

Recent case-law of the ICJ and its significance for International Law

OC - (ILA-14157) - THE OIL PLATFORMS TEST AND THE SUBJECT-MATTER JURISDICTION OF THE ICJ IN LIGHT OF ITS RECENT CASE LAW

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Abstract

The recent judgments of the International Court of Justice on preliminary objections in the *Immunities and Criminal Proceedings* and the *Certain Iranian assets* and the pleadings in *Ukraine v Russia* last week raised an old issue of lasting importance: how should the Court deal with a preliminary objection that the allegations of the applicant fall outside the scope of the provisions of the treaty. In its more recent history, the Court confronted the issue during the preliminary objections in the *Oil Platforms* case and since then, the famous paragraph 16 of the judgment became known as the 'Oil Platforms test'. The matter concerned in particular the question whether issues related to the use of force fall within the ambit of the 1955 Iran-US treaty of friendship. The Court conducted a meticulous analysis of the provisions of the bilateral treaty in order to decide whether the violations pleaded by Iran fall within its provisions. Later on the test was referred to in the *Legality of Use of Force* case and most importantly in four other cases, three of which are currently pending. Only a week ago, during the hearings in the *Ukraine v Russia* case counsels for both parties referred explicitly and repeatedly to the test. This paper analyses the scope of the *Oil Platforms* test as applied in the *Bosnian Genocide*, *Immunities and Criminal Proceedings* cases and the judgment on the preliminary objections in *Certain Iranian assets*.

The paper argues that the subsequent application of the Oil Platforms test reflects the way in which the Court perceives the scope of its jurisdiction *ratione materiae*. The importance of the preliminary objections stage which serves more and more as a gateway, with the Court standing as the gatekeeper. The paper addresses three issues. Firstly, it analyses the scope of the test; secondly, it inquires how uniform has been its application so far. Thirdly, it aims to analyse the impact of the Oil Platforms test beyond the case law of the Court in particular in the field of investment arbitration.

The paper concludes recommends that in cases where the written pleadings refer and rely on the test, the Court should use the so-called 'Article 1 deliberation' and be more proactive during the oral hearings in order to avoid facing a situation in which due to the different litigation strategies of the parties it would not have sufficient elements at the preliminary stage.

Palavras-chave : Oil Platforms test, subject matter jurisdiction, International Court of Justice