

CHAPTER TWENTY-EIGHT

THE *OIL PLATFORMS* CASE BEFORE THE INTERNATIONAL COURT OF JUSTICE: A NON-CASE OF INTERNATIONAL RESPONSIBILITY

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1. INTRODUCTION

What an odd case-study the *Oil Platforms* case² will be for generations of students of international law! Iran alleged the United States had violated its obligations under the Iran-United States Treaty of Amity of 1955;³ and the United States—relying upon the same Treaty—argued that it had not. The International Court of Justice, however, judged the case on the basis of the law governing the use of force and self-defence, without using the words ‘international responsibility’, without referring to the law relating thereto, and without even mentioning the work of the International Law Commission on this topic. As a result, the *Oil Platforms* case will be remembered not for what it was—a case on international responsibility—but for what it was not and has become: a case on the use of force and self-defence.

The discrepancy between the dispute presented to the Court and the grounds on which the Court chose to resolve it is the distinctive feature of this case. The Court undeniably has a discretionary power to determine the grounds on which it wishes to resolve a dispute brought before it. However, for the Court to alter so fundamentally the nature of a dispute is a significant departure from its usual exercise of such discretionary power. In the future, governments will have to take this extension of the Court’s power into account when accepting jurisdiction with respect to a particular conflict or category of conflicts.

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² Judgment of 12 December 1996 on Iran’s Preliminary Objection (*Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment*, ICJ Reports 1996, 803, hereafter referred to as: *Preliminary Objection*). Judgment of 6 November 2003 on the merits (*Oil Platforms (Islamic Republic of Iran v. United States of America), Merits, Judgment 6 November 2003*, ICJ Reports 2003, 161, hereafter referred to as: *Merits*).

³ Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, 284 *UNTS* 93 (signed 15 August 1955 and entered into force 16 June 1957).

2. TWO DIFFERENT PERSPECTIVES ON THE CASE

The dispute arose out of military action taken by the United States Navy against three Iranian offshore oil production complexes in 1987 and 1988, during the Iran-Iraq war.⁴ The oil platforms, operated by the National Iranian Oil Company for commercial purposes, were destroyed as a result. Iran contended that the attacks were carried out in breach of Article X of the Iran-United States Treaty of Amity of 1955, and that the United States bore responsibility for its actions under international law. Article X provides, *inter alia*, that '[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation'.

In its final submissions, Iran requested the Court to adjudge and declare:

- (1) That in attacking and destroying on 19 October 1987 and 18 April 1988 the oil platforms [of the National Iranian Oil Company] the United States breached its obligations to Iran under Article X, paragraph 1, of the Treaty of Amity, and that the United States bears responsibility for the attacks; and
- (2) That the United States is accordingly under an obligation to make full reparation to Iran for the violation of its international obligations and the injury thus caused . . .⁵

The United States responded that it had not violated Article X and thus could not be held responsible under the Treaty. It asked the Court to adjudge and declare:

- (1) That the United States did not breach its obligations to the Islamic Republic of Iran under Article X, paragraph 1, of the 1955 Treaty between the United States and Iran; and
- (2) That the claims of the Islamic Republic of Iran are accordingly dismissed.⁶

It is important to read these submissions in context. During the jurisdictional phase of the proceedings, the United States had argued that the Court was without jurisdiction because, *inter alia*, Iran's claims raised issues relating to the use of force, which, in the United States' view, did not fall within the ambit of the 1955 Treaty.⁷ Rejecting this argument, the Court held in its 1996 Judgment on the Preliminary Objection that:

⁴ *Merits*, para. 1.

⁵ CR 2003/16, 36, para. 12.

⁶ CR 2003/18, 36, para. 29.30.

⁷ *Preliminary Objection*, 810, para. 18.

The Treaty of 1955 imposes on each of the Parties various obligations on a variety of matters. Any action by one of the Parties that is incompatible with those obligations is unlawful, regardless of the means by which it is brought about.⁸

Thus, in the eyes of the Court, the obligations of the parties and its own jurisdiction were defined by the 1955 Treaty and their legality was to be assessed vis-à-vis the Treaty.

Having framed its jurisdiction strictly in the terms of the Treaty of Amity in its Judgment on the Preliminary Objection, the question before the Court at the Merits phase was the following: had the United States violated the freedom of commerce and navigation protected by Article X of the bilateral Treaty of Amity? The answer to this question should have been straightforward—either the United States had violated Article X or it had not.

However, this answer depended on the Court's reading of another provision of the Treaty, Article XX, which provided that each Party could take measures 'necessary to protect its essential security interests'. The United States relied on Article XX to establish that it had not violated Article X, maintaining that its actions against the oil platforms had been necessary to protect its essential security interests. Article XX, the United States further argued, is 'a substantive provision which, concurrently and concomitantly with Article X, determines, defines and delimits the obligations of the parties'.⁹ The United States viewed Articles X and XX as an 'indivisible whole'; the two being 'constituent elements of the rights and obligations as determined by the parties'.¹⁰ In other words, as the Court explained, the United States regarded Article XX as 'determinative of the question of the existence of a breach of the obligation under Article X'. The Court summarized the position of the United States as follows:

It is the contention of the United States that the actions complained of by Iran were measures necessary to protect the essential security interests of the United States, and that accordingly, if those actions would otherwise have been breaches of Article X, paragraph 1, of the Treaty, which the United States denies, the effect of Article XX, paragraph 1 (d), is that they are justified under the terms of the Treaty itself, and thus do not constitute breaches of it.¹¹

In its 1996 Judgment on the Preliminary Objection, the Court had held that Article XX affords the parties 'a possible defence on the merits'.¹² It recalled this finding in its 2003 Judgment as well, concluding that:

⁸ *Ibid.*, 811–12, para. 21.

⁹ CR 2003/12, 6, para. 17.10.

¹⁰ *Ibid.*

¹¹ *Merits*, para. 32.

¹² *Preliminary Objection*, 811, para. 20.

If . . . the Court is satisfied by the argument of the United States that the actions against the oil platforms were, in the circumstances of the case, 'measures . . . necessary to protect [t]he essential security interests' of the United States, within the meaning of Article XX, paragraph 1 (d), of the 1955 Treaty, it must hold that no breach of Article X, paragraph 1, of the Treaty has been established.¹³

Since Iran brought the case on the ground that the United States had breached a provision of the Treaty of Amity, the United States analyzed the dispute as one of international responsibility involving the concepts of 'internationally wrongful act' and 'circumstances precluding wrongfulness'. During the oral hearings, the United States repeatedly referred to these concepts and discussed the case in light of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts,¹⁴ parts of which the Court had in previous cases declared customary international law.¹⁵ The United States pointed out that the relationship between the concepts of 'internationally wrongful acts' and 'circumstances precluding wrongfulness' had been addressed as early as in 1973 by Roberto Ago, then Special Rapporteur of the International Law Commission, who had emphasized that circumstances precluding wrongfulness do not excuse an act that is otherwise wrongful, but render the act internationally lawful.¹⁶ This analysis, which was adopted by the Commission,¹⁷ has also been embraced by arbitral tribunals.¹⁸ The United States referred to a recently published book by Crawford,¹⁹ where he explains that '[t]he existence in a given case of a circumstance precluding wrongfulness . . . provides a shield against an otherwise well-founded claim for the breach of an international obligation'.²⁰ In other words, a circumstance precluding wrongfulness does not merely allow a State to avoid international responsibility (namely, the obligation to compensate) while maintaining the illegality of the

¹³ *Merits*, paras. 33 and 34. Jurisdiction was not discussed by the Parties, and not addressed by the Court, at the Merits stage of the proceedings since it had already been decided in 1996, in the Court's decision on the United States' preliminary objection, that 'there exists between the Parties a dispute as to the interpretation and the application of Article X, paragraph 1, of the Treaty of 1955; that this dispute falls within the scope of the compromissory clause in Article XXI, paragraph 2, of the Treaty, and that as a consequence the Court has jurisdiction to entertain the dispute' (*Preliminary Objection*, 820, para. 53).

¹⁴ See Chapter V of 'Report of the International Law Commission on the Work of its Fifty-third Session', *Gen. Ass. Off. Recs., Fifty-sixth Session*, Supp. No. 10 (Doc.A/56/10).

¹⁵ See, for example, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, ICJ Reports 1997, 7, at 38, para. 46.

¹⁶ *YILC* (1973), ii, para. 12. See also *YILC* (1979), ii, Part One, paras. 51 and 55.

¹⁷ *YILC* 1979, ii, Part Two, paras. 1 and 10.

¹⁸ The arbitral tribunal in the *Rainbow Warrior* case ('Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the *Rainbow Warrior* Affair. Decision of 30 April 1990') referred to 'circumstances that may exclude wrongfulness (and render the breach only apparent)', *RIAA*, xx, 215, at 251-2, para. 75.

¹⁹ Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (2002).

²⁰ *Ibid.*, 160.

act. The effects of a circumstance precluding wrongfulness go further: the act taken in such circumstances is not internationally wrongful; it is an international lawful act.

This, in the view of the United States, is precisely what Article XX of the Treaty sets out to accomplish: it ‘precludes wrongfulness of conduct which would otherwise not be in conformity with the international obligations of the State concerned’. Although the concept of measures ‘necessary to protect essential security interests’, as provided for in Article XX, is not expressly listed in the Commission’s draft as one of the ‘circumstances precluding wrongfulness’, the United States argued that it is covered by Article 55 of the draft:

These articles do not apply where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law.

This provision, as Professor Crawford explains in his book,

makes it clear by reference to the *lex specialis* principle that the articles have a residual character. Where some matter otherwise dealt with in the articles is governed by a special rule of international law, the latter will prevail to the extent of any inconsistency.²¹

On the basis of the Commission’s findings—and Professor Crawford’s commentary—the United States argued that Article XX referred to a ‘circumstance precluding wrongfulness’. The United States concluded that, if the Court was satisfied that such a circumstance existed at the time of the United States actions, it should decide that there was no internationally wrongful act, and therefore no responsibility, on the part of the United States.²²

At certain points in its Judgment, the Court also appeared to frame the dispute in terms of Articles X and XX. At paragraph 21, the Court declares:

The task of the Court in the present proceedings is to determine whether or not there have been breaches of the 1955 Treaty, and if it finds that such is the case, to draw the appropriate consequences according to the submissions of the Parties.

Then, at paragraph 35, the Court states:

To uphold the claim of Iran, the Court must be satisfied both that the actions of the United States, complained of by Iran, infringed the freedom of commerce between the territories of the Parties, guaranteed by Article X, paragraph 1, and that such actions were not justified to protect the essential security interests of the United States as contemplated by Article XX, paragraph 1 (*d*).

²¹ *Ibid.*, 306.

²² CR 2003/12, 15–18, paras. 17.12–17.19.

Reading these two paragraphs together, one would have expected a clear and simple determination by the Court: either *yes*, the United States violated its obligations under Article X to protect the freedom of commerce and navigation because its actions were not necessary to protect its essential security interests; or *no*, the United States did not violate its obligations under Article X because these actions were necessary to protect its essential security interests. In the former case, Iran's claim would prevail; in the latter, it would be dismissed.

Ultimately, however, Iran's contentions did not focus on the issue of responsibility for breach of treaty but relied primarily on the law governing the use of force and self-defence.²³ In substance, Iran's main argument was that Article XX, which permits each Party to take measures necessary to protect its essential security interests, could not be interpreted as exempting the parties from the provisions of the United Nations Charter and the principles of international law governing the use of force and self-defence. The Treaty of Amity, Iran argued, 'cannot legitimise or permit . . . breaches of mandatory rules of international law' and therefore should not be read as an 'additional exempting authority over and above the provisions of the Charter so far as the use of force is concerned'.²⁴

This conflation of the concept of 'measures necessary for the protection of essential security interests' of the Treaty and the concept of self-defence of Article 51 was at the heart of Iran's position. Iran's Counsel explicitly declared that Iran's primary submission 'is that . . . paragraph 1(d) [of Article XX] is only satisfied by proof of circumstances which would amount to self-defence . . . Since the destruction of the platforms could not be justified as a measure of self-defence . . . it cannot be justified under paragraph 1(d) either'.²⁵ In short, Iran asked the Court to decide the case not on the specific ground of the Treaty of Amity but on the much broader ground of the law governing the use of force: 'We invite the Court to judge [the case] on that basis', Iran's Counsel explicitly stated.²⁶

The Court was thus faced with two dramatically different perspectives on the case. Whereas the United States was asking the Court to judge the dispute on the basis of the law of State responsibility, Iran asked the Court to assess the legality of the United States' actions on the basis of the prohibition of the use of force and the law of self-defence. The Court chose the latter

²³ In the early stages of the proceedings (Application and Written Submissions), Iran had argued that the United States had violated not only Article X of the Treaty of Amity but also 'international law'. Later, in its Counter-Memorial, Iran seemed to modify its position, arguing that the United States' actions had violated Article X—without any reference to what it had earlier termed a violation of 'international law'. During the oral hearings, however, Iran subtly returned to its original submission that the United States actions had violated 'international law'—international law in general, and not specifically Article X of the Treaty of Amity.

²⁴ *Reply of Iran*, 162, para. 7.71, and 165, para. 7.77; CR 2003/8, 17, para. 32.

²⁵ CR 2003/8, 19, para. 37, and 2003/15, 55, para. 6.

²⁶ CR 2003/8, 19, para. 37.

approach, and the Judgment deals only with the law on the use of force and the right of self-defence. It does not say a single word about international responsibility—even though its jurisdiction rested on the limited ground of Article XXI, paragraph 2, of the Treaty.²⁷

3. THE COURT'S DEPARTURE FROM THE *NICARAGUA* PRECEDENT

In addition to having discretion regarding the grounds on which the case was decided, the Court had to choose the order in which it analyzed Articles X and XX—a choice that was to prove significant. The Court noted the importance of the sequence of its analysis in paragraph 35 of the Judgment:

[T]o uphold the claim of Iran, the Court must be satisfied both that the actions of the United States . . . infringed the freedom of commerce . . . guaranteed by Article X, paragraph 1, and that such actions were not justified to protect the essential security interests of the United States as contemplated by Article XX, paragraph 1 (*d*). The question however arises in what order the Court should examine these questions . . .²⁸

Were the Court to conclude that the American actions had not violated the freedom of commerce and navigation between the Parties provided for in Article X, it would not have had to ask itself whether these actions were justified by the protection of essential security interests under Article XX. Conversely, were the Court to conclude that the American actions were justified by the protection of essential security interests provided for in Article XX, it would not have had to ask itself whether such actions had violated the freedom of commerce and navigation protected by Article X.

The Judgment points out that, faced with the same issue in *Nicaragua*, the Court first assessed whether the United States had violated its obligations under the Treaty of Amity, and added that it is only '[i]nsofar as acts of the Respondent may appear to constitute violations of the relevant rules of law' that it 'will then have to determine whether there are present any circumstances excluding lawfulness, or whether such acts may be justified upon any other ground'.²⁹

On the basis of this precedent, the United States had argued, first, that its actions had not impeded the freedom of commerce and navigation of Article X and, alternatively, that these actions were in any event 'justified' by Article XX. The United States maintained that the order in which the Court was to

²⁷ Article XXI, paragraph 2, reads: 'Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means'.

²⁸ *Merits*, para. 35. (Emphasis added.)

²⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, ICJ Reports 1986, 14, at 117–18, para. 226.

examine Article X and Article XX was irrelevant since both approaches would yield the same result, namely that the United States was not in breach of its treaty obligations toward Iran. The Court responded as follows:

The Court does not consider that the order in which the Articles of the 1955 Treaty were dealt with in the [*Nicaragua*] case . . . was dictated by the economy of the Treaty; it was rather an instance of the Court's 'freedom to select the ground upon which it will base its judgment' . . . *In the present case, it appears to the Court that there are particular considerations militating in favor of an examination of the application of Article XX, paragraph 1 (d), before turning to Article X, paragraph 1.*³⁰

The question thus arises: what are the 'particular considerations' that led the Court to divert from the order it had adopted in *Nicaragua* and which, on the basis of this precedent, the United States had relied upon in its oral presentation? The Court's only explanation is that, since 'both Parties are agreed as to the importance of the implications of the case in the field of the use of force', it 'considers that, to the extent that its jurisdiction under Article XXI, paragraph 1, of the 1955 Treaty authorises it to examine and rule on such issues, it should do so'.³¹

The Court's decision to first look into whether American actions were 'justified' under Article XX before turning to Article X would not have been objectionable if the Court had not in effect rendered Article XX meaningless. By equating Article XX with the concept of self-defence as spelled out in the United Nations Charter and general international law, the Court denied the concept of 'measures necessary to the protection of a Party's security interest' as set forth in that provision any specific meaning. In *Nicaragua*, the Court had expressly rejected such conflation, and recognized the specific character of the concept set forth in Article XX, as distinct from that of self-defence:

It is difficult to deny that self-defence against an armed attack corresponds to measures necessary to protect essential security interests. But the concept of essential security interests certainly extends beyond the concept of an armed attack, and has been subject to very broad interpretations in the past.³²

This meant that, whereas a measure taken in self-defence is by definition necessary to protect essential security interests, the reverse is not true: a measure can be 'necessary to protect essential security interests' even though it does not meet all the conditions required for self-defence. Relying on this most explicit analysis in *Nicaragua*, the United States argued that the question before the Court in *Oil Platforms* was whether its actions had been necessary to protect its essential security interests; if so, the United States maintained, such measures did not constitute a violation of the 1955 Treaty. In the view of the United

³⁰ *Merits*, para. 37. (Emphasis added.)

³¹ *Ibid.*, para. 38.

³² ICJ Reports 1986, 14, at 117, para. 224.

States, the question was not whether it had acted in self-defence. The United States also emphasised that, while under the 1955 Treaty the Court had jurisdiction to assess whether the United States actions were necessary to protect its essential security interests, the Court's jurisdiction did not extend to the question of the conformity of those actions to the law governing the use of force and the right of self-defence.³³

Surprisingly, however, the Court failed to follow its own *Nicaragua* precedent. Instead of asking itself whether United States actions had been necessary to protect essential security interests, it asked whether the actions met the conditions required under the law of self-defence. Contrary to what it did in *Nicaragua*, the Court this time denied any specific meaning to the concept of 'measures necessary to protect essential security interests' to which the Parties referred in their 1955 Treaty, and the Court dealt with this concept as if it were interchangeable with the concept of self-defence under the Charter and general international law.

To explain this approach, the Judgment declares that, '[b]efore the Court, [the United States] has continued to maintain that it was justified in acting as it did in exercise of its right of self-defence'.³⁴ The Judgment does not recall, however, that when Counsel for the United States came to this aspect of the case he insisted that he was doing so only 'for the record'³⁵ and on a subsidiary basis:

the Court can and should dismiss the claims of Iran on the basis of Article XX, without having to decide whether United States actions also fell within the bounds of self-defence. If the Court concludes that the measures taken by the United States were necessary to protect its essential security interests, then they were not precluded by the Treaty, and there would accordingly be no need for the Court to consider the right of self-defence.³⁶

The United States could hardly have been more explicit.

The United States repeatedly emphasized that, *primo*, the measures were justified as 'measures necessary to protect its essential security interests' under the 1955 Treaty of Amity; *secundo*, that the Treaty of Amity—the only existing basis for the Court's jurisdiction—did not give the Court jurisdiction to discuss questions of the use of force and self-defence; and, *tertio*, that such lack of jurisdiction did not mean that the United States considered itself exempted from the rules and principles of international law and the United Nations Charter regarding the use of force and self-defence. All of this the Judgment appears to ignore.

³³ CR 2003/12, 26–7, para. 17.36.

³⁴ *Merits*, para. 37.

³⁵ CR 2003/12, 46, para. 18.42.

³⁶ *Ibid.*, 34, para. 18.4.

Moreover, the Judgment criticizes a position that the United States did not put forward. Contrary to what the Judgment says, the United States did *not* ‘interpret Article XX, paragraph 1 (*d*), to the effect that the “measures” there contemplated could include even an unlawful use of force by one party against the other’.³⁷ Contrary to what the Judgment says, the United States did *not* invoke Article XX, paragraph 1 (*d*) ‘to justify actions involving the use of armed force, allegedly in self-defence’. Finally, contrary to what the Judgment says, the United States did *not* argue that ‘Article XX, paragraph 1 (*d*), of the 1955 Treaty was intended to operate wholly independently of the relevant rules of international law on the use of force’.³⁸ Quite the opposite. The United States emphasized that it did not consider having been exempted by the Treaty of Amity from the obligations imposed by the Charter and general international law. It simply argued that the Court did not have jurisdiction to address these questions. All of this the Court simply chose to ignore.

Through this reshaping of the American position, the Court turned a case of international responsibility for breach of treaty into a case bearing on the rules of general and Charter international law governing the use of force and self-defence. It is worth repeating that in its final submissions Iran had requested the Court to find that the United States had ‘breached its obligations to Iran under Article X, paragraph 1, of the Treaty of Amity and that the United States bears responsibility for these attacks’,³⁹ while the United States had requested the Court to find that ‘the United States did not breach its obligations to [Iran] under Article X, paragraph 1, of the 1955 Treaty’.⁴⁰ The Court’s response to these requests, however, went far beyond an assessment whether the United States violated Article X of the Treaty. True, in the *dispositif* of the Judgment the Court found ‘further’ that it could not

uphold the submission of the Islamic Republic of Iran that those actions constitute a breach of the obligations of the United States of America under Article X, paragraph 1, of that Treaty, regarding freedom of commerce between, the territories of the parties . . .⁴¹

This, however, is only the second sentence of the *dispositif*. The first sentence reads as follows: the Court found

that the actions of the United States of America against Iranian oil platforms . . . cannot be justified as measures necessary to protect the essential security interests of the United States of America under Article XX, paragraph 1 (*d*), of the 1955 Treaty . . .⁴²

³⁷ *Merits*, para. 41.

³⁸ *Ibid.*, para. 41.

³⁹ CR 2003/16, 36, para. 12. (Emphasis added.)

⁴⁰ CR 2003/18, 36, para. 29.30. (Emphasis added.)

⁴¹ *Merits*, para. 125.

⁴² *Ibid.*

It is, in effect, the second sentence of the *dispositif* that answers the question in the Parties' submissions, namely whether the United States had breached its obligations under the 1955 Treaty. Having concluded that American actions did not breach the 1955 Treaty, it was not necessary for the Court to determine whether these actions were justified as necessary to protect American essential security interests. Therefore, the Court's statement on Article XX is mere *obiter dictum*, and may be regarded as not possessing the character of *res judicata*.

Strangely enough, when one reads the *dispositif*—the Court 'finds further that the Court cannot uphold . . .'⁴³—it is the second sentence, which deals with Article X, that appears to be regarded by the Court as *obiter*. This reflects the fact that the Court paid primary attention to the use of force while relegating the Treaty to secondary importance. That the Court was aware of the unwarranted importance it gave to issues relating to the use of force is evident from the passage in the Judgment where the Court bluntly states that the 1955 Treaty 'authorise[d] it to examine and rule on such issues' because 'both Parties are agreed as to the importance of the implications of the case in the field of the use of force'.⁴⁴ The weak justification thus given by the Court to deal with issues pertaining to self-defence highlights the lack of direct relevance of such issues to the case at hand.

The Court also appears to have been aware that its jurisdiction, as defined in and limited by Article XXI of the Treaty of Amity, did not allow it to go as far as examining the actions of the United States in light of general international law governing the use of force and self-defence. After repeating that its jurisdiction 'extends, where appropriate, to the determination whether action alleged to be justified under that paragraph [1 (d) of Article XX] was or was not an unlawful use of force', the Court went out of its way to

emphasise that its jurisdiction remains limited to that conferred to it by Article XXI, paragraph 2, of the 1955 Treaty. The Court is always conscious that it has jurisdiction only so far as conferred by the consent of the parties.⁴⁵

Notwithstanding its protests to the contrary, however, the Court significantly departed from its usual caution not to overstep the limits of consensual jurisdiction. Judges Higgins,⁴⁶ Kooijmans,⁴⁷ Buergenthal,⁴⁸ and Owada,⁴⁹ all criticized the fact that the Court dealt with issues which were not before it.

⁴³ Ibid.

⁴⁴ Ibid., para. 38.

⁴⁵ Ibid., para. 42.

⁴⁶ Separate Opinion of Judge Higgins, at para. 14.

⁴⁷ Separate Opinion of Judge Kooijmans, at para. 17.

⁴⁸ Separate Opinion of Judge Buergenthal, at para. 28.

⁴⁹ Separate Opinion of Judge Owada, at para. 34.

4. CONCLUSION

As it appears from both Parties' submissions, the *Oil Platforms* case raised specific issues of international responsibility for breach of treaty. The Court was, therefore, expected to contribute to the law of international responsibility and to rule on key provisions of the International Law Commission's draft articles on State responsibility. In contrast, the Judgment does not contribute in any way to the law of State responsibility. It simply ignores it, and deals instead with the law pertaining to the use of force and self-defence. Some may rejoice that the Court chose this opportunity to address issues as important as the law on the use of force and the right of self-defence; others will question the jurisdictional grounds on which the Court did so.