

Oil Platforms

Student Materials

- Decided by the International Court of Justice in 2003
- Key topics: use of force (principle, self-defense); law of the sea (principles); armed conflict (principles)

Learning Objectives

- Understand and apply:
 - flag state jurisdiction and diplomatic protection
 - UN Charter requirements for self-defense
 - major principles of armed conflict to the choice of targets
- Analyze and evaluate:
 - how the judges assessed legitimate claims of self-defense
 - the gravity threshold for the use of force

Background Information

In 1980—1988, Iran and Iraq fought a bloody war over religious differences and territorial claims. In 1984, violence between Iran and Iraq spilled out into the Persian Gulf, which had major commercial shipping lanes. Numerous commercial and military ships were attacked or damaged by mines in international waterways.

Under international law, a ship is subject to the jurisdiction of the state in which it is registered. This state is commonly called the flag state because ships usually fly national flags to indicate where they are registered. Flag states can provide their ships with diplomatic protection if they become involved in an international dispute, meaning that the flag state can assert legal claims on behalf of the ship.

To obtain more favorable regulations and taxes, US corporations (including Texaco) often register their ships in other states or charter ships of different nationalities. Many US companies were financially

harmful by the attacks on non-US ships. At the same time, many foreign governments (including Kuwait) received permission to fly the US flag on their ships to prevent them from being attacked.

After a series of attacks in 1987 and 1988, the US retaliated against Iran, which the US believed was responsible for the attacks. This retaliation consisted of attacking Iranian oil complexes and other targets. In 1992, Iran sued the US at the ICJ, arguing that the US violated the 1955 Treaty of Amity, Economic Relations and Consular Rights between Iran and the US. To win the case, Iran would need to prove two claims:

1. that the US violated the “freedom of commerce and navigation” between Iran and the US; and
2. that the US attacks were not “necessary to protect its essential security interests.”

Ultimately, the ICJ agreed with Iran’s second claim, finding that the US attacks were not “necessary to protect its essential security interests.” However, the ICJ disagreed with Iran’s first claim. The 1987 attack took place on an oil complex that was not actually producing oil (because it was under repair from a prior attack by Iraq). And the 1988 attack occurred after the US prohibited the import of oil from Iran. So the ICJ ruled that US attacks did not disrupt the “freedom of commerce” between the two countries.

Because the facts of this case are complex, you should fill out Table 1 (included at the end of the judgment) to help you organize and remember the relevant facts of the dispute.

Also, as context for this ruling, it is important to remember that this case was being argued at the ICJ after the *Nicaragua* judgment. This means that two important dynamics were at play.

- 1) Both Iran and the US were trying to make arguments that were consistent with the logic of the *Nicaragua* judgment (even though many US lawyers did not agree with the Court’s judgment in that case).
- 2) By the time that the *Oil Platforms* case was filed, the US had severely limited the ICJ’s jurisdiction to hear use of force lawsuits. Iran could not simply file a lawsuit arguing that the US violated the UN Charter. Instead, Iran had to argue that the US violated the 1955 Treaty, which created ICJ jurisdiction.

Relevant Legal Texts

1955 Treaty of Amity, Economic Relations and Consular Rights

Article X, para. 1

Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.

Article XX, para. 1

The present Treaty shall not preclude the application of measures: ...

(d) necessary to fulfil the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests ...

Judgment

The Court began by summarizing the US argument that its attacks were justified under Article XX because they were “necessary to protect its essential security interests.” The Court argued that this defense requires that the Court consider international law on self-defense.

It is the contention of the United States that [its] actions ... 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, ... 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.

It is clear that the original dispute between the parties related to the legality of the actions of the United States, in the light of international law on the use of force ... The contention of the United States at the time was that its attacks on the oil platforms were justified as acts of self-defence, in response to what it regarded as armed attacks by Iran, and on that basis it gave notice of its action to the Security Council under Article 51 of the United Nations Charter. Before the Court, it has

continued to maintain that it was justified in acting as it did in exercise of the right of self-defence ...

As the United States itself recognizes ..., “The self-defence issues presented in this case raise matters of the highest importance to all members of the international community”, and both parties are agreed as to the importance of the implications of the case in the field of the use of force ... The Court therefore considers that, to the extent that its jurisdiction under ... the 1955 Treaty authorizes it to examine and rule on such issues, it should do so ...

The Court will ... examine first the application of Article XX, paragraph 1(d), of the 1955 Treaty ... On the basis of that provision, a party to the Treaty may be justified in taking certain measures which it considers to be “necessary” for the protection of its essential security interests ... Whether a given measure is “necessary” is “not purely a question for the subjective judgment of the party” ... and may thus be assessed by the Court. In the present case, the question whether the measures taken were “necessary” overlaps with the question of their validity as acts of self-defence ... The criteria of necessity and proportionality must be observed if a measure is to be qualified as self-defence ...

The Court then described the US attack on Iran in October 1987. It reviewed and assessed the US’s justification for this attack. It ultimately found that the US attack was not a legitimate act of self-defence.

The United States has never denied that its actions against the Iranian platforms amounted to a use of armed force ... The first installation attacked, on 19 October 1987, was the Reshadat complex ... At the time of the United States attacks, [Reshadat was] not producing oil due to damage inflicted by prior Iraqi attacks ... On 19 October 1987, ... Iranian personnel was warned by the United States forces via radio of the imminent attack and abandoned the facility. The United States forces then opened fire on the platform ... Iran states that production from the Reshadat [complex] was interrupted for several years ...

The Court will thus first concentrate on the facts tending to show the validity or otherwise of the claim to exercise the right of self-defence. In its communication to the Security Council, ... the United States based this claim on the existence of

a series of unlawful armed attacks by Iranian forces against the United States, including laying mines in international waters for the purpose of sinking or damaging United States flag ships, and firing on United States aircraft without provocation;

it referred in particular to a missile attack on the *Sea Isle City* as being the specific incident that led to the attack on the Iranian platforms. Before the Court, it has based itself more specifically on the attack on the *Sea Isle City*, but has continued to assert the relevance of the other attacks ... To justify its choice of the platforms as target, the United States asserted that they had “engaged in a variety of actions directed against United States flag and other non-belligerent vessels and aircraft”. Iran has denied any responsibility for (in particular) the attack on the *Sea Isle City*, and has claimed that the platforms had no military purpose, and were not engaged in any military activity.

Despite having thus referred to attacks on vessels and aircraft of other nationalities, the United States has not claimed to have been exercising collective self-defence on behalf of the neutral States engaged in shipping in the Persian Gulf; this would have required the existence of a request made to the United States “by the State which regards itself as the victim of an armed attack” ... Therefore, in order to establish that it was legally justified in attacking the Iranian platforms in exercise of the right of individual self-defence, the United States has to show that attacks had been made upon it for which Iran was responsible; and that those attacks were of such a nature as to be qualified as “armed attacks” within the meaning of that expression in Article 51 of the United Nations Charter, and as understood in customary law on the use of force. As the Court observed in the [*Nicaragua* case],

it is necessary to distinguish “the most grave forms of the use of force (those constituting an armed attack) from other less grave forms” ... since “In the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack” ... The United States must also show that its actions were necessary and proportional to the armed attack made on it, and that the platforms were a legitimate military target open to attack in the exercise of self-defence.

Since it was the missile attack on the *Sea Isle City* that figured most prominently in the United States contentions, the Court will first examine in detail the evidence relating to that incident. The *Sea Isle City* was a Kuwaiti tanker reflagged to the United States; on 16 October 1987 it was hit

by a missile near Kuwait's Al-Ahmadi Sea Island ... terminal. This incident ... caused damage to the ship and injury to six crew members ...

The United States has however not relied solely on the *Sea Isle City* incident as constituting the "armed attack" to which the United States claimed to be responding ... The United States relies on the following incidents involving United States-flagged, or United States-owned, vessels and aircraft, in the period up to 19 October 1987, and attributes them to Iranian action: the mining of the United States-flagged *Bridgeton* on 24 July 1987; the mining of the United States-owned *Texaco Caribbean* on 10 August 1987; and firing on United States Navy helicopters by Iranian gunboats, and from the Reshadat oil platform, on 8 October 1987. The United States also claims to have detected and boarded an Iranian vessel, the *Iran Ajr*, in the act of laying mines in international waters ... Iran has denied any responsibility for the mining of the *Bridgeton* and the *Texaco Caribbean*; as regards the *Iran Ajr*, Iran has admitted that the vessel was carrying mines, but denies that they were being laid at the time it was boarded, and claims that its only mission was to transport them by a secure route to a quite different area.

On the hypothesis that all the incidents complained of are to be attributed to Iran ... the question is whether that attack, either in itself or in combination with the rest of the "series of ... attacks" cited by the United States can be categorized as an "armed attack" on the United States justifying self-defence. The Court notes first that the *Sea Isle City* was in Kuwaiti waters at the time of the attack on it, and that a Silkworm missile fired from (it is alleged) more than 100 km away could not have been aimed at the specific vessel, but simply programmed to hit some target in Kuwaiti waters. Secondly, the *Texaco Caribbean*, whatever its ownership, was not flying a United States flag, so that an attack on the vessel is not in itself to be equated with an attack on that State. As regards the alleged firing on United States helicopters from Iranian gunboats and from the Reshadat oil platform, no persuasive evidence has been supplied to support this allegation. There is no evidence that the minelaying alleged to have been carried out by the *Iran Ajr*, at a time when Iran was at war with Iraq, was aimed specifically at the United States; and similarly it has not been established that the mine struck by the *Bridgeton* was laid with the specific intention of harming that ship, or other United States vessels. Even taken cumulatively, ... these incidents do not seem to the Court to constitute an armed attack on the United States, of the kind that the Court, in the [*Nicaragua* case], qualified as a "most grave" form of the use of force ...

Next, the Court described the US attack on Iran in April 1988. It then described the US's justification for this attack. It ultimately found that the US attack was not a legitimate act of self-defense.

The second occasion on which Iranian oil installations were attacked was on 18 April 1988, with the action against the Salman and Nasr complexes. The Salman offshore oil complex ... had been attacked by Iraq in October and November 1986, and was still undergoing repairs in April 1988 ... The Nasr complex ... was functioning normally in April 1988.

United States naval forces attacked the Salman and Nasr complexes on 18 April 1988 ... Shortly before 8 a.m., local time, the United States forces warned the personnel on the platforms that the attack was due to begin; some of them began to evacuate the installation, while others opened fire. A few minutes later, shelling on the complex commenced from United States ships, warplanes and helicopters. United States forces then boarded some of the platforms ... and placed and detonated explosives. Iran states that the attack caused severe damage to the production facilities of the platforms, and that the activities of the Salman complex were totally interrupted for four years ...

The central platform of the Nasr complex was attacked at around 8.15 a.m. by three United States warships and a number of helicopters. After having been warned of the imminent military action, Iranian personnel evacuated the platform. The United States forces bombarded the installation and almost completely destroyed it ... According to Iranian accounts, activities in the whole Nasr complex ... were interrupted as a consequence of the attack and did not resume until nearly four years later.

The nature of the attacks on the Salman and Nasr complexes, and their alleged justification, was presented by the United States to the United Nations Security Council in the following terms ...

In accordance with Article 51 of the Charter of the United Nations, I wish, on behalf of my Government, to report that United States forces have exercised their inherent right of self-defence under international law by taking defensive action in response to an attack by the Islamic Republic of Iran against a United States naval vessel in international waters of the Persian Gulf. The actions taken are necessary and are proportionate to the threat posed by such hostile Iranian actions.

At approximately 10:10 Eastern Daylight Time on 14 April the *USS Samuel B. Roberts* was struck by a mine ... in international waters. Ten US sailors were injured, one seriously, and the ship was damaged. The mine which struck the Roberts was one of at least four mines laid in this area. The United States has subsequently identified the mines by type, and we have conclusive evidence that these mines were manufactured recently in Iran. The mines were laid in shipping lanes known by Iran to be used by US vessels, and intended by them to damage or sink such vessels. This is but the latest in a series of offensive attacks and provocations Iranian naval forces have taken against neutral shipping in the international waters of the Persian Gulf.

Through diplomatic channels, the United States has informed the Government of the Islamic Republic of Iran on four separate occasions, most recently 19 October 1987, that the United States would not accept Iran's minelaying in international waters or in the waters of neutral States. In October, my Government indicated that the United States did not seek a military confrontation with Iran, but that it would take appropriate defensive measures against such hostile actions ...

The Court notes that the attacks on the Salman and Nasr platforms were not an isolated operation, aimed simply at the oil installations, ... they formed part of a much more extensive military action, designated "Operation Praying Mantis", conducted by the United States against what it regarded as "legitimate military targets"; armed force was used, and damage done to a number of targets, including the destruction of two Iranian frigates and other Iranian naval vessels and aircraft.

The *USS Samuel B. Roberts* was a warship returning to Bahrain on 14 April 1988 ... when it hit a mine ... The United States reports that, in the days following the attack, Belgian and Dutch mine-clearing forces and its own navy discovered several mines bearing Iranian serial numbers in the vicinity and it concludes therefore that the mine struck by the *USS Samuel B. Roberts* was laid by Iran. It also adduces other discoveries of Iranian mining activities at the time ..., contemporary statements by Iranian military leaders and conclusions of the international shipping community ..., all allegedly demonstrating that Iran made a general practice of using mines to attack neutral shipping ...

No attacks on United States-flagged vessels (as distinct from United States-owned vessels) ... have been brought to the Court's attention, other than the mining of the *USS Samuel B. Roberts* itself. The question is therefore whether that incident sufficed in itself to justify action in self-defence, as amounting to an "armed attack". The Court does not exclude the possibility that the mining of a single military vessel might be sufficient to bring into play the "inherent right of self-defence"; but in view of all the circumstances, including the inconclusiveness of the evidence of Iran's responsibility for the mining of the *USS Samuel B. Roberts*, the Court is unable to hold that the attacks on the Salman and Nasr platforms have been shown to have been justifiably made in response to an "armed attack" on the United States by Iran ...

The Court then turned to a separate legal issue, which was whether the US attacks in 1987 and 1988 satisfied customary armed conflict law on military necessity and proportionality. The Court described details of the nature of the US attacks.

In its decision in the [*Nicaragua* case], the Court endorsed the shared view of the parties to that case that in customary law "whether the response to the [armed] attack is lawful depends on observance of the criteria of the necessity and the proportionality of the measures taken in self-defence" ... One aspect of these criteria is the nature of the target of the force used avowedly in self-defence ... The United States has ... presented evidence directed to showing that the platforms collected and reported intelligence concerning passing vessels, acted as a military communication link coordinating Iranian naval forces and served as actual staging bases to launch helicopter and small boat attacks on neutral commercial shipping. The United States has referred to documents and materials ... allegedly establishing that the Reshadat platforms served as military communication facilities. It has also affirmed that the international shipping community at the time was aware of the military use of the platforms, as confirmed by the costly steps commercial vessels took to avoid them, and by various witness reports describing Iranian attacks. The United States has also submitted expert analysis of the conditions and circumstances surrounding these attacks, examining their pattern and location in the light of the equipment at Iran's disposal. Finally, the United States has produced a number of documents, found on the Reshadat complex when it was attacked, allegedly corroborating the platforms' military function. In particular, it contends that these documents prove that the Reshadat platforms had monitored the movements of the *Sea Isle City* on 8 August 1987. On the other hand, the forces that attacked the Salman and Nasr complexes were not able to board the platforms containing the control centres, and did not

therefore seize any material (if indeed such existed) tending to show the use of those complexes for military purposes.

Iran recognizes the presence of limited military personnel and equipment on the Reshadat platforms, but insists that their purpose was exclusively defensive and justified by previous Iraqi attacks on its oil production facilities. Iran further challenges the evidence adduced by the United States in this regard. It alleges that documents found aboard the *Iran Ajr* and the Reshadat platforms are read out of their proper context, incorrectly translated and actually consistent with the platforms' purely defensive role; and that military expert analysis relied on by the United States is hypothetical and contradictory. Iran asserts further that reports and testimony referred to by the United States are mostly non-specific about the use of the platforms as staging bases to launch attacks, and that the equipment at its disposal could be used from mainland and offshore islands, without any need to have recourse to the platforms.

The Court is not sufficiently convinced that the evidence available supports the contentions of the United States as to the significance of the military presence and activity on the Reshadat oil platforms; and it notes that no such evidence is offered in respect of the Salman and Nasr complexes. However, even accepting those contentions, for the purposes of discussion, the Court is unable to hold that the attacks made on the platforms could have been justified as acts of self-defence. The conditions for the exercise of the right of self-defence are well settled ... [In the *Nicaragua* case], the Court referred to a specific rule "whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it" as "a rule well established in customary international law" ...

The Court next applied the principle of military necessity to the US attacks.

In the case both of the attack on the *Sea Isle City* and the mining of the *USS Samuel B. Roberts*, the Court is not satisfied that the attacks on the platforms were necessary to respond to these incidents. In this connection, the Court notes that there is no evidence that the United States complained to Iran of the military activities of the platforms, in the same way as it complained repeatedly of minelaying and attacks on neutral shipping, which does not suggest that the targeting of the platforms was seen as a necessary act ...

Then the Court applied the principle of proportionality to the US attacks.

As to the requirement of proportionality, the attack of 19 October 1987 might, had the Court found that it was necessary in response to the *Sea Isle City* incident as an armed attack committed by Iran, have been considered proportionate. In the case of the attacks of 18 April 1988, however, they were conceived and executed as part of a more extensive operation entitled “Operation Praying Mantis” ... The question of the lawfulness of other aspects of that operation is not before the Court ... but the Court cannot assess in isolation the proportionality of that action to the attack to which it was said to be a response; it cannot close its eyes to the scale of the whole operation, which involved ... the destruction of two Iranian frigates and a number of other naval vessels and aircraft. As a response to the mining, by an unidentified agency, of a single United States warship, which was severely damaged but not sunk, and without loss of life, neither “Operation Praying Mantis” as a whole, nor even that part of it that destroyed the Salman and Nasr platforms, can be regarded, in the circumstances of this case, as a proportionate use of force in self-defence.

The Court thus concludes from the foregoing that the actions carried out by United States forces against Iranian oil installations on 19 October 1987 and 18 April 1988 cannot be justified, under Article XX, paragraph 1 (d), of the 1955 Treaty, as being measures necessary to protect the essential security interests of the United States, since those actions constituted recourse to armed force not qualifying, under international law on the question, as acts of self-defence.

Table 1: Facts and Findings from the *Oil Platforms* Case

Fact/Finding	October 1987	April 1988
Inciting incident <i>(Fact: what triggered the US response?)</i>		
Target of US response <i>(Fact: what specifically did the US attack?)</i>		
Was there an “armed attack”? <i>(Finding: how did the ICJ rule?)</i>		
Was Iran responsible? <i>(Finding: how did the ICJ rule?)</i>		
Was the US response necessary? Why? <i>(Finding: how did the ICJ rule?)</i>		
Was the US response proportional? Why? <i>(Finding: how did the ICJ rule?)</i>		