

**CASE CONCERNING OIL PLATFORMS**  
**(Islamic Republic of Iran v. United States of America)**

**COMMENTS OF THE ISLAMIC REPUBLIC OF IRAN ON THE REPLIES  
OF THE UNITED STATES OF AMERICA TO THE QUESTIONS PUT  
BY JUDGE AL-KHASAWNEH AND JUDGE *AD HOC* RIGAUX**

**FIRST QUESTION OF JUDGE AL-KHASAWNEH TO THE UNITED STATES OF AMERICA:**

**"In the opinion of counsel of the United States, are the concepts of *lex specialis*, on the one hand, and self-contained régimes, on the other, synonymous? If not, what are the differences between them? This question is of course in relation to the 1955 Treaty."**

Iran's position on this question was set out in oral argument: see CR 2003/16, 3 March 2003, 3 p.m. at pp. 11-13 (Professor Crawford). Nothing said by the United States in its reply to Judge Al-Khasawneh's question requires any modification whatever to the position already set out. Iran would only make three points as to the United States' reply.

First, it notes that the United States does not now argue that the Treaty of Amity is a "self-contained régime". That term was in fact used by Professor Weil in the United States' first round presentation: CR 2003/12, p. 18, para. 17.20. But whatever difficulties attend the notion of a "self-contained régime", it is quite clear that it has nothing to do with the present case. The Treaty of Amity is a normal bilateral treaty to be interpreted and applied in accordance with international law.

Secondly, while it is true that the Treaty of Amity is a *lex specialis* - that is to say, it confers a specific set of rights and imposes a specific set of obligations on the parties in their bilateral relations - no special significance attaches to this in the present case. The question whether a bilateral treaty is a *lex specialis* - for example vis-à-vis some other treaty or general international law - has significance where there is some potential inconsistency between the bilateral treaty and the other rule in question. The matter is "essentially one of interpretation", as the International Law Commission pointed out in para. (4) of its commentary to Article 55 of the ILC Articles on Responsibility of States for Internationally Wrongful Acts, annexed to

GA Resolution 56.83, 12 December 2001. And it is international law which provides the interpretative matrix for treaties such as the Treaty of Amity. Iran refers again to the approach taken by the Iran-United States Claims Tribunal in cases such as Amoco International Finance, where the Tribunal, having affirmed that the Treaty of Amity is a *lex specialis*, went on to say in the very same paragraph that "the rules of customary law may be useful in order to fill in possible lacunae of the Treaty, to ascertain the meaning of undefined terms in its text or, more generally, to aid interpretation and implementation of its provisions" ((1987) 15 Iran-US CTR 189 at p. 222, para. 112). In the present case the Court's jurisdiction arises under the Treaty of Amity, specifically in relation to Article X, paragraph 1, but the Court can apply international law in interpreting and applying the Treaty. Indeed the Parties appear to agree on this.

Where they do not agree - and this is Iran's third point - is on the implications of this position, especially as concerns the interpretation of Article XX (1)(d). For Iran, the "essential security" clause cannot, or at least should not, be applied so as to legitimize or render lawful under the Treaty conduct which is contrary to a peremptory norm of general international law, *i.e.*, conduct involving the use of force in international relations which goes manifestly beyond the bounds of self-defence. The Parties to the Treaty of Amity did not intend to allow one Party, under cover of Article XX (1)(d) - to take military action contrary to the express terms of the Treaty in circumstances which "cannot possibly" be justified on the grounds of self-defence. This is a straightforward point of interpretation which the United States, for all its use of Latin phrases, has never faced. Again it is referred to in para. (2) of the ILC's commentary to Article 55: "States cannot, even as between themselves, provide for legal consequences of a breach of their mutual obligations which would authorize acts contrary to peremptory norms of general international law." Yet that is what the United States' reliance on Article XX (1)(d) would do in the present case.

**SECOND QUESTION OF JUDGE AL-KHASAWNEH TO THE UNITED STATES OF AMERICA:**

**"In his statement, provided by the United States and contained at tab C9 of the judges' folders, General Crist explained the reason why a choice was made to attack the oil platforms as follows: 'Iran could not have attacked U.S. ships without using the oil platforms as they had no other offshore means to maintain continuous surveillance over the transit routes, other than on Farsi Island'. Why did the United States choose the platforms and not the means of surveillance located on Farsi Island?"**

The question refers to General Crist's statement that Iran had no offshore means other than the oil platforms "to maintain continuous surveillance over the transit routes, other than on Farsi Island".

In order to comment on the United States' answer to the question, it is necessary first to point out that General Crist's statement is itself inaccurate. As Iran has shown, Iranian military forces possessed communications facilities and radars along Iran's coastline and on its islands, and such facilities could cover the whole of the Persian Gulf (see Statement of Mr. Mokhlessian, Iran's Reply, Vol. VI). In particular, Iran's coastline and islands were equipped with various alert radars with long distance stand-by performance, which could detect and track any vessel movement in the Persian Gulf. Other radar equipment and electronic detection systems were installed in aircraft and on warships. These facts have not been disputed by the United States.

Confirmation of the fact that Iranian islands other than Farsi Island were equipped with radar may be found in the United States' own Exhibits. Thus, Exhibit 114 to the Counter-Memorial mentions radar posts on Larak, Abu Musa, Hengam, Sirrik and Sirri Islands in the First Naval District alone. In addition, Iran had placed radar facilities on the islands of Tonb, Qeshm and Kharg.

As regards the choice of the oil platforms as a target for U.S. action, rather than Farsi Island or indeed any other radar facilities possessed by Iran, the United States' answer is contradicted by the facts. Iran has already shown not only that the radar on the Reshadat complex was unsophisticated and in a state of disrepair, but that this radar was located on the R-4 platform.

However, the initial target was the R-7 platform, which did not have a radar, and the R-4 platform was described by the United States as an "unexpected 'target of opportunity'" which had not been planned (see Iran's Reply, paras. 4.80 *et seq.* and Iran's Memorial, Exhibit 69). There were no radar facilities on either the Salman or Nasr platforms, and the United States, whose forces boarded the Salman platforms and would thus have been in a position to ascertain what equipment was present, has not alleged otherwise. Moreover, the United States' acknowledgement that the waters around the platforms were not mined (paragraph 5 of its answer) is further confirmation of their non-offensive status.

Finally, in its response to this question, the United States has again alleged that "more Iranian attacks on shipping took place within radar range of Iran's platforms than took place within radar range of Farsi Island". This ignores the fact that, as the United States' own evidence shows, the number of attacks alleged to have occurred in the vicinity of the platforms in 1987 and 1988 is insignificant (see U.S. Exhibit 10, p. 41 and Exhibit 2, pp. 19, 21 and 23; see also CR 2003/15, p. 31, para. 21).

**FIRST QUESTION OF JUDGE *AD HOC* RIGAUX TO BOTH PARTIES:**

**"What is the legal status of oil platforms constructed by a State on its continental shelf? What types of jurisdiction are exercised over such installations? How does the status of oil platforms vary depending on whether they are situated within a State's territorial sea or outside it?"**

Iran has no comments on the answer of the United States to this question.

**SECOND QUESTION OF JUDGE *AD HOC* RIGAUX TO BOTH PARTIES:**

**"During the war between Iran and Iraq was Kuwait a neutral state, a non-belligerent state, or a co-belligerent state with Iraq? Would the response to this question be different depending on whether it was given during the war or today, bearing in mind the additional information now available?"**

In its response to this question, the United States has failed to draw any distinction between a neutral State complying with its corresponding obligations and a so-called non-belligerent State. As Iran has already noted in its own response, the expression "non-belligerent" has been used to describe a situation where a State, while formally neutral because it is not a party to the conflict, has violated the obligations of abstention and impartiality incumbent upon a neutral.

Kuwait's actions during the conflict, which have been documented by Iran, demonstrate that Kuwait did not respect its obligations as a neutral. The evidence provided by Iran also demonstrates that Kuwait's non-neutral actions were public knowledge at the time (see in particular Iran's Reply, paras. 2.12 – 2.16; the Freedman Report annexed to Iran's Reply in Vol. II; Iran's Further Response, paras. 3.23 – 3.27; and the evidence referred to therein).

As Iran has already noted in its own response to this question, a State is either a party to a conflict or it is not. The Diplomatic Note from the Ministry of Foreign Affairs of the State of Kuwait, attached to the United States' response, merely reflects Kuwait's formal status as a non-party. This Note must be read in the light of various statements made by high Kuwaiti officials, including the Minister of Foreign Affairs, in the early 1990s, which are attached to Iran's Reply as Exhibit 13. All those statements acknowledge Kuwait's support for Iraq during the conflict, which was clearly in violation of the obligations of a neutral.