On 2 November 1992 Iran instituted proceedings against the US in respect of a dispute arising out of the attacks on and destruction of three offshore oil production complexes on 19 October 1987 and 18 April 1988, respectively. The US raised preliminary objections to the jurisdiction of the Court, and on 12 December 1996, the Court ruled on the issue of jurisdiction: By fourteen votes to two the Court rejected the preliminary objection of the US and found that it did have jurisdiction on the basis of Article XXI, paragraph 2, of the 1955 Treaty of Amity, Economic Relations and Consular Rights to entertain the claims made by Iran under Article X, paragraph 1 of that Treaty. Subsequently, in its Counter-Memorial, the US filed a counter-claim concerning Iran’s
alleged mining and other attacks on US-flagged or US-owned ships, which the Court by an order of 10 March 1998, held admissible.

Then, on 7 March 2003, the Court announced that the public hearings had been completed and that the Court was ready to begin its deliberations. Eventually, on 6 November 2003, the Court rendered its judgment. By fourteen votes to two, the Court found that the US attacks could not be justified under the Treaty as interpreted in the light of international law on the use of force; it further found, however, that it could not uphold the submission of Iran that those actions constituted a breach of the obligations of the United States of America under Article X, paragraph 1, of that Treaty. Finally, by fifteen votes to one, the Court decided that the US counter-claim could not be upheld.

If one were to merely look at the dispositif, two aspects might draw attention. One is the odd finding in subsection 1, that although the US attacks were unjustified they, nevertheless, did not breach the Treaty under which they were unjustified. The second notable aspect is the apparent agreement that existed among the judges: A large majority was able to subscribe to the findings of the Court. One might see it as especially interesting that both of the ‘national judges’, i.e. Judge Buergenthal of the US and Judge ad hoc Rigaux appointed by Iran, voted in favour. As will become clear, however, this broad agreement was more imaginary than actual.

Among the judges it is possible to discern a spectrum of opinion ranging from the sharply critical Judges Buergenthal and Higgins over Judges Kooijmans and Owada to Judge Simma. As it is not possible to deal in detail with each of the separate opinions, particular attention will be paid to the opinions of Judges Higgins and Simma, with emphasis on the latter.

When dealing with the Court’s discussion concerning international law relating to self-defence, several of the separate opinions addressed both the

5 Case Concerning Oil Platforms (Islamic Republic of Iran v. United States of America) Judgment, 6 November, 2003, General List No. 90. The text of the judgment and individual opinions is available at the ICJ website <www.icj-cij.org>. References in the following are made to the text available at the website.

6 Judge Buergenthal found that the Court’s Judgement as it related to Article XX, para. 1(d) was ‘seriously flawed’, Separate Opinion of Judge Buergenthal, p. 1, para. 2. See, on the other hand, Judge Simma’s complaint that the text of the Judgment did not include ‘an unambiguous statement to the effect that the United States military operations against the oil platforms, since they were not conducted in justified self-defence against an armed attack by Iran, must be considered breaches of the prohibition on the use of military force enshrined in the United Nations Charter and in customary international law’, Separate Opinion of Judge Simma, p. 4, para. 7. Disagreeing to the point of dissention, Judge Elaraby found that ‘if the Court were to hold that the United States measures were unlawful [which in fact it did] then the Court is duty-bound to declare that the United States has acted contrary to its obligations under the Charter of the United Nations and under customary international law’, Dissenting Opinion of Judge Elaraby, p. 2, para. 1.1.