

COMMENTS ON THE ICJ'S JUDGMENT OF 30 MARCH 2023
CONCERNING CERTAIN IRANIAN ASSETS
(ISLAMIC REPUBLIC OF IRAN V. UNITED STATES)



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Abstract:

The International Court of Justice, on 30 March 2023, [hereafter, ICJ or the Court], issued a significant judgment on the merits of the case concerning certain Iranian Assets (Islamic Republic of Iran v. United States) [hereafter, Iran v. USA], where the Court declared that it has no jurisdiction to consider Iran's claims under Articles III, IV and V of the 1955 Treaty of Amity, Economic Relations, and Consular Rights [hereafter, Treaty of Amity], to the extent that they relate to treatment accorded to Bank Markazi. But it also found that the USA has violated its obligation for illegally blocking other assets and, accordingly, it ordered the USA to compensate Iranian companies for the injurious consequences of the violations of its international obligations. This article discusses, through the jurisprudence, the reasons for rejecting the most important part of Iran's claims in this case, and the reason for upholding other parts of Iran's claims? To answer the question, this contribution provides an analysis of legal issues raised by the Court, and their relevance in light of unilateral measures against State-owned corporations.

Key words: International Court of Justice; Certain Iranian Assets; 30 March 2023; United States; Iran.

Introduction:

Between 2002 and 2012, the USA adopted legislative and executive measures to allow enforcement and execution against the assets of the Government of Iran, including those of Bank Markazi to satisfy default judgments against Iran. In 2016, the Supreme Court of the USA in *Bank Markazi v Peterson and others* upheld the provision in the Iran Threat Reduction and Syria Human Rights Act that facilitated such execution of assets (Freehills, 2019).

On 14 June 2016, Iran lodged an application against the USA in the Case concerning Certain Iranian Assets before the ICJ. The case was filed shortly after the US Supreme Court's judgment in *Bank Markazi v. Peterson*, confirming that victims of terrorist attacks, in which Iran was allegedly involved, may execute domestic judgments against property of Iran's central bank (Janig & Mansour Fallah, 2016, 59, p. 1). Iran argues that those measures violate provisions of the 1955 Treaty of Amity, Economic Relations, and Consular Rights signed at Tehran on 15 August 1955, . . . have had, and/or are having a serious adverse impact upon the ability of Iran and of Iranian companies (including Iranian State-owned companies) to exercise their rights to control and enjoy their property, including property located outside the territory of Iran/within the territory of the USA.

In particular, Iran requested the Court to adjudge, order and declare that the USA had breached certain obligations under the Treaty of Amity and that it was under an obligation to make full reparation for the damage thus caused to Iran. As basis for the jurisdiction of the Court, the Applicant invoked Article XXI, paragraph 2, of the Treaty of Amity (Judgment, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, 2023, p. 16).

On 1 May 2017, the USA raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application.

On 13 February 2019, the Court rendered its Judgment on the preliminary objections raised by the USA. It found that it had jurisdiction to rule on part of the Application filed by the Islamic Republic of Iran, and that the Application was admissible. The Court found that the third preliminary objection, relating to "all claims of purported violations . . . that are predicated on treatment accorded to the Government of Iran or Bank Markazi", did not possess, in the circumstances of the case, an exclusively preliminary character (Judgment, 2019, p. 7).

On 30 March 2023, The Court, issued significant judgment on the merits of the case, where the Court rejected the most important part of Iran's claims in this case and declared that it has no jurisdiction to consider Iran's claims under Articles III, IV and V of the 1955 Treaty of Amity, to the extent that they relate to treatment accorded to Bank Markazi. But it also upheld other parts of Iran's claims that found the USA has violated its obligation for illegally blocking other assets and, accordingly, it ordered the USA to compensate Iranian companies for the injurious consequences of the violations of its international obligations (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, pp. 64-66.).

After ICJ's "Certain Iranian Assets" Judgment, Both the USA and Iran were quick to frame the decision as a victory. The USA issued a statement calling the Court's judgment a "major victory for the USA and victims of Iran's State-sponsored terrorism." Meanwhile, Iran's Foreign Ministry said that the ICJ's ruling proved Iran's "righteousness and the violations by the US government." (Razipour, 2023). Accordingly, we will divide this study into two sections, the first, relating to aspects of the USA's victory (Section I); the second, relating to aspects of Iran's victory in this judgment (Section II).

SECTION I:

Rejection the most important part of Iran's claims

In this particular case, the Court has made a significant judgment that upheld the most crucial aspect of the USA's defenses and rejected the majority of Iran's claims. In its judgment, the Court found that the USA side had successfully presented the necessary defenses, and it upheld these defenses while rejecting most of Iran's claims.

It is possible that this judgment may have significant geopolitical implications, especially in terms of the relationship between the USA and Iran.

I- Objection to the Court's jurisdiction *ratione materiae*: question whether Bank Markazi is a "company" within the meaning of the Treaty of Amity

In its 2019 judgment on preliminary objections, the ICJ rejected the USA's arguments and found that a third jurisdictional objection related to Bank Markazi was not of a preliminary nature. The Court thus deferred a final decision on this objection until a full factual record could be developed (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, 2019, pp. 35-40).

On 30 March 2023, the Court returned to the outstanding jurisdiction and concluded that it did not have jurisdiction over Iran's claims regarding alleged violations of the Treaty of Amity by the USA in relation to Bank Markazi. The Treaty only provides benefits to "nationals" (natural persons) and "companies". The USA successfully argued that Bank Markazi did not qualify as a "company" under the Treaty's meaning (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 21), thus excluding Iran's central bank from its protection. This jurisdictional decision was particularly significant because it concerned assets worth almost \$1.75 billion in addition to twelve blocked real properties of unknown value in major USA cities (Gladstone, 2016), which constituted the majority of Iran's monetary claims (Razipour, 2023).

In its decision, the Court gave particular consideration to the "nature" of Bank Markazi's activities, rather than its legal personality separate from the Government of Iran. Iran argued that Bank Markazi's investment in dematerialized bonds issued on the USA financial market and subsequent management of proceeds from those 22 securities qualified it as a "company" under the Treaty (Razipour, 2023).

However, the Court was not persuaded and held that the bank did not engage in a sufficient level of activities of a commercial character to be considered a "company" entitled to the Treaty's protections. The Court determined that Bank Markazi's operations in the USA are "part of the usual activity of a central bank and inseparable from its sovereign function" (Razipour, 2023).

II- Alleged violations of the Treaty of Amity

Iran have brought this case before the Court, alleging that the United States had breached its obligations under the Treaty of Amity. However, the Court ruled against the majority of Iran's claims. In its judgment of 2023, the Court rejected the majority of Iran's claims concerning alleged violations of the Treaty of Amity following:

A. Rejection some Iran's claims concerning alleged violations of Article III, paragraph 1, and Article IV, paragraph 1

Iran has argued that three other entities, IRISL Benelux NV, Bank Sepah International PLC and Bank Melli PLC U.K., were also affected by enforcement proceedings in the Heiser cases.

The Court observes, however, that IRISL Benelux NV was constituted under the laws of Belgium, while Bank Melli PLC U.K. and Bank Sepah International PLC were constituted under the laws of the United Kingdom. Consequently, these three entities are not companies constituted under the applicable laws of either High Contracting Party, as required by Article III, paragraph 1, of the Treaty of Amity. Therefore, the Court will not consider Iran's claims as they concern these three entities (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 47).

B. Rejection the Iran's claims concerning alleged violations of Article III, paragraph2

Iran argues that Article III, paragraph 2, reflects the obligation of each Contracting Party to provide nationals and companies of the other Contracting Party with "meaningful" access to courts, such that they can properly defend their rights. It asserts that the USA's measures have deprived Iranian companies of any possibility to have meaningful access to USA courts, by removing their right to recognition of separate juridical status and establishing their liability for judgments rendered against Iran in proceedings to which the companies were not parties. In its view, there could be no meaningful access when the outcome of enforcement proceedings was predetermined by the law. Iran argues that, as a matter of fact, Iranian companies are being treated in less favourable terms than companies of any third country (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 49).

The USA stresses that Iranian companies were at all times permitted to appear and present all their arguments before the courts in the USA. It considers that some companies' active participation in judicial proceedings, where they were represented by counsel and made legal submissions, is a sufficient basis for rejecting Iran's claims under this provision (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 49).

In its 2019 judgment on preliminary objections, when interpreting Article III, paragraph 2, the Court had already examined the phrase "to the end that prompt and impartial justice be done" (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, 2019, p. 32). In the circumstances of the present case, the Court found no violation committed by the USA. Although the application of law by U.S. courts was unfavorable to the Iranian companies, the ICJ noted that the rights of Iranian companies to appear before U.S. court, make legal submissions, and lodge appeals were unimpeded (Razipour, 2023).

C. Rejection the majority of Iran's claims concerning alleged violations of Article IV, paragraph 2

Iran argues that the USA violated Article IV, paragraph 2 of the Treaty of Amity by blocking, seizing or disposing of Iranian companies' property without compensation, which amounts to unlawful expropriation. Iran also claims that the USA breached its obligation to afford the most constant protection and security by removing legal defenses available to Iranian companies and making them liable for wrongful acts of Iran. Additionally, Iran asserts that the USA violated Article IV, paragraph 2 by indirectly taking property of Iranian companies through the earlier "blocking" of their assets (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 53).

Although the court Upholding some Iran's claims concerning alleged violations of Article IV, paragraph 2, as concerns the prohibition of takings except for a public purpose and with the prompt payment of just compensation, it rejected the majority of Iran's claims concerning alleged violations of Article IV, paragraph 2

Iran has identified property and interests in property which were affected in the context of several enforcement proceedings before USA courts (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America),

2023, p. 53). However, the Court found that Iran has not established that Iranian companies owned or had interests in those assets. Therefore, the Court did not consider this claim.

The Court also considered that Iran has failed to identify the property or interests in property of Iranian companies that were specifically affected by Executive Order 13599. Indeed, it has accepted that the main effect of Executive Order 13599, as concerns the cases challenged in these proceedings, was the blocking of Bank Markazi's assets, which is outside the Court's jurisdiction. Accordingly, the Court concludes that, in respect of Executive Order 13599, Iran has not substantiated its allegations in relation to takings under Article IV, paragraph 2, of the Treaty (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 54).

Finally, the Court has already concluded that the measures of the USA were in violation of its obligations under Article IV, paragraph 1. In the Court's view, the provisions of Article IV, paragraph 2, as concerns the most constant protection and security, were not intended to apply to situations covered by the provisions of Article IV, paragraph 1. Accordingly, the Court concludes that Iran has not established a violation by the USA of its obligations under Article IV, paragraph 2, as concerns the most constant protection and security (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 55).

D. Rejection the Iran's claims concerning alleged violations of Article V, paragraph 1

Iran claims that the measures taken by the USA have deprived Iranian companies of their right to dispose of their property, as defined in subparagraph 1 (c) of Article V. According to Iran, an act that seizes property violates the right to freely dispose of that property. Iran asserts that the first sentence of Article V, paragraph 1, establishes an unconditional right to dispose of property at any time, while the second sentence regarding most-favoured-nation treatment creates a separate obligation. The Applicant argues that this obligation has also been breached since Iranian companies and property have been treated less favourably than nationals and companies of third countries (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 56).

The Court ruled that Iran's claim that the USA deprived Iranian companies of their right to dispose of their property was unfounded. Iran's allegations were

based on the same facts presented in relation to Article IV, paragraph 2. The Court determined that measures constituting unlawful expropriation were not covered by Article V, paragraph 1. As the United States' measures were already found to constitute expropriation, the Court decided that Iran had not proven a violation of the right to dispose of property by the USA (Razipour, 2023).

E. Rejection the Iran's claims concerning alleged violations of Article VII, paragraph 1

Iran maintains that Article VII, paragraph 1 of the Treaty prohibits any restrictions on the making of payments and transfers of funds, with the exception of restrictions related to foreign exchange, which do not apply in this case. Iran further argues that paragraphs 2 and 3 of the Article only provide for arrangements for the application of those exceptions. According to Iran's interpretation, the USA violated Article VII, paragraph 1 by adopting legislative, executive, and judicial measures through which it attached, blocked, and confiscated funds belonging to Iranian entities and to Iran, thereby imposing restrictions on the making of payments, remittances, and other transfers of funds (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 25).

The Court did not accept Iran's interpretation of Article VII, paragraph 1 as a complete ban on any restrictions on the movement of capital. Instead, the Court interpreted the provision as reflecting Iran and the United States' intention to regulate exchange restrictions to maintain bilateral trade. As Iran did not accuse the USA of applying exchange restrictions, the Court dismissed Iran's allegations (Razipour, 2023).

III- REMEDIES

In its final submissions, Iran asked the Court three claims, having placed on record the alleged violations of the Treaty of Amity, where it upheld two of them:

“ . . . that the USA is consequently obliged to put an end to the situation brought about by the aforementioned violations of international law, by (a) ceasing those acts . . . , and (c) offering a formal apology to the Islamic Republic of Iran for those wrongful acts and injuries”(Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 62).

A. Cessation of internationally wrongful acts

Iran had requested the Court to order the USA to stop its conduct that violated the Treaty, after the Court had identified certain violations of the Treaty. However, the Court pointed out, based on the ILC Articles on State Responsibility, that it could only order the cessation of internationally wrongful acts "if the violated obligation is still in force." On 3 October 2018, the USA had given Iran advance notice of its withdrawal from the Treaty, resulting in its termination, and thus the Court concluded that the relevant obligations were no longer in force. As a result, the Court was unable to grant Iran's request for an order of cessation (Razipour, 2023).

B. Satisfaction

The Court considered that in some cases, an official apology from a state that has committed a wrongful act may be considered as a form of redress for the injured state, which is entitled to claim such relief after a determination of wrongdoing has been made (as stated in Article 37, paragraph 2 of the ILC Articles on State Responsibility). However, in this particular case, the Court has determined that the finding of wrongful acts committed by the USA in the present judgment is enough to provide satisfaction to the Applicant, and thus, a formal apology is not required (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, pp. 63,64).

SECTION II:

Upholding other parts of Iran's claims

This case involved many legal issues or claims brought by both sides. Although the Court upheld, in its judgment of 2023, the most important part of defences of USA and rejected the majority of Iran's claims, however, it rejected some defences of USA and upheld other parts of Iran's claims following:

I- Objection to admissibility based on the failure to exhaust local remedies

In its final submissions, the USA asks the Court to "dismiss as outside its jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to companies that have failed to exhaust

local remedies”(Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 25).

The Court rejected the objection raised by the USA regarding the admissibility of the case on the grounds of Iran's alleged failure to exhaust local remedies. According to customary international law, a State seeking to bring an international claim on behalf of its nationals through diplomatic protection must first attempt to exhaust available local remedies before the claim can be heard. However, this requirement can also be considered fulfilled if there are no local remedies that offer the affected individuals a reasonable chance to seek redress (Razipour, 2023).

In this case, the Court concluded that the Iranian entities “had no reasonable possibility of successfully asserting their rights in USA court proceedings” and rejected the United States’ challenge to admissibility based on a failure to exhaust local remedies (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 25).

II- Defence on the merits put forward by the USA

In its judgment of 2023, the Court rejected all defences on the merits put forward by the USA. This means that the Court has not accepted any of the arguments or legal reasoning raised by the USA to support its position:

A. Defence based on the “clean hands” doctrine

In its preliminary objections, the USA contended that Iran’s Application was inadmissible because Iran came to the Court with “unclean hands”. It alleged, in particular, that Iran had “sponsored and supported international terrorism” and had “taken destabilizing actions in contravention of nuclear non-proliferation . . . obligations” (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, 2019, p. 43).

The USA requested that the Court dismiss all of Iran's claims under the Treaty of Amity, arguing that Iran came to the Court with "unclean hands." The Court observed that it had never recognized "clean hands" as a customary or general principle of law, and that it approached the doctrine with caution. It noted, moreover, that the ILC declined to include the “clean hands” doctrine among the circumstances precluding wrongfulness in its Articles on the Responsibility of States for Internationally Wrongful Acts, on the ground that this “doctrine has been

invoked principally in the context of the admissibility of claims before international courts and tribunals, though rarely applied” (Commission, 2001, Vol. II, Part Two, p. 72).

Despite its reluctance to apply the doctrine, the Court stated that even if it were to apply "clean hands" in this case, there would need to be a nexus between the wrongful conduct attributed to Iran and its claims under the Treaty of Amity. The Court found that this necessary nexus was absent and rejected the United States' "unclean hands" defense (Razipour, 2023).

B. Defence based on abuse of rights

According to the USA, Iran's claims before the Court constitute an abuse of rights for two reasons. First, because Iran “seeks to extend its rights under the Treaty, a consular and commercial agreement, to circumstances that the Parties plainly never intended them to address”; and, second, because the Applicant invokes the Treaty for the sole purpose of circumventing its obligation to make reparation to USA victims of Iranian-sponsored terrorist acts (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 32).

Iran argues that the USA is merely relabeling as “abuse of rights” the “abuse of process” preliminary objection that the Court examined and rejected in its 2019 Judgment. According to Iran, the nature of the argument is the same and it is not enough to replace one term with another in order to submit the same question to the Court, without taking any account of the Court's reasons for rejecting the “abuse of process” preliminary objection in its earlier Judgment. It is based on the same legal grounds as those on which the preliminary objection rejected by the Court was based; and it has the same object, namely to preclude Iran from exercising its rights under the Treaty (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 32).

The Court rejected the USA's contention that Iran had committed an abuse of right by applying the Treaty of Amity to measures it considered to be unrelated to commerce. It found that could only accept the abuse of rights defence in this instance if it were demonstrated by the Respondent, on the basis of compelling evidence, that the Applicant seeks to exercise rights conferred on it by the Treaty of Amity for purposes other than those for which the rights at issue were established, and that it was doing so to the detriment of the Respondent. Accordingly, the Court considers that the USA has failed to make such a

demonstration (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 33).

C. Article XX, paragraph 1 (c) and (d), of the Treaty of Amity

In its preliminary objections, the USA invoked Article XX, paragraph 1 (c) and (d), of the Treaty of Amity to request that the Court dismiss as outside its jurisdiction all claims of Iran that the measures adopted by the USA under Executive Order 13599 was issued in 2012, violate the Treaty of Amity (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 33).

The provisions invoked read as follows:

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

(c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment; and

(d) necessary to fulfill 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 Court rejected the USA's argument that its Executive Order 13599, which blocked the property of the Iranian government and related financial entities, fell within two Treaty carve-outs: measures that regulate the production of or traffic in arms and measures that are necessary for a contracting party's essential security interests. The Court disagreed that the Executive Order fell within either of these two exceptions. It determined that the Executive Order was not necessary to protect the United States' essential security interests, as the justifications stated in the Executive Order primarily related to financial considerations rather than security concerns (Razipour, 2023).

II- Alleged violations of the Treaty of Amity

On this point concerning alleged violations of the Treaty of Amity, the Court found, in its judgment of 2023, that the USA had violated certain aspects of the Treaty of Amity. Therefore, it upheld other parts of Iran's claims following:

A- Upholding the Iran's claims concerning alleged violations of Article III, paragraph 1, and Article IV, paragraph 1

Iran argues that, through the legislative, executive and judicial measures at issue, the USA has deprived Iranian companies of the independent legal personality conferred on them by their juridical status and conflated their assets with those of the Iranian State, in violation of Article III, paragraph 1, of the Treaty of Amity. Iran also argues that, by abrogating Iranian companies' separate legal personality, removing a legal defence otherwise available to them, and making them liable for purportedly wrongful acts of Iran that were the subject of judgments in proceedings to which they were not parties, the USA has failed to afford Iranian companies the treatment prescribed by Article IV, paragraph 1, of the Treaty (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 40).

Iran contends that, under Article III, paragraph 1, of the Treaty of Amity, a company's own legal personality must be recognized and its constituent elements, including its assets, must not be conflated with those of other legal persons (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 41).

The USA argues that there has been no discrimination, since the measures are applicable to all States designated as a sponsor of terrorism and are not limited to Iran (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 43).

The Court recalls that, in its 2019 Judgment, it examined the definition of the term "company", as reflected in the third sentence of Article III, paragraph 1, of the Treaty (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, 2019, p. 37). Accordingly, the Court considers that the expression "juridical status" refers to the companies' own legal personality. The recognition of a company's own legal personality entails the legal existence of the company as an entity that is distinct from other natural or legal persons, including States (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 43).

In the present case, Section 201 (a) of TRIA refers to "the blocked assets of any agency or instrumentality" (emphasis added). Section 1610 (g) (1) of the FSIA refers to "the property of an agency or instrumentality", expressly including "property that is a separate juridical entity or is an interest held directly or

indirectly in a separate juridical entity” (emphasis added). Both provisions employ very broad terms, which are capable of encompassing any legal entity, regardless of Iran’s type or degree of control over them. In addition, by dispensing with the requirement that the relevant assets were previously “blocked”, Section 1610 (g) (1) ensures that any assets of those legal entities are available for attachment and execution. Thus, by design, these legislative measures plainly disregarded the Iranian companies’ own legal personality, making it possible to impair their legally acquired rights and interests, namely those related to their ownership of, or interest in, the assets liable to attachment and execution (Judgment, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, 2023, p. 43).

In light of the foregoing, the Court considers that, even assuming that the legislative provisions adopted by the USA and their application by USA courts pursued a legitimate public purpose, they caused an impairment of the Iranian companies’ rights that was manifestly excessive when measured against the protection afforded to the purpose invoked. The Court therefore concludes that the legislative and judicial measures were unreasonable, in violation of the obligation under Article IV, paragraph 1, of the Treaty of Amity (Judgment, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, 2023, p. 47).

Additionally, the Court found Executive Order 13599 to be manifestly excessive in relation to the purpose of responding to Iran’s “sustained support of terrorist acts” because it applied in an overinclusive manner to “any Iranian financial institution” (Razipour, 2023). Since the Court has concluded that the measures adopted by the USA are “unreasonable”, it is not necessary to examine separately whether they are “discriminatory”. Neither is it necessary to consider the other grounds on which Iran has relied to claim breaches of Article IV, paragraph 1, by the USA (Judgment, *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, 2023, p. 48).

B. Upholding some Iran's claims concerning alleged violations of Article IV, paragraph 2

Although the court rejected the majority of Iran's claims concerning alleged violations of Article IV, paragraph 2, it concludes that the USA has violated its obligations under Article IV, paragraph 2, of the Treaty of Amity, as concerns the prohibition of takings except for a public purpose and with the prompt payment of just compensation.

The Court has already concluded that, in the circumstances of the present case, Section 201 (a) of TRIA and Section 1610 (g) (1) of the FSIA, as well as their application by USA courts(Grandaubert, 2019), were unreasonable measures in violation of the obligation under Article IV, paragraph 1, of the Treaty of Amity. Reasonableness is one of the considerations that limit the exercise of the governmental powers in this respect. It follows from this element of unreasonableness, which is found in the legislative provisions and which extends to their judicial enforcement, that the measures adopted by the USA did not constitute a lawful exercise of regulatory powers and amounted to compensable expropriation.

For these reasons, the Court concludes that the application of Section 201 (a) of TRIA and Section 1610 (g) (1) of the FSIA by USA courts amounted to takings without compensation of the property and interests in property of Iranian companies, in violation of the obligations under Article IV, paragraph 2, of the Treaty (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 54).

C. Upholding Iran's claims concerning alleged violations of Article X, paragraph 1

Iran claims that the treatment of Iranian companies and financial institutions violates Iran's right to freedom of commerce under Article X, paragraph 1 of the Treaty. It argues that the provision covers modern financial operations and protection against legislative or executive acts that result in the automatic blocking or seizure of property. Despite the territorial limitation, Iran maintains that there was limited commerce between the Parties' territories and identifies contractual rights and debts owed by US companies to Iranian companies (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 59).

The Court returned to its jurisprudence in the 2019 Judgment, when it restated that the term "commerce" as used in Article X, paragraph 1, of the Treaty of Amity, extends beyond just maritime commerce and encompasses all commercial exchanges(Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, 2019, p. 34). The Court also emphasized that commercial treaties cover a wide range of matters that are related to commerce. This interpretation echoes the Court's previous decision in the Oil Platforms case, which held that the term "commerce" in Article X, paragraph 1,

encompasses all commercial activities, including activities that are integrally related to commerce and not just limited to the immediate act of buying and selling (Judgment O. P., 1996).

The Court found that Executive Order 13599, which imposed a comprehensive block on property, constituted a significant impediment to any financial transactions involving Iran or Iranian financial institutions within the USA. Furthermore, the attachment and seizure of assets belonging to Iranian state-owned companies under the FSIA also constituted an actual impediment to the companies' ability to engage in commercial activities. Lastly, the application of both the FSIA and TRIA by USA courts were deemed to be a significant interference with Iranian commerce within the USA (Razipour, 2023).

III- REMEDIES (Compensation for the injury suffered)

In its final submissions, Iran asked the Court three claims, having placed on record the alleged violations of the Treaty of Amity, where it upheld one of them:

“ . . . that the USA is consequently obliged to put an end to the situation brought about by the aforementioned violations of international law, by ... (b) making full reparation for the injury caused by those acts, in an amount to be determined in a later phase of these proceedings, ...” (Judgment, Certain Iranian Assets (Islamic Republic of Iran v. United States of America), 2023, p. 62).

On this question, the Court recognized that the USA is obligated to compensate Iran for the violations it committed. If Iran and the USA are unable to come to an agreement on the amount within two years, the Court will determine the amount due in a subsequent phase of the proceedings (Razipour, 2023).

Conclusion:

As a conclusion, Iran and the USA have confronted each other five times in the I.C.J, of which the last three cases relate to the interpretation or application of the same treaty, but with different facts. In this case it seems that the USA was really focusing on the merit stage.

Iran handed a legal victory with an international court ruling that some of the USA's measures were illegal, while the USA handed the most important legal and financial victory close to \$1.75 billion dollars in assets tied to Iran's central bank.

Although both the USA and Iran have declared the court's decision as a victory for their respective sides, it remains unclear whether this allegation holds true. However, the satisfaction of both parties to the court's decision is an objectively positive outcome of the Court.

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