



17<sup>TH</sup> ANNUAL CONFERENCE

25<sup>TH</sup> -27<sup>TH</sup> OCTOBER 2019

INTERNATIONAL COURT OF JUSTICE

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## MESSAGE FROM THE DIRECTORS

Dear Delegates,

Welcome to the International Court of Justice (‘ICJ’) at Oxford International Model United Nations 2019. We, Saskia Millmann and Tan Yan Shen, are the chairs for this council and we will have the honour of serving on the ICJ dais.

This year, we have selected the issue of the Oil Platforms (Islamic Republic of Iran v United States of America) [1996] ICJR 803 as the topic for the ICJ. This is in line with the theme for Advanced Committees for OcIMUN 2019: “The Future of Petroleum Oil Trading”. Despite the fact that the case is set in the past, and that the underlying conflict, the Iran-Iraq War, had been over by the time the oral arguments were first heard by the Court, the dais has opted for a wider interpretation of the theme and believes that the instant case fits snugly into the theme for the Advanced Council.

In doing so, the dais relies on the preeminent position of the ICJ as an international forum to interpret the law surrounding this dispute. While in theory, the Court’s decision is *sui generis* and will not bind future jurisprudence of the Court, in real life, the Court’s decisions are often very influential and often proves influential in international fora. This can be seen from the aftermath of several cases heard by the ICJ, such as the advisory opinion on Kosovo, where even though efforts were made to reiterate that the decision was to remain *sui generis*, many have argued that the advisory opinion issued serves as a strong precedence for unilateral declarations of independence.

The instant case thus nonetheless bears an extraordinary impact on the future of the transport and production of petroleum oil in the Gulf and thus concerns the future of petroleum oil trading. Importantly, it also serves as a testament and reminder to advocates, judges and chairs alike that the responsibility of upholding the international rule of law is ever so important in the ICJ due to its expansive reach and the longevity of its jurisprudence.

*On behalf of the dais,*

Saskia Millmann and Tan Yan Shen

Chairs of the ICJ, OXIMUN 2019

# THE INTERNATIONAL COURT OF JUSTICE

The ICJ is the principal judicial organ of the United Nations ('UN')<sup>1</sup>. It was established in June 1945 by the Charter of the UN<sup>2</sup> and is composed of a panel of 15 judges elected by the UN General Assembly ('UNGA') and United Nations Security Council ('UNSC') for nine-year terms<sup>3</sup>. The ICJ may issue decisions on contentious issues (disputes submitted to the court by a state) and decisions providing interim relief. Only States that have accepted the ICJ's jurisdiction may be parties to contentious cases. States may accept the ICJ's jurisdiction by entering into a special agreement to submit the dispute to the Court; by virtue of a jurisdictional clause in a treaty or agreement; and through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration<sup>4</sup>.

The ICJ may also issue Advisory Opinions to the UNGA or the UNSC, or other UN organisations on authorisation by the UNGA. These advisory opinions are, in principle, only consultative and non-binding under the Statute of the Court but are highly influential in practice as they reflect the Court's authoritative views on important issues of international law<sup>5</sup>. The instant case is a contentious case.

The provisions of the ICJ are mostly found in Chapter XIV of the UN Charter and in the Statute of the Court which is annexed to the UN Charter. Article 93 of the Charter states that all UN members are automatically members of the ICJ<sup>6</sup> and Article 94 requires all members to abide by the decisions of ICJ in cases to which they are a party, and gives the UNSC power to enforce such decisions<sup>7</sup>.

Article 38 states that in arriving at its decisions, the court shall apply international conventions, international custom and the "general principles of law recognized by civilized nations."<sup>8</sup> It may also refer to "the teachings of the most highly qualified publicists of the various nations" and previous judicial decisions<sup>9</sup>. However, it is to be noted that Article 59 states that the court is not formally bound by its previous decisions under the doctrine of stare decisis, and the court's decision binds only the parties to that particular controversy<sup>10</sup>.

The ICJ at OxiMUN is comprised of 15 judges as well as Advocates for both the Applicant and the Respondent. The 15 judges of the Court are of equal status, irrespective of age, priority of election or length of service. The President and Vice President are elected among the judges and are supported by the Registrar. Within this simulation

however, neither of these positions will be considered active members of the court and therefore shall restrict themselves to the duties set out in the OxiMUN rules of procedure.

At the first public sitting, the judges make their solemn declarations in open Court where they declare that they will perform their duties *“honourably, faithfully, impartially and contentiously”* (Article 4 of the Rules of the Court). The obligation of the Members of the Court under Article 23 paragraph 3 of the Statute is to hold themselves permanently at the disposal of the Court, attend all such meetings, unless they are prevented from attending by illness or for other serious reasons duly explained to the President, who shall inform the Court. The deliberations of the judges take place after the oral pleadings and are private and secret. It is a decision of the Court to decide when to publish judicial matters or allow any publication of them (Article 21 of the Rules of the Court).

The Advocates act as agents for the states (in this case for Iran and the United States respectively). Since the judges of the ICJ can only consider the evidence that is submitted to the Court, the number of legal dilemmas that will be solved by the Court depends on the arguments presented by the Counsels of both parties within a case. After the written pleadings have been submitted to the Court, both Counsels start their oral pleadings. During public hearings, normally the agent opens the arguments on behalf of the representing Government and lodges the submissions.

The date of institution of the proceedings marks the opening of the proceedings before the Court. In contentious cases between two States, there are two phases, a written and an oral one. During the written phase, the parties of the case file and exchange pleadings that contains the main facts and points of law that need to be considered by the Judges in order to determine the case. After the written pleadings are presented, the oral proceedings start. It is after having heard the position of the Applicant and the Respondent that the Judges deliberate in camera in order to decide on the facts of the case and deliver the judgement. When the judgement is delivered in open court, it is considered as binding. Judges, however, can add their own separate or dissenting opinion to the judgement.

## *INTRODUCTION TO THE CASE – FACTS OF THE CASE*

*These facts are agreed upon by both parties and are therefore not disputable.*

On the 22<sup>nd</sup> of September 1980, armed hostilities broke out between Iraq and Iran<sup>11</sup> leading to what is now commonly known as the Iran-Iraq war. Throughout the war, both Iran and Iraq had attacked shipping in the Gulf states, which was accelerated when Iraq attacked shipping near the Iranian island of Kharg in 1984<sup>12</sup>. Iran retaliated by attacking tankers carrying Iraqi oil from Kuwait and subsequently, tankers from any Gulf state supporting Iraq. On the 1<sup>st</sup> of November 1986, Kuwait formally petitioned the US to protect its shipping following Iranian speedboat

attacks on Kuwaiti shipping. The US acceded to the request and began Operation Earnest Will where US Navy warships escorted tankers which registered under the US flag. Many of these tankers were previously registered under other jurisdictions such as Kuwait and allegedly were transporting oil to Iraq, and only re-registered under the US flag to enjoy US protection under Operation Earnest Will.

Operation Earnest Will started on the 22<sup>nd</sup> of July 1987 with a US convoy comprising of the USS *Fox* and USS *Kidd* escorting the US-registered tankers *Bridgeton* and *Gas Prince*<sup>13</sup> through the Strait of Hormuz. This group was supported by the USS *Constellation* battlegroup and various other warships in the region. On the 24<sup>th</sup> of July, after passing through the Strait of Hormuz, the *Bridgeton* had allegedly struck a moored naval mine just 20 miles west of Farsi Island. It was reported that the alleged incident resulted in the damage of two forward cargo tanks but did not result in any personnel injuries and the *Bridgeton* proceeded under her own power for Kuwait<sup>14</sup> <sup>15</sup>. Iran denied responsibility for the incident.

There were also direct conflicts between Iranian and US forces. On the 21<sup>st</sup> of September 1987, US naval helicopters had allegedly observed the *Iran Ajr* laying mines at night near the Bahrain Bell in an international shipping channel used regularly by U.S. ships in the central Persian Gulf. The *Iran Ajr* was eventually attacked and boarded. Nine armed Iranian-made mines and charts detailing armed and planted mines were allegedly found on the *Iran Ajr*<sup>16</sup>. Iran denied that neither the *Iran Ajr* nor the patrol boats had engaged in any illegal action that might have justified the U.S. attacks<sup>17</sup>.

On the 8<sup>th</sup> of October 1987, it was alleged that three Iranian fast attack boats in international waters 15 miles southwest of Farsi Island fired upon U.S. helicopters that had taken off from the mobile sea base *Hercules*. Two of the three U.S. helicopters returned fire, sinking all three of the Iranian boats. The US claimed that it had taken this action in the exercise of its inherent right of self-defence<sup>18</sup>.

### **The destruction of the *Resalat* and *Reshadat***

On the 15<sup>th</sup> of October 1987, the US-owned, Liberian-flagged oil tanker *Sungari* was hit by a missile allegedly fired from the Faw Peninsula, while anchored off Port Mina al-Ahmadi in Kuwaiti territorial waters. There were no casualties<sup>19</sup>. The next morning, another missile hit the aft crew compartment of the *Sea Isle City*, a Kuwaiti-owned, US-flagged tanker about seven nautical miles east of Mina al-Ahmadi. Eighteen seamen were injured<sup>20</sup>. The US had

alleged that these were Silkworm missiles fired by Iran off the Faw Peninsula, but Iran had denied the attack, claiming that their Silkworm missiles were positioned in the Strait of Hormuz, hundreds of miles to the south<sup>21</sup>.

On the 19<sup>th</sup> of October 1987, three days after the alleged missile attacks, four US guided-missile destroyers—the *Young*, *Hoel*, *Kidd* and *Leftwich*—, with the frigate *Thach* and the guided missile cruiser *Standley* in support, attacked the *Resalat* and *Reshadat*, which were oil platforms owned and operated by the National Iranian Oil Company in the continental shelf and exclusive economic zone of Iran<sup>22</sup>. These oil platforms were allegedly part of a larger series of oil installations involving more than 100 producing wells and platforms<sup>23</sup>.

After loudspeaker warnings in Farsi and English to personnel on the *Rashadat* platform, the US attacked and destroyed the platform at 2pm initially with the destroyers' 5-inch guns and later, allegedly with dynamite by a boarding team. Iran claimed that the destruction was total, with a complete stoppage of oil production from the underlying oilfields to date<sup>24</sup>.

The US claimed that the *Rashadat* platform was inoperative as an oil production facility, since it was armed and equipped with radar and communications devices “beyond that reasonably required for the defensive purposes alleged by Iran”<sup>25</sup>. The US further claimed that the facility was used for surveillance in the south-central Gulf and as a staging base for small boat and helicopter attacks on innocent shipping as well as mine-laying operations in the region<sup>26</sup>.

US forces had also boarded and searched the *Resalat* platform, another oil platform nearby. As with the *Rashadat* platform, the US contended that the *Resalat* platform was a non-producing platform which was used as a staging area to attack innocent shipping. Instead, Iran alleged that the *Resalat* platform was a producing platform<sup>27</sup>. When boarding, the Iranian military personnel on the platform engaged the US forces with one of its two twin ZU-23mm guns. The US allegedly found two different types of radars and other equipment that could possibly be used to support and coordinate attacks on innocent shipping. The US then destroyed the platform, claiming that this would prevent its continued use in supporting ship attacks in the southern Persian Gulf<sup>28</sup>.

Skirmishes in the area continued to develop well till the end of 1987. On the 16<sup>th</sup> of November 1987, Iranian small boats attacked and damaged the U.S.-owned, Bahamian-flagged tanker *Esso Freevort* and the U.S.-owned, Liberian-flagged tanker *Lsneer the Strait of Hormuz*<sup>29</sup>. On the 12<sup>th</sup> of December 1987, the Cypriot-flagged tanker *Pivot* was

attacked by an Iranian frigate off Dubai, prompting the destroyer USS *Chandler* to send a helicopter to rescue 11 seamen from the burning tanker<sup>30</sup>. On the 25<sup>th</sup> of December 1987, a U.S. Navy helicopter rescued 11 seamen and a British Navy helicopter rescued nine seamen from South Korean freighter, the Hyundai-7, after it had been attacked by Iranian small boats 25 miles north of Sharjah<sup>31</sup>.

### **Destruction of the *Nasr* and *Salman***

The US alleged that despite various warnings, Iran continued laying new minefields in international waters near the Shah Allum shoal and the Rostam platform. On the 14<sup>th</sup> of April 1988, at about 5:00 pm, the USS *Samuel B. Roberts*, returning to Bahrain after an escort mission, allegedly encountered three newly-laid contact mines in international waters near the Shah Allum shoal. It then struck a mine while backing out of the minefield, causing extensive damage to the vessel and injuring 10 crewmen<sup>32</sup>.

Four days later, on the 18<sup>th</sup> of April 1988, US naval forces attacked the *Nasr*, an oil platform located in the continental shelf and exclusive economic zone of Iran, off the Iranian island of Sirri. The *Nasr* was owned and operated by the National Iranian Oil Company and the US allegedly attacked after 5 minutes warning to the oil workers on the platforms. This resulted in serious damage to the oil platforms and the death of one civilian worker. As a result of the attack, the *Nasr* platform was destroyed and a near-by platform seriously damaged<sup>33</sup>.

At the same time, the US forces also attacked the *Salman* complex located 3.5 nautical miles north of the UAE-owned Abu Al Bu Khoosh oil field. The *Salan* platform was destroyed and remains out of operation to date<sup>34</sup>. The US claimed that the attacks were "necessary" and "proportionate" "self-defence" in response to an alleged Iranian attack against USS *Samuel B. Roberts*. The US has also subsequently attempted to characterize the NIOC oil platforms as "legitimate" "military targets in the Persian Gulf which have been used as attacks against non-belligerent shipping in the international waterways of the [Persian] Gulf".<sup>35</sup> This was denied by Iran<sup>36</sup>.

## *APPLICATION*

Iran has alleged that the US breached Article I of the Treaty of Amity, which provides that:

*"There shall be firm and enduring peace and sincere friendship between the United States of America and Iran."*<sup>37</sup>

Iran submitted that US assisted Iraq in its war efforts against Iran. These claims were based upon the US' adoption of a threatening and provocative position via the deployment of substantial naval and air forces off the shores of the Islamic Republic, and due to its destructive attacks on Iranian entities and oil installations, the US has breached the obligations set out in Article I of the Treaty of Amity<sup>38</sup>.

Iran has also alleged that the US breached Article X(1) of the Treaty of Amity, which provides that:

*"Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."*<sup>39</sup>

Iran submitted that by its actions in assisting the Government of Iraq in its war efforts, in threatening and provoking Iran with the deployment of US naval forces in the region, and in attacking and destroying Iranian oil platforms, the US had gravely interfered with the commerce and navigation of Iran and had thus violated the provisions of Article X (1) of the Treaty<sup>40</sup>.

**Iran, therefore, respectfully, asks the Court to adjudicate the following questions:**

(a) that in attacking and destroying the oil platforms referred to in the Application on the 19 of October 1987 and 18<sup>th</sup> of April 1988, the United States breached its obligations to the Islamic Republic, *inter alia*, under Articles I and X (1) of the Treaty of Amity and international law;

(b) that in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including Articles I and X (1), and international law;

(c) that the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

(d) any other remedy the Court may deem appropriate. <sup>41</sup>

## *INSTITUTION OF PROCEEDINGS AND THE QUESTION OF JURISDICTION*

Iran then instituted proceedings against the US on the 2<sup>nd</sup> of November 1992 under Article 36(1) of the Statute of the Court:

*"The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."*<sup>42</sup>

Iran and the US are both Members of the UN. Iran submitted that both Iran and the US are parties to the Treaty of Amity, Economic Relations, and Consular Rights ("Treaty of Amity") between the US and Iran which was signed in Tehran on the 15<sup>th</sup> of August 1955 and entered into force on the 16<sup>th</sup> of June 1957. Article XXI(2) of the Treaty of Amity states:

*"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."*<sup>43</sup>

The Court, in a previous sitting<sup>44</sup>, pointed out, that the Parties do not contest that the Treaty of 1955 was in force at the date of the filing of the Application of Iran and is moreover still in force. The Court recalls that it had decided in 1980 that the Treaty of 1955 was applicable at that time (*United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 28, para. 54); none of the circumstances brought to its knowledge in the present case would cause it now to depart from that view.

The Court therefore concludes that there is a dispute between the Islamic Republic of Iran and the United States of America and that it does have jurisdiction over the matter.

## *COUNTERCLAIM*

The US submitted a counterclaim following the claims launched by Iran. Claiming that Iran's mining of the Gulf waters and the attacks on US-flagged or US-owned vessels, *inter alia*, justified the actions taken in self-defence by the US against the offshore platforms. The US also submitted that the aforementioned Iranian actions was a violation of Article X of the Treaty of Amity and thus claimed for damages it suffered as a result of Iran's "recurring and significant breaches" of its Treaty obligations<sup>45</sup>.

The US justified the counterclaim on the basis of Article 80 of the Rules of Court, asserting that the counter-claim is "directly connected with the subject-matter" of Iran's claim and "comes within the jurisdiction of the Court."<sup>46</sup>

The US also relied on Article XXI(2) of the Treaty of Amity, submitting that Iran's breach of the Treaty of Amity gives the US ample cause to pursue an action under Article XXI(2) and Article 80 of the Rules of Court.

The US claimed that Iran had breached its treaty obligations under the Treaty of Amity. In particular, the US alleged that Iran had breached its obligations under Article X of the Treaty of Amity (*supra*).

As defence to the Iranian claim, the US maintained that its actions had fallen under Article XX(1)(d) of the Treaty, which provides for a defence:

*"The present Treaty shall not preclude the application of measures... 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."*

The US also maintained that its actions satisfied the UN Charter's requirements regarding the use of force and self-defence. Article 51 of the UN Charter states:

*"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council"*<sup>47</sup>

Finally, the US submitted that the ICJ should deny the Iranian claims due to Iran's own illegal conduct. The US relied on its arguments made in the counter-claim to establish that Iran had violated the Treaty of Amity. The US submitted that Iran's claim was "inconsistent with the principle of good faith which is a key element of the interpretation and application of treaties", and that the court should reject the claim to "honour the basic principle that a tribunal should refuse relief to a plaintiff whose conduct in regard to the subject matter of the litigation has been improper"<sup>48</sup>.

## BACKGROUND ON CONTENTIOUS LEGAL POINTS

*This short overview is designed to give both Counsel and Judges an idea of which areas of law are important for the case at hand. The overview is meant to be understood as a starting point for your own research and is not designed to display the relevant legal points in their entirety.*

### **Prohibition of the Use of Force**

The prohibition of the Use of Force is enshrined in both customary international law and treaty law. Furthermore, there are scholars who argue that the prohibition of the use of force is part of *jus cogens*.<sup>49</sup>

The conventional form of the norm is laid down in Article 2(4) of the United Nations Charter states:

*“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”*<sup>50</sup>

The *force* in question and its meaning, however, is often a topic of widespread debate. Indeed, the use of force might come in a variety of actions: Direct use of military force (deploying military resources as a mean of acting warfare aggression against other State’s territory and population), but also cooperating in the use of force of another State might be viewed as a use of force in itself.<sup>51</sup> Some argue that numerous other acts which aim at the loss of health and life of other States’ population, but are not, strictly speaking military actions (e.g. cyber-attacks, economic force and diplomatic duress) must also be understood as a use of force.<sup>52</sup>

### **Right to self-defence**

The right to self-defence is the one explicitly outlined exemption from the prohibition of the use of force. One of the most quoted texts concerning self-defence is Article 51 of the Charter:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self- defence [...]”*.<sup>53</sup>

To fully understand the right to self-defence its nature and purpose, one needs to look at the entirety of the article and its place within Chapter VII of the UN Charter:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self- defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”*<sup>54</sup>

This tightens the scope of the right self-defence to the responses of direct armed attacks, solely in situations, in which the Security Council failed to act. However, many argue that by pointing out the *inherent right to self-defence* it evokes a customary rule and thus creates another general rule of a reciprocal use of force.<sup>55</sup>

It is debatable whether **pre-emptive (anticipatory) forms of self-defence are self-defence at all or non-permissible military actions**. Its legality is long debated upon, as it is not explicitly mentioned in the UN Charter. Some say, however, that in order to see the preservation of peace and security as a *jus cogens*,<sup>56</sup> a right of anticipatory self-defence use of force on certain grounds of probability and imminence must be granted. In this light, customary law allows the use of what is called the **Caroline test**,<sup>57</sup> which examines the necessity of pre-emptive self-defence. It has been formulated in the 19th Century and the reformulated within the judgements of the Nuremberg Trials.<sup>58</sup> The test follows two main rules: one of **necessity** and one of **imminence**, wherein the chosen response must also be **proportionate** to the threat. Should these three issues be proven with respect to a use of force, it is to be deemed legitimate and thus can be seen as legal. Scholars point out, however, that the legality of self-defence use of force does not release the State of carrying out military actions in accordance with international and customary humanitarian law and the law of war.<sup>59</sup>

### **Military Necessity**

Military necessity has been defined in the Hostage Case as follows:

*“Military necessity permits a belligerent, subject to the laws of war, to apply any amount and kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money.”<sup>60</sup>*

Military necessity requires that the act committed or planned would result in a military advantage. Said advantage must be concrete and not speculative, but it is not restricted to tactical or local gains.<sup>61</sup>

The presence of military necessity is particularly relevant for a successful claim of self-defence. As the Court ruled both in the *Nicaragua Case*, as well as the Advisory Opinion on the *legality of the threat to use Nuclear Weapons*, the action of the defending state must be both “necessary” and “proportional”.<sup>62</sup> Necessity in this scenario means that no other reasonable alternative or means of redress were available.<sup>63</sup>

### **Reciprocity**

Reciprocity is a rule of international law and consequently governs e.g. every treaty in international law. In regard to treaties, reciprocity holds a very important role: It is, in a way, a quid pro quo rule. Consequently, it ensures that advantages of reservations or similar one-sided acts like terminations, or suspensions are afforded to all parties to the treaty. <sup>64</sup>

In practice, this means that if one side claims, e.g. that a certain treaty provision does not apply to them because they have made a reservation on it, they also have to afford the other side the right not to be bound by said provision.

This is irresectable of whether the other side also made a reservation or not – reciprocity prohibits one side from taking advantage of imbalanced duties and obligations during a dispute with another state.

### **Conclusion**

These principles of law should give you an idea where to start your research. We would advise you to continue reading further and to especially look at the case law cited. Remember that you need to back up everything you want to argue with sources of law (treaty law, customary international law or principles of international law). Again, we would like to reiterate that this list was not intended as a comprehensive list and should only be regarded as the beginning of your own research. Should you have any questions at all don't hesitate to contact the presidency via the committee email address.

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<sup>2</sup> United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

<sup>3</sup> <https://www.icj-cij.org/en/members>.

<sup>4</sup> “How the Court Works.” | International Court of Justice. Accessed August 21, 2019. <https://www.icj-cij.org/en/how-the-court-works>.

<sup>5</sup> *Ibid.*

<sup>6</sup> United Nations, Article 93 of the Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

<sup>7</sup> *Ibid*, Article 94

<sup>8</sup> *Ibid*, Article 38

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid*, Article 59.

<sup>11</sup> “Situation between Iran and Iraq,” 34 YEARBOOK OF THE UNITED NATIONS 1980 pp. 312-319(1983).

<sup>12</sup> Karsh, Efraim (25 April 2002). *The Iran–Iraq War: 1980–1988*. Osprey Publishing.

<sup>13</sup> Gibson, Bryan R. (2010). *Covert Relationship: American Foreign Policy, Intelligence, and the Iran–Iraq War, 1980–1988*.

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- 14 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) [1971] ICJ Rep 71.
- 16 *Ibid.*
- 17 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Institution of Proceedings) [1971] ICJ Rep 71.
- 18 U.N. Doc. SI19194.
- 19 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) [1971] ICJ Rep 71.
- 20 *Ibid.*
- 21 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Institution of Proceedings) [1971] ICJ Rep 71.
- 22 Molly Moore, Washington Post, U.S. Destroyer Shell Iranian Military Platform in Gulf, October 20 1987
- 23 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Institution of Proceedings) [1971] ICJ Rep 71.
- 24 *Ibid.*
- 25 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) [1971] ICJ Rep 71.
- 26 *Ibid.*
- 27 *Ibid.*
- 28 *Ibid.*
- 29 *Ibid.*
- 30 *Ibid.*
- 31 *Ibid.*
- 32 *Ibid.*
- 33 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Institution of Proceedings) [1971] ICJ Rep 71.
- 34 *Ibid.*
- 35 *Ibid.*
- 36 *Ibid.*
- 37 Article I of the Treaty of Amity, Economic Relations, and Consular Rights (Concluded 15 August 1955) 284 UNTS 93.
- 38 *Ibid.*
- 39 Article X(1) of the Treaty of Amity, Economic Relations, and Consular Rights (Concluded 15 August 1955) 284 UNTS 93.
- 40 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Institution of Proceedings) [1971] ICJ Rep 71.
- 41 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Institution of Proceedings) [1971] ICJ Rep 71 (2 November 1992).
- 42 Article 36(1) of the Rules of Court.
- 43 Article XXI(2) of the Treaty of Amity, Economic Relations, and Consular Rights (Concluded 15 August 1955) 284 UNTS 93.
- 44 United States Diplomatic and Consular Staff in Tehran, Judgment, 1.C.J. Reports 1980, p. 28, para. 54.
- 45 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Counter-memorial and Counter-claim) [1971] ICJ Rep 71.
- 46 Article 80 of the Rules of Court.
- 47 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Counter-memorial and Counter-claim) [1971] ICJ Rep 71.
- 48 Case concerning Oil Platforms (Islamic Republic of Iran v United States of America) (Counter-memorial and Counter-claim) [1971] ICJ Rep 71.
- 49 Dörr, Oliver, 'Prohibition of use of force', in: Max Planck Encyclopaedia of International Law [online] at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e427?rskey=G1zs8q&result=1&prd=OPIL> (10 September 2019).
- 50 United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, art. 2, para. 4.
- 51 In accordance to Article 16 of *the Articles on State Responsibility*.

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<sup>52</sup> Dörr, Oliver, 'Prohibition of use of force', in: Max Planck Encyclopaedia of International Law [online] at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e427?rskey=G1zs8q&result=1&prd=OPIL> (10 September 2019).

<sup>53</sup> Art. 51, United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI.

<sup>54</sup> Ibid.

<sup>55</sup> Rebaz Khdir, *The Right to Self-Defence in International Law as a Justification for Crossing Borders: The Turkey-PKK Case within the Borders of Iraq*, 4(4) Russian Law Journal 62–80 (2016). p. 65.

<sup>56</sup> Orakhelashvili, Alexander, *The Impact of Peremptory Norms on the Interpretation and Application of United Nations Security Council Resolutions*, "The European Journal of International Law" Vol. 16 no.1 (2005), p. 59-80; p. 59.

<sup>57</sup> H. Duffy (2005). *The 'War on Terror' and the Framework of International Law*. Cambridge University Press. p. 157.

<sup>58</sup> See: France and others v Göring (Hermann) and others (International Criminal Tribunal October 1, 1946) (Oxford Reports on International Law, International Criminal Law, Dist. file).

<sup>59</sup> As reinforced by the appeal judgment of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 in the case Boškoski & Tarčulovski (2010):

*The fact that a State resorted to force in self-defence in an internal armed conflict against an armed group does not, in and of itself, prevent the qualification of crimes committed therein as serious violations of international humanitarian law. As the Appeals Chamber has stated, "whether an attack was ordered as pre-emptive, defensive or offensive is from a legal point of view irrelevant [...]. The issue at hand is whether the way the military action was carried out [during an armed conflict] was criminal or not.*

found in: Martić Appeal Judgement, para. 268.

<sup>60</sup> Hostage Case, United States v List (Wilhelm) and others Trial judgment, Case No 7, (1950) ICL 491 (US 1948), (1948) 15 ILR 632, 19th February 1948, International Military Tribunal [IMT]; Nuremberg Military Tribunal [NMT], at 1253.

<sup>61</sup> Dinstein, Yoran, 'Military necessity' in: Max Planck Encyclopaedia of International Law [online] at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e333?rskey=DwqKX0&result=1&prd=OPIL> (10 September 2019).

<sup>62</sup> Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. at 245, para. 41; Military and Paramilitary Activities, 1986 I.C.J. at 94, para. 176.

<sup>63</sup> Schachter, Oscar, 'The Right of States To Use Armed Force', in: Vol. 82 Michigan Law Review 1620, 1635 (1984).

<sup>64</sup> Simma, Bruna, 'Reciprocity', in: Max Planck Encyclopaedia of International Law [online] at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1461?rskey=GSGMq2&result=1&prd=OPIL> (10 September 2019).