30 MARCH 2023

JUDGMENT

CERTAIN IRANIAN ASSETS

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

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CERTAINS ACTIFS IRANIENS

(RÉPUBLIQUE ISLAMIQUE D'IRAN c. ÉTATS-UNIS D'AMÉRIQUE)

30 MARS 2023

ARRÊT

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ABBREVIATIONS, ACRONYMS AND SHORT FORMS

Bank Markazi	Bank Markazi Jomhuri Islami Iran (the Central Bank of Iran)
Bank Melli	Bank Melli Iran
Bennett case	*Bennett et al.* v. *The Islamic Republic of Iran et al.* (a case brought before the United States District Court for the Northern District of California, the judgment of which was affirmed by the United States Court of Appeals for the Ninth Circuit)
FSIA	Foreign Sovereign Immunities Act (a law of the United States of America)
ILC	International Law Commission
ILC Articles on State Responsibility	The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts
ITRSHRA	Iran Threat Reduction and Syria Human Rights Act (a law of the United States of America)
Peterson case	*Deborah Peterson et al.* v. *Islamic Republic of Iran* (a case brought before the United States District Court for the Southern District of New York, the judgment of which was affirmed by the United States Supreme Court)
TRIA	Terrorism Risk Insurance Act (a law of the United States of America)
Treaty of Amity	Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed at Tehran on 15 August 1955
Weinstein case	*Weinstein et al.* v. *Islamic Republic of Iran et al.* (a case brought before the United States District Court for the Eastern District of New York, the judgment of which was affirmed by the United States Court of Appeals for the Second Circuit)
2019 Judgment	*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 7

INTERNATIONAL COURT OF JUSTICE

YEAR 2023

2023
30 March
General List
No. 164

30 March 2023

CERTAIN IRANIAN ASSETS

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

Factual background — Signature of the 1955 Treaty of Amity — Cessation of diplomatic relations in 1980 — Amendment of United States Foreign Sovereign Immunities Act (the "FSIA") in 1996 — Enactment of United States Terrorism Risk Insurance Act ("TRIA") in 2002 — Further amendment of the FSIA in 2008 — Issuance of Executive Order 13599 in 2012 — Assets of Iran and certain Iranian entities subject to enforcement proceedings — Notice of termination of the Treaty of Amity in 2018.

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Defence based on abuse of rights — Need to demonstrate that Iran seeks to exercise rights conferred on it by the Treaty of Amity for purposes other than those for which rights were established, to the detriment of United States — United States has failed to make such a demonstration — Defence cannot be upheld.

Defence based on Article XX (1) (c) *and* (d) *of the Treaty of Amity — Measures adopted under Executive Order 13599 do not regulate production of or traffic in arms within the meaning of Article XX (1)* (c) *— Defence based on Article XX (1)* (c) *cannot be upheld — Measures not necessary to protect essential security interests within the meaning of Article XX (1)* (d) *— Defence based on Article XX (1)* (d) *cannot be upheld.*

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JUDGMENT

Present: *Vice-President* GEVORGIAN, *Acting President*; *Judges* TOMKA, ABRAHAM, BENNOUNA, YUSUF, XUE, SEBUTINDE, BHANDARI, ROBINSON, SALAM, IWASAWA, NOLTE, CHARLESWORTH; *Judges* ad hoc BARKETT, MOMTAZ; *Registrar* GAUTIER.

In the case concerning certain Iranian assets,

between

the Islamic Republic of Iran,

represented by

Mr. Tavakol Habibzadeh, Head of the Center for International Legal Affairs of the Islamic Republic of Iran, Attorney at Law, Associate Professor of International Law at Imam Sadiq University,

as Agent, Counsel and Advocate;

Mr. Mohammad H. Zahedin Labbaf, Agent of the Islamic Republic of Iran to the Iran-United States Claims Tribunal, Legal Adviser to the Center for International Legal Affairs of the Islamic Republic of Iran, The Hague,

as Co-Agent and Counsel;

H.E. Mr. Alireza Kazemi Abadi, Ambassador of the Islamic Republic of Iran to the Kingdom of the Netherlands,

Mr. Mohammad Saleh Attar, Director of the Center for International Legal Affairs of the Islamic Republic of Iran, The Hague,

as Senior National Authorities and Legal Advisers;

Mr. Vaughan Lowe, KC, member of the Bar of England and Wales, Essex Court Chambers, Emeritus Professor of International Law, University of Oxford, member of the Institut de droit international,

Mr. Alain Pellet, Professor Emeritus of the University Paris Nanterre, former Chairman of the International Law Commission, President 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, associate member of the Institut de droit international, member of the Paris Bar, Sygna Partners,

Mr. Samuel Wordsworth, KC, member of the Bar of England and Wales, member of the Paris Bar, Essex Court Chambers,

Mr. Sean Aughey, member of the Bar of England and Wales, Essex Court Chambers,

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

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

as Counsel and Advocates;

Mr. Behzad Saberi Ansari, Director General for International Legal Affairs, Ministry of Foreign Affairs of the Islamic Republic of Iran,

Mr. Ali Nasimfar, Assistant Director General for International Legal Affairs, Ministry of Foreign Affairs of the Islamic Republic of Iran,

Mr. Yousef Nourikia, Counsellor, Embassy of the Islamic Republic of Iran in the Netherlands,

Mr. Mahdad Fallah-Assadi, Legal Expert, Department of International Legal Affairs, Ministry of Foreign Affairs of the Islamic Republic of Iran,

as Senior Legal Advisers;

Ms Tessa Barsac, Consultant in International Law, Master (University Paris Nanterre), LLM (Leiden University),

Ms Lefa Mondon, Master (University of Strasbourg), Sygna Partners,

as Counsel;

Mr. Ali Mokhberolsafa, Legal Adviser to the Center for International Legal Affairs of the Islamic Republic of Iran, The Hague,

Mr. S. Mohammad Asbaghi Namini, Legal Adviser to the Center for International Legal Affairs of the Islamic Republic of Iran,

Mr. Ahmad Reza Tohidi, Legal Adviser to the Center for International Legal Affairs of the Islamic Republic of Iran, Associate Professor of International Law at the University of Qom,

Mr. Sajad Askari, Legal Adviser to the Center for International Legal Affairs of the Islamic Republic of Iran, Assistant Professor at Shahid Bahonar University of Kerman,

Mr. Vahid Bazzar, Legal Adviser to the Center for International Legal Affairs of the Islamic Republic of Iran,

Mr. Alireza Ranjbar, Legal Adviser to the Center 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, Acting Legal Adviser, United States Department of State,

as Agent, Counsel and Advocate;

Mr. Steven F. Fabry, Deputy Legal Adviser, United States Department of State,

as Co-Agent, Counsel and Advocate;

Ms Emily J. Kimball, Legal Counselor, Embassy of the United States of America in the Kingdom of the Netherlands,

Ms Jennifer E. Marcovitz, Deputy Legal Counselor, Embassy of the United States of America in the Kingdom of the Netherlands,

as Deputy Agents and Counsel;

Sir Daniel Bethlehem, KC, member of the Bar of England and Wales, Twenty Essex Chambers, London,

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

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,

Mr. Nathaniel E. Jedrey, Attorney Adviser, United States Department of State,

as Counsel and Advocates;

Ms Kristina E. Beard, Attorney Adviser, United States Department of State,

Mr. David M. Bigge, Attorney Adviser, United States Department of State,

Ms Julia H. Brower, Attorney Adviser, United States Department of State,

Mr. Peter A. Gutherie, Attorney Adviser, United States Department of State,

Mr. Matthew S. Hackell, Attorney Adviser, United States Department of State,

Ms Melinda E. Kuritzky, Attorney Adviser, United States Department of State,

Ms Mary T. Muino, Attorney Adviser, United States Department of State,

Mr. Robert L. Nightingale, Attorney Adviser, United States Department of State,

Mr. Alvaro J. Peralta, Attorney Adviser, United States Department of State,

Mr. David J. Stute, Attorney Adviser, United States Department of State,

Mr. Isaac D. Webb, Attorney Adviser, United States Department of State,

as Counsel;

Mr. Guillaume Guez, PhD candidate at the University of Geneva and the University of Paris 1 Panthéon-Sorbonne, Research and Teaching Assistant, Faculty of Law, University of Geneva,

Ms Anjail Al-Uqdah, Paralegal, United States Department of State,

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

Ms Kelly A. Molloy, Administrative Assistant, United States Department of State,

as Assistants,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 14 June 2016, 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 sought to found the Court's jurisdiction on Article XXI, paragraph 2, of the Treaty of Amity, in conjunction with Article 36, paragraph 1, of the Statute of the Court.

3. In accordance with Article 40, paragraph 2, of the Statute of the Court, the Registrar immediately communicated the Application to the Government of the United States. He also notified the Secretary-General of the United Nations of the filing of the Application by Iran.

4. In addition, by letters dated 20 June 2016, the Registrar informed all Member States of the United Nations of the filing of the above-mentioned Application.

5. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar subsequently notified the Members of the United Nations through the Secretary-General of the filing of the Application, by transmission of the printed bilingual text.

6. 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. Following the resignation of Judge Brower on 5 June 2022, the United States chose Ms Rosemary Barkett to sit as judge *ad hoc*.

7. 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 3, of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Djamchid Momtaz.

8. 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 fixed.

9. By 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 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 of the Court 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 United States District Court seised of the *Peterson* proceedings for access to the documents in question and that it would seek to present to the Court any additional relevant material.

10. On 1 May 2017, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the United States raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. Consequently, by an Order of 2 May 2017, the President of the Court noted that, by virtue of Article 79, paragraph 5, of the Rules of Court of 14 April 1978 as amended on 1 February 2001, the proceedings on the merits were suspended and, taking account of Practice Direction V, 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.

11. By letter dated 24 August 2017, the United States informed the Court that the United States District Court seised of the *Peterson* proceedings had directed the parties to file public versions of the documents to which it had sought access (see paragraph 9 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.

12. Public hearings on the preliminary objections raised by the United States were held from 8 to 12 October 2018. In its Judgment of 13 February 2019 (hereinafter the "2019 Judgment"), the Court found that it had jurisdiction to rule on the Application filed by Iran, except with respect to

Iran's claims based on the alleged violation of rules of international law on sovereign immunities. With respect to the preliminary objection concerning its jurisdiction to entertain Iran's claims of purported violations of Articles III, IV or V of the Treaty of Amity predicated on the treatment accorded to Bank Markazi Jomhuri Islami Iran (hereinafter "Bank Markazi"), the Court found that the objection did not possess an exclusively preliminary character. The Court also found that Iran's Application was admissible.

13. By an Order of 13 February 2019, the Court fixed 13 September 2019 as the new time-limit for the filing of the Counter-Memorial of the United States. By an Order dated 15 August 2019, the President of the Court, at the request of the Respondent, extended that time-limit to 14 October 2019. The Counter-Memorial was filed within the time-limit thus extended.

14. By an Order dated 15 November 2019, the President of the Court authorized the submission of a Reply by Iran and a Rejoinder by the United States, and fixed 17 August 2020 and 17 May 2021 as the respective time-limits for the filing of those pleadings. The Reply and Rejoinder were filed within the time-limits thus fixed.

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

16. Public hearings were held on 19, 21, 22 and 23 September 2022, at which the Court heard the oral arguments and replies of:

For Iran: Mr. Tavakol Habibzadeh,
Mr. Vaughan Lowe,
Mr. Hadi Azari,
Mr. Luke Vidal,
Mr. Jean-Marc Thouvenin,
Mr. Samuel Wordsworth,
Mr. Sean Aughey,
Mr. Alain Pellet.

For the United States: Mr. Richard C. Visek,
Sir Daniel Bethlehem,
Ms Lisa Grosh,
Ms Laurence Boisson de Chazournes,
Mr. John Daley,
Mr. Nathaniel E. Jedrey,
Mr. Steven Fabry.

17. At the hearings, a Member of the Court put a question to Iran, to which a reply was given in writing, in accordance with Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, the United States submitted written comments on Iran's reply.

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18. In the Application, the following claims were made by 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."

19. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Iran,

in the 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."

in the Reply:

"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 has violated its obligations under the Treaty of Amity, 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 inequitable treatment of such companies and their property (including interests in property); and *(b)* unreasonable and discriminatory treatment of such companies, and their property, which impairs the legally acquired rights and interests; and *(c)* failure to assure that the lawful contractual rights of such companies are afforded effective means of enforcement, and *(d)* failure to accord to such companies and their property the most constant protection and security that is in no case less than that required

by international law, and *(e)* expropriation of the property of such companies, and its failure to accord to such entities freedom of access to the U.S. courts to the end that justice be done, as required by the 1955 Treaty of Amity, and *(f)* failure to respect the right of such companies 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), and V (1) 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 aforementioned violations of international law entail the international responsibility of the United States;

(c) That the United States is consequently obliged to put an end to the situation brought about by the aforementioned violations of international law, by *(a)* ceasing those acts and *(b)* making full reparation for the injury caused by those acts, in an amount to be determined in a later phase of these proceedings, and *(c)* offering a formal apology to the Islamic Republic of Iran for those wrongful acts and injuries;

(d) That the United States shall, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the measures adopted by its Legislature and its Executive, and the decisions of its courts and those of other authorities infringing the rights of Iran and of Iranian companies, cease to have effect in so far as they were each adopted or taken in violation of the obligations owed by the United States to Iran under the Treaty of Amity, and that no steps are taken against the assets or interests of Iran or any Iranian entity or national that involve or imply the recognition or enforcement of such acts;

(e) That Iran present to the Court, by a date to be fixed by the Court, a precise evaluation of the reparations due for injuries caused by the unlawful acts of the United States in breach of the Treaty of Amity;

(f) That the United States shall pay the costs incurred by Iran in the presentation of this case and the defence of its legal rights under the Treaty of Amity, with the details thereof to be presented by Iran to the Court, by a date to be fixed by the Court;

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

On behalf of the Government of the United States,

in the Counter-Memorial:

"On the basis of the facts and arguments set out above, the United States of America requests that the Court, in addition or in the alternative:

(1) Dismiss all claims brought under the Treaty of Amity on the basis that Iran comes to the Court with unclean hands.

(2) Dismiss as outside the Court's jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to Bank Markazi.

(3) Dismiss as outside the Court's jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to companies that have failed to exhaust local remedies.

(4) Dismiss on the basis of Article XX (1) *(c)* and *(d)* of the Treaty of Amity 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.

(5) Dismiss all claims brought under Articles III, IV, V, VII, and X of the Treaty of Amity on the basis that the United States did not breach its obligations to Iran under any of those Articles.

(6) To the extent the Court concludes that Iran, notwithstanding the foregoing submissions, has established one or more of its claims brought under the Treaty of Amity, reject such claims on the basis that Iran's invocation of its purported rights under the Treaty constitutes an abuse of right."

in the Rejoinder:

"On the basis of the facts and arguments set out above, the United States of America requests that the Court, in addition or in the alternative:

(1) Dismiss all claims brought under the Treaty of Amity on the basis that Iran comes to the Court with unclean hands.

(2) Dismiss as outside the Court's jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to Bank Markazi.

(3) Dismiss as outside the Court's jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to companies that have failed to exhaust local remedies.

(4) Dismiss on the basis of Article XX (1) *(c)* and *(d)* of the Treaty of Amity 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.

(5) Dismiss all claims brought under Articles III, IV, V, VII, and X of the Treaty of Amity on the basis that the United States did not breach its obligations to Iran under any of those Articles.

(6) To the extent the Court concludes that Iran, notwithstanding the foregoing submissions, has established one or more of its claims brought under the Treaty of Amity, reject such claims on the basis that Iran's invocation of its purported rights under the Treaty constitutes an abuse of right."

20. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of Iran,

"On the basis of the foregoing, Iran respectfully requests the Court to adjudge, order and declare:

(a) First, that the United States has violated its obligations under the Treaty of Amity, as follows:

(i) That by its acts, 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, in particular its *(a)* unfair and inequitable treatment of such companies and their property (including interests in property); and *(b)* unreasonable and discriminatory treatment of such companies, and their property, which impairs the legally acquired rights and interests; and *(c)* failure to assure that the lawful contractual rights of such companies are afforded effective means of enforcement, and *(d)* failure to accord to such companies and their property the most constant protection and security that is in no case less than that required by international law, and *(e)* expropriation of the property of such companies, and its failure to accord to such entities freedom of access to the U.S. courts to the end that justice be done, as required by the 1955 Treaty of Amity, and *(f)* failure to respect the right of such companies 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), and V (1) of the Treaty of Amity;

(iii) That by its acts, 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) Second, that the aforementioned violations of international law entail the international responsibility of the United States;

(c) Third, that the United States is consequently obliged to put an end to the situation brought about by the aforementioned violations of international law, by *(a)* ceasing those acts and *(b)* making full reparation for the injury caused by those acts, in an amount to be determined in a later phase of these proceedings, and *(c)* offering a formal apology to the Islamic Republic of Iran for those wrongful acts and injuries;

(d) Fourth, that the United States shall, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the measures adopted by its Legislature and its Executive, and the decisions of its courts and those of other

authorities infringing the rights of Iran and of Iranian companies, cease to have effect in so far as they were each adopted or taken in violation of the obligations owed by the United States to Iran under the Treaty of Amity, and that no steps are taken against the assets or interests of Iran or any Iranian entity or national that involve or imply the recognition or enforcement of such acts;

(e) Fifth, that Iran presents to the Court, by a date to be fixed by the Court, a precise evaluation of the reparations due for injuries caused by the unlawful acts of the United States in breach of the Treaty of Amity;

(f) Sixth, that the United States shall pay the costs incurred by Iran in the presentation of this case and the defence of its legal rights under the Treaty of Amity, with the details thereof to be presented by Iran to the Court, by a date to be fixed by the Court;

(g) Seventh, any other remedy the Court may deem appropriate."

On behalf of the Government of the United States,

"For the reasons explained during these hearings and in its written submissions and any other reasons the Court might deem appropriate, the United States of America requests that the Court:

(1) Dismiss all claims brought under the Treaty of Amity on the basis that Iran comes to the Court with unclean hands.

(2) Dismiss as outside the Court's jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to Bank Markazi.

(3) Dismiss as outside the Court's jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to companies that have failed to exhaust local remedies.

(4) Dismiss on the basis of Article XX (1) *(c)* and *(d)* of the Treaty of Amity 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.

(5) Dismiss all claims brought under Articles III, IV, V, VII, and X of the Treaty of Amity on the basis that the United States did not breach its obligations to Iran under any of those Articles.

(6) To the extent the Court concludes that Iran, notwithstanding the foregoing submissions, has established one or more of its claims brought under the Treaty of Amity, reject such claims on the basis that Iran's invocation of its purported rights under the Treaty constitutes an abuse of right."

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* *

I. FACTUAL BACKGROUND

21. The Court recalls that, on 15 August 1955, the Parties signed the Treaty of Amity, which entered into force on 16 June 1957 (see paragraph 1 above).

22. 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.

23. In October 1983, the United States Marine Corps barracks in Beirut, Lebanon, were bombed, killing 241 United States service members 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, including the bombing in 1996 of a housing complex in Saudi Arabia known as the Khobar Towers, which killed 19 United States service members. Iran rejects these allegations.

24. In 1984, in accordance with its domestic law, the United States designated Iran as a "State sponsor of terrorism", a designation which it has maintained ever since.

25. 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 to the *Peterson* case, concerning the bombing of the United States barracks in Beirut (see paragraph 23 above), among other cases concerning alleged acts of terrorism. 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.

26. In 2002, the United States enacted the Terrorism Risk Insurance Act (hereinafter "TRIA"), which permitted certain enforcement measures for judgments entered pursuant to the 1996 amendment to the FSIA. In particular, Section 201 of TRIA provides 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 an entity designated a "terrorist party" under United States law (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.

27. In 2008, the United States further amended the FSIA, enlarging the categories of assets available for the satisfaction of judgment creditors, in particular to include all property of State-owned entities of those States having been designated "State sponsors of terrorism", whether or not that property had previously been "blocked" by the United States Government (Section 1610 *(g)* of the FSIA).

28. In 2012, the President of the United States issued Executive Order 13599, which blocked all assets of the Government of Iran, including those of Bank Markazi and of other Iranian financial institutions, where such assets are within United States territory or "within the possession or control of any United States person, including any foreign branch".

29. Also in 2012, the United States adopted the Iran Threat Reduction and Syria Human Rights Act (hereinafter the "ITRSHRA"), Section 502 of which, *inter alia*, made the assets of Bank Markazi subject to execution in order to satisfy debts under default judgments against Iran in the *Peterson* case. Bank Markazi challenged the validity of this provision before United States courts; the United States Supreme Court 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)).

30. Following the legislative and executive measures taken by the United States, many default judgments and substantial damages judgments 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 certain Iranian 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.

31. On 14 June 2016, Iran instituted the current proceedings before the Court (see paragraph 1 above), arguing that, as a result of the United States' executive, legislative and judicial acts, Iran and Iranian entities were suffering serious and ongoing harm.

32. By diplomatic Note dated 3 October 2018 addressed by the United States Department of State to the Ministry of Foreign Affairs of Iran, the United States, in accordance with Article XXIII, paragraph 3, of the Treaty of Amity, gave "one year's written notice" of the termination of the Treaty.

II. QUESTIONS OF JURISDICTION AND ADMISSIBILITY

33. In its 2019 Judgment (see paragraph 12 above), the Court ruled on several objections to jurisdiction and admissibility that the United States had raised as a preliminary matter (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 7). At the present stage of the proceedings, it falls to the Court to examine two objections raised by the Respondent: the first, relating to the Court's jurisdiction *ratione materiae*, concerns the characterization of Bank Markazi; the second, relating to the admissibility of Iran's claims, is based on the failure to exhaust local remedies.

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

34. The Court recalls that one of the preliminary objections raised by the United States sought to have the Court dismiss "as outside [its] 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" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 35, para. 81). Having found that Iran's claims based on Articles III, IV and V of the Treaty of Amity did not relate to the treatment of the Iranian State itself, and that consequently the objection at issue concerned only Bank Markazi (*ibid.*, p. 36, para. 84), the Court considered that the decisive question was whether Bank Markazi was a "company" within the meaning of the Treaty of Amity. Indeed, the rights and protections guaranteed by Articles III, IV and V of the Treaty are for the benefit of "nationals" (a term used in the Treaty to describe natural persons) and "companies".

35. There being a disagreement between the Parties as to whether Bank Markazi could be characterized as a "company", the Court ruled, on the basis of the arguments exchanged before it and information provided to it, that

> "it [did] 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" (*ibid.*, p. 40, para. 97).

It added that, "[s]ince 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" *(ibid.)*. This led the Court, in the operative part of its Judgment, to declare that the objection in question "[did] not possess, in the circumstances of the case, an exclusively preliminary character" (*ibid.*, p. 45, para. 126, subpara. 3).

36. In its final submissions presented at the end of the hearings on the merits, the United States raised the same objection to jurisdiction, except that, in contrast to its preliminary objection, it now referred only to Bank Markazi (subparagraph (2) of the final submissions; see paragraph 20 above).

37. In order to demonstrate that Bank Markazi was carrying out, at the relevant time, activities permitting it to be characterized as a "company" within the meaning of the Treaty of Amity, Iran contends that not only was Bank Markazi able, under its statutes, to perform commercial activities, but it was also actually engaged in such activities.

As regards the first point, Iran refers to its Monetary and Banking Act of 1972. Iran argues that this Act not only confers on Bank Markazi the typical functions of a central bank, which the Applicant acknowledges are sovereign functions; according to Iran, it also authorizes the bank to perform other financial and banking activities that are typically commercial in nature, identical to those performed by any other private company doing business in a free and competitive market.

As regards the second point, Iran cites certain investment activities and the management of securities belonging to Bank Markazi that were held on its behalf in a custody account with Citibank in New York. These assets, which are said to be worth around US$1.8 billion, were composed, according to Iran, of investments made in the form of purchases, between 2002 and 2007, of 22 security entitlements in dematerialized bonds issued on the United States financial market by governments, public enterprises and international institutions such as the World Bank. Iran points out that these investments generated profits, on which Bank Markazi was required to pay tax under Article 25 *(a)* (1) of Iran's Monetary and Banking Act, and on account of which Bank Markazi did in fact pay a significant amount of tax during the period in question.

38. According to Iran, Bank Markazi's purchase of the bonds in question and the management of its investment portfolio are by nature commercial activities that allow the bank to be characterized as a "company" within the meaning of the Treaty. Iran contends that, in its Judgment on preliminary objections, the Court found that, in order to determine whether an activity was commercial, it was necessary to focus on the nature of the said activity, and that the existence of a link between sovereign functions and a given activity was not a sufficient basis for depriving that activity of its commercial nature. In other words, according to Iran, "it is necessary to focus on the activity as such, and not on the function with which that activity has a link of some kind". The Applicant adds that both the United States political authorities and courts deemed Bank Markazi's investment activities to be commercial in nature, which is why they considered that the bank was not entitled to claim immunity against the measures aimed at freezing and attaching the assets concerned. Furthermore, the Applicant contends that there is extensive arbitral jurisprudence confirming that, in characterizing an activity as commercial, the focus should be on the nature of the activity as such, and not on the underlying purpose.

39. For the United States, the nature of the activities mentioned by Iran is not such that they would permit Bank Markazi to be characterized as a "company" within the meaning of the Treaty. According to the Respondent, Bank Markazi engaged in transactions falling within the traditional framework of the sovereign activities carried out by a central bank, and not in transactions of a commercial nature. Bank Markazi's purchase of 22 security entitlements in dematerialized bonds issued by a number of foreign governments and international institutions was part of the management of Iran's currency reserves, a sovereign function with no equivalent in the commercial sphere.

The Respondent emphasizes that, in United States court proceedings, in particular the *Peterson* case, Bank Markazi consistently presented the activities in question as falling within the exercise of its sovereign function as a central bank, and not as commercial operations. It relies, for example, on the bank's statement that

> "Bank Markazi is the Central Bank of Iran. Like other central banks, it holds foreign currency reserves to carry out monetary policies such as maintaining price stability. Like other central banks, it often maintains the reserves in bonds issued by foreign sovereigns or 'supranationals' like the European Investment Bank",

and the assertion that,

> "[p]lainly, central banking activities such as investing currency reserves are not remotely comparable to the 'commercial, industrial, shipping or other business

> activities' that Article XI, Section 4[, of the Treaty] is concerned with. Rather, central banking activities serve an important governmental purpose."

The United States argues that the Court should rely on the assertions made by Bank Markazi itself.

* *

40. Although in its 2019 Judgment the Court refrained from ruling on the objection to jurisdiction now under consideration, on the ground that it did not possess, in the circumstances of the case, an exclusively preliminary character (see paragraph 35 above), that Judgment nevertheless contains, in its reasoning, a number of significant indications regarding the concept of "company" as it is used in Articles III, IV and V of the Treaty of Amity.

41. The Court began by recalling that, under the Treaty, first, an entity may only be characterized as a "company" if it has its own legal personality conferred on it by the law of the State in which it was created, and, second, an entity which is wholly or partly owned by a State may constitute a "company" within the meaning of the Treaty, since the definition of "company" provided by Article III, paragraph 1, makes no distinction between private and public enterprises (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 37, para. 87). The Court concluded from this that Bank Markazi, which had its own legal personality conferred on it by Iranian law, and which the United States could not dispute, was not to be excluded from the category of "companies" solely because it was wholly owned by the Iranian State, which exercised a power of direction and close control over the bank's activities (*ibid.*, p. 38, para. 88).

42. The Court then rejected the interpretation put forward at the time by the Applicant, according to which the nature of the activities carried out by a particular entity was immaterial for the purpose of characterizing that entity as a "company", and that it was therefore of no relevance whether the entity in question carried out functions of a sovereign nature, i.e. acts of sovereignty or public authority, or whether it engaged in activities of a commercial or industrial nature, or indeed a combination of both types of activity.

43. This interpretation, which the Court observed would lead to the conclusion that having a separate legal personality would be both a necessary and a sufficient condition for a given entity to be characterized as a "company" within the meaning of the Treaty, was rejected. In the view 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 the Court stated, 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 Court thus concluded 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" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 38, para. 91).

44. The Court went on to state that, "[h]owever, 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". It considered that,

> "[i]n 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" (*ibid.*, pp. 38-39, para. 92).

45. The Court concluded from all the foregoing that the question was whether Bank Markazi, "alongside the sovereign functions which [Iran] concede[d], . . . engage[d] in activities of a commercial nature". The sovereign functions in question being those of Bank Markazi in its role as central bank, the Court asked itself whether Iran had demonstrated the existence of other activities that would permit the bank to be characterized as a "company" within the meaning of the Treaty (*ibid.*, p. 39, para. 94). In this regard, it noted that, according to Iran, under Iranian law, Bank Markazi could carry out a number of activities, including commercial operations, but that "the Applicant ha[d] made little attempt to demonstrate" the existence of such activities during the relevant period, which could be explained by the fact that Iran's principal argument at the time was that the nature of the activities performed was of no relevance when it came to characterizing the entity as a "company" within the meaning of the Treaty *(ibid.)*.

46. In light of all the foregoing reasons, the Court considered that it did not have the elements necessary to determine whether Bank Markazi was carrying out, at the relevant time, activities of a nature which permit the characterization of an entity as a "company". Since those elements were largely of a factual nature and linked to the merits of the case, the Court concluded that it could rule on the objection to jurisdiction at issue "only after the Parties ha[d] presented their arguments in the following stage of the proceedings" (*ibid.*, p. 40, para. 97).

47. The Court, following the line of reasoning it adopted in its 2019 Judgment, is thus now called upon to determine whether the evidence presented to it by Iran throughout the entire proceedings, and at the merits stage in particular, shows that Bank Markazi was carrying out, at the relevant time, activities which could be categorized as commercial and which would therefore permit the bank to be characterized as a "company" within the meaning of the Treaty, regardless of whether or not those activities, should they be established, constituted its principal activities.

48. Before taking its analysis any further, the Court emphasizes that, to answer the question above, it is not required to rule on the international law on immunities. First, it recalls that, in its 2019 Judgment, in upholding the second preliminary objection to jurisdiction raised by the United States, it declared that, "in so far as Iran's claims concern the alleged violation of rules of

international law on sovereign immunities", in particular to the detriment of Bank Markazi, "the Court does not have jurisdiction to consider them" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, pp. 34-35, para. 80). Further, it notes that, in order to rule on the question whether the activities of Bank Markazi presented by Iran as being of a commercial character permit the bank to be characterized as a "company" within the meaning of the Treaty, it is not required to ascertain whether the entity in question could claim, with regard to those activities, immunity from jurisdiction or enforcement under customary international law. These are two separate questions. The rules on sovereign immunities and those laid down by the Treaty of Amity concerning the treatment of "companies" are two distinct sets of rules. In particular, the questions whether, under customary international law, a State enjoys immunity from jurisdiction in proceedings relating to a commercial transaction and, if so, which criteria should be applied to determine whether a transaction is commercial need not be addressed by the Court for the purpose of examining the objection to jurisdiction at issue.

49. The Court will thus confine itself, at present, to ascertaining whether Iran has established that Bank Markazi was carrying out, at the relevant time, activities of a nature such that the bank should be characterized as a "company" for the purposes of the Treaty of Amity.

The Court notes in this regard that the only activities on which Iran relies to found the characterization of Bank Markazi as a "company" consist in the purchase, between 2002 and 2007, of 22 security entitlements in dematerialized bonds issued on the United States financial market and in the management of proceeds deriving from those entitlements (see paragraph 37 above).

50. In the opinion of the Court, these operations are not sufficient to establish that Bank Markazi was engaged, at the relevant time, in activities of a commercial character. Indeed, the operations in question were carried out within the framework and for the purposes of Bank Markazi's principal activity, from which they are inseparable. They are merely a way of exercising its sovereign function as a central bank, and not commercial activities performed by Bank Markazi "alongside [its] sovereign functions", to use the words of the 2019 Judgment (see paragraph 45 above).

51. Contrary to Iran's contentions (see paragraph 38 above), it does not follow from the 2019 Judgment that, in order to determine whether an activity is commercial, it is necessary only "to focus on the activity as such, and not on the function with which that activity has a link of some kind". In its 2019 Judgment, the Court merely indicated that the decisive question was whether Bank Markazi was carrying out, alongside its sovereign activities, other activities, of a commercial nature. It did not state that, in determining whether particular activities were of a commercial nature, there was no need to take into account any link that they may have with a sovereign function. On the contrary, the Court considers this latter criterion to be relevant. Indeed, in establishing whether a given entity may be characterized as a "company", consideration cannot be limited to a transaction — or series of transactions — "as such", carried out by that entity. That transaction — or series of transactions — must be placed in its context, taking particular account of any links that it may have with the exercise of a sovereign function.

52. To reach the conclusion set out in paragraph 50 above, i.e. that the transactions performed by Bank Markazi are part of the usual activity of a central bank and inseparable from its sovereign

function, the Court does not consider the statements made in United States court proceedings by counsel for Bank Markazi and relied on by the United States (see paragraph 39 above) to be decisive.

Such statements are not opposable to Iran, which, moreover, did not make them, and they can be explained by the fact that the bank was seeking, in that context, to obtain the immunity to which it believed it was entitled. Iran rightly notes that both the United States political authorities and courts rejected Bank Markazi's claims at the time and declared instead that a number of its activities were of a commercial nature. As the Court recalled earlier, the question of immunity is not before it today.

The Court nevertheless considers that the assertions made by Bank Markazi in the judicial proceedings in the *Peterson* case, which are cited above, accurately reflect the reality of the bank's activities.

53. The Parties cited before the Court various arbitral decisions in support of their opposing arguments regarding the commercial nature of Bank Markazi's activities. The Court notes that none of the decisions cited is wholly relevant to the present proceedings. Iran relies on an arbitral decision rendered in the *Československá Obchodní Banka, A.S.* v. *The Slovak Republic* case (Decision of the Tribunal on Objections to Jurisdiction, 24 May 1999, ICSID Case No. ARB/97/4). In that case, however, the tribunal had to respond to the question whether a commercial bank should be considered as a national of the State by which it is owned or merely as an agency of that State, for the purposes of the applicable convention. The arbitral award in *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company* v. *The Government of Mongolia* (Award on Jurisdiction and Liability, 28 April 2011), relied on by the United States, appears to be more similar to the present case. In that case, the tribunal had to determine whether certain contractual operations of the central bank of Mongolia were of a commercial nature or had been carried out *de jure imperii*; it found the latter to be the case, based on the purpose of the transactions at issue. However, what the tribunal had to decide was whether the actions of the central bank were attributable to the State of Mongolia itself for the purpose of invoking the international responsibility of the State, which is a different question from the one now before the Court. In sum, the decisions relied on are of little relevance.

54. For the reasons set out above, the Court concludes that Bank Markazi cannot be characterized as a "company" within the meaning of the Treaty of Amity. Consequently, the objection to jurisdiction raised by the United States with regard to Iran's claims relating to alleged violations of Articles III, IV, and V of the Treaty of Amity predicated on treatment accorded to Bank Markazi must be upheld. The Court has no jurisdiction to consider those claims.

B. Objection to admissibility based on the failure to exhaust local remedies

55. In its final submissions, the United States asks the Court to "[d]ismiss as outside [its] jurisdiction all claims brought under Articles III, IV, and V of the Treaty of Amity that are predicated on treatment accorded to companies that have failed to exhaust local remedies".

56. Although this claim is presented by the Respondent as an objection to jurisdiction, it is in fact an objection to admissibility: the Court has ruled that an objection based on the failure to exhaust

local remedies, when proceedings are instituted on the basis of diplomatic protection, does not relate to its jurisdiction but to the admissibility of the application (*Interhandel (Switzerland* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 26).

57. The Court begins by noting that the United States first raised this objection in its Counter-Memorial, i.e. as part of the proceedings on the merits and after the Court had delivered its Judgment on preliminary objections on 13 February 2019. In that Judgment, the Court examined and dismissed several objections to admissibility raised by the United States (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 45, para. 126, subpara. 4), and found the Application admissible (*ibid.*, subpara. 5).

58. The Court notes that Iran does not invoke the 2019 Judgment to contest the admissibility of the objection concerned, but instead asks the Court to dismiss the objection as ill-founded on the ground that the rule requiring local remedies to be exhausted does not apply in this case and that, in any event, the remedies offered by the legal system of the United States were ineffective.

Under these circumstances, the Court will examine the United States' objection to admissibility based on the failure to exhaust local remedies.

59. The United States contends that the rule requiring the nationals of an applicant State to have first exhausted local remedies is applicable in this case, because the claims before the Court are advanced by Iran on behalf of Iranian companies affected by the United States' measures and not in its own right. Yet the legal system of the United States affords accessible and effective means of redress, which were not exhausted by the Iranian companies in question, except in two cases, the *Bennett* and *Weinstein* cases, which involved enforcement measures taken against Bank Melli. In all other cases, the failure to exhaust local remedies prevents the Court, in the view of the United States, from entertaining Iran's claims.

60. Iran contends that the Court must dismiss the objection for two reasons. First, it asserts that its claims arise from injuries "to the State itself, which in part consist[] in, and [are] interdependent with, the injuries to its companies", hence the requirement to exhaust local remedies does not apply. Second, the Applicant argues that "[t]he discriminatory scheme targeting Iran and its companies prevents U.S. courts from providing effective redress" in such a way that any proceedings Iran may have instituted — in addition to those attempted without success — would have been bound to fail from the outset.

* *

61. The Court recalls that, under customary international law, when a State brings an international claim on behalf of one or more of its nationals on the basis of diplomatic protection, local remedies must be exhausted before the claim may be examined (see most recently *Application of the International Convention for the Suppression of the Financing of Terrorism and of the*

International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, pp. 605-606, para. 129; see also *Interhandel (Switzerland* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1959*, p. 27; *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy), Judgment, I.C.J. Reports 1989*, p. 42, para. 50; *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 599, para. 42).

The Court has previously stated that the definition of diplomatic protection given in Article 1 of the Articles on Diplomatic Protection of the International Law Commission (hereinafter the "ILC"), namely that

> "diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility",

reflects customary international law (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 599, para. 39).

62. The Court notes that the Applicant stated, in its Memorial, that it was "claim[ing] both in its own right and on behalf of the Iranian companies impacted by the U.S. measures at issue in this case" and, in its Reply, that its claims arose from injuries to Iran, "which in part consist[] in, and [are] interdependent with, the injuries to its companies" (see paragraph 60 above).

63. The Court found, in the case concerning *Avena and Other Mexican Nationals (Mexico* v. *United States of America)*, that the obligation to exhaust local remedies did not apply to a claim by which a State alleged both that it had suffered a violation of its own rights and that there had been a violation of the individual rights conferred on its nationals, when there were "special circumstances of interdependence of the rights of the State and of individual rights" (*Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 36, para. 40). In that case, the "interdependence" noted by the Court resulted from the fact that the rights at issue were an arrested person's right to request that the consular authorities of his or her State of nationality be notified of the arrest and the right to be informed of the possibility to make such a request, which rights are guaranteed by Article 36, paragraph 1 *(b)*, of the Vienna Convention on Consular Relations of 24 April 1963.

64. The rights at issue in the above-mentioned *Avena* Judgment were particular in that the relationship between individuals and the authorities of their State of nationality was brought into play, so that the rights of the individual were inextricably linked to those of the State. As the Court observed, "violations of the rights of the individual under Article 36 may entail a violation of the rights of the sending State, and . . . violations of the rights of the latter may entail a violation of the rights of the individual" *(ibid.)*.

65. There is not the same relationship of interdependence in respect of the rights that Iran alleges have been violated in this case.

The Court thus sees no reason to refrain from applying the rule of exhaustion of local remedies by following a similar line of reasoning to that which it adopted in the *Avena* case.

66. Under Article 14, paragraph 3, of the ILC Articles on Diplomatic Protection, local remedies must be exhausted when the claim of a State is brought "preponderantly" on the basis of an injury to one of its nationals. This provision implies that, in the event of a mixed claim, which contains elements of both injury to the State and injury to its nationals, it is the "preponderance" criterion which may determine whether the local remedies rule is applicable or not (see the commentary on Article 14, Report of the ILC on the work of its fifty-eighth session, *Yearbook of the International Law Commission*, 2006, Vol. II, Part Two, p. 46, para. 11).

67. In this case, the Court does not consider that it is required to rule on the question whether Iran's Application was submitted preponderantly in defence of its own rights or to protect those of Iranian companies, assuming that criterion to be relevant (see on this point *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy), Judgment, I.C.J. Reports 1989*, p. 43, para. 52). Indeed, for the reasons set out below, the Court is persuaded that the companies in question did not have any effective means of redress, in the legal system of the United States, that they failed to pursue.

68. Under customary international law, the requirement that local remedies be exhausted is deemed to be satisfied when there are no available local remedies providing the injured persons with a reasonable possibility of obtaining redress (see Article 15, paragraph *(a)*, of the ILC Articles on Diplomatic Protection and the numerous examples mentioned in the commentary, *Yearbook of the International Law Commission*, 2006, Vol. II, Part Two, pp. 47-48, paras. 3 and 4).

69. What characterizes the United States' measures complained of by Iran in the present case is that they were established by legislative means, or by executive acts based on legislation, and that they were given effect by court decisions applying federal legislative provisions.

As recalled by counsel for Iran, "according to settled United States jurisprudence, where there is an explicit inconsistency between a treaty and a statute adopted later than that treaty, the statute is deemed to have abrogated the treaty in United States law". The United States did not attempt to contest the validity of that assertion, which is corroborated by several decisions of United States courts included in the case file. It appears from those decisions that, each time an Iranian entity sought to have a federal legislative provision set aside by a court on the ground that it ran counter to the rights enjoyed by that entity under the Treaty of Amity, the court, after finding that the provision at issue was not contrary to the Treaty, referred to the jurisprudence whereby courts are, in any event, obliged to apply the federal statute when it was enacted after the treaty (which is the case for the provisions at issue in these proceedings).

70. For example, in the *Weinstein* case, Bank Melli argued before the District Court for the Eastern District of New York that TRIA violated Article III, paragraph 1, of the Treaty of Amity, because it allowed for the "lifting of the corporate veil", thereby denying the bank, in its view, its separate legal personality. The court responded, first, that such was not the case and, second, that "[i]n any event, to the extent that TRIA § 201 *(a)* may conflict with Article III (1) of the Treaty

of Amity, the TRIA would 'trump' the Treaty of Amity". On the second point, the court referred to several Supreme Court precedents establishing that, in the event of a conflict between a treaty and a federal statute, it is the more recent of the two that prevails (*Weinstein et al.* v. *Islamic Republic of Iran et al.*, United States District Court, Eastern District of New York, Order of 5 June 2009, *Federal Supplement*, Second Series, Vol. 624, p. 272, affirmed by United States Court of Appeals, Second Circuit, 15 June 2010, *Federal Supplement*, Third Series, Vol. 609, p. 43; see also *Bennett et al.* v. *The Islamic Republic of Iran et al.*, United States Court of Appeals, Ninth Circuit, 22 February 2016, *Federal Supplement*, Third Series, Vol. 817, p. 1131, as amended on 14 June 2016, *Federal Supplement*, Third Series, Vol. 825, p. 949).

71. The Iranian companies that succeeded in having certain measures set aside by the courts were only able to do so by demonstrating either that the contested measures fell outside the scope of the statute on which they were said to be founded, or that they were contrary to the statute itself (see for example *Rubin* v. *Islamic Republic of Iran*, United States District Court, Northern District of Illinois, Memorandum and Order of 27 March 2014, *Federal Supplement*, Third Series, Vol. 33, p. 1003).

72. The effectiveness of local remedies must be assessed in light of the rights claimed by those concerned, in this case the rights guaranteed to Iranian companies by the Treaty of Amity. Given the combination of the legislative character of the contested measures and the primacy accorded to a more recent federal statute over the treaty in the jurisprudence of the United States, it appears to the Court that, in the circumstances of the present case, the companies in question had no reasonable possibility of successfully asserting their rights in United States court proceedings. The Court is not, by the above finding, making any judgment upon the judicial system of the United States, or on the distribution of powers between the legislative and judicial branches under United States law as regards the fulfilment of international obligations within the domestic legal system.

73. For the foregoing reasons, the Court concludes that the objection to admissibility based on the failure to exhaust local remedies cannot be upheld.

III. DEFENCES ON THE MERITS PUT FORWARD BY THE UNITED STATES

74. As the Court has stated on several occasions, it "retains its freedom to select the ground upon which it will base its judgment" (for example, *Application of the Convention of 1902 Governing the Guardianship of Infants (Netherlands* v. *Sweden), Judgment, I.C.J. Reports 1958*, p. 62). Therefore, in principle, it retains its freedom to choose the order in which it will deal with the questions submitted to it by the parties (for example, *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 180, para. 37).

75. In the present case, the Court considers it appropriate to deal first with the defences on the merits put forward by the United States before, if necessary, addressing the Applicant's claims.

A. Defence based on the "clean hands" doctrine

76. In its preliminary objections, the United States contended that Iran's Application was inadmissible because Iran came to the Court with "unclean hands". It alleged, in particular, that Iran had "sponsored and supported international terrorism" and had "taken destabilizing

actions in contravention of nuclear non-proliferation . . . obligations" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 43, para. 116).

In its Judgment, the Court stated that,

> "[w]ithout having to take a position on the 'clean hands' doctrine, [it] consider[ed] 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" (*ibid.*, p. 44, para. 122).

It added that

> "[s]uch a conclusion [was] 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" (*ibid.*, p. 44, para. 123).

In the operative part of the 2019 Judgment, all the preliminary objections to admissibility raised by the United States, including the objection based on the "clean hands" doctrine, were rejected (*ibid.*, p. 45, para. 126, subpara. 4).

77. The United States repeats its arguments based on Iran's "unclean hands" in support of its defence on the merits. In its final submissions, it requests that the Court "[d]ismiss all claims brought under the Treaty of Amity on the basis that Iran comes to the Court with unclean hands" (subparagraph 1 of the final submissions).

78. According to the Respondent, Iran has engaged in a concerted and consistent campaign to advance its own political interests through destabilizing acts, contrary to international law; terrorism is alleged to be a core component of that campaign, which has specifically targeted United States nationals. The Respondent maintains that such is the case of the 1983 Beirut Marine barracks bombing that caused the deaths of 241 United States service members. In the view of the United States, by invoking the Treaty of Amity, Iran seeks to avoid the payment of reparation that it owes to its victims. According to the Respondent, this provides the Court with a basis to apply the "clean hands" doctrine in this case and to reject Iran's claims based on the Treaty of Amity, because the challenged measures have been taken by the United States in response to Iranian-supported terrorist acts directed at the United States and its nationals.

79. Iran notes that the United States overlooks the fact that the Court has already ruled on the same argument in its Judgment on preliminary objections. While accepting that "the matter is not *res judicata* in the technical sense", Iran observes that the United States merely repeats the same line of argument in its defence on the merits, without any reference to the Court's findings and arguments in its decision on the preliminary objections. In Iran's opinion, much of the Court's reasoning in its 2019 Judgment is equally valid for the merits and provides a basis for rejecting the defence now being examined. Iran further contends that, although the "clean hands" doctrine has often been invoked, it has never been applied by international courts and tribunals.

* *

80. The Court observes that while it rejected the objection to admissibility based on the "clean hands" doctrine in its Judgment on preliminary objections, it was careful to note that its decision was "without prejudice to the question whether the [Respondent's] allegations . . . could . . . provide a defence on the merits" (see paragraph 76 above). Indeed, it is in principle open to a State to repeat in substance, in support of a defence on the merits, arguments it previously relied on unsuccessfully to support an objection to jurisdiction or admissibility. Neither the force of *res judicata* attached to the 2019 Judgment nor any other factor allows for the defence on the merits based on the "clean hands" doctrine, as invoked by the United States, to be declared inadmissible.

81. The Court notes that, though often invoked in international disputes, the argument based on the "clean hands" doctrine has only rarely been upheld by the bodies before which it has been raised. The Court itself has never held that the doctrine in question was part of customary international law or constituted a general principle of law. In its Judgment of 17 July 2019 in the *Jadhav* case, the Court stated that it "[did] not consider that an objection based on the 'clean hands' doctrine may by itself render an application based on a valid title of jurisdiction inadmissible" (*Jadhav (India* v. *Pakistan), Judgment, I.C.J. Reports 2019 (II)*, p. 435, para. 61), thus confirming that such an argument could not be relied upon in support of an objection to admissibility.

As a defence on the merits, the Court has always treated the invocation of "unclean hands" with the utmost caution. In its 2019 Judgment in the present case, the Court stated that it did not have to "take a position on the 'clean hands' doctrine" (see paragraph 76 above), thus reserving its position on the legal status of the concept itself in international law. It notes, moreover, that the ILC declined to include the "clean hands" doctrine among the circumstances precluding wrongfulness in its Articles on the Responsibility of States for Internationally Wrongful Acts (hereinafter the "ILC Articles on State Responsibility"), on the ground that this "doctrine has been invoked principally in the context of the admissibility of claims before international courts and tribunals, though rarely applied" (see the commentary on Chapter V of Part One of the ILC Articles on State Responsibility, *Yearbook of the International Law Commission*, 2001, Vol. II, Part Two, p. 72, para. 9).

82. In any event, in the view of the Respondent itself, at least several conditions must be met for the "clean hands" doctrine to be applicable in a given case. Two of those conditions are that a wrong or misconduct has been committed by the applicant or on its behalf, and that there is "a nexus between the wrong or misconduct and the claims being made by the applicant State". The United States adds that "[t]he level of connection between the misconduct or wrong and the applicant's claim will depend on the circumstances of the case".

83. In its Judgment on preliminary objections in the present case, the Court noted 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" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 44, para. 122). This observation is also relevant with regard to the "clean hands" doctrine relied on as a defence on the merits. In the view of the Court, there is, in any case, not a sufficient connection between the wrongful conduct imputed to Iran by the United States and the claims of Iran, which are based on the alleged violation of the "Treaty of Amity, Economic Relations, and Consular Rights".

84. For the above reasons, the defence on the merits based on the "clean hands" doctrine cannot be upheld.

B. Defence based on abuse of rights

85. According to the United States, Iran's claims before the Court constitute an abuse of rights for two reasons. First, because Iran "seeks to extend its rights under the Treaty, a consular and commercial agreement, to circumstances that the Parties plainly never intended them to address"; and, second, because the Applicant invokes the Treaty for the sole purpose of circumventing its obligation to make reparation to United States victims of Iranian-sponsored terrorist acts.

86. Iran argues that the United States is merely relabelling as "abuse of rights" the "abuse of process" preliminary objection that the Court examined and rejected in its 2019 Judgment. According to Iran, the nature of the argument is the same and it is not enough to replace one term with another in order to submit the same question to the Court, without taking any account of the Court's reasons for rejecting the "abuse of process" preliminary objection in its earlier Judgment. The Applicant observes that the so-called "abuse of rights" defence is being put forward in a dispute between the same Parties as those concerned in the 2019 Judgment; it is based on the same legal grounds as those on which the preliminary objection rejected by the Court was based; and it has the same object, namely to preclude Iran from exercising its rights under the Treaty.

87. Iran contends that the defence in question is founded neither in fact nor in law and notes that such a defence has never been upheld in an inter-State dispute. It adds that abuse of rights could only be successful in this case if there were clear evidence to overturn the presumption that Iran, like any applicant, is acting in good faith, and that there is no such evidence.

* *

88. The Court begins by observing that the fact that the United States has raised similar arguments in support of its "abuse of process" objection that was rejected by the 2019 Judgment on preliminary objections does not preclude examination of its "abuse of rights" defence. Since an objection to admissibility and a defence on the merits are by nature distinct, the force of *res judicata* attaching to the 2019 Judgment cannot preclude the invocation of any defence on the merits.

89. However, in examining the defence, the Court must take into account the reasons given in its earlier Judgment for rejecting the objection to admissibility based on similar arguments.

90. In this regard, the Court notes that, in arguing that Iran is committing an abuse of rights by seeking to apply the Treaty of Amity to measures that are unrelated to commerce, the United States is merely asserting, in another way, that Iran's claims fall outside the scope *ratione materiae* of the

Treaty. This question was addressed by the Court, in terms of its jurisdiction, in its 2019 Judgment; it will be referred to, in terms of the merits, in the following section of this Judgment, as part of the examination of Iran's claims based on the alleged violation of various provisions of the Treaty.

91. With respect to the second limb of the United States' argument, namely that Iran's aim is to circumvent its obligation to make reparation to the victims of its acts (see paragraph 85 above), the Court begins by recalling the essential elements of its jurisprudence in this regard.

92. As early as 1926, the Permanent Court of International Justice held that an abuse of rights or a violation of the principle of good faith "cannot be presumed, and it rests with the party who states that there has been such [an abuse or violation] to prove his statement" (*Certain German Interests in Polish Upper Silesia, Merits, Judgment No. 7, 1926, P.C.I.J., Series A, No. 7*, p. 30). As the Court noted in its 2018 Judgment in the case concerning *Immunities and Criminal Proceedings*, "[o]n several occasions before the Permanent Court of International Justice, abuse of rights was pleaded and rejected at the merits phase for want of sufficient proof" (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 335-336, para. 147).

93. The Court could only accept the abuse of rights defence in this instance if it were demonstrated by the Respondent, on the basis of compelling evidence, that the Applicant seeks to exercise rights conferred on it by the Treaty of Amity for purposes other than those for which the rights at issue were established, and that it was doing so to the detriment of the Respondent.

The Court considers that the United States has failed to make such a demonstration.

Consequently, the defence based on an alleged abuse of rights cannot be upheld.

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

94. The Court recalls that, in its preliminary objections, the United States invoked Article XX, paragraph 1 *(c)* and *(d)*, of the Treaty of Amity to request that the Court dismiss as outside its jurisdiction all claims of Iran that the measures adopted by the United States under Executive Order 13599 violate the Treaty of Amity. The Court rejected this objection to its jurisdiction on the ground that the provisions relied on did not have the effect of restricting its jurisdiction but only afforded the Parties a possible defence on the merits to be used should the occasion arise (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 25, para. 45, referring to *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20).

95. In its final submissions presented at the end of the proceedings on the merits, the United States invokes the same provisions again to request that the Court "[d]ismiss on the basis of Article XX (1) *(c)* and *(d)* of the Treaty of Amity 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".

96. The provisions invoked read as follows:

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

. . . . . .

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

(d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests."

97. It should be noted that, in its arguments before the Court regarding subparagraph *(d)*, the Respondent relied on only the second limb of that subparagraph, namely that which refers to the "protect[ion of] its essential security interests"; the United States did not claim that the contested measures were "necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security".

98. The Court will examine in turn the arguments of the Parties concerning the two provisions invoked as defences by the United States.

1. Article XX, paragraph 1 *(c)*

99. Executive Order 13599 was issued in 2012 with a view to blocking all assets of the Government of Iran and those of Iranian financial institutions, where such assets are within United States territory or "within the possession or control of any United States person, including any foreign branch" (see paragraph 28 above).

100. According to the United States, Executive Order 13599 falls within the scope of Article XX, paragraph 1 *(c)*, in so far as it seeks to "contain, by rules and regulations, Iran's international arms trafficking, ballistic missile production, and financial support for terrorism" by freezing the assets of Iranian governmental entities that are in the United States or in the control of a United States person. The United States adds that, contrary to what Iran maintains, Article XX, paragraph 1 *(c)*, is not limited to measures by which each Party regulates its own production or its own export or import of arms; it addresses more broadly the "traffic in arms", a term which refers to the international trade in munitions, including any transactions that enable or facilitate such trade, by promoting the proliferation of arms across borders to actors who may put them to dangerous use.

101. Iran argues that Executive Order 13599 is in no way intended to "'regulate' the production of or traffic in arms", as would, for example, a prohibition on the export of United States arms to Iran. Moreover, it does not even contain the word "arms" and the aims it pursues are, according to its own terms, of a purely financial nature and have no direct link to the production of and traffic in arms.

* *

102. The Court cannot accept the United States' broad interpretation of the provision concerned. The terms of Article XX, paragraph 1 *(c)*, in their ordinary meaning and in light of the object and purpose of the Treaty, cannot bring within its scope any measures other than those that are intended, by a party to the Treaty, to regulate its own production of or its own traffic in arms, or to regulate the export of arms to the other party or the import of arms from the other party. In the view of the Court, Article XX, paragraph 1 *(c)*, cannot be relied upon to justify measures taken by a party which might impair the rights afforded by the Treaty and which are solely intended to have an indirect effect on the production of and the traffic in arms by the other party or on the territory of the other party.

103. There is nothing in Executive Order 13599 that meets the criteria defined in the previous paragraph. Consequently, the United States' defence based on Article XX, paragraph 1 *(c)*, of the Treaty of Amity cannot be upheld.

2. Article XX, paragraph 1 *(d)*

104. According to the United States, Executive Order 13599 is a measure "necessary to protect its essential security interests", within the meaning of Article XX, paragraph 1 *(d)*, of the Treaty. The United States submits that the Executive Order enables it to protect its essential interests by addressing Iran's support for arms trafficking, terrorism and the development of ballistic capabilities. The Respondent points out that the concept of essential security interests is broad, as the Court has previously held, referring in this regard to the 1986 Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* (*I.C.J. Reports 1986*, p. 117, para. 224).

Furthermore, according to the Respondent, the judicial organ should afford substantial deference to the State invoking such a ground by relying on an exception provided for in the applicable treaty; this exception, it argues, "leaves each party, acting in good faith, a wide discretion to determine the measures necessary to protect its security interests". In this regard, the Respondent refers to the Court's Judgment in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France)* (*I.C.J. Reports 2008*, p. 229, para. 145).

Finally, the United States observes that the prevention of terrorism and of the financing of terrorism, and the halting of the ballistic missile programme of a hostile State indisputably constitute its essential security interests.

105. Iran submits that the United States has not shown, as is incumbent on it, that Executive Order 13599 was a measure necessary to protect its essential security interests.

The Applicant points out that it is not sufficient for a State to declare that a measure is warranted on the grounds set out in Article XX, paragraph 1 *(d)*, for it to be justified, *ipso facto*, to invoke that provision. It falls to the Court to ascertain whether the "essential interests" invoked are real and the contested measure necessary. According to the Applicant, the criterion of necessity involves consideration of proportionality, which must be assessed in light of the damage inflicted by the measures concerned. Iran refers to the Court's jurisprudence, in particular its Judgments in the cases concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v.

United States of America) (*I.C.J. Reports 1986*, p. 117, para. 224, and p. 141, para. 282) and *Oil Platforms (Islamic Republic of Iran* v. *United States of America)* (*I.C.J. Reports 2003*, p. 183, para. 43).

* *

106. The Court has previously examined a defence based on Article XX, paragraph 1 *(d)*, of the Treaty of Amity in its Judgment on the merits in the *Oil Platforms* case. Referring to the Judgment in the case concerning *Military and Paramilitary Activities*, mentioned above, in which it applied a provision of another treaty drafted in similar terms, the Court stated that "the measures taken must not merely be such as tend to protect the essential security interests of the party taking them, but must be 'necessary' for that purpose" and that "whether the measures taken were 'necessary' is 'not purely a question for the subjective judgment of the party' . . . and may thus be assessed by the Court" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 183, para. 43, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Judgment, I.C.J. Reports 1986*, p. 141, para. 282).

The Court can see no reason to depart from this jurisprudence in the present case.

107. It is true that in its Judgment in the *Djibouti* v. *France* case, to which the United States refers, the Court considered that the applicable treaty in that case — which enabled a party to invoke its "essential interests", including "security" interests — provided a State invoking it with "a very considerable discretion" (*Certain Questions of Mutual Assistance in Criminal Matters (Djibouti* v. *France), Judgment, I.C.J. Reports 2008*, pp. 229-230, paras. 145-147). But the provision in question was drafted in terms significantly different from those used in Article XX, paragraph 1 *(d)*. The Convention on Mutual Assistance between Djibouti and France provided that the requested State could refuse a request for mutual assistance if it "consider[ed] that execution of the request [was] likely to prejudice its sovereignty, its security, its *ordre public* or other of its essential interests" (*ibid.*, p. 226, para. 135). The very language of this provision, in using the verb "consider", provided the State concerned with a wide margin of discretion, greater than that afforded to the States parties by Article XX, paragraph 1 *(d)*, of the Treaty of Amity.

108. Having regard to the foregoing considerations, the Court is of the view that it was for the United States to show that Executive Order 13599 was a measure necessary to protect its essential security interests, and that it has not convincingly demonstrated that this was so. Even accepting that the Respondent enjoys a certain margin of discretion, the Court cannot content itself with the latter's assertions. It further notes that the reasons set out by the Executive Order itself to justify the specific measures it enacts relate to the financial practices of Iranian banks, deficiencies in Iran's anti-money laundering régime and the ensuing risks for the international financial system; there is no mention of security considerations.

109. The Court therefore concludes that the defence based on Article XX, paragraph 1 *(d)*, of the Treaty cannot be upheld.

IV. ALLEGED VIOLATIONS OF THE TREATY OF AMITY

110. The Court will now examine the alleged violations by the United States of its obligations under the Treaty of Amity.

111. The claims of Iran concern a set of legislative, executive and judicial measures adopted by the United States since 2002. These measures include Section 201 *(a)* of TRIA and Section 1610 *(g)* (1) of the FSIA (see paragraphs 26-27 above), as well as the application of those provisions by United States courts.

112. Section 201 of TRIA is entitled "Satisfaction of judgments from blocked assets of terrorists, terrorist organizations, and State sponsors of terrorism". Paragraph *(a)* of Section 201 reads:

> "In General. — Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605 *(a)* (7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable."

Section 1610 *(g)* (1) of the FSIA provides:

> "*(g)* Property in Certain Actions. —
>
> (1) In general. — Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of —
>
> (A) the level of economic control over the property by the government of the foreign state;
>
> (B) whether the profits of the property go to that government;
>
> (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
>
> (D) whether that government is the sole beneficiary in interest of the property; or
>
> (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations."

113. The judicial decisions of which Iran complains were rendered by United States courts in application of those legislative provisions. They ordered the attachment, execution, turnover or distribution of assets of certain Iranian companies.

114. Iran's claims also concern Executive Order 13599 of 2012, which is entitled "Blocking Property of the Government of Iran and Iranian Financial Institutions". Section 1 of Executive Order 13599 provides:

> "*(a)* All property and interests in property of the Government of Iran, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.
>
> *(b)* All property and interests in property of any Iranian financial institution, including the Central Bank of Iran, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.
>
> *(c)* All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order."

115. The Parties agree that, as concerns the domestic cases challenged by Iran in these proceedings, the main effect of Executive Order 13599 was the blocking of Bank Markazi's assets. Since the Court has found that it does not have jurisdiction under the Treaty of Amity to entertain claims relating to alleged violations of Articles III, IV and V predicated on treatment accorded to Bank Markazi (see paragraph 54 above), it will not consider Iran's claims in respect of Executive Order 13599 in so far as they concern this entity. For the same reason, the Court will not consider Iran's allegations with respect to the *Peterson* case and Section 502 of the ITRSHRA (see paragraph 29 above). The Court will, however, examine Iran's other claims in respect of Executive Order 13599.

* *

116. Iran argues that, as a result of the measures described above, Iranian enterprises and Iran itself have been deprived of the rights they enjoyed under the Treaty of Amity. They have been stripped of their assets, and the freedom of commerce and navigation guaranteed by the Treaty has

been severely curtailed. It asserts that the United States has established an exceptional legal régime, amending its laws and regulations to ensure that the assets of Iranian companies could be seized for the purpose of executing judgments against Iran, despite the fact that those companies have no relation to the judgments against Iran or to the allegations on which they are based. The Applicant adds that the legal defences which Iranian companies should have been able to enjoy under the Treaty of Amity have been "systematically neutralized" by the legislative provisions adopted by the United States and "systematically rejected" by the courts.

117. According to Iran, through these measures, the United States has disregarded the principle of separation of legal personalities and unlawfully blocked and seized property of certain Iranian companies and of Iran itself. It takes note of the United States' assertion that it has adopted these measures as part of its "efforts to provide redress for victims of terrorism". Yet, in Iran's view, the United States has not explained how such efforts could justify its conduct towards Iranian enterprises engaged in commercial activities.

118. Iran consequently submits that the United States has violated its obligations under Article III, paragraphs 1 and 2, Article IV, paragraphs 1 and 2, Article V, paragraph 1, Article VII, paragraph 1, and Article X, paragraph 1, of the Treaty of Amity.

*

119. The United States, for its part, considers that the dispute is inextricably linked to its domestic response aimed at holding accountable State sponsors of terrorism and providing redress for victims of terrorist acts. The Respondent contends that its measures enabling victims of terrorism to seek redress for their losses, which were taken progressively over a period of years, as well as the related judicial decisions, do not constitute violations of the Treaty of Amity.

120. The United States maintains that the relevant legislative provisions, which allow plaintiffs to enforce liability judgments against Iran upon the property of the State and its agencies and instrumentalities, are a reasonable and measured response to "the refusal of State sponsors of terrorism to reckon with the immense harm that they have caused". It emphasizes that the measures apply equally to all designated State sponsors of terrorism and not solely to Iran, and that they were in place prior to the initiation of the enforcement proceedings at issue. As concerns those proceedings, the United States stresses that Iran has not alleged any procedural impropriety by the courts, which assess whether the statutory criteria are met and give interested parties the opportunity to be heard. It adds that the relevant orders are subject to appeal.

121. The Respondent argues that the measures at issue are outside the realm of the Treaty of Amity because they are not targeted at trade and transactions between the Parties. It rejects the argument that the Treaty requires corporate separateness in all circumstances, maintaining that Articles III, IV and V do not constrain the regulatory power of either Party to allow victims

to use the judicial process to hold State sponsors of terrorism to account and seek compensation. It adds that Article VII, paragraph 1, and Article X, paragraph 1, do not apply to the type of measures at issue.

* *

122. The Court observes that the Parties have divergent views on the question to what extent the Treaty of Amity imposes limits on a State's regulatory powers. In this respect, the Parties' disagreements essentially relate to the alleged disregard of the separate legal personality of Iranian companies and to the attachment and execution of their assets to satisfy liability judgments against Iran. Their main arguments on these issues concern the interpretation of Article III, paragraph 1, and Article IV, paragraph 1, of the Treaty, and their application in the circumstances of the present case. Since the Parties' arguments in respect of these provisions are closely related, the Court will address Iran's claims based on Article III, paragraph 1, and Article IV, paragraph 1, together, before examining the remainder of its claims.

A. Alleged violations of Article III, paragraph 1, and Article IV, paragraph 1

123. Article III, paragraph 1, of the Treaty of Amity reads as follows:

> "Companies 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. It is understood, however, that recognition of juridical status does not of itself confer rights upon companies to engage in the activities for which they are organized. 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."

Article IV, paragraph 1, of the Treaty 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."

124. Iran argues that, through the legislative, executive and judicial measures at issue, the United States has deprived Iranian companies of the independent legal personality conferred on them by their juridical status and conflated their assets with those of the Iranian State, in violation of Article III, paragraph 1, of the Treaty of Amity. Iran also argues that, by abrogating Iranian companies' separate legal personality, removing a legal defence otherwise available to them, and making them liable for purportedly wrongful acts of Iran that were the subject of judgments in

proceedings to which they were not parties, the United States has failed to afford Iranian companies the treatment prescribed by Article IV, paragraph 1, of the Treaty.

125. According to Iran, the juridical status of a company is established by the law of the State in which it was created, and it is this law that determines whether an entity has its own legal personality, as well as the specific elements of that legal personality. The United States is therefore obliged to give effect to the juridical status of Iranian companies as determined by Iranian law, including by recognizing that they have their own, separate legal personality. Iran contends that, under Article III, paragraph 1, of the Treaty of Amity, a company's own legal personality must be recognized and its constituent elements, including its assets, must not be conflated with those of other legal persons. The Applicant considers that the interpretation of Article III, paragraph 1, put forward by the United States is not compatible with the Court's jurisprudence.

126. As concerns Article IV, paragraph 1, of the Treaty of Amity, Iran contends that it contains three freestanding obligations of protection, all of which have been violated by the United States. Concerning the first obligation, Iran argues that the "fair and equitable treatment" standard in the Treaty is not tied to the minimum standard of treatment under customary international law. In its view, it is well established that, in considering whether the obligation to afford fair and equitable treatment has been breached, international tribunals will examine whether the conduct *(a)* is arbitrary, grossly unfair, unjust or idiosyncratic; *(b)* is discriminatory; *(c)* involves a lack of due process leading to an outcome which offends judicial propriety, including but not limited to a denial of justice; or *(d)* defeats the legitimate expectations of Iranian nationals and companies. It maintains that, even under the United States' restrictive interpretation, there was a denial of justice because the companies could not rely on their separate juridical personality.

127. With regard to the second obligation under Article IV, paragraph 1, to refrain from applying unreasonable or discriminatory measures, Iran maintains that for a measure to be reasonable, there must be an appropriate correlation between the State's public policy objective and the measure adopted to achieve it, noting that, in assessing reasonableness, tribunals also refer to the concept of proportionality. As regards the third obligation, to afford effective means of enforcement of lawful contractual rights, the Applicant contends that the United States has failed to do so in relation to certain Iranian companies, since the relevant enforcement proceedings involved funds representing contractual debts owed to Iranian companies by companies of the United States.

128. Iran contests the argument made by the United States in respect of both Article III, paragraph 1, and Article IV, paragraph 1, that "piercing the corporate veil" to provide compensation for victims was fair and reasonable. Iran argues that none of the instances considered by the Court in the case concerning *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)* is applicable in the current circumstances. It adds that the United States provides no evidence capable of justifying each "piercing", and that it has adopted a collective measure, namely the "elimination of legal separateness" of companies.

*

129. The United States rejects Iran's claims under Article III, paragraph 1, and Article IV, paragraph 1, which it describes as "almost identical".

130. The United States argues that the recognition of juridical status under Article III, paragraph 1, entails only the recognition of a company's existence as a legal entity and not the recognition of its legal separateness. It contends that this provision does not confer any other rights upon a company. It maintains that the very fact that Iranian companies have appeared and participated in judicial proceedings demonstrates that their juridical status has been recognized.

131. According to the United States, the Court observed in the *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)* case and subsequent judgments that, in municipal law, the privilege of the corporate form is not treated as absolute and can be disregarded in extraordinary cases. The Respondent argues that its decision to enable victims of terrorism to obtain compensation through enforcement proceedings against Iran's State-owned agencies and instrumentalities is one of those cases.

132. As concerns Article IV, paragraph 1, the United States contends that the phrase "fair and equitable treatment" reflects one of the components of the customary minimum standard of treatment of aliens, as understood at the time of the conclusion of the Treaty of Amity, namely protection against a denial of justice. It considers that the second and third clauses, concerning "unreasonable or discriminatory measures" and "effective means" respectively, do not establish independent obligations, but rather inform the interpretation of the fair and equitable treatment standard.

133. The United States maintains that, for a denial of justice to be established, the conduct related to the administration of justice must be notoriously unjust or egregious. It argues that, in this case, the aforementioned requirement is not met, because the Iranian companies were able to engage in the same legal process available to other litigants in the United States and its domestic courts ensured the protection of the companies' rights even when Iran or Iranian entities chose not to participate in the proceedings. The Respondent further argues that there has been no denial of justice because "it was both reasonable and justified" to pierce the corporate veil and allow victims holding terrorism-related judgments against Iran to attach assets of Iran's agencies and instrumentalities.

134. In the Respondent's view, even under Iran's proposed standards, the United States did not breach Article IV, paragraph 1, of the Treaty. The United States maintains that the challenged measures are part of a rational policy aimed at responding to the sustained support of terrorist acts and at satisfying valid judgments against Iran. It contends that the measures were reasonably related to this policy, authorizing the attachment only of assets wholly owned or majority-owned by Iran or its agencies and instrumentalities, and not private companies. It emphasizes that proportionality is not mentioned in Article IV, paragraph 1, but argues that the measures were in any case proportional. The United States further asserts that there was no lack of due process, since the measures did not prevent Iranian companies from examining witnesses, presenting evidence, hiring counsel or pursuing appeals. It also argues that, under customary international law, there is no doctrine of legitimate expectations and that, in any case, Iran has failed to establish that any companies had

relevant expectations or that the United States made specific representations. The Respondent adds that there has been no discrimination, since the measures are applicable to all States designated as a sponsor of terrorism and are not limited to Iran. The United States submits that Iran's claims regarding the denial of effective means of enforcing contractual rights should be dismissed, because the measures only authorized the attachment and execution of proceeds from certain contracts, and did not interfere with the contractual rights themselves or with the companies' ability to enforce them before the courts.

* *

135. The Court begins by examining the scope of the obligation established by the first sentence of Article III, paragraph 1, of the Treaty, which provides 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". The Parties' disagreement revolves around the meaning of the phrase "shall have their juridical status recognized". According to Iran, this phrase entails the obligation to give effect to the juridical status of companies as determined by the State where they were created, including their separate legal personality. For the United States, this phrase refers to the recognition of a company's legal existence, but not its legal separateness.

136. The Court recalls that, in its 2019 Judgment, it examined the definition of the term "company", as reflected in the third sentence of Article III, paragraph 1, of the Treaty. Based on that definition, the Court considered that the following point is not in doubt:

> "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'." (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 37, para. 87.)

Accordingly, the Court considers that the expression "juridical status" refers to the companies' own legal personality. The recognition of a company's own legal personality entails the legal existence of the company as an entity that is distinct from other natural or legal persons, including States.

137. It does not follow, however, that the legal situation of such an entity will always be the same as in the State in which it was constituted. In the case concerning *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)*, the Court noted that international law recognizes the corporate entity as an institution created by States within their domestic jurisdiction, and it explained that the legal situation of such entities is determined by municipal law, which endows them with rights and obligations peculiar to themselves (*Second Phase, Judgment, I.C.J. Reports 1970*, pp. 33-34, paras. 38-41). The Court affirmed moreover that "the independent existence of the legal entity cannot be treated as an absolute" and observed that the process of disregarding the legal entity had been found justified in certain exceptional circumstances (*ibid.*, pp. 38-39, paras. 56-58).

138. In the present case, it is not disputed that the companies allegedly affected by the measures of the United States were constituted under Iranian law as separate legal entities with their own legal personality. The Parties disagree on whether the United States disregarded the legal personality of the companies through its legislative, executive and judicial measures and whether this was justified. In the Court's view, the obligation under Article III, paragraph 1, to recognize the juridical status of companies of the other Contracting Party is not necessarily satisfied by the fact of their appearance at and participation in domestic judicial proceedings. The Court will examine all the relevant measures in order to determine whether the United States disregarded the legal personality of the Iranian companies and, if so, whether this was justified.

The Court will address these questions in the context of its examination of Iran's claims under Article IV, paragraph 1, of the Treaty of Amity.

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139. With regard to Article IV, paragraph 1, the Court recalls that it is, as a whole, "aimed at the way in which the natural persons and legal entities in question are, in the exercise of their private or professional activities, to be treated by the State concerned" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 816, para. 36).

140. Article IV, paragraph 1, consists of three clauses separated by semicolons, and each clause starts with the word "shall" (see paragraph 123 above). Interpreted in good faith, in accordance with the ordinary meaning to be given to its terms in their context, it is clear that Article IV, paragraph 1, comprises three distinct obligations. The interpretation put forward by the United States according to which the second and third clauses of Article IV, paragraph 1, do not establish independent obligations has no basis in the text of the Treaty.

141. Article IV, paragraph 1, neither refers to the "customary minimum standard of treatment", nor employs other formulations sometimes associated with that standard, such as "required by international law". Accordingly, there is no need to examine the content of the customary minimum standard of treatment. The Court will focus on Article IV, paragraph 1, of the Treaty and apply it to the present case.

142. The first clause of Article IV, paragraph 1, provides that "[e]ach 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". The Parties agree that the obligation to afford "fair and equitable treatment" includes protection against a denial of justice. Iran argues that for such a denial to occur, there must be an obstruction of access to courts or a failure to provide those guarantees generally considered indispensable in the proper administration of justice. It maintains that the legislative, executive and judicial acts at issue have resulted in a denial of justice. The United States, for its part, contends that there is a high threshold for demonstrating a denial of justice, requiring a notoriously unjust or egregious violation in the administration of justice which offends a sense of judicial propriety. In the Respondent's view, there is nothing unjust or egregious about the measures in question.

143. In the present case, the rights of Iranian companies to appear before the courts in the United States, to make legal submissions and to lodge appeals, have not been curtailed. The enactment of legislative provisions removing legal defences based on separate legal personality, and their application by the courts, do not in themselves constitute a serious failure in the administration of justice amounting to a denial of justice.

144. The second clause of Article IV, paragraph 1, provides that "[e]ach High Contracting Party . . . shall refrain from applying unreasonable or discriminatory measures that would impair [the] legally acquired rights and interests [of nationals and companies of the other High Contracting Party]". Even though the first and second clauses of Article IV, paragraph 1, lay down two separate obligations, there is an overlap between the protection against "unreasonable or discriminatory measures" stipulated in the second clause and the broader standard of "fair and equitable treatment" provided for in the first clause, because fair and equitable treatment can encompass protection against unreasonable or discriminatory measures.

145. The Court notes that the second clause uses a disjunctive "or", not a conjunctive "and", to prescribe protection against "unreasonable or discriminatory measures". In the case concerning *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy)*, the Court conducted separate examinations as to whether the measures concerned were either "discriminatory" or "arbitrary" (see *Judgment, I.C.J. Reports 1989*, pp. 72-77, paras. 121-130). The Court considers that the terms "unreasonable" or "discriminatory" in the second clause of Article IV, paragraph 1, reflect two different standards against which the conduct of a State may be separately assessed.

146. The Court begins by examining whether the measures taken by the United States and challenged by Iran are "unreasonable". In its ordinary meaning, the term "unreasonable" means lacking in justification based on rational grounds.

The Court has explained that in examining the "reasonableness" of a regulation, a court

> "must recognize that the regulator . . . has the primary responsibility for assessing the need for regulation and for choosing, on the basis of its knowledge of the situation, the measure that it deems most appropriate to meet that need. It will not be enough in a challenge to a regulation simply to assert in a general way that it is unreasonable. Concrete and specific facts will be required to persuade a court to come to that conclusion." (*Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 253, para. 101.)

Indeed, what is reasonable in any given case must depend on its particular circumstances (see *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 96, para. 49; *Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, I.C.J. Reports 1982*, p. 60, para. 72).

147. In the Court's view, a measure is unreasonable within the meaning of the Treaty of Amity if it does not meet certain conditions.

First, a measure is unreasonable if it does not pursue a legitimate public purpose. In the present case, the United States contends that the legislative provisions challenged by Iran, as well as the judicial decisions that applied those provisions, had the purpose of providing compensation to victims of "terrorist acts" for which Iran has been found liable by United States courts. As a general rule, providing effective remedies to plaintiffs who have been awarded damages can constitute a legitimate public purpose.

148. In addition, a measure is unreasonable if there is no appropriate relationship between the purpose pursued and the measure adopted. The attachment and execution of assets of a defendant that has been found liable by domestic courts can generally be considered as having an appropriate relationship with the purpose of providing compensation to plaintiffs.

149. Furthermore, a measure is unreasonable if its adverse impact is manifestly excessive in relation to the purpose pursued. In the case concerning the *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua)*, the Court examined whether Nicaragua had the power to regulate the exercise by Costa Rica of its right to freedom of navigation under the Treaty of Limits of 1858. Pointing out that such power was not unlimited, the Court defined "unreasonable" as follows:

> "A regulation . . . must not be unreasonable, which means that its negative impact on the exercise of the right in question must not be manifestly excessive when measured against the protection afforded to the purpose invoked." (*Judgment, I.C.J. Reports 2009*, pp. 249-250, para. 87.)

150. In the present case, Section 201 *(a)* of TRIA refers to "the blocked assets of *any* agency or instrumentality" (emphasis added). Section 1610 *(g)* (1) of the FSIA refers to "the property of an agency or instrumentality", expressly including "property that is a separate juridical entity or is an interest held *directly or indirectly* in a separate juridical entity" (emphasis added). Both provisions employ very broad terms, which are capable of encompassing any legal entity, regardless of Iran's type or degree of control over them. In addition, by dispensing with the requirement that the relevant assets were previously "blocked", Section 1610 *(g)* (1) ensures that any assets of those legal entities are available for attachment and execution. Thus, by design, these legislative measures plainly disregarded the Iranian companies' own legal personality, making it possible to impair their legally acquired rights and interests, namely those related to their ownership of, or interest in, the assets liable to attachment and execution.

151. Section 201 *(a)* of TRIA and Section 1610 *(g)* (1) of the FSIA have been applied by United States courts in several enforcement proceedings involving Iranian companies.

In the *Weinstein* and *Bennett* cases (see paragraph 70 above), the sole company involved was Bank Melli.

152. In respect of the *Levin* case (*Levin et al.* v. *Bank of New York et al.*, United States District Court, Southern District of New York, Case No. 09-cv-5900, filed 26 June 2009), the United States,

while not contesting that Iranian companies may have been involved in the enforcement proceedings, nonetheless pointed out that Iran has not identified those companies. It is true that certain judicial decisions and other court documents brought to the Court's attention by both Parties are redacted or do not otherwise identify Iranian companies. However, the evidence in the case file shows that the enforcement proceedings in the *Levin* case involved assets which were owned by, or in which interests were held by, Bank Melli, Bank Saderat.

153. The *Heiser* cases involved the Telecommunication Infrastructure Company, Iranohind Shipping Company, Export Development Bank of Iran, Bank Saderat, Behran Oil Company, Iran Marine Industrial Company, Sediran Drilling Company, Iran Air and Bank Melli, all of which were affected by one or more decisions (*Estate of Michael Heiser* v. *Islamic Republic of Iran*, United States District Court, District of Columbia, Memorandum Opinion of 10 August 2011, *Federal Supplement*, Second Series, Vol. 807, p. 9; *Estate of Michael Heiser et al.* v. *The Bank of Tokyo Mitsubishi UFJ, New York Branch*, United States District Court, Southern District of New York, Memorandum and Order of 29 January 2013, *Federal Supplement*, Second Series, Vol. 919, p. 411; *Estate of Michael Heiser* v. *Bank of Baroda, New York Branch*, United States District Court, Southern District of New York, Case No. 11-cv-1602, Order of 19 February 2013.

154. Iran has argued that three other entities, IRISL Benelux NV, Bank Sepah International PLC and Bank Melli PLC U.K., were also affected by enforcement proceedings in the *Heiser* cases. The Court observes, however, that IRISL Benelux NV was constituted under the laws of Belgium, while Bank Melli PLC U.K. and Bank Sepah International PLC were constituted under the laws of the United Kingdom. Consequently, these three entities are not companies constituted under the applicable laws of either High Contracting Party, as required by Article III, paragraph 1, of the Treaty of Amity. Therefore, the Court will not consider Iran's claims as they concern these three entities.

155. In the case concerning *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium* v. *Spain)*, the Court noted that "the process of 'lifting the corporate veil' or 'disregarding the legal entity' has been found justified and equitable in certain circumstances or for certain purposes" (*Second Phase, Judgment, I.C.J. Reports 1970*, p. 39, para. 56). However, in the circumstances of the present case, the Iranian companies' own legal personality has been set aside, under the conditions described above (see paragraph 150), in relation to liability judgments rendered in cases in which those companies could not participate and in relation to facts in which those companies do not appear to have been involved. The Court considers that disregarding the legal entity in such circumstances is not justified.

156. In light of the foregoing, the Court considers that, even assuming that the legislative provisions adopted by the United States and their application by United States courts pursued a legitimate public purpose, they caused an impairment of the Iranian companies' rights that was manifestly excessive when measured against the protection afforded to the purpose invoked. The Court therefore concludes that the legislative and judicial measures were unreasonable, in violation of the obligation under Article IV, paragraph 1, of the Treaty of Amity.

157. With respect to Executive Order 13599, the Court recalls that this executive measure blocked all property and interests in property of Iran and Iranian financial institutions falling within its purview (see paragraph 114 above). The measure was adopted in 2012, several years

after Section 1610 *(g)* (1) of the FSIA had dispensed with the requirement that assets had to be blocked in order for them to be available for attachment and execution. It is therefore apparent that Executive Order 13599 was not adopted for the purpose of providing compensation to plaintiffs who had been successful in their liability claims against Iran. Indeed, the United States' contention is that Executive Order 13599 was adopted in response to Iran's "sustained support of terrorist acts". Because Executive Order 13599 encompasses "[a]ll property and interests in property of any Iranian financial institution", it is manifestly excessive in relation to the purpose pursued. Accordingly, the Court concludes that Executive Order 13599 is also an unreasonable measure, in violation of the obligation under Article IV, paragraph 1.

158. As explained above (see paragraph 145), the second clause of Article IV, paragraph 1, of the Treaty of Amity uses the disjunctive "or" in providing for protection against "unreasonable" or "discriminatory" measures. Therefore, a measure will be in violation of the obligation under the second clause when it is not in conformity with either standard. Since the Court has concluded that the measures adopted by the United States are "unreasonable", it is not necessary to examine separately whether they are "discriminatory". Neither is it necessary to consider the other grounds on which Iran has relied to claim breaches of Article IV, paragraph 1, by the United States.

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159. On the basis of its finding that the measures taken by the United States were unreasonable (see paragraphs 156-157), the Court concludes that the United States has violated its obligation under Article IV, paragraph 1, of the Treaty of Amity.

In reaching this conclusion, the Court has determined that the measures of the United States disregarded the Iranian companies' own legal personality, and that this was not justified. In light of all of the foregoing, the Court also concludes that the United States has violated its obligation to recognize the juridical status of Iranian companies under Article III, paragraph 1.

B. Alleged violations of Article III, paragraph 2

160. 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."

161. Iran argues that Article III, paragraph 2, reflects the obligation of each Contracting Party to provide nationals and companies of the other Contracting Party with "meaningful" access to courts, such that they can properly defend their rights. It emphasizes that the phrase "to the end that prompt and impartial justice be done" should be given full effect, and it recalls that the context of this provision is the obligation to recognize companies' juridical status under Article III, paragraph 1. It therefore contends that companies do not have freedom of access under paragraph 2 when they are not recognized as a separate juridical entity. According to the Applicant, the Court did not settle this question in its 2019 Judgment because its reasoning with respect to Article III, paragraph 2, was focused on the question of sovereign immunities.

162. Iran asserts that the United States' measures have deprived Iranian companies of any possibility to have meaningful access to United States courts, by removing their right to recognition of separate juridical status and establishing their liability for judgments rendered against Iran in proceedings to which the companies were not parties. In its view, there could be no meaningful access when the outcome of enforcement proceedings was predetermined by the law. Iran argues that, as a matter of fact, Iranian companies are being treated in less favourable terms than companies of any third country.

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163. The United States, for its part, argues that Article III, paragraph 2, simply grants companies the right of access to the courts to pursue other rights they may claim to have, but does not itself guarantee any rights, procedural or substantive. In its view, this question of interpretation was settled by the Court in its 2019 Judgment. The Respondent rejects the alleged effect Iran ascribes to the phrase "to the end that prompt and impartial justice be done".

164. The United States stresses that Iranian companies were at all times permitted to appear and present all their arguments before the courts in the United States. It considers that some companies' active participation in judicial proceedings, where they were represented by counsel and made legal submissions, is a sufficient basis for rejecting Iran's claims under this provision.

* *

165. In its 2019 Judgment, the Court referred to Article III, paragraph 2, of the Treaty of Amity in the following terms:

> "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'." (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 32, para. 70.)

166. The Court made this statement while addressing Iran's arguments on sovereign immunities. However, the Court's assessment of Article III, paragraph 2, has a broader reach. There is a clear distinction between, on the one hand, freedom of access to the courts with a view to the assertion of rights and, on the other, the content of the substantive or procedural rights that may be invoked before the courts. As reflected in the passage cited above, when interpreting Article III, paragraph 2, the Court had already examined the phrase "to the end that prompt and impartial justice be done". In the Court's view, that phrase reflects the purpose for which the Contracting Parties of the Treaty recognized the freedom of access to the courts of justice and administrative agencies for their respective nationals and companies. It does not itself guarantee any procedural or substantive right, nor does it in any way enlarge the "freedom of access" established in Article III, paragraph 2.

167. The Court has noted above (see paragraph 143) that, in the circumstances of the present case, the rights of Iranian companies to appear before United States courts, make legal submissions and lodge appeals were not curtailed. Iran's claims with respect to Article III, paragraph 2, are concerned with the rights that Iranian companies pursued before United States courts and with their likelihood of success. The application by United States courts of legislation that was unfavourable to the Iranian companies and the fact that the companies' arguments on the basis of the Treaty of Amity were unsuccessful are matters related to the companies' substantive rights. These matters do not call into question the "freedom of access" enjoyed by the companies or the aim of "prompt and impartial justice" within the meaning of Article III, paragraph 2, of the Treaty of Amity.

168. For these reasons, the Court concludes that Iran has not established a violation by the United States of its obligations under Article III, paragraph 2, of the Treaty of Amity.

C. Alleged violations of Article IV, paragraph 2

169. 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."

170. Iran notes that, as a result of the measures adopted by the United States, the property of Iranian companies has been blocked, seized or disposed of. It contends that, in each instance, the property was taken without compensation and handed over to plaintiffs holding default liability judgments against Iran, which amounts to an unlawful expropriation and a failure to accord the most constant protection and security, in violation of Article IV, paragraph 2, of the Treaty of Amity. It stresses that both limbs of Article IV, paragraph 2, apply to property and "interests in property", with the latter term including intangible interests in property.

171. With respect to the obligation to afford the most constant protection and security, Iran contends that it was breached by the same conduct of the United States as the obligation to afford fair and equitable treatment under Article IV, paragraph 1. In its view, the standard of the most constant protection and security entitles property and interests in property to a high level of both physical and legal protection. Thus, it asserts that the United States has violated this obligation by removing generally applicable legal defences otherwise available to Iranian companies and by making those companies liable for purportedly wrongful acts of Iran in proceedings to which they were not parties.

172. As concerns the second limb of Article IV, paragraph 2, Iran argues that the prohibition of takings except for a public purpose and with payment of just compensation is applicable to acts of any organ of the State. It contends that the United States has violated this provision through judicial decisions giving effect to legislative and executive acts which were themselves expropriatory in nature. The Applicant maintains that the design and effect of the measures, as implemented by the courts, was for the property to be taken and given to plaintiffs in cases against Iran. Thus, the combined effect of the series of legislative, executive and judicial acts amounted to a taking. It asserts that there is no need to prove an additional element of illegality in relation to the judicial decisions. Iran further asserts that the United States violated Article IV, paragraph 2, through the indirect taking of property of Iranian companies, due to the earlier "blocking" of their assets pursuant to Executive Order 13599, which radically deprived the owners of the economic use and enjoyment of their property as if the rights had ceased to exist.

173. In response to the United States' invocation of the police powers doctrine, Iran notes that the doctrine is mentioned neither in the text of Article IV, paragraph 2, nor in the negotiating history of the Treaty. It argues that, in any event, the United States' measures are not bona fide regulations aimed at the general welfare and adopted in a non-discriminatory manner. According to the Applicant, the valid exercise of police powers requires the regulations to be free from arbitrariness and unreasonableness. In its view, the doctrine requires an assessment of proportionality.

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174. The United States, for its part, argues that the obligation to provide the most constant protection and security is limited to protection from physical harm, and concerns the level of police protection required under customary international law against acts of physical harm to a person or property. It notes that there is no allegation in this case that the property of Iranian companies was subjected to invasion or other forms of physical harm, and thus maintains that the challenged measures do not violate this obligation. In the alternative, the Respondent argues that, even if the Court were to accept that the provision requires more than the protection of physical security, the authorities cited by Iran do not support the legal security standard it proposes, which would bar any executive or legislative measure formulated specifically to remove legal protections. In any case, the United States considers that Iran has not established a breach of the provision at issue.

175. With respect to Iran's allegations in relation to takings, the United States contends that decisions of domestic courts acting in the role of neutral and independent arbiters of legal rights do not give rise to a claim for expropriation. In its view, even if it were possible to conclude that a judicial decision is expropriatory, this would require the identification of an additional element of illegality in either the conduct of the court making the decision or in the chain of events leading to the decision. The Respondent argues that its legislative and executive acts do not, standing alone, deprive Iranian nationals or companies of any property, but simply make them potentially subject to an enforcement action, or, as in the case of Executive Order 13599, are temporary measures which do not alter ownership of the blocked assets.

176. The United States further argues that the measures it has adopted do not constitute an expropriation because they are bona fide, non-discriminatory exercises of police power, which do not trigger a right to compensation. It denies that the police powers doctrine includes an assessment of proportionality.

* *

177. The Parties agree that Article IV, paragraph 2, contains two distinct rules. The first rule is reflected in the first sentence, which sets out the obligation of each Contracting Party to afford the most constant protection and security to the property and interests in property of the nationals and companies of the other Contracting Party. The second rule is set out in the second and third sentences of Article IV, paragraph 2. The second sentence of paragraph 2 prohibits the taking of such property and interests in property, except for a public purpose and with the prompt payment of just compensation. In English, the Parties have employed the terms "taking" and "expropriation" interchangeably. The third sentence establishes conditions in relation to the payment of compensation.

The Court will first examine Iran's claims with respect to the second rule in Article IV, paragraph 2, which is concerned with takings or expropriations.

178. It is not disputed by the Parties that United States courts, in application of Section 201 *(a)* of TRIA or Section 1610 *(g)* (1) of the FSIA, subjected to attachment and execution the property and interests in property of Iranian companies. It is also uncontroversial that the assets were turned over or distributed to plaintiffs who had succeeded in cases before United States courts in which Iran was found liable. Nor is it disputed that the Iranian companies concerned did not receive any payment.

179. Iran has identified property and interests in property which were affected in the context of several enforcement proceedings before United States courts. The United States has not contested the identification of those assets.

180. The Court will consider Iran's claims in respect of the following assets, to the extent that they were owned by, or interests were held in them by, Iranian companies (see paragraphs 151-153 above): as concerns the enforcement proceedings in the *Weinstein* case, real property; with respect to the enforcement proceedings in the *Heiser* cases, funds related to a contractual debt owed by Sprint Communications Company, funds held by Bank of Tokyo Mitsubishi UFJ, proceeds of electronic fund transfers held by Bank of Baroda and funds held by Bank of America; in relation to the enforcement proceedings in the *Levin* case, funds held by JP Morgan Chase Bank related to contractual debts owed by Mastercard International Inc., and proceeds of electronic fund transfers held by JP Morgan Chase Bank or Citibank.

181. As concerns the *Bennett* case (see paragraph 70 above), Iran identifies funds related to contractual debts owed by Visa Inc. and Franklin Resources Inc., affected by the enforcement proceedings. The United States sought to disregard this claim of Iran on the basis that the assets in these enforcement proceedings were not distributed to the plaintiffs until after the termination of the Treaty of Amity. It is true that the distribution of assets in these proceedings was not ordered until 2020 (*Bennett et al.* v. *The Islamic Republic of Iran et al.*, United States District Court, Northern District of California, Case No. 11-cv-5807, Order of 24 April 2020), after the termination of the Treaty of Amity took effect (see paragraph 32 above). However, this does not prevent the Court from considering Iran's claims in relation to these funds, which were already affected by decisions issued in 2013 (*Bennett et al.* v. *The Islamic Republic of Iran et al.*, United States District Court, Northern District of California, Order of 28 February 2013, *Federal Supplement*, Second Series, Vol. 927, p. 833) and 2016 (*Bennett et al.* v. *The Islamic Republic of Iran et al.*, United States Court of Appeals, Ninth Circuit, Opinion and Order of 22 February 2016, *Federal Supplement*, Third Series, Vol. 817, p. 1131, as amended on 14 June 2016, *Federal Supplement*, Third Series, Vol. 825, p. 949).

182. Iran has also referred to certain funds held by Mashreqbank, PSC, affected by enforcement proceedings in one of the *Heiser* cases (*Estate of Michael Heiser et al.* v. *Mashreqbank*, United States District Court, Southern District of New York, Case No. 11-cv-1609, Order of 4 May 2012). However, Iran has not established that Iranian companies owned or had interests in those assets. Therefore, the Court will not consider this claim.

183. The Court must determine whether the attachment and execution of the property and interests in property listed above (see paragraphs 180-181) constitute takings contrary to Article IV, paragraph 2, of the Treaty.

184. The Court considers that a judicial decision ordering the attachment and execution of property or interests in property does not per se constitute a taking or expropriation of that property. A specific element of illegality related to that decision is required to turn it into a compensable expropriation. Such an element of illegality is present, in certain situations, when a deprivation of property results from a denial of justice, or when a judicial organ applies legislative or executive measures that infringe international law and thereby causes a deprivation of property. Therefore, in order to determine whether there exists a specific element of illegality, it is necessary to examine the legislative, executive and judicial acts adopted by the United States as a whole.

185. The Court notes that the Parties disagree as to whether the "police powers" doctrine has any bearing on Article IV, paragraph 2, given that there is no mention of it in the text of the provisions concerned with expropriation. The Court considers that the Contracting Parties' right to regulate is not undermined by the prohibition of takings provided for in Article IV, paragraph 2. It has long been recognized in international law that the bona fide non-discriminatory exercise of certain regulatory powers by the government aimed at the protection of legitimate public welfare is not deemed expropriatory or compensable (see for example *Bischoff Case, German-Venezuelan Commission, Award, 1903*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. X, p. 420; *Sedco, Inc. and Sediran Drilling Company* v. *National Iranian Oil Company, and the Islamic Republic of Iran, Interlocutory Award*, No. ITL-55-129-3, 17 September 1985, para. 90; *Saluka Investments B.V.* v. *Czech Republic, PCA Case No. 2001-4, Partial Award*, 17 March 2006, para. 255). Governmental powers in this respect, however, are not unlimited.

186. The Court has already concluded that, in the circumstances of the present case, Section 201 *(a)* of TRIA and Section 1610 *(g)* (1) of the FSIA, as well as their application by United States courts, were unreasonable measures in violation of the obligation under Article IV, paragraph 1, of the Treaty of Amity (see paragraphs 155-156 above). Reasonableness is one of the considerations that limit the exercise of the governmental powers in this respect (see for example *Bischoff Case, 1903, RIAA*, Vol. X, p. 420). It follows from this element of unreasonableness, which is found in the legislative provisions and which extends to their judicial enforcement, that the measures adopted by the United States did not constitute a lawful exercise of regulatory powers and amounted to compensable expropriation.

187. For these reasons, the Court concludes that the application of Section 201 *(a)* of TRIA and Section 1610 *(g)* (1) of the FSIA by United States courts amounted to takings without compensation of the property and interests in property of Iranian companies, as identified above (see paragraphs 180-181), in violation of the obligations under Article IV, paragraph 2, of the Treaty.

188. The situation with respect to Executive Order 13599 is different. Iran has failed to identify the property or interests in property of Iranian companies that were specifically affected by Executive Order 13599. Indeed, it has accepted that the main effect of Executive Order 13599, as concerns the cases challenged in these proceedings, was the blocking of Bank Markazi's assets, which is outside the Court's jurisdiction (see paragraph 115 above). Accordingly, the Court concludes that, in respect of Executive Order 13599, Iran has not substantiated its allegations in relation to takings under Article IV, paragraph 2, of the Treaty.

189. The Court turns now to Iran's claims in relation to the obligation to afford the most constant protection and security under Article IV, paragraph 2, of the Treaty.

190. The Court considers that the core of the obligation to afford the most constant protection and security under the Treaty of Amity concerns the protection of property from physical harm. Each Contracting Party has an obligation to exercise due diligence in providing protection from physical harm to the property of nationals and companies of the other Contracting Party within its own territory. In its 2019 Judgment, the Court emphasized that Article IV, paragraph 2, "must be read in the context of Article IV as a whole" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 28, para. 58). The Treaty of Amity provides for fair and equitable treatment in Article IV, paragraph 1, and then for the most constant protection and security in Article IV, paragraph 2. Similarly, treaties on commerce and navigation and international investment agreements often provide for fair and equitable treatment and the most constant protection and security, consecutively or even in the same sentence. These two separate standards of protection will overlap significantly if the standard of the most constant protection and security is interpreted to include legal protection. The Court observes that the most constant protection and security standard is of particular practical significance and relevance in the form of protection of property from physical harm by third parties. It also recalls that, in any event, the standard of constant protection and security "cannot be construed as the giving of a warranty that property shall never in any circumstances be occupied or disturbed" (*Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy), Judgment, I.C.J. Reports 1989*, p. 65, para. 108).

191. In the present case, Iran does not assert that the United States has failed to protect the property of Iranian nationals and companies from physical harm. It argues that the United States has violated its obligation under Article IV, paragraph 2, to afford the most constant protection and security to the property of Iranian companies, because that obligation also includes the legal protection of property. As observed above, the standard of the most constant protection and security and the standard of fair and equitable treatment will overlap significantly if the former is interpreted to include legal protection. The Court has already concluded that the measures of the United States were in violation of its obligations under Article IV, paragraph 1. In the Court's view, the provisions of Article IV, paragraph 2, as concerns the most constant protection and security, were not intended to apply to situations covered by the provisions of Article IV, paragraph 1. Accordingly, the Court concludes that Iran has not established a violation by the United States of its obligations under Article IV, paragraph 2, as concerns the most constant protection and security.

192. Based on its finding with respect to the measures of the United States (see paragraph 187 above), the Court concludes that the United States has violated its obligations under Article IV, paragraph 2, of the Treaty of Amity, as concerns the prohibition of takings except for a public purpose and with the prompt payment of just compensation.

D. Alleged violations of Article V, paragraph 1

193. Article V, paragraph 1, of the Treaty of Amity reads:

> "Nationals and companies of either High Contracting Party shall be permitted, within the territories of the other High Contracting Party: *(a)* to lease, for suitable periods of time, real property needed for their residence or for the conduct of activities pursuant to the present Treaty; *(b)* to purchase or otherwise acquire personal property of all kinds; and *(c)* to dispose of property of all kinds by sale, testament or otherwise. The treatment accorded in these respects shall in no event be less favorable than that accorded to nationals and companies of any third country."

194. Iran contends that the measures adopted by the United States have deprived Iranian companies of the right to dispose of their property, within the meaning of subparagraph 1 *(c)* of Article V. It maintains that an act that confiscates property also violates prima facie the right to dispose freely of that property. In its view, the first sentence of Article V, paragraph 1, establishes a right to dispose of property which may be exercised at any time, while the second sentence concerning the most-favoured-nation treatment creates an independent obligation. The Applicant argues that the latter obligation has also been violated, since Iranian companies and property have manifestly been treated less favourably than nationals and companies of third countries.

195. The United States, for its part, contends that Article V, paragraph 1, is a permissive provision, which does not entail an obligation to facilitate an activity or leave it entirely unregulated or unencumbered and which is not violated by rules and procedures imposing burdens, obstacles or requirements on the transfer of property. It argues that the two sentences of Article V, paragraph 1, must be read together and impose a single obligation, with the most-favoured-nation provision supplying the standard to be applied in relation to the first sentence. The Respondent maintains that this provision simply does not apply to the type of measures of which Iran complains. In the view of the United States, Iran has not demonstrated that its companies have attempted to dispose of property or that any such attempt was prevented by the measures of the United States. The United States asserts that none of the measures challenged by Iran accords less favourable treatment to Iranian nationals in respect of the disposal of property. It stresses that Iran has not identified a similarly situated person or company that received more favourable treatment, which is a fundamental requirement of the most-favoured-nation test.

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196. The Court considers that the language of the first sentence of Article V, paragraph 1, which employs the expression "shall be permitted", establishes rights for the nationals and companies of the Contracting Parties to lease property for their residence or for the conduct of their commercial activities, to purchase or otherwise acquire personal property, and to dispose of property.

197. The rights established in the first sentence do not entail an absolute obligation for the Contracting Parties. The Contracting Parties can exercise their regulatory powers in respect of such

acts of lease, acquisition or disposal of property. This is exemplified in the first sentence itself, which refers to the lease of real property "for suitable periods of time". The second sentence of Article V, paragraph 1, referring to the "treatment accorded in these respects", also makes clear that the Contracting Parties can regulate these matters.

198. The Court considers that the rights established in the first sentence of Article V, paragraph 1, and the corresponding obligations of the Contracting Parties, are independent from the standard set out in the second sentence. The second sentence states that the treatment accorded shall "*in no event* be less favorable than that accorded nationals and companies of any third country" (emphasis added). The expression "in no event" suggests that the second sentence establishes a minimum standard. The second sentence contains the Contracting Parties' commitment to improve the treatment of the nationals and companies of the other Contracting Party whenever they accord more favourable treatment to the nationals and companies of a third country in respect of the rights set out in the first sentence.

199. The Court notes that Iran's allegations with respect to the right of Iranian companies to dispose of property under Article V, paragraph 1, are predicated on the same set of facts as its claims in relation to Article IV, paragraph 2. The Court has already concluded that the measures of the United States amounted to takings without compensation in violation of its obligations under Article IV, paragraph 2. In the Court's view, measures that amount to takings without compensation are not the type of measures that fall within the scope of the Contracting Parties' obligation to permit the disposal of property, under Article V, paragraph 1. The obligation to permit the disposal of property presupposes that the national or company concerned actually owns property over which it can exercise ownership rights. The Court considers that Article V, paragraph 1, was not meant to apply to situations amounting to expropriation, which are addressed in Article IV, paragraph 2.

200. As concerns Executive Order 13599, the Court notes that the property and interests in property blocked by this Executive Order "may not be transferred, paid, exported, withdrawn, or otherwise dealt in". These terms reflect a general prohibition of the disposal of property. The Court recalls, however, that Iran has failed to identify the property or interests in property of Iranian companies that were specifically affected by the Executive Order, other than the assets of Bank Markazi. Indeed, all other property allegedly blocked by Executive Order 13599 that Iran has brought to the Court's attention was blocked by other executive measures which have not been challenged in these proceedings. Such property was therefore not affected by Executive Order 13599.

201. In light of the foregoing, the Court concludes that Iran has not established a violation by the United States of the right to dispose of property under Article V, paragraph 1, of the Treaty of Amity.

E. Alleged violations of Article VII, paragraph 1

202. Article VII, paragraph 1, of the Treaty of Amity reads as follows:

> "Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except *(a)* to the extent necessary to assure the availability

of foreign exchange for payments for goods and services essential to the health and welfare of its people, or *(b)* in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund."

203. Iran argues that Article VII, paragraph 1, reflects a general prohibition of restrictions on the making of payments and transfers of funds, providing for two exceptions concerned with restrictions on foreign exchange, which are not applicable in this case. It adds that paragraphs 2 and 3 merely contain arrangements for the application of those exceptions. Based on this interpretation, the Applicant contends that, by adopting legislative, executive and judicial measures through which it attached, blocked and confiscated funds belonging to Iranian entities and to Iran, the United States has applied restrictions on the making of payments, remittances and other transfers of funds, in violation of Article VII, paragraph 1.

204. The United States, for its part, argues that Article VII is an exchange control provision. In its view, the scope of the general prohibition in paragraph 1 is understood in light of its immediate context, namely the two exceptions in the same paragraph, and paragraphs 2 and 3, which are all concerned with exchange control restrictions. It maintains that this interpretation is confirmed by the Treaty's negotiating history. In its view, even under Iran's interpretation, Iran's claim fails because measures enabling victims of terrorism to enforce judgments against the property of Iran's agencies and instrumentalities do not constitute restrictions on payments, remittances or other transfers.

* *

205. The Parties' disagreement on the interpretation of Article VII, paragraph 1, concerns the scope of the first part of the provision, in particular that of the term "restrictions".

206. The first part of Article VII, paragraph 1, refers to "restrictions on the making of payments, remittances, and other transfers of funds". While this phrase appears fairly broad on its face, it should not be interpreted in isolation but in its context. In addition to establishing the general rule, paragraph 1 contains two exceptions, for situations in which it is "necessary to assure the availability of foreign exchange" and for "restrictions specifically approved by the [International Monetary] Fund". Paragraphs 2 and 3 of Article VII contain rules that each Contracting Party should follow whenever it applies exchange restrictions. Paragraph 3 *in fine* provides that, when applying exchange restrictions, a Contracting Party shall afford the other Party adequate opportunity for consultation "regarding the application of the present Article". Thus, the context of Article VII, paragraph 1, suggests that the term "restrictions" in paragraph 1 is limited to "exchange restrictions".

207. The Court also observes that the interpretation suggested by Iran would give the provision the character of a prohibition of any restriction on the movement of capital. Given the treaty practice of States regarding movement of capital more generally, it is difficult to conceive that the Parties intended to impose such a general prohibition, especially in the absence of any words making clear an intention to do so (see *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy),*

Judgment, I.C.J. Reports 1989, p. 42, para. 50). Paragraph 3 of Article VII, which provides for the administration of exchange restrictions "in a manner not to influence disadvantageously the competitive position of the commerce, transport or investment of capital of the other High Contracting Party in comparison with the commerce, transport or investment of capital of any third country", suggests that the Parties' intention was to regulate the application of exchange restrictions so that they would not negatively affect bilateral commerce. Accordingly, the Court considers that Article VII, paragraph 1, is concerned with exchange restrictions.

208. Since Iran's claims regarding Article VII, paragraph 1, are not related to exchange restrictions, they should be dismissed. The Court concludes that Iran has not established a violation by the United States of its obligations under Article VII, paragraph 1, of the Treaty of Amity.

F. Alleged violations of Article X, paragraph 1

209. 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".

210. Iran argues that the treatment afforded to Iran and to Iranian companies and financial institutions, as well as to their respective property, interferes with Iran's right to freedom of commerce under Article X, paragraph 1, of the Treaty. It contends that "commerce" is a broad concept and that this provision includes protection against legislative or executive acts that result in the automatic blocking or seizure of property. In its view, in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)*, the Court rejected the view that Article X, paragraph 1, is limited to maritime commerce or to trade in goods, while accepting that it encompasses modern financial operations. As to the territorial limitation included in Article X, paragraph 1, the Applicant argues that the Court did not make a general finding that only "direct trade" or "direct commerce" is covered by the provision. It maintains that there was commerce, albeit limited, between the territories of the Parties, and identifies several contractual rights in force, as well as debts owed by United States companies to Iranian companies.

211. The United States contends that Iran's allegations fail for three reasons. First, it argues that the reference to "commerce" in Article X, paragraph 1, interpreted in context, means commerce related to navigation. To the extent that this interpretation conflicts with the Court's approach in the *Oil Platforms* case, the United States requests the Court to revisit its ruling. In the alternative, it contends that "commerce" means trade in goods, including its ancillary activities. In this regard, it emphasizes that Iran has not identified any underlying trade in goods that was disrupted by the challenged measures.

Secondly, the United States argues that Iran disregards the territorial limitation in Article X, paragraph 1. In the view of the Respondent, Iran has failed to identify actual commerce taking place directly between the territories of Iran and the United States, which was impeded by the challenged measures. According to the United States, Iran has made a generic claim, of the type already rejected by the Court in the *Oil Platforms* case.

Thirdly, the United States maintains that the type of "legal impediments" to commerce, such as rules governing enforcement of judgments in domestic courts, do not implicate Article X, paragraph 1, since they have too tenuous a connection, if any, to the commercial relations between the Parties.

* *

212. In its 2019 Judgment, the Court recalled that the word "commerce" in Article X, paragraph 1, of the Treaty of Amity, "refers not just to maritime commerce, but to commercial exchanges in general" and that "commercial treaties cover a wide range of matters ancillary to commerce". It thus reiterated the interpretation, expressed in the *Oil Platforms* case, that the word "commerce" in Article X, paragraph 1, "includes commercial activities in general — not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce" (*Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 34, para. 78, citing *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, pp. 818-819, paras. 45-46 and 49). The Court sees no reason to depart from its previous interpretation of the concept of "freedom of commerce" in Article X, paragraph 1, of the Treaty.

213. The Parties disagree on whether the Court's interpretation of "freedom of commerce" requires that commerce and the ancillary activities related to it are limited to trade in goods.

214. The Court observes that the object and purpose of the Treaty of Amity, which is stated in its preamble, is to encourage "mutually beneficial trade and investments and closer economic intercourse generally". It is true that in the *Oil Platforms* case the Court addressed matters related to trade in goods. However, it did not interpret "commerce" as being exclusively connected with such trade. In its reasoning, it noted, referring to its predecessor's decision in the *Oscar Chinn* case, that "[t]he expression 'freedom of trade' was thus seen by the Permanent Court as contemplating not only the purchase and sale of goods, but also industry, and in particular the transport business" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 819, para. 48). The Court also cited the *Dictionnaire de la terminologie du droit international* of 1960, which explains that "international commerce" designates "all transactions of import and export, relationships of exchange, purchase, sale, transport, and financial operations between nations" and in some instances "all economic, political, intellectual relations between States and between their nationals" (*ibid.*, p. 818, para. 45). The Court has specifically opined that the limitation of financial transactions is a type of measure capable of affecting rights under the Treaty of Amity (*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, I.C.J. Reports 2018 (II)*, p. 643, para. 67).

215. The Court thus considers that financial transactions or operations constitute ancillary activities integrally related to commerce. In the Court's view, activities entirely conducted in the financial sector, such as trade in intangible assets, also constitute commerce protected under Article X, paragraph 1, of the Treaty.

216. As previously stated by the Court, in accordance with the text of Article X, paragraph 1, in order to enjoy its protection, the commerce concerned "is to be *between the territories* of the United States and Iran" (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 214-215, para. 119; emphasis in the original). In the *Oil Platforms* case, the Court examined whether the process of indirect commerce in oil constituted commerce between the territories of the two States for the purposes of the Treaty of Amity. The Court considered that "the nature of the successive commercial transactions relating to the oil" was determinative. It reached the conclusion that there was no commerce between the territories of the United States and Iran, noting that "[a]fter the completion of the first contract Iran had no ongoing financial interest in, or legal responsibility for, the goods transferred" (*ibid.*, p. 207, para. 97). This conclusion was predicated on the nature of successive commercial transactions relating to oil. It does not follow that any form of commerce conducted through intermediaries is not commerce for the purposes of Article X, paragraph 1. Indeed, it is in the nature of financial transactions that intermediaries located in various countries are often involved in the operations.

217. The Court recalls that a party claiming a breach by the other party of Article X, paragraph 1, must show that "there was an *actual impediment* to commerce . . . *between* the territories of the two High Contracting Parties" (*ibid.*, p. 217, para. 123; emphasis in the original). The United States contends that the measures challenged by Iran are indirect "legal impediments" to which Article X, paragraph 1, does not apply and that in any case Iran has not shown how the measures interfered with commerce.

218. The Court is aware that the strained relationship between the Parties has resulted in a progressive reduction of commerce between them. Nonetheless, there is no doubt that at the time when the measures challenged by Iran were adopted by the United States, commercial relations between the Parties were still active. There was trade in goods, as reported by the United States Census Bureau. There were also instances in which Iranian companies provided services in Iran to United States companies, as shown by the materials related to contractual debts in the telecommunications industry and in the credit card services sector, as well as a number of financial transactions performed by Iranian companies in the United States banking system (see paragraphs 180-181 above).

219. In the *Oil Platforms* case, the Court was concerned with physical interferences with freedom of commerce. However, the decision in that case does not prevent the Court from examining in the present case whether the measures adopted by the United States, which are of a legal nature, interfered with freedom of commerce between the Parties.

220. Executive Order 13599 comprehensively blocked the property and interests in property of Iran and Iranian financial institutions (see paragraph 114 above). By its own terms, this Executive Order constitutes an actual impediment to any financial transaction or operation to be conducted by Iran or Iranian financial institutions in the territory of the United States.

221. Pursuant to Section 1610 *(g)* (1) of the FSIA, any assets of any Iranian company in which the State holds any form of interest are subject to attachment and execution, even if they have not previously been blocked. By its own terms, this provision constitutes an actual impediment to the performance of commercial activities by those entities in the territory of the United States. Moreover, the judicial application of Section 1610 *(g)* (1) of the FSIA and Section 201 *(a)* of TRIA has caused concrete interference with commerce.

222. In the context of its claims under Article X, paragraph 1, Iran specifically mentioned the effects of certain enforcement proceedings with respect to assets of the Iranian Ministry of Defence and the Iranian Navy held by Wells Fargo bank. The Court notes that the first allegation concerns a sum deposited by the company Cubic Defense Systems which was owed to the Iranian Ministry of Defence as a result of arbitration proceedings relating to a failure fully to perform contractual obligations after the Iranian revolution in 1979. With respect to the assets of the Iranian Navy, the only information available is that they were held by Wells Fargo bank as "collateral for letter of credit". In the Court's view, the materials submitted to it do not demonstrate that the relevant assets were connected to commerce in such a way that the relevant judicial decisions can be considered instances of interference with commerce as a result of the application of TRIA and the FSIA.

However, the effects of the enforcement proceedings with respect to contractual debts in the telecommunications industry and in the credit card services sector mentioned above (see paragraphs 180-181) constitute clear examples of such concrete interference with commerce.

223. In light of the foregoing, the Court concludes that the United States has violated its obligations under Article X, paragraph 1, of the Treaty of Amity.

V. REMEDIES

224. In its final submissions, Iran requests that the Court, having placed on record the alleged violations of the Treaty of Amity, declare

> "*(c)* . . . that the United States is consequently obliged to put an end to the situation brought about by the aforementioned violations of international law, by *(a)* ceasing those acts and *(b)* making full reparation for the injury caused by those acts, in an amount to be determined in a later phase of these proceedings, and *(c)* offering a formal apology to the Islamic Republic of Iran for those wrongful acts and injuries".

A. Cessation of internationally wrongful acts

225. Iran sets out its claim relating to the cessation of the wrongful acts in the following terms:

> "[T]he United States shall, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the measures adopted by its Legislature and its Executive, and the decisions of its courts and those of other authorities infringing the rights of Iran and of Iranian companies, cease to have effect in so far as they were each

adopted or taken in violation of the obligations owed by the United States to Iran under the Treaty of Amity, and that no steps are taken against the assets or interests of Iran or any Iranian entity or national that involve or imply the recognition or enforcement of such acts" (subparagraph *(d)* of the final submissions).

226. As provided in Article 30 of the ILC Articles on State Responsibility, which in this regard reflects customary international law: "The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing".

227. Such an obligation exists only if the violated obligation is still in force (see, in this respect, the commentary of the ILC to Article 30, paragraphs (1) and (3); see also the arbitral award in the *Rainbow Warrior* case (Award of 30 April 1990, *RIAA*, Vol. XX, p. 270, para. 114)).

228. In the present case, this condition is not met, since the Treaty of Amity is no longer in force. The United States denounced the Treaty by giving notification of its denunciation to Iran on 3 October 2018, so that the Treaty ceased to have effect a year later in accordance with the provisions of Article XXIII, paragraph 3, thereof (see paragraph 32 above).

229. It follows that Iran's request relating to the cessation of internationally wrongful acts must be rejected.

B. Compensation for the injury suffered

230. Iran states, in support of its claim for reparation for its injuries, that it will "present[] to the Court, by a date to be fixed by the Court, a precise evaluation of the reparations due for injuries caused by the unlawful acts of the United States in breach of the Treaty of Amity" (subparagraph *(e)* of the final submissions).

231. Iran is entitled to compensation for the injury caused by violations by the United States that have been ascertained by the Court. The relevant injury and the amount of compensation may be assessed by the Court only in a subsequent phase of the proceedings. If the Parties are unable to agree on the amount of compensation due to Iran within 24 months of the date of the present Judgment, the Court will, at the request of either Party, determine the amount due on the basis of further written pleadings limited to this issue.

C. Satisfaction

232. The offering of a formal apology by the State having committed the wrongful act may, in appropriate circumstances, constitute a form of satisfaction that the injured State is entitled to claim further to a finding of wrongfulness (on this point, see Article 37, paragraph 2, of the ILC Articles on State Responsibility).

233. In the circumstances of this case, the Court considers that a finding, in the present Judgment, of wrongful acts committed by the United States is sufficient satisfaction for the Applicant.

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234. In its final submissions, Iran also requested that the Court rule that "the United States shall pay the costs incurred by Iran in the presentation of this case and the defence of its legal rights under the Treaty of Amity".

235. Article 64 of the Statute of the Court provides that "[u]nless otherwise decided by the Court, each party shall bear its own costs". In the circumstances of this case, the Court can see no sufficient reason to direct the respondent Party to bear the costs of the proceedings (see, for example, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment of 9 February 2022*, para. 396; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua* v. *Costa Rica), Judgment, I.C.J. Reports 2015 (II)*, p. 718, para. 144).

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236. For these reasons,

THE COURT,

(1) By ten votes to five,

Upholds the objection to jurisdiction raised by the United States of America relating to the claims of the Islamic Republic of Iran under Articles III, IV and V of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, to the extent that they relate to treatment accorded to Bank Markazi and, accordingly, *finds* that it has no jurisdiction to consider those claims;

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Tomka, Abraham, Xue, Sebutinde, Bhandari, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Barkett;

AGAINST: *Judges* Bennouna, Yusuf, Robinson, Salam; *Judge* ad hoc Momtaz;

(2) By thirteen votes to two,

Rejects the objection to admissibility raised by the United States of America relating to the failure by Iranian companies to exhaust local remedies;

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Momtaz;

AGAINST: *Judge* Sebutinde; *Judge* ad hoc Barkett;

(3) By eight votes to seven,

Finds that the United States of America has violated its obligation under Article III, paragraph 1, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights;

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Bennouna, Yusuf, Xue, Robinson, Salam, Charlesworth; *Judge* ad hoc Momtaz;

AGAINST: *Judges* Tomka, Abraham, Sebutinde, Bhandari, Iwasawa, Nolte; *Judge* ad hoc Barkett;

(4) By twelve votes to three,

Finds that the United States of America has violated its obligations under Article IV, paragraph 1, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights;

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Robinson, Salam, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Momtaz;

AGAINST: *Judges* Sebutinde, Bhandari; *Judge* ad hoc Barkett;

(5) By eleven votes to four,

Finds that the United States of America has violated its obligation under Article IV, paragraph 2, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, namely that the property of nationals and companies of the Contracting Parties "shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation";

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Robinson, Salam, Iwasawa, Nolte; *Judge* ad hoc Momtaz;

AGAINST: *Judges* Sebutinde, Bhandari, Charlesworth; *Judge* ad hoc Barkett;

(6) By ten votes to five,

Finds that the United States of America has violated its obligations under Article X, paragraph 1, of the 1955 Treaty of Amity, Economic Relations, and Consular Rights;

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

AGAINST: *Judges* Tomka, Sebutinde, Bhandari, Charlesworth; *Judge* ad hoc Barkett;

(7) By thirteen votes to two,

Finds that the United States of America is under obligation to compensate the Islamic Republic of Iran for the injurious consequences of the violations of international obligations referred to in subparagraphs (3) to (6) above;

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; *Judge* ad hoc Momtaz;

AGAINST: *Judge* Sebutinde; *Judge* ad hoc Barkett;

(8) By fourteen votes to one,

Decides that, failing agreement between the Parties on the question of compensation due to the Islamic Republic of Iran within 24 months from the date of the present Judgment, this matter will, at the request of either Party, be settled by the Court, and *reserves* for this purpose the subsequent procedure in the case;

IN FAVOUR: *Vice-President* Gevorgian, *Acting President*; *Judges* Tomka, Abraham, Bennouna, Yusuf, Xue, Bhandari, Robinson, Salam, Iwasawa, Nolte, Charlesworth; *Judges* ad hoc Barkett, Momtaz;

AGAINST: *Judge* Sebutinde;

(9) Unanimously,

Rejects all other submissions made by the Parties.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this thirtieth day of March, two thousand and twenty-three, 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) Kirill GEVORGIAN,
Vice-President.

(Signed) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a separate opinion to the Judgment of the Court; Judge ABRAHAM appends a declaration to the Judgment of the Court; Judges BENNOUNA and YUSUF append separate opinions to the Judgment of the Court; Judge SEBUTINDE appends a dissenting opinion to the Judgment of the Court; Judge BHANDARI appends a declaration to the Judgment of the Court; Judge ROBINSON appends a separate opinion, partly concurring and partly dissenting, to the Judgment of the Court; Judge SALAM appends a declaration to the Judgment of the Court; Judges IWASAWA, NOLTE and CHARLESWORTH append separate opinions to the Judgment of the Court; Judge *ad hoc* BARKETT appends a separate opinion, partly concurring and partly dissenting, to the Judgment of the Court; Judge *ad hoc* MOMTAZ appends a separate opinion to the Judgment of the Court.

(Initialled) K.G.

(Initialled) Ph.G.

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