INTERNATIONAL COURT OF JUSTICE

YEAR 2019

2019
13 February
General List
No. 164

13 February 2019

CERTAIN IRANIAN ASSETS

(ISLAMIC REPUBLIC OF IRAN *v.* UNITED STATES OF AMERICA)

PRELIMINARY OBJECTIONS

Factual background.

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Jurisdiction — Article XXI (2) of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (hereinafter the "Treaty").

Not contested that Treaty in force at date of Application and that several of conditions in Article XXI (2) of Treaty are met — Dispute has arisen between Iran and United States — Has not been possible to adjust that dispute by diplomacy — No agreement to settle dispute by some other pacific means.

Parties disagree on whether dispute is one "as to the interpretation or application" of Treaty — Court observes that a particular dispute often arises in context of broader disagreement between parties — Court must ascertain whether acts complained of fall within provisions of Treaty and whether, as a consequence, dispute is one which the Court has jurisdiction ratione materiae *to entertain.*

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First objection to jurisdiction: Iran's claims arising from measures taken by United States to block Iranian assets pursuant to Executive Order 13599.

Question whether blocking measures fall outside scope of Treaty by virtue of Article XX (1) (c), *which states that Treaty shall not preclude measures regulating production or traffic in arms, ammunition and implements of war, and Article XX (1)* (d), *which states that Treaty shall not preclude measures necessary to protect essential security interests — Court has previously observed that Treaty contains no provision expressly excluding certain matters from its jurisdiction — Court has previously considered that Article XX (1)* (d) *did not restrict jurisdiction but was confined to affording a possible defence on the merits — No reason for Court to depart from earlier findings — Same interpretation applies to Article XX (1)* (c) *— First objection to jurisdiction rejected.*

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Second objection to jurisdiction: Iran's claims concerning sovereign immunities.

Question whether claims predicated on purported failure to accord sovereign immunity are outside Court's jurisdiction — Court examines provisions of the Treaty on which Iran relies to ascertain whether question of sovereign immunities can be considered as falling within scope of Treaty.

Article IV (2), which guarantees protection and security to property of nationals and companies of either State in no case less than that required by international law — Meaning of phrase "required by international law" — Viewed in light of object and purpose of Treaty, the "international law" in question is that which defines minimum standard of protection for property belonging to "nationals" and "companies" of one Party engaging in economic activities within territory of the other — Context of Article IV indicates that purpose of this provision is to guarantee rights and protections of natural persons and legal entities engaged in commercial activities — Provision does not incorporate customary rules on sovereign immunities.

Article XI (4), which excludes from sovereign immunity publicly owned or controlled enterprises of either Party engaging in commercial or industrial activities within territory of other Party — Provision does not affect sovereign immunities under customary international law by State entities when they engage in activities jure imperii *— Provision does not implicitly guarantee, through an* a contrario *interpretation, sovereign immunity of public entities engaged in activities* jure imperii *— Object and purpose of Treaty support this interpretation — Provision does not incorporate sovereign immunities.*

Article III (2), which guarantees freedom of access to courts of other State on terms no less favourable than those applicable to nationals and companies of third States — Not linked to

sovereign immunities because breach of international law on sovereign immunities would not be capable of having impact on compliance with Article III (2) — Provision not seeking to guarantee substantive or procedural rights that a company might intend to pursue before courts — Nothing in ordinary meaning of provision, in its context and in light of object and purpose of the Treaty, to suggest that it entails an obligation to uphold sovereign immunities.

Article IV (1), which concerns fair and equitable treatment of nationals and companies of both Parties, and prohibits unreasonable or discriminatory measures — Similar reasoning as for Article IV (2) — Provision does not include an obligation to respect sovereign immunities.

Article X (1), which provides for freedom of commerce and navigation — Court has previously ruled that "commerce" in Article X (1) includes commercial exchanges in general, not limited to acts of purchase or sale, and covers a wide range of ancillary matters — Nevertheless, cannot cover matters having no or too tenuous connection with commercial relations between Parties — Violation of sovereign immunities to which certain State entities are said to be entitled in exercise of activities jure imperii *not capable of impeding freedom of commerce and thus does not fall within scope of this provision*.

Claims based on alleged violations of sovereign immunities do not fall within scope of Treaty's compromissory clause and Court lacks jurisdiction to consider them — Second objection to jurisdiction upheld.

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Third objection to jurisdiction: Iran's claims alleging violations of Articles III, IV and V of the Treaty in relation to Bank Markazi.

Rights and protections guaranteed by Articles III, IV and V to "companies" of a Contracting Party — Definition of "company" in Article III (1) — Entity must have its own legal personality, conferred on it by law of the State where it was created — Definition makes no distinction between private and public enterprises — Bank Markazi endowed with its own legal personality by Iran's Monetary and Banking Act — Fact that Bank Markazi wholly owned by Iran does not, in itself, exclude it from category of "companies" within meaning of Treaty.

Definition of "company" in Article III (1) to be read in context and in light of object and purpose of Treaty — Treaty is aimed at affording protections to companies engaging in activities of a commercial nature — Question whether Bank Markazi is a "company" to be determined by reference to nature of its activities — Entity carrying out exclusively sovereign activities cannot be characterized as a "company" — Nothing to preclude a single entity from engaging in both commercial and sovereign activities.

Question of nature of activities of Bank Markazi in the United States — Iran's Monetary and Banking Act not discussed in detail by Parties — Court does not have before it all facts necessary

to determine whether Bank Markazi's activities at relevant time would lead to its characterization as a "company" within meaning of Treaty — Elements largely of factual nature and closely linked to merits — Third objection to jurisdiction does not possess, in circumstances of the case, an exclusively preliminary character.

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Objections to admissibility: Abuse of process and "unclean hands".

Abuse of process — Initially characterized as "abuse of right" by United States — Recharacterization as "abuse of process" during oral proceedings does not constitute new objection — Court should reject claim based on valid title of jurisdiction on grounds of abuse of process only in exceptional circumstances — No exceptional circumstances in the present case.

"Unclean hands" — Court notes that the United States has not argued that Iran has violated Treaty — Without having to take a position on the "clean hands" doctrine, even if it were shown that Applicant's conduct was not beyond reproach, this would not be sufficient per se to uphold "unclean hands" objection to admissibility — Conclusion without prejudice to question whether United States' allegations could eventually provide a defence on merits.

Objections to admissibility rejected.

JUDGMENT

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, GAJA, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; *Judges* ad hoc BROWER, MOMTAZ; *Registrar* COUVREUR.

In the case concerning certain Iranian assets,

between

the Islamic Republic of Iran,

represented by

Mr. Mohsen Mohebi, International Law Adviser to the President of the Islamic Republic of Iran and Head of the Centre for International Legal Affairs, Associate Professor of Public International Law and Arbitration at the Azad University, Science and Research Branch, Tehran,

as Agent, Counsel and Advocate;

Mr. Mohammad H. Zahedin Labbaf, Agent of the Islamic Republic of Iran to the Iran-US Claims Tribunal, Director of the Centre for International Legal Affairs of the Islamic Republic of Iran, The Hague,

as Co-Agent and Counsel;

Mr. Vaughan Lowe, QC, member of the English Bar, Essex Court Chambers, Emeritus Professor of International Law, University of Oxford, member of the Institut de droit international,

Mr. Alain Pellet, Emeritus Professor at the University Paris Nanterre, former member and former Chairman of the International Law Commission, member of the Institut de droit international,

Mr. Jean-Marc Thouvenin, Professor at the University Paris Nanterre, Secretary General of the Hague Academy of International Law, member of the Paris Bar, Sygna Partners,

Mr. Samuel Wordsworth, QC, member of the English Bar, member of the Paris Bar, Essex Court Chambers,

Mr. Sean Aughey, member of the English Bar, 11KBW,

Mr. Luke Vidal, member of the Paris Bar, Sygna Partners,

Ms Philippa Webb, Associate Professor at King's College London, member of the English Bar, member of the New York Bar, 20 Essex Street Chambers,

as Counsel and Advocates;

Mr. Jean-Rémi de Maistre, PhD candidate, Centre de droit international de Nanterre,

Mr. Romain Piéri, member of the Paris Bar, Sygna Partners,

as Counsel;

Mr. Hadi Azari, Legal Adviser to the Centre for International Legal Affairs of the Islamic Republic of Iran, Assistant Professor of Public International Law at Kharazmi University,

Mr. Ebrahim Beigzadeh, Senior Legal Adviser to the Centre for International Legal Affairs of the Islamic Republic of Iran, Professor of Public International Law at Shahid Beheshti University,

Mr. Mahdad Fallah Assadi, Legal Adviser to the Centre for International Legal Affairs of the Islamic Republic of Iran,

Mr. Mohammad Jafar Ghanbari Jahromi, Deputy Head of the Centre for International Legal Affairs of the Islamic Republic of Iran, Associate Professor of Public International Law at Shahid Beheshti University,

Mr. Mohammad H. Latifian, Legal Adviser to the Centre for International Legal Affairs of the Islamic Republic of Iran,

as Legal Advisers,

and

the United States of America,

represented by

Mr. Richard C. Visek, Principal Deputy Legal Adviser, United States Department of State,

as Agent, Counsel and Advocate;

Mr. Paul B. Dean, Legal Counselor, United States Embassy in the Kingdom of the Netherlands,

Mr. David M. Bigge, Deputy Legal Counselor, United States Embassy in the Kingdom of the Netherlands,

as Deputy Agents and Counsel;

Sir Daniel Bethlehem, QC, member of the English Bar, 20 Essex Street Chambers,

Ms Laurence Boisson de Chazournes, Professor of International Law, University of Geneva, associate member of the Institut de droit international,

Mr. Donald Earl Childress III, Counselor on International Law, United States Department of State,

Ms Lisa J. Grosh, Assistant Legal Adviser, United States Department of State,

Mr. John D. Daley, Deputy Assistant Legal Adviser, United States Department of State,

Ms Emily J. Kimball, Attorney Adviser, United States Department of State,

as Counsel and Advocates;

Ms Terra L. Gearhart-Serna, Attorney Adviser, United States Department of State,

Ms Catherine L. Peters, Attorney Adviser, United States Department of State,

Ms Shubha Sastry, Attorney Adviser, United States Department of State,

Mr. Niels A. Von Deuten, Attorney Adviser, United States Department of State,

as Counsel;

Mr. Guillaume Guez, Assistant, University of Geneva, Faculty of Law,

Mr. John R. Calopietro, Paralegal Supervisor, United States Department of State,

Ms Mariama N. Yilla, Paralegal, United States Department of State,

Ms Abby L. Lounsberry, Paralegal, United States Department of State,

Ms Catherine I. Gardner, Assistant, United States Embassy in the Kingdom of the Netherlands,

as Assistants,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 14 June 2016, the Government of the Islamic Republic of Iran (hereinafter "Iran") filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter the "United States") with regard to a dispute concerning alleged violations by the United States of the Treaty of Amity, Economic Relations, and Consular Rights, which was signed by the two States in Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter the "Treaty of Amity" or "Treaty").

2. In its Application, Iran seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the Treaty of Amity.

3. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of the United States; and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the filing of the Application.

4. By letters dated 23 June 2016, the Registrar informed both Parties that the Member of the Court of United States nationality, referring to Article 24, paragraph 1, of the Statute, had notified the Court of her intention not to participate in the decision of the case. Pursuant to Article 31 of the Statute and Article 37, paragraph 1, of the Rules of Court, the United States chose Mr. David Caron to sit as judge *ad hoc* in the case. Judge Caron having passed away on 20 February 2018, the United States chose Mr. Charles Brower to sit as judge *ad hoc* in the case.

5. Since the Court included upon the Bench no judge of Iranian nationality, Iran proceeded to exercise the right conferred upon it by Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Djamchid Momtaz.

6. By an Order dated 1 July 2016, the Court fixed 1 February 2017 and 1 September 2017 as the respective time-limits for the filing of a Memorial by Iran and a Counter-Memorial by the United States. The Memorial of Iran was filed within the time-limit thus prescribed.

7. By a letter dated 30 March 2017, the United States, invoking Article 49 of the Statute and Articles 50 and 62 of the Rules, requested that the Court call upon Iran to produce, or arrange for the United States to have access to, "certain documents relevant to the claims Iran ha[d] asserted against the United States, which [had] not [been] included in the Annexes to Iran's Memorial, and to which the United States lack[ed] access", in particular pleadings and related documents that had been filed confidentially with the United States District Court for the Southern District of New York in the *Deborah Peterson et al.* v. *Islamic Republic of Iran* case (hereinafter, the "*Peterson* case").

By a second letter dated 30 March 2017, the United States requested that the Court extend the time-limit for the filing of preliminary objections to 16 June 2017 or a date not less than 45 days after the United States obtained the documents from the *Peterson* case.

By a letter dated 12 April 2017, Iran objected to these two requests.

By letters dated 19 April 2017, the Registrar informed the Parties that, at that stage of the proceedings, the Court had decided not to use its powers under Article 49 of the Statute to call upon Iran to produce the documents from the *Peterson* case, and that, consequently, it had also decided to reject the request for an extension of the time-limit for the filing of preliminary objections.

By letter dated 1 May 2017, the United States informed the Court that it would petition the federal court concerned to obtain access to the requested documents in the *Peterson* case and that it would seek to present to the Court any additional relevant material.

8. On 1 May 2017, within the time-limit prescribed by Article 79, paragraph 1, of the Rules, the United States presented preliminary objections to the admissibility of the Application and the jurisdiction of the Court. Consequently, by an Order of 2 May 2017, the President of the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules, the proceedings on the merits were

suspended, fixed 1 September 2017 as the time-limit within which Iran could present a written statement of its observations and submissions on the preliminary objections raised by the United States. Iran filed such a statement within the time-limit so prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

9. By letter dated 24 August 2017, the United States informed the Court that the federal court in the *Peterson* case had directed the parties to file public versions of the documents to which it had sought access (see paragraph 7 above), and announced its intention to file these public versions with the Court, adding that they would constitute publications "readily available" within the meaning of Article 56, paragraph 4, of the Rules.

By letter dated 30 August 2017, Iran noted the content of the United States' letter of 24 August 2017 and indicated that it wished to reserve all its rights, in particular its right "to respond to any application by the United States to introduce new evidence and/or written submissions commenting upon evidence, outside the timetable fixed by the Court".

On 19 September 2017, the United States filed certain documents from the *Peterson* case, which had been made public on 31 August 2017. In an accompanying letter, the United States indicated that these documents were available on the website of the federal court concerned and that they would also be published on the website of the United States Department of State.

By letter dated 16 October 2017, Iran objected to the filing of the documents from the *Peterson* case, arguing that the United States had acted in violation of Article 79, paragraphs 3 to 8, of the Rules of Court and that these documents were not publicly available.

By letter dated 3 November 2017, the United States confirmed that it had placed the documents from the *Peterson* case on the website of the United States Department of State.

10. By letter dated 3 October 2018, the United States indicated that it considered it necessary to include four new documents in the case file. Given the nature of the said documents and the absence of objection from Iran, the Court decided to grant the United States' request.

11. Pursuant to Article 53, paragraph 2, of its Rules, the Court, after ascertaining the views of the Parties, decided that copies of the written pleadings, including the Memorial of Iran, and the documents annexed would be made accessible to the public on the opening of the oral proceedings.

12. Public hearings on the preliminary objections raised by the United States were held from 8 to 12 October 2018, at which the Court heard the oral arguments and replies of:

For the United States: Mr. Richard C. Visek,
Ms Lisa J. Grosh,
Sir Daniel Bethlehem,
Ms Emily J. Kimball,
Mr. John D. Daley,
Ms Laurence Boisson de Chazournes,
Mr. Donald Earl Childress III.

For Iran: Mr. Mohsen Mohebi,
Mr. Luke Vidal,
Mr. Vaughan Lowe,
Ms Philippa Webb,
Mr. Jean-Marc Thouvenin,
Mr. Samuel Wordsworth,
Mr. Sean Aughey,
Mr. Alain Pellet.

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13. In the Application, the following claims were made by the Islamic Republic of Iran:

"On the basis of the foregoing, and while reserving the right to supplement, amend or modify the present Application in the course of further proceedings in the case, Iran respectfully requests the Court to adjudge, order and declare as follows:

(a) That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by Iran;

(b) That by its acts, including the acts referred to above and in particular its *(a)* failure to recognise the separate juridical status (including the separate legal personality) of all Iranian companies including Bank Markazi, and *(b)* unfair and discriminatory treatment of such entities, and their property, which impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights, and *(c)* failure to accord to such entities and their property the most constant protection and security that is in no case less than that required by international law, *(d)* expropriation of the property of such entities, and *(e)* failure to accord to such entities freedom of access to the US courts, including the abrogation of the immunities to which Iran and Iranian State-owned companies, including Bank Markazi, and their property, are entitled under customary international law and as required by the Treaty of Amity, and *(f)* failure to respect the right of such entities to acquire and dispose of property, and *(g)* application of restrictions to such entities on the making of payments and other transfers of funds to or from the USA, and *(h)* interference with the freedom of commerce, the USA has breached its obligations to Iran, *inter alia*, under Articles III (1), III (2), IV (1), IV (2), V (1), VII (1) and X (1) of the Treaty of Amity;

(c) That the USA shall ensure that no steps shall be taken based on the executive, legislative and judicial acts (as referred to above) at issue in this case which are, to the extent determined by the Court, inconsistent with the obligations of the USA to Iran under the Treaty of Amity;

(d) That Iran and Iranian State-owned companies are entitled to immunity from the jurisdiction of the US courts and in respect of enforcement proceedings in the USA, and that such immunity must be respected by the USA (including US courts), to the extent established as a matter of customary international law and required by the Treaty of Amity;

(e) That the USA (including the US courts) is obliged to respect the juridical status (including the separate legal personality), and to ensure freedom of access to the US courts, of all Iranian companies, including State-owned companies such as Bank Markazi, and that no steps based on the executive, legislative and judicial acts (as referred to above), which involve or imply the recognition or enforcement of such acts shall be taken against the assets or interests of Iran or any Iranian entity or national;

(f) That the USA is under an obligation to make full reparations to Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the USA; and

(g) Any other remedy the Court may deem appropriate."

14. In the written proceedings on the merits, the following submissions were presented on behalf of the Government of the Islamic Republic of Iran in its Memorial:

"On the basis of the foregoing, and reserving its right to supplement, amend or modify the present request for relief in the course of the proceedings in this case, Iran respectfully requests the Court to adjudge, order and declare:

(a) That the United States' international responsibility is engaged as follows:

(i) That by its acts, including the acts referred to above and in particular its failure to recognise the separate juridical status (including the separate legal personality) of all Iranian companies including Bank Markazi, the United States has breached its obligations to Iran, *inter alia*, under Article III (1) of the Treaty of Amity;

(ii) That by its acts, including the acts referred to above and in particular its: *(a)* unfair and discriminatory treatment of such entities, and their property, which impairs the legally acquired rights and interests of such entities including enforcement of their contractual rights, and *(b)* failure to accord to such entities and their property the most constant protection and security that is in no case less than that required by international law, and *(c)* expropriation of the property of such entities, and its failure to accord to such entities freedom of access to the U.S. courts, including the abrogation of the immunities to which Iran and Iranian State-owned companies, including Bank Markazi, and their property, are entitled under customary international law and as required by the 1955 Treaty of Amity, and *(d)* failure to respect the right of such entities to acquire and dispose of property, the United States

has breached its obligations to Iran, *inter alia*, under Articles III (2), IV (1), IV (2), V (1) and XI (4) of the Treaty of Amity;

(iii) That by its acts, including the acts referred to above and in particular its: *(a)* application of restrictions to such entities on the making of payments and other transfers of funds to or from the United States, and *(b)* interference with the freedom of commerce, the United States has breached its obligations to Iran, *inter alia*, under Articles VII (1) and X (1) of the Treaty of Amity;

(b) That the United States shall cease such conduct and provide Iran with an assurance that it will not repeat its unlawful acts;

(c) That the United States shall ensure that no steps shall be taken based on the executive, legislative and judicial acts (as referred to above) at issue in this case which are, to the extent determined by the Court, inconsistent with the obligations of the United States to Iran under the 1955 Treaty of Amity;

(d) That the United States shall, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other authorities infringing the rights, including respect for the juridical status of Iranian companies, and the entitlement to immunity which Iran and Iranian State-owned companies, including Bank Markazi, enjoy under the 1955 Treaty of Amity and international law cease to have effect;

(e) That Iran and Iranian State-owned companies are entitled to immunity from the jurisdiction of the U.S. courts and in respect of enforcement proceedings in the United States, and that such immunity must be respected by the United States (including the U.S. courts), to the extent required by the 1955 Treaty of Amity and international law;

(f) That the United States (including the U.S. courts) is obliged to respect the juridical status (including the separate legal personality), and to ensure freedom of access to the U.S. courts, of all Iranian companies, including State-owned companies such as Bank Markazi, and that no steps based on the executive, legislative and judicial acts (as referred to above), which involve or imply the recognition or enforcement of such acts shall be taken against the assets or interests of Iran or any Iranian companies[;]

(g) That the United States is under an obligation to make full reparation to Iran for the violation of its international legal obligations in a form and in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves its right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

(h) Any other remedy the Court may deem appropriate."

15. In the Preliminary Objections, the following submissions were presented on behalf of the Government of the United States of America:

> "In light of the foregoing, the United States of America requests that the Court uphold the objections set forth above as to the admissibility of Iran's claims and the jurisdiction of the Court, and decline to entertain the case. Specifically, the United States of America requests that the Court:
>
> *(a)* Dismiss Iran's claims in their entirety as inadmissible.
>
> *(b)* Dismiss as outside the Court's jurisdiction all claims that U.S. measures that block or freeze assets of the Iranian government or Iranian financial institutions (as defined in Executive Order 13599) violate any provision of the Treaty.
>
> *(c)* Dismiss as outside the Court's jurisdiction all claims, brought under any provision of the Treaty of Amity, that are predicated on the United States' purported failure to accord sovereign immunity from jurisdiction and/or enforcement to the Government of Iran, Bank Markazi, or Iranian State-owned entities.
>
> *(d)* Dismiss as outside the Court's jurisdiction all claims of purported violations of Articles III, IV, or V of the Treaty that are predicated on treatment accorded to the Government of Iran or to Bank Markazi."

16. In its Observations and Submissions on the Preliminary Objections, the following submissions were presented on behalf of the Government of the Islamic Republic of Iran:

> "For the reasons given above, the Islamic Republic of Iran requests that the Court:
>
> *(a)* Dismiss the preliminary objections submitted by the United States in its submission dated 1 May 2017, and
>
> *(b)* Decide that it has jurisdiction to hear the claims in the Application by the Islamic Republic of Iran dated 14 June 2016, and proceed to hear those claims."

17. At the oral proceedings on the preliminary objections, the following submissions were presented by the Parties:

On behalf of the Government of the United States of America,

at the hearing of 11 October 2018:

> "For the reasons explained during these hearings and any other reasons the Court might deem appropriate, the United States of America requests that the Court

uphold the U.S. objections set forth in its written submissions and at this hearing as to the admissibility of Iran's claims and the jurisdiction of the Court, and decline to entertain the case. Specifically, the United States of America requests that the Court:

(a) Dismiss Iran's claims in their entirety as inadmissible;

(b) Dismiss as outside the Court's jurisdiction all claims that U.S. measures that block the property and interests in property of the Government of Iran or Iranian financial institutions (as defined in Executive Order 13599 and regulatory provisions implementing Executive Order 13599) violate any provision of the Treaty;

(c) Dismiss as outside the Court's jurisdiction all claims, brought under any provision of the Treaty of Amity, that are predicated on the United States' purported failure to accord sovereign immunity from jurisdiction and/or enforcement to the Government of Iran, Bank Markazi, or Iranian State-owned entities; and

(d) Dismiss as outside the Court's jurisdiction all claims of purported violations of Articles III, IV, or V of the Treaty of Amity that are predicated on treatment accorded to the Government of Iran or Bank Markazi."

On behalf of the Government of the Islamic Republic of Iran,

at the hearing of 12 October 2018:

"The Islamic Republic of Iran requests that the Court adjudge and declare:

(a) that the preliminary objections submitted by the United States are rejected in their entireties, and

(b) that it has jurisdiction to hear the claims in the Application by the Islamic Republic of Iran dated 14 June 2016 and proceed to hear those claims."

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I. FACTUAL BACKGROUND

18. The Court recalls that, on 15 August 1955, the Parties signed a "Treaty of Amity, Economic Relations, and Consular Rights", which entered into force on 16 June 1957 (see paragraph 1 above).

19. Iran and the United States ceased diplomatic relations in 1980, following the Iranian revolution in early 1979 and the seizure of the United States Embassy in Tehran on 4 November 1979.

20. In October 1983, United States Marine Corps barracks in Beirut, Lebanon, were bombed, killing 241 United States servicemen who were part of a multinational peacekeeping force. The United States claims that Iran is responsible for this bombing and for subsequent acts of terrorism and violations of international law; Iran rejects these allegations.

21. In 1984, the United States designated Iran as a "State sponsor of terrorism", a designation which has been maintained ever since.

22. In 1996, the United States amended its Foreign Sovereign Immunities Act (hereinafter the "FSIA") so as to remove the immunity from suit before its courts of States designated as "State sponsors of terrorism" in certain cases involving allegations of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support for such acts (Section 1605 *(a)* (7) of the FSIA); it also provided exceptions to immunity from execution applicable in such cases (Sections 1610 *(a)* (7) and 1610 *(b)* (2) of the FSIA). Plaintiffs then began to bring actions against Iran before United States courts for damages arising from deaths and injuries caused by acts allegedly supported, including financially, by Iran. These actions gave rise in particular to the *Peterson* case, concerning the above-mentioned bombing of the United States barracks in Beirut (see paragraph 20 above). Iran declined to appear in these lawsuits on the ground that the United States legislation was in violation of the international law on State immunities.

23. In 2002, the United States adopted the Terrorism Risk Insurance Act (hereinafter the "TRIA"), which established enforcement measures for judgments entered following the 1996 amendment to the FSIA. In particular, Section 201 of the TRIA provides as a general rule that, in every case in which a person has obtained a judgment in respect of an act of terrorism or falling within the scope of Section 1605 *(a)* (7) of the FSIA, the assets of a "terrorist party" (defined to include, among others, designated "State sponsors of terrorism") previously blocked by the United States Government — "including the blocked assets of any agency or instrumentality of that terrorist party" — shall be subject to execution or attachment in aid of execution.

24. In 2008, the United States further amended the FSIA, enlarging, *inter alia*, the categories of assets available for the satisfaction of judgment creditors, in particular to include all property of Iranian State-owned entities, whether or not that property had previously been "blocked" by the United States Government, and regardless of the degree of control exercised by Iran over those entities (Section 1610 *(g)* of the FSIA).

25. In 2012, the President of the United States issued Executive Order 13599, which blocked all assets ("property and interests in property") of the Government of Iran, including those of the Central Bank of Iran (Bank Markazi) and of financial institutions owned or controlled by Iran, where such assets are within United States territory or "within the possession or control of any United States person, including any foreign branch".

26. Also in 2012, the United States adopted the Iran Threat Reduction and Syria Human Rights Act, Section 502 of which, *inter alia*, made the assets of Bank Markazi subject to execution in order to satisfy default judgments against Iran in the *Peterson* case. Bank Markazi challenged the validity of this provision before United States courts; the Supreme Court of the United States ultimately upheld its constitutionality (*Bank Markazi* v. *Peterson et al.*, U.S. Supreme Court, 20 April 2016, Supreme Court Reporter, Vol. 136, p. 1310 (2016)).

27. Following the measures taken by the United States, many default judgments and substantial damages awards have been entered by United States courts against the State of Iran and, in some cases, against Iranian State-owned entities. Further, the assets of Iran and Iranian State-owned entities, including Bank Markazi, are now subject to enforcement proceedings in various cases in the United States or abroad, or have already been distributed to judgment creditors.

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28. The United States has raised several preliminary objections to the jurisdiction of the Court and to the admissibility of the Application. The Court will first deal with issues related to its jurisdiction.

II. JURISDICTION

29. Iran invokes as a basis of jurisdiction in the present case Article XXI, paragraph 2, of the Treaty of Amity, which provides:

> "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."

30. The Court begins by noting that it is not contested that the Treaty of Amity was in force between the Parties on the date of the filing of Iran's Application, namely 14 June 2016, and that the denunciation of the Treaty announced by the United States on 3 October 2018 has no effect on the jurisdiction of the Court in the present case. Nor is it contested that several of the conditions laid down by Article XXI, paragraph 2, of the Treaty are met: a dispute has arisen between Iran and the United States; it has not been possible to adjust that dispute by diplomacy; and the two States have not agreed to settlement by some other pacific means.

31. However, the Parties disagree on the question whether the dispute concerning the United States' measures of which Iran complains is a dispute "as to the interpretation or application" of the Treaty of Amity.

32. The Court recalls that, in its Application filed on 14 June 2016, Iran states that the dispute between the Parties concerns the adoption by the United States of a series of measures which have had a serious adverse impact on the ability of Iran and of certain Iranian companies to exercise their rights to control and enjoy their property, including property located outside the territory of Iran and, in particular, within the territory of the United States.

33. In its written pleadings, Iran alleges that, by failing to recognize the separate juridical status of Bank Markazi and other Iranian companies, the United States has breached Article III, paragraph 1, of the Treaty; that, by denying these various companies the immunities that they would otherwise enjoy, it has breached Article III, paragraph 2, and Article XI, paragraph 4, of the Treaty; that the unfair and inequitable treatment by the United States of these various companies has breached the obligations arising from Article IV, paragraph 1, of the Treaty; that, by failing to accord such companies and their property the most constant protection and security, the United States has also breached its obligations under Article IV, paragraph 2, of the Treaty; that, by failing to respect the right of such companies to acquire and dispose of property, the United States has breached Article V, paragraph 1, of the Treaty; and that the restrictions applied by the United States on financial transfers have interfered with freedom of commerce between the territories of the Parties to the Treaty, in breach of Article VII, paragraph 1, and Article X, paragraph 1, of the Treaty.

34. The United States maintains that Iran is not seeking the settlement of a legal dispute concerning the provisions of the Treaty, but is attempting to embroil the Court in "a broader strategic dispute". The Respondent also notes that the United States' actions of which Iran complains cannot be separated from their context, namely Iran's long-standing violations of international law with regard to the United States and its nationals and the consequent deterioration of United States-Iranian relations.

35. In Iran's view, the United States "mischaracterises" the dispute by contending that it would encompass the whole of the Iran-United States relationship since 1979. In its oral arguments, however, Iran acknowledged the existence of a complicated history and relationship between the two Parties, but argued that this must not prevent the two countries from seeking the peaceful settlement of their disputes through judicial means.

36. As the Court has observed, applications that are submitted to it often present a particular dispute that arises in the context of a broader disagreement between parties (*Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015 (II)*, p. 604, para. 32; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, pp. 85-86, para. 32; *Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, pp. 91-92, para. 54; *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, pp. 19-20, paras. 36-37). In this case, the Court must ascertain whether the acts of which Iran complains fall within the provisions of the Treaty of Amity and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain, pursuant to Article XXI, paragraph 2, thereof (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, pp. 809-810, para. 16).

37. The Court will examine in turn the three preliminary objections to jurisdiction raised by the United States.

A. First objection to jurisdiction

38. In its first objection to jurisdiction, the United States asks the Court to "[d]ismiss as outside the Court's jurisdiction all claims that U.S. measures that block the property and interests in property of the Government of Iran or Iranian financial institutions (as defined in Executive Order 13599 and regulatory provisions implementing Executive Order 13599) violate any provision of the Treaty". In its view, these claims fall outside the scope of the Treaty by virtue of Article XX, paragraph 1, subparagraphs *(c)* and *(d)*, thereof.

39. Those provisions 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."

40. The United States submits that, when Article XX, paragraph 1, of the Treaty is invoked, "the Court's jurisdiction is limited to deciding, as an initial matter, whether the exclusions therein apply to the challenged measure". In that case, the Court would have no jurisdiction in respect of any claims predicated on such measure. The United States adds that this objection to jurisdiction is exclusively preliminary. To this end, it argues that the Court need not make any findings that concern the merits of Iran's claims, in particular with regard to Article XX, paragraph 1, subparagraph *(c)*, of the Treaty, which the United States notes was not invoked in the *Oil Platforms* case, in order to hold that Executive Order 13599 is excluded from the Court's jurisdiction under Article XX, paragraph 1, of the Treaty. It maintains that the Court should confine itself to observing that Executive Order 13599 is a measure which regulates traffic in the materials listed in Article XX, paragraph 1, subparagraph *(c)*, of the Treaty.

41. In addition, according to the United States, even if the Court were to find that Article XX, paragraph 1, of the Treaty could not sustain an objection to jurisdiction, this would nonetheless not bar it from considering any other objection under that article as a preliminary matter, without any consideration of the merits. The United States thus argues that its first objection is an objection upon which the Court should render a decision before any further proceedings on the merits, in accordance with Article 79, paragraph 1, of the Rules of Court.

42. According to Iran, Article XX, paragraph 1, of the Treaty provides for a potential defence on the merits. It maintains that conduct which would otherwise amount to a breach of the Treaty could thus be excused, adding that the United States' interpretation of the provision lacks a textual basis and is also inconsistent with the Court's jurisprudence. In support of its arguments, Iran cites, in addition to the Judgments rendered in the cases concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* (*Merits, Judgment, I.C.J. Reports 1986*, p. 116, para. 222, and p. 136, para. 271) and *Oil Platforms (Islamic Republic of Iran* v. *United States of America)* (*Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20), the Court's Order of 3 October 2018 indicating provisional measures in the case concerning *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America)* (*Provisional Measures, Order of 3 October 2018*, paras. 40-42).

43. Responding to the United States' argument that the Court was not asked to consider Article XX, paragraph 1, subparagraph *(c)*, of the Treaty in the case concerning *Oil Platforms*, Iran claims that it is of little importance that the United States invokes a different subparagraph of the same article in the present case.

44. Iran also contends that the objection raised by the United States cannot, in any event, be regarded as exclusively preliminary, but that it is inherently tied to the merits in so far as it involves establishing factual allegations of an extremely grave nature which the Court is not in a position to rule on at this preliminary stage of the proceedings.

* *

45. The Court recalls that it previously had occasion to observe in its Judgment on the preliminary objection in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)* (*Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20) and more recently in its Order indicating provisional measures in the case concerning *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America)* (*Provisional Measures, Order of 3 October 2018*, para. 41) that the Treaty of Amity contains no provision expressly excluding certain matters from its jurisdiction. Referring to its decision in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* (*Merits, Judgment, I.C.J. Reports 1986*, p. 116, para. 222, and p. 136, para. 271), the Court considered that Article XX, paragraph 1, subparagraph *(d)*, "[did] not restrict its jurisdiction" in that case "but [was] confined to affording the Parties a possible defence on the merits to be used should the occasion arise" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20). The Court sees no reason in the present case to depart from its earlier findings.

46. In the Court's opinion, this same interpretation also applies to Article XX, paragraph 1, subparagraph *(c)*, of the Treaty since, in this regard, there are no relevant grounds on which to distinguish it from Article XX, paragraph 1, subparagraph *(d)*.

47. The Court concludes from the foregoing that subparagraphs *(c)* and *(d)* of Article XX, paragraph 1, do not restrict its jurisdiction but merely afford the Parties a defence on the merits.

The first objection to jurisdiction raised by the United States must therefore be rejected.

B. Second objection to jurisdiction

48. In its second objection to jurisdiction, the United States asks the Court to dismiss

> "as outside the Court's jurisdiction all claims, brought under any provision of the Treaty of Amity, that are predicated on the United States' purported failure to accord sovereign immunity from jurisdiction and/or enforcement to the Government of Iran, Bank Markazi, or Iranian State-owned entities".

49. In substance, the United States argues that it follows from the text and context of the Treaty of Amity that it does not confer immunity on the States Parties themselves or on any of their State entities. The United States observes that none of the articles of which Iran alleges a breach in support of its claims mentions any protection with respect to immunity from jurisdiction or enforcement. It points out that the object and purpose of the Treaty indicate that it is not intended to govern such questions, but rather concerns commercial and consular relations between the two countries. According to the Respondent, this is confirmed by the historical circumstances in which the Treaty was adopted and by the absence of any reference in the *travaux préparatoires* to questions relating to sovereign immunities. Finally, the United States asserts that its conclusion is supported by the subsequent practice of the Parties to the Treaty, and in particular by the fact that, in the cases submitted to United States courts in the decades following the Treaty's entry into force, Iran did not claim any violation of a right to sovereign immunity allegedly protected by the Treaty.

50. Iran does not dispute that the Treaty of Amity contains no clause directly and expressly granting immunity from jurisdiction or enforcement to the States Parties or their State entities. However, it maintains that consideration of the immunities conferred on States and certain State entities by general international law is a necessary condition for the Court to adjudicate in full on Iran's claims relating to the violation of various provisions of the Treaty of Amity. Consequently, in Iran's view, the jurisdiction conferred on the Court by Article XXI, paragraph 2, of the Treaty includes jurisdiction to determine and apply the immunities at issue to the full extent necessary in order to decide whether the provisions invoked by Iran have been breached by the United States.

51. More specifically, in support of its claim that the second objection to jurisdiction should be rejected, Iran relies on two categories of provisions in the Treaty of Amity. Those in the first category refer to international law in general or to the law of immunities in particular, and, according to Iran, must be understood as incorporating into the Treaty, at least to some degree, the obligation to respect the sovereign immunities guaranteed by international law: they are Article IV, paragraph 2, and Article XI, paragraph 4, of the Treaty. The others, although containing no express reference to the law of immunities or to customary international law in general, necessarily entail, according to Iran, consideration of the immunities which States and State entities enjoy under international law, in order to be interpreted and applied in full: they are Article III, paragraph 2; Article IV, paragraph 1; and Article X, paragraph 1, of the Treaty.

52. The Court will examine below each of the provisions on which Iran relies, in order to ascertain whether it permits the question of sovereign immunities to be considered as falling within the scope *ratione materiae* of the Treaty of Amity.

1. Article IV, paragraph 2, of the Treaty

53. Article IV, paragraph 2, of the Treaty of Amity provides:

> "Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof."

54. Iran relies on the explicit mention of the "require[ments of] international law" contained in the opening sentence of the above paragraph to argue that this provision incorporates by reference the rules of customary international law on sovereign immunities into the obligation it lays down. According to Iran, if there has been a breach by the United States of the immunities enjoyed under customary international law by the Iranian State and Iranian State-owned entities, as it claims on the merits, it follows that the "[p]roperty of nationals and companies of either High Contracting Party" did not "receive the most constant protection and security", and that the protection and security received did not comply with the obligation that they be no "less than that required by international law"; that, consequently, Article IV, paragraph 2, has been breached by the United States. Since the Court has jurisdiction to rule on the alleged breach of any of the Treaty's provisions, it therefore also has jurisdiction, according to Iran, to apply the law of immunities in the context of Article IV, paragraph 2.

55. The United States disputes this interpretation. In its view, the "require[ments of] international law" referred to in Article IV, paragraph 2, concern the minimum standard of treatment for the property of aliens in the host State — a well-known concept in the field of investment protection — and not immunity protections of any kind. Furthermore, the fact that these guarantees apply indiscriminately to private companies (which may not benefit from immunity) and State entities confirms, in the Respondent's view, that the provision at issue cannot be understood as including sovereign immunity protections.

* *

56. For the purposes of the present discussion, the Court will leave aside the question whether Bank Markazi is a "company" within the meaning of Article IV, paragraph 2, quoted above. This point will be addressed below in the context of the Court's consideration of the third

objection to jurisdiction. The question to be answered now by the Court is whether, assuming that this entity constitutes a "company" within the meaning of the Treaty — which the United States disputes — Article IV, paragraph 2, obliges the Respondent to respect the sovereign immunity to which Bank Markazi or the other Iranian State-owned entities concerned in this case would allegedly be entitled under customary international law.

57. The Court observes in this regard that Iran's proposed interpretation of the phrase referring to the "require[ments of] international law" in the provision quoted above is not consistent with the object and purpose of the Treaty of Amity. As stated in the Treaty's preamble, the Parties intended to "encourag[e] mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and [to] regulat[e] consular relations". In addition, the title of the Treaty does not suggest that sovereign immunities fall within the object and purpose of the instrument concerned. Such immunities cannot therefore be considered as included in Article IV, paragraph 2 (see, by analogy, *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment of 6 June 2018*, para. 95). The "international law" in question in this provision is that which defines the minimum standard of protection for property belonging to the "nationals" and "companies" of one Party engaging in economic activities within the territory of the other, and not that governing the protections enjoyed by State entities by virtue of the principle of sovereign equality of States.

58. In addition, the provision in Article IV, paragraph 2, relied on by Iran must be read in the context of Article IV as a whole. Paragraph 1 of this Article concerns the "fair and equitable treatment" to be accorded to the nationals and companies of one Party by the other Party and the prohibition of any "unreasonable or discriminatory measures" that would impair their "legally acquired rights and interests". The second sentence of paragraph 2 provides that the property mentioned in the previous sentence (property which must receive protection, in no case less than that required by international law) "shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation". Paragraph 4 concerns "[e]nterprises which nationals and companies of either High Contracting Party are permitted to establish or acquire, within the territories of the other High Contracting Party". Taken together, these provisions clearly indicate that the purpose of Article IV is to guarantee certain rights and minimum protections for the benefit of natural persons and legal entities engaged in activities of a commercial nature. It cannot therefore be interpreted as incorporating, by reference, the customary rules on sovereign immunities.

2. Article XI, paragraph 4, of the Treaty

59. Article XI, paragraph 4, of the Treaty of Amity provides:

> "No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy,

> either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein."

60. Iran notes that this provision bars all "immunity" only in the case of enterprises of a Contracting Party which are "publicly owned or controlled" and engage in "commercial [or] industrial" activities within the territory of the other Party. It infers from this that the provision at issue does not affect the immunity enjoyed under customary international law by State entities that engage in activities *jure imperii*, and that it "confirms by strong implication the existence of a Treaty obligation that such immunity must be upheld".

61. The United States rejects this interpretation. In its view, Article XI, paragraph 4, seeks only to prevent unfair competition on the part of publicly owned enterprises, by ensuring that they cannot avoid the liabilities imposed on the private enterprises with which they are in competition. It is extraneous to the question of the immunities enjoyed by State entities engaging in activities *jure imperii*.

* *

62. The Court notes, in agreement with Iran's argument on this point, that Article XI, paragraph 4, which solely excludes from all "immunity" publicly owned enterprises engaging in commercial or industrial activities, does not affect the immunities enjoyed under customary international law by State entities which engage in activities *jure imperii*.

63. However, Iran goes further in contending that this provision imposes an implied obligation to uphold those immunities. The Applicant adopts, in this regard, an *a contrario* reading of Article XI, paragraph 4, whereby, in excluding from immunity only publicly owned enterprises engaging in commercial or industrial activities, this provision implicitly seeks to guarantee the sovereign immunity of public entities when they engage in activities *jure imperii*.

64. As the Court has stated previously,

> "[a]n *a contrario* reading of a treaty provision . . . has been employed by both the present Court (see, e.g., *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Application by Honduras for Permission to Intervene, Judgment, I.C.J. Reports 2011 (II)*, p. 432, para. 29) and the Permanent Court of International Justice (*S.S. "Wimbledon", Judgment, 1923, P.C.I.J., Series A, No. 1*, pp. 23-24). Such an interpretation is only warranted, however, when it is appropriate in light of

> the text of all the provisions concerned, their context and the object and purpose of the treaty." (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 19, para. 37; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 116, para. 35.)

65. In the present case, the Court cannot adopt the interpretation put forward by Iran. It is one thing for Article XI, paragraph 4, to leave intact, by not barring them, the immunities enjoyed under customary law by State entities when they engage in activities *jure imperii*. It is quite another for it to have the effect, as Iran claims it does, of transforming compliance with such immunities into a treaty obligation, a view not supported by the text or context of the provision.

If Article XI, paragraph 4, mentions only publicly owned enterprises which engage in "commercial, industrial, shipping or other business activities", this is because, in keeping with the object and purpose of the Treaty, it pertains only to economic activities and seeks to preserve fair competition among economic actors operating in the same market. The question of activities *jure imperii* is simply not germane to the concerns underlying the drafting of Article XI, paragraph 4. The argument that this provision incorporates sovereign immunities into the Treaty thus cannot be upheld.

3. Article III, paragraph 2, of the Treaty

66. Article III, paragraph 2, of the Treaty of Amity provides:

> "Nationals and companies of either High Contracting Party shall have freedom of access to the courts of justice and administrative agencies within the territories of the other High Contracting Party, in all degrees of jurisdiction, both in defense and pursuit of their rights, to the end that prompt and impartial justice be done. Such access shall be allowed, in any event, upon terms no less favorable than those applicable to nationals and companies of such other High Contracting Party or of any third country. It is understood that companies not engaged in activities within the country shall enjoy the right of such access without any requirement of registration or domestication."

67. According to Iran, sovereign immunities come into play in several ways in determining — a matter for the merits — whether the United States upheld the "freedom of access to the courts of justice and administrative agencies . . . both in defense and pursuit of their rights", which the provision quoted above accords to "nationals and companies" of Iran.

In Iran's view, the Court should determine whether the denial under United States law of the right of the Iranian entities concerned to avail themselves in judicial proceedings of a defence based on sovereign immunity is consistent with customary international law.

Iran is also of the view that the Court should take account of all the relevant rules of international law, including the right to assert jurisdictional immunity in judicial proceedings, in order to ascertain what is required by "freedom of access" to the courts within the meaning of Article III, paragraph 2. It argues that its right under that provision to freedom of access to United States courts on terms no less favourable than those applicable to nationals and companies of third States has been breached. This is because, according to Iran, entities of third States performing sovereign functions, in particular central banks, are able to avail themselves of their immunity before United States courts.

68. The United States disputes this interpretation and contends that the purpose of Article III, paragraph 2, is not to grant specific substantive rights or any substantive guarantees as to the defences that may be asserted by the "nationals" or "companies" of one Party before the courts of the other Party, but only to allow access to those courts. Similarly, freedom of access to the courts does not imply any guarantee that certain entities cannot be sued or that their property cannot be seized.

* *

69. Assuming for the purposes of the present discussion, as above (see paragraph 56 above), that Bank Markazi is a "company" — a question which will be examined below — the Court must now ascertain whether the alleged breach of the immunities that bank and the other Iranian State entities concerned are said to enjoy under customary international law, should that breach be established, would constitute a violation of the right to have "freedom of access to the courts" guaranteed by that provision. It is only if the answer to this question is in the affirmative that it could be concluded that the application of Article III, paragraph 2, requires the Court to examine the question of sovereign immunities, and that such an examination thus falls, to that extent, within its jurisdiction as defined by the compromissory clause of the Treaty of Amity.

70. The Court is not convinced that a link of the nature alleged by Iran exists between the question of sovereign immunities and the right guaranteed by Article III, paragraph 2.

It is true that the mere fact that Article III, paragraph 2, makes no mention of sovereign immunities, and that it also contains no *renvoi* to the rules of general international law, does not suffice to exclude the question of immunities from the scope *ratione materiae* of the provision at issue. However, for that question to be relevant, the breach of international law on immunities would have to be capable of having some impact on compliance with the right guaranteed by Article III, paragraph 2.

That is not the case. The provision at issue does not seek to guarantee the substantive or even the procedural rights that a company of one Contracting Party might intend to pursue before the courts or authorities of the other Party, but only to protect the possibility for such a company to have access to those courts or authorities with a view to pursuing the (substantive or procedural) rights it claims to have. The wording of Article III, paragraph 2, does not point towards the broad

interpretation suggested by Iran. The rights therein are guaranteed "to the end that prompt and impartial justice be done". Access to a Contracting Party's courts must be allowed "upon terms no less favorable" than those applicable to the nationals and companies of the Party itself "or of any third country". There is nothing in the language of Article III, paragraph 2, in its ordinary meaning, in its context and in light of the object and purpose of the Treaty of Amity, to suggest or indicate that the obligation to grant Iranian "companies" freedom of access to United States courts entails an obligation to uphold the immunities that customary international law is said to accord — if that were so — to some of these entities. The two questions are clearly distinct.

4. Article IV, paragraph 1, of the Treaty

71. Iran also relies on Article IV, paragraph 1, of the Treaty of Amity, which provides:

> "Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws."

72. According to Iran, the denial by the United States of the sovereign immunities to which the Iranian State entities concerned are entitled under customary international law is capable of constituting a breach of the obligation to accord "fair and equitable treatment" and to refrain from any "unreasonable or discriminatory measures" within the meaning of Article IV, paragraph 1. In Iran's view, the Court therefore has jurisdiction to ascertain whether the international law on immunities has been upheld, in order to determine whether the United States has complied with the requirements of Article IV, paragraph 1.

73. The United States contests this view. According to the Respondent, Article IV, paragraph 1, which is a classic provision in "Friendship, Commerce and Navigation" treaties, is aimed at affording certain protections to the nationals and companies of a State in the exercise of their private or professional activities, of a commercial nature, within the territory of the other Party. It does not concern entities engaged in sovereign activities.

* *

74. For reasons similar to those set out above regarding Iran's reliance on Article IV, paragraph 2, of the Treaty of Amity (see paragraph 58 above), the Court does not consider that the requirements of Article IV, paragraph 1, include an obligation to respect the sovereign immunities of the State and those of its entities which can claim such immunities under customary international law. It cannot therefore uphold on this point Iran's argument that the question of sovereign immunities falls within the scope *ratione materiae* of this provision, and consequently within the jurisdiction of the Court under the compromissory clause of the Treaty of Amity.

5. Article X, paragraph 1, of the Treaty

75. Article X, paragraph 1, of the Treaty of Amity provides that "[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation".

76. According to Iran, the jurisdiction of the Court to pronounce on whether the United States respected the "freedom of commerce" guaranteed by Article X, paragraph 1, implies jurisdiction to determine whether the sovereign immunities guaranteed by customary international law have been respected and, if they have not, whether and to what extent freedom of commerce might thereby have been impeded.

77. The United States notes that the "freedom of commerce" mentioned in Article X, paragraph 1, appears in an article on matters relating to the treatment of vessels and of the cargo and products they carry. The Respondent concludes that this expression refers to actual commerce and to the ancillary activities linked directly thereto, but that it cannot cover the protection of sovereign immunity.

* *

78. The Court recalls that in its Judgment on the preliminary objection in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)* (*Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 803), it had to rule on the scope of the concept of "freedom of commerce" within the meaning of Article X, paragraph 1, of the Treaty of Amity, in order to determine whether the dispute between the parties fell within the scope of that provision.

It stated on that occasion that the word "commerce" within the meaning of the provision at issue refers not just to maritime commerce, but to commercial exchanges in general; that, in addition, the word "commerce", both in its ordinary usage and in its legal meaning, is not limited to the mere acts of purchase and sale; and that commercial treaties cover a wide range of matters ancillary to commerce, such as the right to establish and operate businesses, protection from molestation, and acquisition and enjoyment of property, etc. (*ibid*., pp. 818-819, paras. 45-46). The Court concluded that "it would be a natural interpretation of the word 'commerce' in Article X, paragraph 1, of the Treaty of 1955 that it includes commercial activities in general — not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce" (*ibid*., p. 819, para. 49).

79. The Court sees no reason to depart now from the interpretation of the concept of "freedom of commerce" that it adopted in the case quoted above. Nevertheless, even if understood in this sense, freedom of commerce cannot cover matters that have no connection, or too tenuous a connection, with the commercial relations between the States Parties to the Treaty. In this regard, the Court is not convinced that the violation of the sovereign immunities to which certain State entities are said to be entitled under international law in the exercise of their activities

jure imperii is capable of impeding freedom of commerce, which by definition concerns activities of a different kind. Consequently, the violations of sovereign immunities alleged by Iran do not fall within the scope of Article X, paragraph 1, of the Treaty.

*

80. The Court concludes from all of the foregoing that none of the provisions the violation of which Iran alleges, and which, according to the Applicant, are capable of bringing within the jurisdiction of the Court the question of the United States' respect for the immunities to which certain Iranian State entities are said to be entitled, is of such a nature as to justify such a finding.

Consequently, the Court finds that Iran's claims based on the alleged violation of the sovereign immunities guaranteed by customary international law do not relate to the interpretation or application of the Treaty of Amity and, as a result, do not fall within the scope of the compromissory clause in Article XXI, paragraph 2. Thus, in so far as Iran's claims concern the alleged violation of rules of international law on sovereign immunities, the Court does not have jurisdiction to consider them.

The second objection to jurisdiction raised by the United States must therefore be upheld.

C. Third objection to jurisdiction

81. In its third objection to jurisdiction, the United States requests the Court to dismiss "as outside the Court's jurisdiction all claims of purported violations of Articles III, IV, or V of the Treaty of Amity that are predicated on treatment accorded to the Government of Iran or Bank Markazi".

82. The United States contends that Bank Markazi is not a "company" for the purposes of Articles III, IV and V of the Treaty of Amity, on the ground that, as the Central Bank of Iran, it carries out exclusively sovereign functions and is not engaged in activities of a commercial nature. According to the United States, the protections which Articles III, IV and V provide to "companies" apply only to entities whose activity is of a commercial nature and takes place in a competitive market. The United States acknowledges that the term "company" may also be applied to a public enterprise, but only if the enterprise in question is acting in a similar fashion to a private enterprise. On the other hand, according to the United States, a central bank with functions of an exclusively sovereign nature falls outside the scope of Articles III, IV and V of the Treaty. Such is the case, according to the United States, for Bank Markazi. The Respondent refers to the statutes of the bank laid down in Iran's 1960 Monetary and Banking Act, as amended, which it argues place this entity under the full control of the Iranian Government and confer on it exclusively sovereign functions, as is generally the case for a central bank. The United States concludes from the above that Iran's claims relating to the treatment of Bank Markazi fall outside the scope of Articles III, IV and V of the Treaty and that, as a result, the Court lacks jurisdiction to entertain the claims based on the alleged violation of those provisions.

83. Iran contends, to the contrary, that Bank Markazi is a "company" for the purposes of Articles III, IV and V of the Treaty of Amity. Iran points out that the definition of "companies" given in Article III, paragraph 1, is deliberately broad. According to the Applicant, it includes any entity that has its own legal personality in the legal order in which it was created, regardless of its activity or capital structure and of whether or not it engages in profit-making activities. Iran argues that, since Bank Markazi has legal personality under Article 10 of the Monetary and Banking Act, and since, under that same provision, it is generally subject to the law applicable to joint-stock companies — and not the law applicable to public entities, except for instances expressly laid down by law — it is a "company" within the meaning of the Treaty.

Iran adds that Bank Markazi is endowed with capital for the conduct of its professional operations, which may generate profits on which it must pay tax to the Iranian State, and that, like any legal person, it can enter into contracts of any nature, acquire and sell goods and services, own assets and other movable and immovable property, and appear in a court of law.

Lastly, Iran contends in the alternative that the third objection to jurisdiction is not of a preliminary character, since in order to rule on it, the Court would have to consider questions pertaining to the merits. Indeed, according to Iran, assuming that, as the United States claims, the Treaty only protects companies in so far as they are engaging in private, commercial or business activities, it would be necessary for the Court to determine to which of Bank Markazi's activities the treatment complained of by the Applicant relates. In Iran's opinion, that could only be done after the Parties have been heard on the merits.

* *

84. The Court observes first that, although the wording of the third preliminary objection refers to "treatment accorded to the Government of Iran or Bank Markazi", the question before it is solely that of whether Bank Markazi is a "company" within the meaning of the Treaty of Amity and is thereby justified in claiming the rights and protections afforded to "companies" by Articles III, IV and V. It is because Bank Markazi is endowed, under Iranian law, with a legal personality distinct from the State, that Iran takes the view that it is a "company" within the meaning of the Treaty. In the final version of its arguments presented to the Court, Iran does not contend that this characterization could be applied to the State itself. Consequently, the Court will endeavour solely to establish, in the following paragraphs, whether the characterization of "company" within the meaning of the Treaty of Amity is applicable to Bank Markazi. That is, in reality, the only question raised by the third objection to jurisdiction.

85. Articles III, IV and V of the Treaty of Amity guarantee certain rights and protections to "nationals" and "companies" of a Contracting Party, which must be respected by the other Party.

These include, in particular, the right to have "freedom of access to the courts of justice and administrative agencies . . . both in defense and pursuit of their rights" (Art. III, para. 2); the right to "fair and equitable treatment" and not to be subject to "unreasonable or discriminatory measures" (Art. IV, para. 1); the "most constant protection" of their property, "in no case

less than that required by international law", and the right for such property not to be taken "except for a public purpose, nor . . . without the prompt payment of just compensation" (Art. IV, para. 2); the protection of premises used by them from any entry or molestation without just cause and other than according to law (Art. IV, para. 3); the right for enterprises established by "nationals" and "companies" of one Party within the territory of the other to conduct their activities on terms no less favourable than for other enterprises of whatever nationality engaged in similar activities (Art. IV, para. 4); the right to benefit, in the lease or purchase of movable and immovable property, from treatment no less favourable than that accorded to nationals and companies of any third country (Art. V).

86. All these provisions refer to "nationals" and "companies" of a Contracting Party. The term "national" applies to natural persons, whose status is not at issue in the difference between the Parties as regards the third preliminary objection. The term "company" is defined thus in Article III, paragraph 1: "As used in the present Treaty, 'companies' means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit."

87. On the basis of this definition, two points are not in doubt and, moreover, give no cause for disagreement between the Parties.

First, an entity may only be characterized as a "company" within the meaning of the Treaty if it has its own legal personality, conferred on it by the law of the State where it was created, which establishes its legal status. In this regard, Article III, paragraph 1, begins by stating that "[c]ompanies constituted under the applicable laws and regulations of either High Contracting Party shall have their juridical status recognized within the territories of the other High Contracting Party".

Secondly, an entity which is wholly or partly owned by a State may constitute a "company" within the meaning of the Treaty. The definition of "companies" provided by Article III, paragraph 1, makes no distinction between private and public enterprises. The possibility of a public enterprise constituting a "company" within the meaning of the Treaty is confirmed by Article XI, paragraph 4, which deprives of immunity any enterprise of either Contracting Party "which is publicly owned or controlled" when it engages in commercial or industrial activities within the territory of the other Party, so as to avoid placing such an enterprise in an advantageous position in relation to private enterprises with which it may be competing (see paragraph 65 above).

88. Two conclusions may be drawn from the above.

In the first place, the United States cannot contest the fact that Bank Markazi was endowed with its own legal personality by Article 10, paragraph *(c)*, of Iran's 1960 Monetary and Banking Act, as amended — and indeed it does not do so.

In the second place, the fact that Bank Markazi is wholly owned by the Iranian State, and that the State exercises a power of direction and close control over the bank's activities — as pointed out by the United States and not contested by Iran — does not, in itself, exclude that entity from the category of "companies" within the meaning of the Treaty.

89. It remains to be determined whether, by the nature of its activities, Bank Markazi may be characterized as a "company" according to the definition given by Article III, paragraph 1, read in its context and in light of the object and purpose of the Treaty of Amity.

90. In this regard, the Court cannot accept the interpretation put forward by Iran in its main argument, whereby the nature of the activities carried out by a particular entity is immaterial for the purpose of characterizing that entity as a "company". According to Iran, whether an entity carries out functions of a sovereign nature, i.e., acts of sovereignty or public authority, or whether it engages in activities of a commercial or industrial nature, or indeed a combination of both types of activity, is of no relevance when it comes to characterizing it as a "company". It would follow that having a separate legal personality under the domestic law of a Contracting Party would be a sufficient condition for a given entity to be characterized as a "company" within the meaning of the Treaty of Amity.

91. In the opinion of the Court, such an interpretation would fail to take account of the context of the definition provided by Article III, paragraph 1, and the object and purpose of the Treaty of Amity. As stated above in respect of the second objection to jurisdiction raised by the United States, an analysis of all those provisions of the Treaty which form the context of Article III, paragraph 1, points clearly to the conclusion that the Treaty is aimed at guaranteeing rights and affording protections to natural and legal persons engaging in activities of a commercial nature, even if this latter term is to be understood in a broad sense. The same applies to the object and purpose of the Treaty, as set out in the preamble (quoted in paragraph 57 above), and an indication of which can also be found in the title of the Treaty (Treaty of Amity, Economic Relations, and Consular Rights).

The Court therefore concludes that an entity carrying out exclusively sovereign activities, linked to the sovereign functions of the State, cannot be characterized as a "company" within the meaning of the Treaty and, consequently, may not claim the benefit of the rights and protections provided for in Articles III, IV and V.

92. However, there is nothing to preclude, *a priori*, a single entity from engaging both in activities of a commercial nature (or, more broadly, business activities) and in sovereign activities.

In such a case, since it is the nature of the activity actually carried out which determines the characterization of the entity engaged in it, the legal person in question should be regarded as a "company" within the meaning of the Treaty to the extent that it is engaged in activities of a commercial nature, even if they do not constitute its principal activities.

93. The Court must therefore now address the question of the nature of the activities engaged in by Bank Markazi. More precisely, it must examine Bank Markazi's activities within the territory of the United States at the time of the measures which Iran claims violated Bank Markazi's alleged rights under Articles III, IV and V of the Treaty.

94. Given that Iran's principal argument is that the nature of the activities engaged in is of no relevance when it comes to characterization of an entity as a "company" within the meaning of the Treaty (see paragraph 83 above), the Applicant has made little attempt to demonstrate that, alongside the sovereign functions which it concedes, Bank Markazi engages in activities of a commercial nature. It has nonetheless stated, in its written observations, that "[s]ome of Bank Markazi's activities are also performed by private companies (e.g., concluding contracts; owning property; buying securities), and they pertain to commerce". The Applicant added during the hearings that Bank Markazi "was endowed with capital for the conduct of its operations, which may generate profits on which it must pay tax to the Iranian State" and that it "can . . . enter into contracts of any nature, acquire and sell goods and services" (see paragraph 83 above). The United States, for its part, has asserted to the contrary that, like any central bank, Bank Markazi exercises sovereign functions, and has emphasized the fact that, before United States courts, Bank Markazi has always presented itself as a central bank in the traditional sense and not as a commercial enterprise.

95. The Court observes that the Monetary and Banking Act of 1960, as amended, containing the statutes of Bank Markazi, was included in the case file by Iran in an English translation which for the most part the United States has not contested. This law contains various provisions defining the types of activities in which Bank Markazi is entitled to engage, the scope of which has not been discussed in detail by the Parties before the Court.

96. Under Article 79, paragraph 9, of the Rules of Court, when it is called upon to rule on a preliminary objection, the Court must give its decision "in the form of a judgment, by which it shall either uphold the objection, reject it, or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character".

As the Court stated in its Judgment on the preliminary objections in the case concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* (*Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 852, para. 51):

> "In principle, a party raising preliminary objections is entitled to have these objections answered at the preliminary stage of the proceedings unless the Court does not have before it all facts necessary to decide the questions raised or if answering the preliminary objection would determine the dispute, or some elements thereof, on the merits."

97. In the present case, the Court takes the view that it does not have before it all the facts necessary to determine whether Bank Markazi was carrying out, at the relevant time, activities of the nature of those which permit characterization as a "company" within the meaning of the Treaty of Amity, and which would have been capable of being affected by the measures complained of by Iran by reference to Articles III, IV and V of the Treaty. Since those elements are largely of a factual nature and are, moreover, closely linked to the merits of the case, the Court considers that it will be able to rule on the third objection only after the Parties have presented their arguments in the following stage of the proceedings, should it find the Application to be admissible.

Therefore, there is reason to conclude that the third objection to jurisdiction does not possess, in the circumstances of the case, an exclusively preliminary character.

D. General conclusion on the jurisdiction of the Court

98. It follows from the foregoing that the first objection to jurisdiction must be rejected, the second must be upheld, and the third does not possess, in the circumstances of the case, an exclusively preliminary character.

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99. Given that the Court has jurisdiction to entertain part of the claims made by Iran, which, moreover, were not covered in their entirety by the three objections to jurisdiction raised by the United States, it is now necessary for the Court to consider the objections to admissibility raised by the Respondent, which seek the rejection of the Application as a whole.

III. ADMISSIBILITY

100. The Court notes that the United States initially raised two objections to the admissibility of the Application, namely, first, that Iran's reliance on the Treaty to found the Court's jurisdiction in this case is an abuse of right and, secondly, that Iran's "unclean hands" preclude the Court from proceeding with this case. The Court observes, however, that, during the oral proceedings, the United States clarified that its first objection to admissibility was an objection based on "abuse of process" and not on "abuse of right", adding that an applicant who comes with "unclean hands" is committing an abuse of process.

101. The United States acknowledges that it used the term "abuse of right" in its written submissions, but states that the clarification provided by the Court on the nature of abuse of right and abuse of process in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)* made it more appropriate to characterize the objection it raised as one based on an abuse of process.

102. According to Iran, it is too late to raise this new objection. In support of its view, it invokes Article 79, paragraph 1, of the Rules of Court, according to which

> "[a]ny objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing as soon as possible, and not later than three months after the delivery of the Memorial".

* *

103. The Court begins by recalling that, in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)*, it considered that "[a]lthough the basic concept of an abuse may be the same, the consequences of an abuse of rights or an abuse of process may be different" (*Preliminary Objections, Judgment of 6 June 2018*, para. 146). It further stated that "[a]n abuse of process goes to the procedure before a court or tribunal and can be considered at the preliminary phase of these proceedings" (*ibid.*, para. 150) and that "abuse of rights cannot be invoked as a ground of inadmissibility when the establishment of the right in question is properly a matter for the merits" (*ibid.*, para. 151).

104. The Court notes that, in its oral pleadings, the United States submitted that the dispute did not fall within the scope of the Treaty of Amity and that Iran could not therefore seek to found the jurisdiction of the Court on that instrument, an attempt that it characterizes in its Preliminary Objections as being "disingenuous". In the Court's view, the objection based on abuse of process is not a new objection, but merely a recharacterization of a position already set out by the United States in its Preliminary Objections.

105. The Court further notes that, during the oral proceedings, the United States maintained that the "clean hands" doctrine was a subpart of the abuse of process principle. It added that if, however, the Court considered that abuse of process and the "clean hands" doctrine were distinct, the latter had a sufficient basis in international law.

106. The Court observes that even if the objections based on abuse of process and on the "clean hands" doctrine may be linked, in the present instance they remain distinct with regard to their scope and the acts relied upon in their support. The Court will first examine the objection based on abuse of process raised by the United States, followed by that based on the "clean hands" doctrine.

A. Abuse of process

107. The United States contends that in light of the "exceptional" circumstances of this case, the Court should decline to found jurisdiction on the Treaty of Amity. It points out in particular that the fundamental conditions underlying the Treaty of Amity no longer exist between the Parties, notably the friendly, commercial and consular relations envisaged therein. It adds that Iran's attempt to found the Court's jurisdiction on the Treaty does not seek to vindicate interests protected by the Treaty, but rather to embroil the Court in a broader strategic dispute.

108. In addition, the United States maintains that Iran's claims are abusive because they "subvert" the purposes of the Treaty. Focusing on Iran's claims in respect of sovereign immunity, it considers that Iran is attempting to rewrite the Treaty, thus violating basic principles of good faith by manipulating the Treaty in disregard of its object and purpose.

109. Finally, the United States cites the *Northern Cameroons* case to assert that Iran's claims are also incompatible with the Court's judicial function, because a judgment of the Court on the merits of the present case would, in its view, rest on "a fiction".

110. Iran, for its part, notes that, in this instance, the United States has invoked no "exceptional circumstances" linked to the procedure before the Court. It maintains that the "broader strategic dispute" referred to by the United States is irrelevant to the present case. It also rejects the Respondent's assertion that the fundamental conditions underlying the Treaty no longer exist between the Parties.

111. Responding to the United States' assertion regarding Iran's claims in respect of sovereign immunities, the latter reiterates that the Treaty expressly contains a *renvoi* to international law, which includes the law of sovereign immunities.

112. Finally, Iran considers that the *Northern Cameroons* case relied on by the United States is of no assistance to the latter in this instance, because the issue in that case was the interpretation of a treaty that was no longer in force. According to Iran, submitting a dispute to the Court under a jurisdictional title that is in force, and in a case in which the claims are related to a breach of the treaty in question, cannot be considered an abuse of process. In its oral pleadings, Iran added that the real question was whether the Treaty of Amity was in force, and noted that since it was, it must apply.

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113. The Court recalls that, in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)*, it stated that only in exceptional circumstances should the Court reject a claim based on a valid title of jurisdiction on the ground of abuse of process. In this regard, there has to be clear evidence that the applicant's conduct amounts to an abuse of process (*Preliminary Objections, Judgment of 6 June 2018*, para. 150) (see also *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 255, para. 38).

114. The Court has already observed that the Treaty of Amity was in force between the Parties on the date of the filing of Iran's Application, i.e., 14 June 2016 (see paragraph 30 above), and that the Treaty includes a compromissory clause in Article XXI providing for its jurisdiction. The Court does not consider that in the present case there are exceptional circumstances which would warrant rejecting Iran's claim on the ground of abuse of process.

115. In light of the foregoing, the Court finds that the first objection to admissibility raised by the United States must be rejected.

B. "Unclean hands"

116. According to the second objection to admissibility raised by the United States, the Court should not proceed with the present case because Iran has come before it with "unclean hands". The United States alleges in particular that "Iran has sponsored and supported international

terrorism, as well as taken destabilizing actions in contravention of nuclear non-proliferation, ballistic missile, arms trafficking, and counter-terrorism obligations". It contends that Iran is seeking relief because of the outcome of the *Peterson* case, which, in its view, arose from Iran's support for terrorism.

117. The United States recognizes that in the past the Court has not upheld an objection based on the "clean hands" doctrine, but argues that it has not rejected the doctrine either, and that, in any event, the time is ripe for the Court to acknowledge it and apply it. According to the United States, the Court need not address the merits of this case to assess the legal consequences of Iran's conduct.

118. Iran, for its part, rejects the allegations of the United States that it has breached its counter-terrorism, nuclear non-proliferation and arms trafficking obligations. In its view, these allegations are ill-founded and irrelevant to the resolution of the present case, and thus cannot be a bar to the admissibility of the Application.

119. Iran also points out that there is uncertainty about the substance and binding character of the "clean hands" doctrine and that the Court has never recognized its applicability.

120. In Iran's view, it is nevertheless clear that the "clean hands" doctrine cannot be applied at the preliminary objections phase and that it cannot serve as a basis for the inadmissibility of a claim.

121. Iran argues lastly that, according to proponents of the "clean hands" doctrine, it only applies when the claimant is engaged in "precisely similar action, similar in fact and similar in law" as that of which it complains. It is of the view that the United States' objection does not satisfy that requirement, since the Respondent has not even claimed that the accusations on which it bases its assertion that Iran has "unclean hands" amount to a violation of the Treaty of Amity.

* *

122. The Court begins by noting that the United States has not argued that Iran, through its alleged conduct, has violated the Treaty of Amity, upon which its Application is based. Without having to take a position on the "clean hands" doctrine, the Court considers that, even if it were shown that the Applicant's conduct was not beyond reproach, this would not be sufficient per se to uphold the objection to admissibility raised by the Respondent on the basis of the "clean hands" doctrine (*Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 38, para. 47; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 52, para. 142).

123. Such a conclusion is however without prejudice to the question whether the allegations made by the United States, concerning notably Iran's alleged sponsoring and support of international terrorism and its presumed actions in respect of nuclear non-proliferation and arms trafficking, could, eventually, provide a defence on the merits.

124. The Court concludes that the second objection to admissibility raised by the United States cannot be upheld.

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125. In light of the foregoing, the two objections to admissibility of the Application raised by the United States must be rejected.

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126. For these reasons,

THE COURT,

(1) Unanimously,

Rejects the first preliminary objection to jurisdiction raised by the United States of America;

(2) By eleven votes to four,

Upholds the second preliminary objection to jurisdiction raised by the United States of America;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Crawford, Salam, Iwasawa; *Judge* ad hoc Brower;

AGAINST: *Judges* Bhandari, Robinson, Gevorgian; *Judge* ad hoc Momtaz;

(3) By eleven votes to four,

Declares that the third preliminary objection to jurisdiction raised by the United States of America does not possess, in the circumstances of the case, an exclusively preliminary character;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Abraham, Bennouna, Cançado Trindade, Bhandari, Robinson, Gevorgian, Salam, Iwasawa; *Judge* ad hoc Momtaz;

AGAINST: *Judges* Tomka, Gaja, Crawford; *Judge* ad hoc Brower;

(4) Unanimously,

Rejects the preliminary objections to admissibility raised by the United States of America;

(5) Unanimously,

Finds that it has jurisdiction, subject to points (2) and (3) of the present operative clause, to rule on the Application filed by the Islamic Republic of Iran on 14 June 2016, and that the said Application is admissible.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirteenth day of February, two thousand and nineteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Islamic Republic of Iran and the Government of the United States of America, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judges TOMKA and CRAWFORD append a joint separate opinion to the Judgment of the Court; Judge GAJA appends a declaration to the Judgment of the Court; Judges ROBINSON and GEVORGIAN append separate opinions to the Judgment of the Court; Judges *ad hoc* BROWER and MOMTAZ append separate opinions to the Judgment of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.C.