International Court of Justice, *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgement of 6 November 2003

23. […] The actions giving rise to [the present case] occurred in the context of the general events that took place in the Persian Gulf between 1980 and 1988, in particular the armed conflict that opposed Iran and Iraq. […]

25. Two specific attacks on shipping are of particular relevance in this case. On 16 October 1987, the Kuwaiti tanker *Sea Isle City* [flying a United States flag] was hit by a missile near Kuwait harbour. The United States attributed this attack to Iran, and three days later, on 19 October 1987, it attacked Iranian offshore oil production installations, claiming to be acting in self-defence. United States naval forces launched an attack against the Reshadat ["Rostam"] and Resalat ["Rakhsh"] complexes; the R-7 and R-4 platforms belonging to the Reshadat complex were destroyed in the attack. On 14 April 1988, the warship USS *Samuel B. Roberts* struck a mine in international waters near Bahrain while returning from an escort mission; four days later the United States, again asserting the right of self-defence, employed its naval forces to attack and destroy simultaneously the Nasr ["Sirri"] and Salman ["Sassan"] complexes.

[…]

51. […] 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 case concerning *Military and Paramilitary Activities in and against Nicaragua*, it is necessary to distinguish "the most grave forms of the use of force (those constituting an armed attack) from other less grave forms" (para. 191), 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" (para. 195). 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. […]

[…]

64. On the hypothesis that all the incidents complained of are to be attributed to Iran, and thus setting aside the question […] of attribution to Iran of the specific attack on the *Sea Isle City*, 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* [an Iranian vessel] 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* [a US vessel] was laid with the specific intention of harming that ship, or other United States vessels. Even taken cumulatively, and reserving, as already noted, the question of Iranian responsibility, 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 case concerning *Military and Paramilitary Activities in and against Nicaragua*, qualified as a "most grave" form of the use of force (see paragraph 51 above).

[…]

74. In its decision in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, 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" (para. 194). One aspect of these criteria is the nature of the target of the force used avowedly in self-defence. In its communications to the Security Council, […] the United States indicated the grounds on which it regarded the Iranian platforms as legitimate targets for an armed action in self-defence. In the present proceedings, the United States has continued to maintain that they were such, and 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. […]

76. 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: as the Court observed in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, "the submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law" (para. 41); and in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, 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" (para. 176). 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. The Court would also observe that in the case of the attack of 19 October 1987, the United States forces attacked the R-4 platform as a "target of opportunity", not one previously identified as an appropriate military target.

77. 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, since it is solely the action against the Salman and Nasr complexes that is presented as a breach of the 1955 Treaty; 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, inter alia, 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.

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37. The Court will now address the question of the legality or illegality of recourse to nuclear weapons in the light of the provisions of the Charter relating to the threat or use of force. […]

39. These provisions do not refer to specific weapons. They apply to any use of force, regardless of the weapons employed. The Charter neither expressly prohibits, nor permits, the use of any specific weapon, including nuclear weapons. A weapon that is already unlawful *per se*, whether by treaty or custom, does not become lawful by reason of its being used for a legitimate purpose under the Charter.

40. The entitlement to resort to self-defence under Article 51 is subject to certain constraints. Some of these constraints are inherent in the very concept of self-defence. Other requirements are specified in Article 51.

41. The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law. […] This dual condition applies equally to Article 51 of the Charter, whatever the means of force employed.

42. The proportionality principle may thus not in itself exclude the use of nuclear weapons in self-defence in all circumstances. But at the same time, a use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law.

43. Certain States have in their written and oral pleadings suggested that in the case of nuclear weapons, the condition of proportionality must be evaluated in the light of still further factors. They contend that the very nature of nuclear weapons, and the high probability of an escalation of nuclear exchanges, mean that there is an extremely strong risk of devastation. The risk factor is said to negate the possibility of the condition of proportionality being complied with. The Court does not find it necessary to embark upon the quantification of such risks; nor does it need to enquire into the question whether tactical nuclear weapons exist which are sufficiently

precise to limit those risks: it suffices for the Court to note that the very nature of all nuclear weapons and the profound risks associated therewith are further considerations to be borne in mind by States believing they can exercise a nuclear response in self-defence in accordance with the requirements of proportionality. […]

92. [Some States hold] that recourse to nuclear weapons could never be compatible with the principles and rules of humanitarian law and is therefore prohibited. In the event of their use, nuclear weapons would in all circumstances be unable to draw any distinction between the civilian population and combatants, or between civilian objects and military objectives, and their effects, largely uncontrollable, could not be restricted, either in time or in space, to lawful military targets. Such weapons would kill and destroy in a necessarily indiscriminate manner, on account of the blast, heat and radiation occasioned by the nuclear explosion and the effects induced; and the number of casualties which would ensue would be enormous. The use of nuclear weapons would therefore be prohibited in any circumstance, notwithstanding the absence of any explicit conventional prohibition. […]

95. […] Certainly, as the Court has already indicated, the principles and rules of law applicable in armed conflict - at the heart of which is the overriding consideration of humanity - make the conduct of armed hostilities subject to a number of strict requirements. Thus, methods and means of warfare, which would preclude any distinction between civilian and military targets, or which would result in unnecessary suffering to combatants, are prohibited. In view of the unique characteristics of nuclear weapons, to which the Court has referred above, the use of such weapons in fact seems scarcely reconcilable with respect for such requirements. Nevertheless, the Court considers that it does not have sufficient elements to enable it to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance.

96. Furthermore, the Court cannot lose sight of the fundamental right of every State to survival, and thus its right to resort to self-defence, in accordance with Article 51 of the Charter, when its survival is at stake. […]

97. Accordingly, in view of the present state of international law viewed as a whole, as examined above by the Court, and of the elements of fact at its disposal, the Court is led to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake.

Otázky:

1. Podívejte se nejprve na rozsudek v případu *Oil Platforms* a uveďte alespoň tři důvody, pro které MSD nepovažoval vojenské akce USA proti íránským ropným plošinám za výkon sebeobrany.

2. Zaměřte se na posudek *Nuclear Weapons* a vysvětlete, proč je použití jaderných zbraní problematické z hlediska mezinárodního práva, a zejména požadavku proporcionality. Pokuste se odlišit argumenty založené v *ius ad bellum* od argumentů založených v *ius in bello*.