO THE UNITED STATES'  
COUNTER-CLAIM PURSUANT TO ARTICLE 80(3) OF THE RULES OF  
COURT"**

**INTRODUCTION AND SUMMARY**

1. On 23 June 1997, the United States of America filed its Counter-Memorial in this case. As provided in Article 80(1) of the Rules of Court, the United States included a substantial counter-claim against the Islamic Republic of Iran. In connection with that counter-claim, the United States showed that Iran's actions against U.S. and other neutral shipping in the Persian Gulf region violated Article X of the 1955 Treaty of Amity between the United States and Iran. The United States also showed that its counter-claim was directly connected to the subject matter of Iran's claim, *inter alia*, because both require the Court to address many of the same factual and legal issues.

2. In a letter dated 2 October 1997, the Agent for the Islamic Republic of Iran indicated that "Iran has serious objections to the admissibility of the United States' counterclaim." On 17 October, the Vice-President met with representatives of the Parties to discuss further steps in the case in light of Iran's letter. The Agent for Iran stated that Iran was preparing written objections to the admissibility of the United States counter-claim. By letter of 21 October, the Registrar invited Iran to specify, "not later than 18

November, the legal grounds" for its opinion, and invited the United States to set forth its views within a month of receiving Iran's statement. On 18 November, the Islamic Republic of Iran filed a document captioned "Request for Hearing in Relation to the United States' Counter-Claim Pursuant to Article 80(3) of the Rules of Court."

(Hereinafter, "Iran's Request for Hearing.")

3. The United States will show here that the objections to the U.S. counter-claim contained in Iran's Request for Hearing are unfounded, and that Iran's objections relating to jurisdiction and admissibility are, in any case, not appropriate for consideration by the Court at this stage. Under the Rules of Court, the only legally relevant issue now is whether there is "doubt" as to whether the U.S. counter-claim is "directly connected to the subject matter" of Iran's claim. Here, there can be no such doubt. There is therefore no basis for Iran's demand for a hearing or for its insistence that the counter-claim not be joined to the original proceedings.

4. A proper understanding of the U.S. counter-claim, and of its direct connection to the subject matter of Iran's claims, requires familiarity with events in the Persian Gulf in the late 1980s, including Iran's recurring attacks upon vessels of the United States and other countries during that period. These are described in detail in the U.S. Counter-Memorial and Counter-Claim filed on 23 June 1997. In the interests of brevity, we will not review the facts in detail here. Instead, the United States incorporates by reference, and requests that the Court take fully into account, the factual discussions in the U.S. Counter-Memorial and Counter-Claim of 23 June 1997. The facts explained there clearly

demonstrate the U.S. counter-claim's direct connection with the subject matter of Iran's claims.

5. In bringing its case, Iran asserted substantial claims against the United States based on the 1955 Treaty of Amity, Economic Relations and Consular Rights and portrayed itself as an innocent victim of supposedly unlawful attacks by the United States. The United States has answered in part with a counter-claim based on the same Treaty and growing out of the facts and events placed at issue by Iran. Iran has put the conduct and good faith of the United States at issue by filing its claims. It cannot now evade the legal consequences of having done so, by arguing that its own conduct and good faith are somehow insulated from scrutiny.

**PART I****THE ONLY ISSUE UNDER ARTICLE 80 (3) IS THE CONNECTION  
BETWEEN THE U.S. COUNTER-CLAIM AND THE SUBJECT-MATTER  
OF IRAN'S CLAIM****CHAPTER I****THE LIMITED SCOPE OF PROCEEDINGS UNDER ARTICLE 80(3)**

6. Iran's request is filed pursuant to Article 80(3) of the Rules of Court. Article 80(3) is expressly limited to a single issue: "the connection between the question presented by way of counter-claim and the subject matter of the claim of the other party." (Article 80(1) indicates that the two must be "directly connected.") Iran, however, asks the Court to ignore the clear language of its Rules and to address issues going far beyond the limits of Article 80(3), including sweeping objections to jurisdiction and admissibility of the counter-claim<sup>1</sup>.

7. There is no basis for Iran's disregard of the Court's Rule. On the contrary, there are good reasons for the narrow scope of any objections under Article 80(3). The Rule has a limited purpose. It allows the Court to prevent the exceptional burdens on a Party, and the waste of the Court's own time and resources, that might result from having

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<sup>1</sup> "Iran is convinced that the United States' Counter-Claim . . . is inadmissible under Article 80, paragraph 1, of the Rules. It therefore asks the Court to hear the Parties pursuant to Article 80, paragraph 3 of the Rules. . . ." Iran's Request for Hearing at p. 5, para 10.

to deal in a single case with two completely different sets of factual and legal disputes. However, where claim and counter-claim are directly connected as the Rule requires, any other issues relating to the counter-claim can be addressed efficiently in the course of proceedings on the principal claim.

8. Iran draws false analogies between the limited proceedings under Article 80(3) and proceedings under Article 79 relating to Preliminary Objections. Preliminary Objections proceedings permit a party faced with a claim to seek early consideration of its objections to jurisdiction and admissibility. The party can thus avoid being forced to litigate on the merits where there is no jurisdiction or where a claim clearly is inadmissible. The situation is quite different with a counter-claim. The party facing the counter-claim initiated the case and chose the forum. Proceedings are underway. It is both reasonable and efficient for a counter-claim directly connected to the subject matter of the initial claim to be considered together with that claim.

9. In asking the Court to ignore the limited scope of Article 80(3), Iran essentially seeks a separate procedure similar to preliminary objections under Article 79 to attack the counter-claim against it<sup>2</sup>. This is not the function of Article 80(3). Iran's objections to the admissibility of the U.S. counter-claim involving issues other than connection are simply outside the scope of that Rule. They are not appropriate for resolution at this stage of Iran's case.

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<sup>2</sup> In addition to its current request for a wide-ranging hearing on the U.S. counter-claim, Iran's Request for Hearing also reserves the right to "lodge preliminary objections in respect of the United States' Counter-Claim," p. 16, para 26. The Rules of Court of course do not provide for preliminary objections to counter-claims. It appears that Iran may ask the Court for multiple opportunities to contest the U.S. counter-claim without ever answering it on the merits.

10. Moreover, the Court could face great practical difficulties in seeking to resolve Iran's objections to admissibility at this stage in the context of Article 80(3). Many of Iran's objections to jurisdiction and admissibility involve contested matters of fact which the Court cannot effectively address and decide at this stage, particularly not in the context of the abbreviated procedures of Article 80(3)<sup>3</sup>.

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<sup>3</sup> Should the Court decide to consider these issues in the present context, the United States would have to request a further opportunity to address them in greater detail in writing before the Court rendered any decision.

## CHAPTER II

### THE CONNECTION REQUIRED BY ARTICLE 80

11. As we have shown, the only issue now before the Court under Article 80(3) is whether there is “doubt” regarding the requisite “connection between the question presented by way of counter-claim and the subject matter of the claim of the other party.”

12. Iran’s Request for Hearing regularly mis-characterizes the key legal requirements of Article 80. Iran paraphrases the Rule to require “a direct connection between the counter-claim and the original claim<sup>4</sup>.” This is not what Article 80 says. It requires a direct connection to the *subject matter* of the claim, not to the claim itself. The difference is important. A proper counter-claim need not be a mirror image of the claim or rest upon precisely the same theory or facts. Rather, the counter-claim must be sufficiently linked to the facts or circumstances giving rise to the claim -- the “subject matter” -- to enable the Court to address both efficiently in the context of a single proceeding.

13. Article 80(3) thus reflects practical considerations of fairness and economy for the Parties and the Court. By requiring that claim and counter-claim share common connection to the subject matter, the Rule ensures that Parties and Court do not have to grapple with unconnected disputes and unrelated claims in a single case. However, where

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<sup>4</sup> Iran’s Request for Hearing at p. 6, para 11. See *id.* at p. 5, para 9 (“[I]t is Iran’s position there is no ‘direct connection’ between the United States’ Counter-Claim and the principal claim formulated by Iran . . . .”)

-- as here -- there are substantial common elements, those common issues can be fairly and efficiently addressed and decided at one time, within a single proceeding. This involves no unfairness to Iran, nor inappropriate burden on the Court. On the contrary, it helps to reduce the burden on the Court that would be caused by separation of closely-related cases, guards against inconsistent results, and helps the Court to reach a just and rational result by addressing all sides of the dispute in a single proceeding.

14. The few previous decisions by this Court and the Permanent Court involving counter-claims reflect this practical understanding of the necessary connection between claim and counter-claim. The modern Court first addressed these issues in the *Asylum Case*<sup>5</sup>. There, both claim and counter-claim grew out of common circumstances, a claim for asylum and safe-conduct for Mr. Haya de la Torre, who sought refuge in the Embassy of Colombia in Lima following a military rebellion. Colombia initiated the case. Peru brought a counter-claim. Colombia asked that the counter-claim be rejected for lack of direct connection to the claim, contending that it "raises new problems and thus tends to shift the grounds of the disputes<sup>6</sup>." The Court disagreed, finding a direct connection between claim and counter-claim. In doing so, the Court stressed that "conditions which are required to exist before a safe-conduct can be demanded depend precisely on facts which are raised by the counter-claim<sup>7</sup>." The same is true here. As we will show, the

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<sup>5</sup> *Asylum, Judgment, I.C.J. Reports 1950*, p. 266.

<sup>6</sup> *Id.* at p. 280.

<sup>7</sup> *Id.* at p. 280-81.

validity of Iran's challenge to the legality of U.S. conduct "depend[s] precisely on facts which are raised by the counter-claim."

15. In *U.S. Nationals in Morocco*, the Court did not even find it necessary to address the question of connection, and instead turned directly to consider the U.S. counter-claim<sup>8</sup>. The Court's Order at the preliminary measures stage of the *Case Concerning United States Diplomatic and Consular Staff in Tehran*, which is cited by Iran, is fully consistent with our analysis. The Court there simply noted that Iran could file a counter-claim if it considered alleged U.S. activities in Iran "legally to have a close connection with the subject matter" of the U.S. claim<sup>9</sup> ."

16. The Permanent Court (which of course acted under different rules) did not require a high degree of correlation between claim and counter-claim. In *Diversion of Water from the Meuse*<sup>10</sup>, The Netherlands argued that Belgium's construction of certain works involving the River Meuse violated an 1863 treaty. Belgium brought a counter-claim involving two different water projects constructed at an earlier time. Despite these differences, the Court concluded that Belgium's counter-claim was "directly connected with the principal claim."

17. Iran also refers to the *Chorzów Factory* case, which presented the Permanent Court with similar issues,<sup>11</sup> but it too supports our view of the appropriate connection.

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<sup>8</sup> *Rights of Nationals of the United States of America in Morocco, Judgment, I.C.J. Reports 1952*, p. 176, at p. 203.

<sup>9</sup> *United States Diplomatic and Consular Staff in Tehran, Provisional Measures, Order of 15 December 1979, I.C.J. Reports 1979*, p. 7 at p. 15, para 24.

<sup>10</sup> *Diversion of Water from the Meuse, Judgment, 1937, P.C.I.J., Series A/B, No. 70*, p. 4, at p. 28.

<sup>11</sup> *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17.*

Germany claimed that Poland was liable for reparations stemming from Poland's confiscation of a nitrate factory in Chorzów. Poland responded, *inter alia*, that its actions were lawful because Article 256 of the Versailles Treaty vested Poland with ownership of the factory. Poland also counter-claimed, alleging that Germany must surrender its shares of the company controlling the factory to Poland. Thus, similar matters formed the basis of Poland's defense to Germany's claim and of Poland's counter-claim. The Permanent Court concluded that in these circumstances, it could address Poland's counter-claim<sup>12</sup>. This case is similar. As is shown below, the factual circumstances at the base of the U.S. defense are also the basis of the U.S. counter-claim.

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<sup>12</sup> *Id.* at pp. 38-39.

**PART II****THE U.S. COUNTER-CLAIM IS "DIRECTLY CONNECTED TO THE SUBJECT MATTER" OF IRAN'S CLAIM**

18. In paragraphs 17-19 of its Request for a Hearing, Iran repeatedly denies that there is any legal or factual connection between the U.S. counter-claim and the subject matter of Iran's Application. Iran thus asks the Court to adopt a very narrow and artificial view of the subject-matter of its claim and the U.S. counter-claim. Iran wants the Court to consider only the U.S. defensive actions against Iran's platforms, and to exclude Iran's prior conduct leading to those actions. The Court should not accept this artificial and illogical definition of the subject-matter of the claim. To do so would in effect accept Iran's position on the merits of the case before the case is even heard. The Parties' dispute cannot be separated from its factual context in this way.

19. As shown in the U.S. Counter-Memorial and Counter-Claim of 23 June 1997, the facts and circumstances that caused the United States to engage Iran's oil platforms -- Iranian attacks on, and threats to, merchant shipping, including U.S. shipping and U.S. nationals -- are at the heart of the U.S. defense to Iran's claims. These same facts and circumstances are likewise the basis of the U.S. counter-claim. The factual connection between the subject matter of Iran's case and the U.S. counter-claim is direct and compelling.

**1. The circumstances which caused the United States to take defensive action against Iran's oil platforms are an essential part of the "subject matter" of Iran's claim**

20. The United States took action in self-defense against Iran's oil platforms in October 1987 and again in April 1988. As detailed in the U.S. Counter-Memorial and as summarized briefly below, U.S. actions in self-defense were justified in each instance by a pattern of Iranian actions against neutral shipping, including attacks on U.S. vessels, that threatened the safety of U.S. merchant vessels and their U.S. warship escorts. The Court must consider all these events in determining whether the U.S. actions were justified under, *inter alia*, the law of self-defense and the 1955 Treaty's provision permitting actions necessary to protect the essential security interests of a party. The merits of Iran's claims cannot be determined without resolving these matters. They are a central part of the "subject-matter" of Iran's claims. As the next section will show, these same actions by Iran are also a central aspect of the U.S. counter-claim.

**a. Events Leading Up to the October 1987 U.S. Defensive Action Against the Rostam Platform**

21. The United States maintains in both its defense and its counter-claim that Iranian armed forces engaged in armed threats and attacks against neutral Gulf shipping prior to the U.S. October 1987 defensive measures against the Rostam Platform. Iran's actions included threats and attacks on U.S. nationals, U.S.-flag vessels and vessels engaged in U.S. trade. These factual contentions are a central part of the subject matter at issue between the Parties.

22. Despite diplomatic efforts by the United States to avert confrontation with Iran<sup>13</sup>, Iranian threats to U.S. shipping increased in July 1987 following the decision to flag eleven Kuwaiti vessels under U.S. registry. Iranian forces mined Kuwaiti waters transited by U.S.-flag tankers, and successfully mined the U.S.-flag tanker *Bridgeton* on 24 July 1987<sup>14</sup>. The comments of Iranian officials made clear that Iranian forces were targeting for attack U.S.-flag merchant vessels and their U.S. Navy escorts<sup>15</sup>. In August 1987, Iranian forces mined the Khor Fakkan anchorage which was used regularly by U.S.-flag and other neutral vessels. The tanker *Texaco Caribbean*, engaged in U.S.-Iran trade, struck one such mine<sup>16</sup>. Further evidence of Iran's threat to merchant shipping, including U.S. shipping, surfaced in September 1987, when U.S. forces caught the Iranian vessel *Iran Ajr* laying mines in an international sea lane used by U.S. merchant convoys<sup>17</sup>.

23. The pattern of Iranian threat and armed attack continued when Iranian forces launched a missile which struck the U.S.-flag tanker *Sea Isle City* at a Kuwaiti anchorage on 16 October 1987<sup>18</sup>. Following Iranian attacks against shipping that spanned from Kuwait to Fujayrah<sup>19</sup>, the attack on *Sea Isle City* caused the United States to conclude

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<sup>13</sup> U.S. Counter-Memorial and Counter-Claim, pp. 19-20, paras. 1.22 - 1.24.

<sup>14</sup> *Id.* at pp. 21-24, paras. 1.25 - 1.31.

<sup>15</sup> *Id.* at pp. 23-24, paras. 1.30 - 1.31.

<sup>16</sup> *Id.* at pp. 25-27, paras. 1.33 - 1.38.

<sup>17</sup> *Id.* at pp. 28-30, paras. 1.40 - 1.42.

<sup>18</sup> *Id.* at pp. 42-52, paras. 1.63 - 1.69.

that Iran's threat to the safety of U.S. shipping and U.S. nationals was continuing and serious<sup>20</sup>. The United States determined that defensive action was necessary to counter this threat, and for the reasons stated in the U.S. Counter-Memorial<sup>21</sup>, took such defensive action against the Rostam oil platforms used by Iran to (1) observe and identify merchant shipping for attack, (2) launch helicopter attacks against merchant vessels, and (3) transmit communications between Iranian naval forces involved in ship attacks.

**b. Events Leading Up to the U.S. Defensive Action Against the Sirri and Sassan Platforms**

24. Despite the U.S. defensive response against Rostam, Iranian armed forces continued seriously to threaten and assault neutral Gulf shipping in the months that followed. Among the vessels attacked were *Lucy* (15 November 1987), *Esso Freeport* (16 November 1987), and *Diane* (7 February 1988), all of which were U.S.-owned. During the first three months of 1988 alone, Iranian forces attacked more than 25 merchant vessels<sup>22</sup>.

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<sup>19</sup> The pattern of Iranian threat and armed attack included 90 assaults on neutral merchant vessels during the course of 1987. See U.S. Counter-Memorial, Map 1.4 following p. 10, and Exhibits 1, 2, 9, and 11 annexed thereto. In addition to imperiling the lives of sailors and affecting the course of merchant traffic in the Gulf, these attacks caused the insurance and labor costs of ship owners to increase substantially. *Id.*, Exhibits 7, 16.

<sup>20</sup> U.S. Counter-Memorial, pp. 53 *et seq.* and 71 *et seq.*

<sup>21</sup> *Id.* at pp. 54-70, paras. 1.81 - 1.98.

<sup>22</sup> *Id.* at p. 9 note 7, and Exhibits 1, 2, 9, and 11.

25. The pattern of Iranian threat and assault continued in April 1988. On 14 April 1988, the U.S. warship *USS Samuel B. Roberts* struck a mine laid by Iran in the central Gulf<sup>23</sup>. Ten U.S. sailors were injured by the mine explosion. Many other mines manufactured in Iran were subsequently discovered in the vicinity of the *Roberts* mining, in international sea lanes used regularly by U.S. merchant convoys<sup>24</sup>. The mining of *USS Samuel B. Roberts* again demonstrated the gravity and immediacy of the Iranian threat to U.S. merchant vessels and their U.S. warship escorts. Faced with this threat, and with reason to believe that the pattern of Iranian attacks would continue, the United States concluded that further proportionate defensive measures were necessary to diminish Iran's ability to endanger U.S. shipping and U.S. nationals<sup>25</sup>. The United States took such actions against the Sassan and Sirri oil platforms which, like the Rostam platforms, were being used to coordinate and launch Iran's attacks against shipping<sup>26</sup>.

26. This course of events is at the heart of the U.S. defense to Iran's claims. It is a central part of the "subject matter" of this case. As the next section shows, these facts are also at the heart of the U.S. counter-claim.

**2. The circumstances which caused the United States to take defensive action are also essential elements of the U.S. counter-claim**

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<sup>23</sup> *Id.* at pp. 77-82, paras. 1.105 - 1.112, and Map 1.13 and Illustration 1.14 preceding p. 77.

<sup>24</sup> *Id.* at pp. 78-79 and note 198, paras. 1.107 - 1.108.

<sup>25</sup> *Id.* at pp. 83-86, paras. 1.113 - 1.121.

<sup>26</sup> *Id.* at pp. 83-89, paras. 1.113 - 1.125.

27. Iran's claim and the U.S. counter-claim both place at issue Iran's overall pattern of armed attacks against U.S. and other neutral shipping in the Gulf. The U.S. counter-claim contends that aspects of Iran's armed attacks against neutral shipping in the Gulf region -- conduct that also is central to the U.S. defense to the merits of Iran's claims -- also violated the 1955 Treaty. Iran's pattern of attacks both damaged particular vessels in violation of the Treaty and created dangerous conditions that denied rights and protections due other vessels under the Treaty.

28. The United States describes in its counter-claim seven specific Iranian attacks that violated the 1955 Treaty. These seven attacks are also directly connected to the subject matter of Iran's claims. As summarized above, Iran's attacks on the U.S.-flag *Sea Isle City* and the U.S. warship *Samuel B. Roberts* were the most immediate of the events leading the United States to take the defensive actions for which Iran now claims. These attacks are specifically included in the U.S. counter-claim. The counter-claim also includes Iran's attacks on the U.S.-flag *Bridgeton*; the U.S.-owned *Lucy*, *Eso Freeport*, and *Diane*; and the *Texaco Caribbean* (carrying Iranian oil to the United States). These attacks were also part of the overall pattern of Iranian actions that led the United States to conclude that it faced a continuing threat necessitating action in self-defense in order to restore safety for its ships and personnel.

29. The pattern of Iranian attacks placed at issue by Iran's claim has legal consequences under the 1955 Treaty going beyond the seven specific attacks mentioned above. As explained in greater detail in the June 1997 U.S. Counter-Memorial and

Counter-Claim, the U.S. counter-claim also includes the consequences of Iran's conduct for the overall exercise of navigational rights protected by the 1955 Treaty. Iran's pattern of armed attacks against neutral shipping created threatening conditions which interfered with the ability of all U.S.-flag and U.S.-owned ships and U.S. nationals to exercise their rights under the Treaty. Substantial damages resulted, including increases in the costs of operating both U.S.-flag and U.S.-owned commercial vessels and the warships protecting them. Insurance and labor costs increased; steaming times increased; vessels were forced to carry smaller cargoes in order to pass through the relative safety of shallower waters.

30. To sum up, in evaluating both the U.S. defense to Iran's claim *and* the merits of the U.S. counter-claim, the Court must consider Iran's responsibility both for specific attacks on U.S.-flag and U.S.-owned vessels and for the overall pattern of Iran's threats and attacks against neutral shipping. The direct connection between the subject matter of Iran's claim and the U.S. counter-claim is clear and compelling.

### **3. The U.S. Claim is Specific and Admissible**

31. Iran's Request for Hearing contains many arguments regarding the form and substance of the U.S. counter-claim, all aimed at showing the counter-claim to be inadmissible. As we have shown, these arguments are not properly before the Court under Article 80(3). The only issue now before the Court is whether there is doubt about the required direct connection between claim and counter-claim. Nevertheless, for completeness, we will briefly comment on some of Iran's arguments.

32. First, Iran contends that the U.S. counter-claim is not admissible because it is not framed clearly or with sufficient precision<sup>27</sup>. Iran particularly objects to the U.S. wish to reserve the right to show additional Iranian attacks on U.S. vessels<sup>28</sup>. This objection must fail. It is clear that the U.S. counter-claim has been stated with sufficient precision to be understood by Iran, leading to Iran's spirited objections here. As to the U.S. reservation of the right to prove other Iranian ship attacks, Iran itself has frequently sought to reserve the right to prove additional matters supporting its claims. Iran's Application thus reserved the right to add additional submissions, and Iran's Memorial reserved the right to offer proof of injuries allegedly suffered by Iran<sup>29</sup>.

33. Iran also argues that the U.S. counter-claim is inadmissible because it affects the rights of third parties<sup>30</sup>. This argument too is implausible. The other States potentially interested in the U.S. counter-claim have indicated their consent or lack of objection to the counter-claim<sup>31</sup>. Iran can hardly object if the other States that may be interested do not.

34. Iran also suggests that the United States should not assert a counter-claim, and should instead file an Application initiating a new and additional case, so that Iran could lodge still more claims against the United States as counter-claims<sup>32</sup>. The Court

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<sup>27</sup> Iran's Request for Hearing, p. 7, para. 16.

<sup>28</sup> *Id.* at p. 8, para 16(b).

<sup>29</sup> Iran's Application Instituting Proceedings, p. 10; Iran's Memorial, p. 135 (reserving right to offer quantification of damages).

<sup>30</sup> Iran's Request for Hearing, p. 18, para 33.

<sup>31</sup> U.S. Counter-Memorial and Counter-Claim, p. 177 n. 397.

<sup>32</sup> *Id.* at p. 17, para 30.

should not give any weight to this contention. The United States did not initiate these proceedings. Iran initiated them, asserting claims that it alone selected. Having done so, Iran cannot now avoid the legal consequences, including its responsibility to respond to the U.S. counter-claim.

35. Finally, Iran denies that the Court has jurisdiction over counter-claims based on the 1955 Treaty, or that the United States has legal standing under the Treaty to assert claims with respect to U.S. owned, non-U.S. flag vessels. As with many of Iran's arguments, these objections are not appropriate for consideration at this stage under Article 80(3). Nevertheless, we will comment briefly on some of Iran's arguments concerning the 1955 Treaty.

36. First, Iran's jurisdictional arguments seek to force all of the U.S. counter-claim into the confines of Article X(1) of the 1955 Treaty. Iran then deems the counter-claim jurisdictionally deficient because it does not conform to Iran's construction of that Article. This is not a matter that can be dealt with at this stage. Various aspects of the character and effect of Article X(1) have not been decided by the Court and remain under dispute<sup>33</sup>. Issues involving the relationship between that Article and the U.S. counter-claim await the Court's eventual decision regarding the interpretation and application of that Article.

37. Similarly, Iran wrongly contends that the specific navigational paragraphs of Article X (paragraphs X(2) *et seq.*) apply only to "commerce [and] navigation between

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<sup>33</sup> See, e.g., U.S. Counter-Memorial and Counter-Claim at pp. 171-172, paras 6.14 - 6.16.

the territories of the High Contracting Parties<sup>34</sup>". The text contains no such limit, and no such limit plausibly can be read into the Treaty.

38. Iran also asks the Court to ignore the adverse effects of its pattern of attacks on neutral shipping on the exercise of U.S. rights under Article X of the Treaty. As we have shown, Iranian actions such as the laying of minefields in international shipping channels and indiscriminate attacks on ships by small boats and aircraft endangered and burdened all neutral shipping. In so doing, they created conditions that impaired the exercise of U.S. rights under the 1955 Treaty.

39. Finally, Iran's specific objections to the application of paragraphs X(2) through X(5) of the Treaty are without merit. For example, as noted above, these provisions are not limited to ships involved in trade between the United States and Iran. Iran clearly denied *Bridgeton* and *Sea Isle City* the status and protection to which they were due under Article X(2) of the Treaty<sup>35</sup>. Similarly, Iran's conduct clearly interfered with the rights of U.S.-flag vessels to receive access and protection under Article X(3) - (5) of the Treaty. Moreover, the exclusion of warships in Article X(6) is not applicable to Article X(5). Attacks on a U.S. warship protecting U.S. commercial vessels, under the circumstances prevailing in the Gulf, must be viewed as endangering and denying access to those commercial vessels as well. Overall, Iran's attempts to evade its obligations under Article X through technical distinctions and narrow interpretations cannot succeed,

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<sup>34</sup> Iran's Request for Hearing, p. 13, para 21.

<sup>35</sup> Indeed, Iran denies that *Bridgeton* and *Sea Isle City* were U.S.-flag vessels. Iran's Request for Hearing at p. 9, para 19 and p. 10 fn. 14.

particularly when its actions put at risk every neutral vessel in the Gulf, including every U.S. commercial vessel.

**PART III****NO HEARING IS REQUIRED**

40. Iran's 18 November filing is captioned in part "Request for Hearing."

However, in the present circumstances, no hearing is required. The controlling legal text is Article 80(3) of the Rules of Court<sup>36</sup>, which states:

In the event of doubt as to the connection between the question presented by way of counter-claim and the subject-matter of the claim of the other party the Court shall, after hearing the parties, decide whether or not the question thus presented shall be joined to the original proceedings.

41. Iran contends that the words "after hearing the parties" require that the Court conduct oral proceedings. However, these words come into operation only if the Court determines that there is "doubt" as to the requisite "connection between the question presented by way of counter-claim and the subject matter." As we have shown, there is no reasonable basis for such doubt. In the absence of doubt, the question of a hearing simply does not arise.

42. The principles of justice and of sound judicial administration require no different result. The question of connection between claim and counter-claim here is simple and straightforward. The relevant considerations are fully explained in the papers

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<sup>36</sup> Iran takes inconsistent positions regarding the principles to be applied in construing the Rules of Court. It begins by arguing for "a cautious approach" in applying the Rule on counter-claims. Request for Hearing, p. 4, para 8. It ends, however, by arguing for a sweeping interpretation the Rule ranging far beyond its clear text. *Id.* at p.14, para. 24.

submitted by the Parties. There is simply no need for additional oral proceedings on the narrow issues before the Court.

**PART IV**  
**CONCLUDING OBSERVATIONS**

43. The thrust of Iran's position is not whether the U.S. counter-claim is connected to the subject matter of Iran's claim, but whether there is a valid U.S. counter-claim at all. The Court cannot make such a determination at this stage of the proceedings. It certainly should not allow Iran to avoid responding to the merits of the U.S. counter-claim.

44. Accordingly, the Court should now decide to join the questions presented by the U.S. counter-claim to the original proceeding. As we have shown here, no oral proceeding is required in connection with such a decision. There is no reasonable basis for doubt as to the connection between the subject matter of Iran's claim and of the U.S. counter-claim. Both claim and counter-claim arise out of the same circumstances and require the Court to examine and decide many of the same factual and legal issues. There is accordingly no need for an oral proceeding under Article 80(3).

45. Iran's many attacks upon the jurisdiction and admissibility of the U.S. counter-claim are unjustified. But in any case, the only issue proper for consideration by the Court now is whether there is sufficient connection between claim and counter-claim. As we have shown, there is sufficient connection. All remaining questions presented in the U.S. counter-claim should now be joined to the original proceedings.

46. As to the schedule of future proceedings on the merits of this case, the United States would not object should Iran ask under Article 45(2) of the Rules of Court for permission to submit a Reply to the U.S. Counter-Memorial to accompany its defense to the U.S. counter-claim, if the United States is also authorized to file a Rejoinder. The United States notes, however, that Iran received the U.S. Counter-Memorial and Counter-Claim late in June 1997, nearly six months ago. Iran thus already has had as long to study the U.S. document as the United States had to write it. Therefore Iran should be required to submit any Reply within six months. The United States should then be given as much time to prepare its Rejoinder as Iran will have had from June 1997 to the filing of its Reply.

18 December 1997.



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