3 FEBRUARY 2021

JUDGMENT

ALLEGED VIOLATIONS OF THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

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

VIOLATIONS ALLÉGUÉES DU TRAITÉ D'AMITIÉ, DE COMMERCE ET DE DROITS CONSULAIRES DE 1955

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

3 FÉVRIER 2021

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ALLEGED VIOLATIONS OF THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

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

PRELIMINARY OBJECTIONS

Factual background.

1955 Treaty of Amity in force on date of filing of Application — Iran party to 1968 Treaty on Non-Proliferation of Nuclear Weapons — International Atomic Energy Agency and Security Council critical of Iran's nuclear activities — Security Council resolutions on Iranian nuclear issue — Iran subject to nuclear-related "additional sanctions" by United States — Joint Comprehensive Plan of Action ("JCPOA") concerning nuclear programme of Iran concluded on 14 July 2015 — Revocation of certain United States nuclear-related "sanctions" under Executive Order 13716 of 16 January 2016 — Participation of United States in JCPOA terminated under National Security Presidential Memorandum of 8 May 2018 — Reimposition by United States of "sanctions" on Iran, its nationals and companies under Executive Order 13846 of 6 August 2018.

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Jurisdiction of the Court ratione materiae *under Article XXI of Treaty of Amity.*

First preliminary objection to jurisdiction: subject-matter of dispute — Question whether dispute concerns interpretation and application of Treaty of Amity or exclusively JCPOA — Subject-matter of dispute to be determined by the Court on objective basis —

Particular account to be taken of facts identified by Applicant as basis for its claim — Opposing views as to whether impugned measures constitute violations of Treaty of Amity — Fact that dispute arose in context of decision of United States to withdraw from JCPOA does not preclude it from relating to interpretation and application of Treaty of Amity — A dispute may relate to certain acts that fall within ambit of more than one instrument — The Court cannot support argument that subject-matter of Iran's claims relates exclusively to JCPOA and not to Treaty of Amity — First preliminary objection to jurisdiction cannot be upheld.

Second preliminary objection to jurisdiction: "third country measures" — The Court must ascertain whether acts of which applicant complains fall within provisions of treaty containing compromissory clause — "Third country measures" objection does not concern all of Iran's claims but only majority of them — Were the Court to uphold second objection to jurisdiction the proceedings would not be terminated — Disagreement between the Parties about relevance of concept of "third country measures" — Disagreement between the Parties as regards territorial scope and ambit of provisions of Treaty of Amity allegedly breached by United States — Fact that some impugned measures directly targeted third States, their nationals or companies, does not automatically exclude them from ambit of Treaty of Amity — Second preliminary objection relates to the scope of certain obligations relied upon by Applicant — Also raises legal and factual questions which are properly a matter for the merits — Second preliminary objection to jurisdiction cannot be upheld.

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Admissibility.

Preliminary objection to admissibility of Iran's Application: alleged abuse of process — Claim based on valid title of jurisdiction can be rejected on ground of abuse of process only in exceptional circumstances — No such exceptional circumstances in present case — Preliminary objection to admissibility rejected.

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Objections on basis of Article XX, paragraph 1 (b) *and* (d)*, of Treaty of Amity.*

Article XX, paragraph 1 (b) *and* (d)*, of Treaty of Amity does not affect the Court's jurisdiction but affords a possible defence on the merits — Treaty of Amity does not preclude application of measures "relating to fissionable materials" under Article XX, paragraph 1* (b) *— Similarly, it does not preclude application of measures deemed necessary to protect*

a State's "essential security interests" under Article XX, paragraph 1 (d) *— A decision concerning these matters requires analysis of issues of law and fact that should be left to the merits — Arguments based on these provisions cannot provide basis for preliminary objections but may be presented at the merits stage — Preliminary objections based on Article XX, paragraph 1* (b) *and* (d)*, of Treaty of Amity rejected.*

JUDGMENT

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

In the case concerning alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights,

between

the Islamic Republic of Iran,

represented by

Mr. Hamidreza Oloumiyazdi, Head of the Centre for International Legal Affairs of the Islamic Republic of Iran, Associate Professor of Private Law at Allameh Tabataba'i University, Tehran,

as Agent and Advocate;

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

as Co-Agent and Counsel;

Mr. Seyed Hossein Sadat Meidani, Legal Adviser of the Ministry of Foreign Affairs of the Islamic Republic of Iran,

as Deputy Agent and Counsel;

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

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

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

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

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

as Counsel and Advocates;

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

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

Mr. Mohsen Izanloo, Deputy in Legal Affairs, Centre for International Legal Affairs of the Islamic Republic of Iran, Associate Professor of Law at University of Tehran,

as Senior Legal Advisers;

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

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

Ms Philippa Webb, Professor at King's College London, Twenty Essex Chambers, member of the Bar of England and Wales, member of the Bar of the State of New York,

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

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

as Counsel;

Mr. Seyed Mohammad Asbaghi Namini, Acting Director, Department of International Claims, Centre for International Legal Affairs of the Islamic Republic of Iran,

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

Mr. Mohsen Sharifi, Acting Head, Department of Litigations and Private International Law, Ministry of Foreign Affairs of the Islamic Republic of Iran,

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

Mr. Alireza Ranjbar, Legal Adviser to the Centre for International Legal Affairs of the Islamic Republic of Iran,

Mr. Seyed Reza Rafiey, Legal Expert, Department of Litigations and Private International Law, Ministry of Foreign Affairs of the Islamic Republic of Iran,

Mr. Soheil Golchin, Legal Expert, Department of Litigations and Private International Law, Ministry of Foreign Affairs of the Islamic Republic of Iran,

Mr. Mahdi Khalili Torghabeh, Legal Expert, Ministry of Foreign Affairs of the Islamic Republic of Iran,

as Legal Advisers,

and

the United States of America,

represented by

Mr. Marik A. String, Acting Legal Adviser, United States Department of State,

as Agent, Counsel and Advocate (until 28 January 2021);

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

as Agent (from 28 January 2021);

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

as Co-Agent and Counsel;

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

Ms Lara Berlin, Deputy Legal Counselor, Embassy of the United States of America in the Netherlands,

as Deputy Agents and Counsel;

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

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

Ms Kimberly A. Gahan, Assistant Legal Adviser, United States Department of State,

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

as Counsel and Advocates;

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

Ms Maegan L. Conklin, Assistant Legal Adviser, United States Department of State,

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

Mr. John I. Blanck, Attorney Adviser, United States Department of State,

Mr. Jonathan E. Davis, Attorney Adviser, United States Department of State,

Mr. Joshua B. Gardner, Attorney Adviser, United States Department of State,

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

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

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

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

Mr. David B. Sullivan, Attorney Adviser, United States Department of State,

Ms Margaret E. Sedgewick, Attorney Adviser, United States Department of State,

as Counsel;

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

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

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

Ms Katherine L. Murphy, Paralegal, United States Department of State,

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

as Assistants,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 16 July 2018, 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 alleged violations 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 the "1955 Treaty").

2. In its Application, Iran seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the 1955 Treaty.

3. On 16 July 2018, Iran also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

4. The Registrar immediately communicated to the Government of the United States the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request for the indication of provisional measures by Iran.

5. In addition, by a letter dated 25 July 2018, the Registrar informed all Member States of the United Nations of the filing of the above-mentioned Application and Request for the indication of provisional measures.

6. Pursuant to Article 40, paragraph 3, of the Statute, the Registrar notified the Member States of the United Nations, through the Secretary-General, and any other State which is entitled to appear before the Court, of the filing of the Application, by transmission of the printed bilingual text of that document.

7. On 18 July 2018, the Registrar informed both Parties that the Member of the Court of the nationality of the United States, pursuant to Article 24, paragraph 1, of the Statute, had notified the President of the Court of her intention not to participate in the decision of the case. In accordance with Article 31 of the Statute and Article 37, paragraph 1, of the Rules of Court, the United States chose Mr. Charles Brower to sit as judge *ad hoc* in the case.

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

9. On 23 July 2018, the President of the Court, acting in conformity with Article 74, paragraph 4, of the Rules of Court, addressed an urgent communication to the Secretary of State of the United States, calling upon the Government of the United States "to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects". A copy of that letter was transmitted to the Agent of Iran.

10. By an Order of 3 October 2018, the Court, having heard the Parties, indicated the following provisional measures:

> "(1) The United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, shall remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of
>
> (i) medicines and medical devices;
>
> (ii) foodstuffs and agricultural commodities; and
>
> (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation;
>
> (2) The United States of America shall ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (1);
>
> (3) Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve." (*I.C.J. Reports 2018 (II)*, p. 652, para. 102.)

11. By an Order dated 10 October 2018, the Court fixed 10 April 2019 and 10 October 2019, as the respective time-limits for the filing of a Memorial by Iran and a Counter-Memorial by the United States.

12. In a letter dated 19 February 2019, Iran requested the Court to "exercise its authority, under Article 78 of the Rules, to call on the USA to explain, as a matter of urgency, the specific steps that have been and are being taken to implement the Court's Order of 3 October 2018".

13. Following this communication, the Court requested the United States to provide, by 4 June 2019, information on its implementation of the provisional measures indicated by the Court in its Order of 3 October 2018 and Iran to furnish, by the same date, any information it might have in that regard. This information was submitted by both Parties within the time-limit fixed for that purpose. By letters dated 19 June 2019, the Parties were informed that the Court had taken due note of the responses provided by them, and that it considered that any issues relating to the implementation of the provisional measures may be addressed at a later stage, if the case proceeded to the merits.

14. By a letter dated 1 April 2019, the Co-Agent of Iran requested the Court to extend the time-limit for the filing of the Memorial by one and a half months, and indicated the reasons for that request. On receipt of that letter, the Deputy-Registrar, referring to Article 44, paragraph 3, of the Rules of Court, transmitted a copy thereof to the Agent of the United States. By a letter dated 5 April 2019, the Agent of the United States indicated that her Government had no objection to the extension of the time-limit requested by Iran.

15. By an Order dated 8 April 2019, the President of the Court extended to 24 May 2019 and 10 January 2020, the respective time-limits for the filing of the Memorial by Iran and a Counter-Memorial by the United States. The Memorial of Iran was filed within the time-limit thus extended.

16. On 23 August 2019, 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 certain preliminary objections (see paragraph 38 below). Consequently, by an Order of 26 August 2019, the President of the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules, the proceedings on the merits were suspended, fixed 23 December 2019 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 its written statement within the time-limit so prescribed and the case became ready for hearing with respect to the preliminary objections.

17. 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 thereto would be made accessible to the public on the opening of the oral proceedings.

18. Public hearings on the preliminary objections raised by the United States were held by video link from 14 to 21 September 2020, at which the Court heard the oral arguments and replies of:

For the United States:	Mr. Marik A. String, Sir Daniel Bethlehem, Ms Lisa J. Grosh, Ms Kimberly A. Gahan, Ms Laurence Boisson de Chazournes.
For Iran:	Mr. Hamidreza Oloumiyazdi, Mr. Vaughan Lowe, Mr. Samuel Wordsworth, Mr. Jean-Marc Thouvenin, Mr. Alain Pellet.

*

19. In the Application, the following claims were made by Iran:

> "Iran requests the Court to adjudge, order and declare that:
>
> *(a)* The USA, through the 8 May and announced further sanctions referred to in the present Application, with respect to Iran, Iranian nationals and companies, has breached its obligations to Iran under Articles IV (1), VII (1), VIII (1), VIII (2), IX (2) and X (1) of the Treaty of Amity;

(b) The USA shall, by means of its own choosing, terminate the 8 May sanctions without delay;

(c) The USA shall immediately terminate its threats with respect to the announced further sanctions referred to in the present Application;

(d) The USA shall ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity;

(e) The USA shall fully compensate 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 submit and present to the Court in due course a precise evaluation of the compensation owed by the USA."

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

"Iran respectfully requests the Court to adjudge, order and declare that:

(a) The United States, through the measures that were implemented pursuant to or in connection with the U.S. Presidential Memorandum of 8 May 2018 and announced further measures, with respect to Iran, Iranian nationals and companies, has breached its obligations to Iran under Articles IV (1), IV (2), V (1), VII (1), VIII (1), VIII (2), IX (2), IX (3) and X (1) of the Treaty of Amity;

(b) The United States shall, by means of its own choosing, terminate the measures that were implemented pursuant to or in connection with the U.S. Presidential Memorandum of 8 May 2018 and announced further measures without delay;

(c) The United States shall immediately terminate its threats with respect to announced further sanctions;

(d) The United States shall ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity;

(e) The United States shall fully compensate 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 submit and present to the Court in due course a precise evaluation of the compensation owed by the United States."

21. In the preliminary objections, the following submissions were presented on behalf of the Government of the United States:

"[T]he United States requests that the Court:

(a) Dismiss Iran's claims in their entirety as outside the Court's jurisdiction.

(b) Dismiss Iran's claims in their entirety as inadmissible.

(c) Dismiss Iran's claims in their entirety as precluded by Article XX, paragraph 1 (b) of the Treaty of Amity.

(d) Dismiss Iran's claims in their entirety as precluded by Article XX, paragraph 1 (d) of the Treaty of Amity.

(e) Dismiss as outside the Court's jurisdiction all claims, brought under any provision of the Treaty of Amity, that are predicated on third country measures."

22. In the written statement of its observations and submissions on the preliminary objections, the following submissions were presented on behalf of the Government of Iran:

"Iran respectfully requests that the Court:

(a) reject and dismiss the Preliminary Objections of the United States of America; and

(b) adjudge and declare:

(i) that the Court has jurisdiction over the entirety of the claims presented by Iran; and

(ii) that Iran's claims are admissible."

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

On behalf of the Government of the United States,

at the hearing of 18 September 2020:

"For the reasons explained during these hearings and any other reasons the Court might deem appropriate, the United States of America requests that the Court uphold the U.S. preliminary objections set forth in its written submission and at this hearing and decline to entertain the case. Specifically, the United States of America requests that the Court:

(a) Dismiss Iran's claims in their entirety as outside the Court's jurisdiction.

(b) Dismiss Iran's claims in their entirety as inadmissible.

(c) Dismiss Iran's claims in their entirety as precluded by Article XX, paragraph 1 (b) of the Treaty of Amity.

(d) Dismiss Iran's claims in their entirety as precluded by Article XX, paragraph 1 (d) of the Treaty of Amity.

(e) Dismiss as outside the Court's jurisdiction all claims, brought under any provision of the Treaty of Amity, that are predicated on third country measures."

On behalf of the Government of Iran,

at the hearing of 21 September 2020:

"The Islamic Republic of Iran respectfully requests that the Court:

(a) reject and dismiss the Preliminary Objections of the United States of America; and

(b) adjudge and declare:

(i) that the Court has jurisdiction over the entirety of the claims presented by Iran; and

(ii) that Iran's claims are admissible."

*

* *

I. FACTUAL BACKGROUND

24. In the present proceedings, Iran alleges violations by the United States of the Treaty of Amity, which was signed by the Parties on 15 August 1955 and entered into force on 16 June 1957 (see paragraph 1 above). It is not disputed by the Parties that on the date of the filing of the Application, namely, on 16 July 2018, the Treaty of Amity was in force. In accordance with Article XXIII, paragraph 3, of the Treaty of Amity, "[e]ither High Contracting Party may, by giving one year's written notice to the other High Contracting Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter". By a 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 "notice of the termination of the Treaty".

25. As regards the events forming the factual background of the case, the Court recalls that Iran is a party to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968. According to Article III of this Treaty, each non-nuclear-weapon State party undertakes to accept safeguards, as set forth in an agreement to be negotiated and concluded with the International Atomic Energy Agency (hereinafter the "IAEA" or "Agency"), for the exclusive purpose of verification of the fulfilment of its obligations assumed under the Treaty "with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices". The Agreement between Iran and the Agency for the Application of Safeguards in

Connection with the Treaty on the Non-Proliferation of Nuclear Weapons has been in force since 15 May 1974. In a report dated 6 June 2003, the IAEA Director General stated that Iran had "failed to meet its obligations under its Safeguards Agreement with respect to the reporting of nuclear material, the subsequent processing and use of that material and the declaration of facilities where the material was stored and processed". In its resolution GOV/2006/14 of 4 February 2006, the Agency's Board of Governors recalled

> "Iran's many failures and breaches of its obligations to comply with its NPT Safeguards Agreement and the absence of confidence that Iran's nuclear programme is exclusively for peaceful purposes resulting from the history of concealment of Iran's nuclear activities, the nature of those activities and other issues arising from the Agency's verification of declarations made by Iran since September 2002"

and requested the Director General to report the matter to the Security Council of the United Nations.

26. On 29 March 2006, the President of the Security Council made a statement on behalf of the Council in which he referred to the Security Council's serious concern regarding "Iran's decision to resume enrichment-related activities, including research and development". He further noted that the Security Council underlined "the particular importance of re-establishing full and sustained suspension" of these activities, "to be verified by the IAEA".

27. On 31 July 2006, the Security Council, acting under Article 40 of Chapter VII of the Charter of the United Nations, adopted resolution 1696 (2006), in which it noted, with serious concern, Iran's decision "to resume enrichment-related activities" and demanded "in this context, that Iran shall suspend all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA". The Security Council further expressed its intention, in the event of non-compliance by Iran, to adopt appropriate measures under Article 41 of Chapter VII of the Charter of the United Nations, "to persuade Iran to comply with [the] resolution and the requirements of the IAEA".

28. On 23 December 2006, the Security Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, adopted resolution 1737 (2006), in which it noted, with serious concern, *inter alia*, that Iran had not established "full and sustained suspension of all enrichment-related and reprocessing activities as set out in resolution 1696 (2006)". The Security Council expressed its determination "to give effect to its decisions by adopting appropriate measures to persuade Iran to comply with resolution 1696 (2006) and with the requirements of the IAEA, and also to constrain Iran's development of sensitive technologies in support of its nuclear and missile programmes". Thus, in resolution 1737 (2006), the Security Council decided that Iran must suspend "all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA", as well as "work on all heavy water-related projects, including the construction of a research reactor moderated by heavy water, also to be verified by the IAEA". It further decided that all States must take the necessary measures to prevent the supply, sale or transfer of all items, materials, equipment, goods and technology which could contribute to Iran's nuclear-related activities. Subsequently, the Security Council adopted further resolutions on the Iranian nuclear issue, namely, resolutions 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015).

29. On 26 July 2010, the Council of the European Union adopted Decision 2010/413/CFSP and, on 23 March 2012, Regulation No. 267/2012 concerning nuclear-related "restrictive measures against Iran", banning arms exports, restricting financial transactions, imposing the freezing of assets and restricting travel for certain individuals.

30. The United States, by Executive Orders 13574 of 23 May 2011, 13590 of 21 November 2011, 13622 of 30 July 2012, 13628 of 9 October 2012 (Sections 5 to 7, and 15) and 13645 of 3 June 2013, imposed a number of nuclear-related "additional sanctions" with regard to various sectors of Iran's economy.

31. On 14 July 2015, China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy, and Iran concluded the Joint Comprehensive Plan of Action (hereinafter the "JCPOA") concerning the nuclear programme of Iran. The declared purpose of that instrument was to ensure the exclusively peaceful nature of Iran's nuclear programme and to produce "the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme".

32. On 20 July 2015, the Security Council adopted resolution 2231 (2015), whereby it endorsed the JCPOA and urged its "full implementation on the timetable established [therein]". In the same resolution, the Security Council provided, in particular, for the termination under certain conditions of provisions of previous Security Council resolutions on the Iranian nuclear issue and set out measures of implementation of the JCPOA. Annex A to Security Council resolution 2231 (2015) reproduced the text of the JCPOA.

33. The JCPOA describes, in particular, the steps to be taken by Iran within a set timeframe, regarding agreed limitations on all uranium enrichment and uranium enrichment-related activities and addresses the co-operation of Iran with the IAEA. It provides for the termination of all sanctions adopted by the Security Council and the European Union, respectively, as well as the cessation of the implementation of certain United States sanctions (as described in Annex II to the JCPOA) concerning, in particular, the financial and banking system, investments, the petrochemical industry, the energy, shipping, shipbuilding and automotive sectors, and trade in commodities. Finally, the JCPOA contains an "Implementation Plan" as well as provisions regarding the resolution of disputes. These provisions establish a procedure to be used, should one of the participants complain that another participant is not meeting its commitments under the JCPOA.

34. On 16 January 2016, the President of the United States issued Executive Order 13716 revoking or amending a certain number of earlier Executive Orders on "nuclear-related sanctions" imposed on Iran or Iranian nationals.

35. On 8 May 2018, the President of the United States issued a National Security Presidential Memorandum announcing the end of the participation of the United States in the JCPOA and directing the reimposition of "sanctions lifted or waived in connection with the JCPOA". In the Memorandum, the President of the United States indicated that Iranian or Iran-backed forces were engaging in military activities in the surrounding region and that Iran remained a State sponsor of terrorism. He further stated that Iran had publicly declared that it would deny the IAEA access to military sites and that, in 2016, Iran had twice violated the JCPOA's heavy-water stockpile limits. The Presidential Memorandum determined that it was in the national interest of the United States to reimpose sanctions "as expeditiously as possible", and "in no case later than 180 days" from the date of the Memorandum.

36. Simultaneously, the United States Department of the Treasury's Office of Foreign Assets Control announced that "sanctions" would be reimposed in two steps. Upon expiry of a period of 90 days, the United States would reimpose a certain number of measures concerning, in particular, financial transactions, trade in metals, the importation of Iranian-origin carpets and foodstuffs, and the export to Iran of commercial passenger aircraft and related parts. Upon expiry of a period of 180 days, the United States would reimpose additional measures.

37. On 6 August 2018, the President of the United States issued Executive Order 13846 reimposing "certain sanctions" on Iran, its nationals and companies. Earlier Executive Orders implementing the commitments of the United States under the JCPOA were revoked.

*

38. The United States has raised five preliminary objections. The first two relate to the jurisdiction of the Court *ratione materiae* to entertain the case on the basis of Article XXI, paragraph 2, of the Treaty of Amity. The third contests the admissibility of Iran's Application by reason of an alleged abuse of process and on grounds of judicial propriety. The last two are based on subparagraphs *(b)* and *(d)* of Article XX, paragraph 1, of the Treaty of Amity. Although, according to the Respondent, they relate neither to the jurisdiction of the Court nor to the admissibility of the Application, the Respondent requests a decision upon them before any further proceedings on the merits.

The Court will begin by considering issues related to its jurisdiction.

II. JURISDICTION OF THE COURT *RATIONE MATERIAE* UNDER ARTICLE XXI OF THE TREATY OF AMITY

39. The United States contests the Court's jurisdiction to entertain the Application of Iran. It submits that the dispute before the Court falls outside the scope *ratione materiae* of Article XXI, paragraph 2, of the Treaty of Amity, the basis of jurisdiction invoked by Iran, which provides that:

> "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

40. According to the Respondent, the dispute which Iran seeks to bring before the Court falls outside the scope of the above-mentioned compromissory clause for two reasons which, in its view, are alternative in nature.

First, the United States contends that "the true subject matter of this case is a dispute as to the application of the JCPOA, an instrument entirely distinct from the Treaty of Amity, with no relationship thereto". Therefore, in the Respondent's view, the subject-matter of the dispute which Iran seeks to have settled by the Court is not "the interpretation or application of the . . . Treaty" within the meaning of the second paragraph of Article XXI, as cited above.

Secondly, the United States argues that the vast majority of the measures challenged by Iran fall outside the scope *ratione materiae* of the Treaty of Amity, because they principally concern trade and transactions between Iran and third countries, or their companies and nationals, and not between Iran and the United States, or their companies and nationals.

41. The Court will begin by examining the first of these two objections, which, if well founded, would cause all of Iran's claims to be excluded from the Court's jurisdiction; then, if necessary, it will consider the second objection, which concerns only the majority, and not the entirety, of the claims at issue.

1. First preliminary objection to jurisdiction: the subject-matter of the dispute

42. According to the United States, the dispute that Iran seeks to bring before the Court has arisen out of the United States' decision of 8 May 2018 to cease participation in the JCPOA and thereby to reimpose the sanctions that it had lifted under that instrument. The United States maintains that, by its Application, Iran in fact seeks the restoration of the sanctions relief provided by the United States when it was a participant in the JCPOA. The dispute thus exclusively pertains to the United States' decisions relating to the JCPOA; the case is inextricably bound up in the latter and has no real relationship to the Treaty of Amity.

43. The United States contends that the foregoing is evidenced by the text of the diplomatic Note of 11 June 2018, by which Iran claims to have notified the United States of the existence of the dispute now before the Court. The United States observes that, in that Note, Iran complains of the "unlawful decision of the Government of the United States, made on 8 May 2018, 'to re-impose the United States sanctions lifted or waived in connection with the JCPOA'", without even mentioning the Treaty of Amity. According to the United States, a second Note from Iran, dated 19 June 2018, also focuses exclusively on the United States' decision to cease participation in the JCPOA and to reimpose the previously lifted sanctions.

44. The United States notes that Iran brought its claims regarding the alleged wrongfulness, under the Treaty of Amity, of the measures that it is challenging only when these were reinstated as a result of the United States' withdrawal from the JCPOA, even though the measures in question had been in force prior to the adoption of the JCPOA — in some cases for decades — without Iran invoking the Treaty of Amity to challenge their imposition.

45. Equally telling, in the United States' view, is the fact that Iran is challenging before the Court only the reimposition of the sanctions that had been lifted under the JCPOA. The Respondent points out that the JCPOA provided for the suspension or removal only of "multilateral and national sanctions related to Iran's nuclear programme", and that, as a result, the other measures aimed at Iran which had been put in place by the United States before the adoption of the JCPOA continued to apply during the period in which the latter was implemented.

46. All the foregoing demonstrates, in the view of the Respondent, that the true subject-matter of the dispute relates exclusively to the JCPOA. According to the United States, the JCPOA is a multilateral political arrangement which does not create legally binding obligations. Moreover, it does not contain any clause giving the Court jurisdiction to entertain a dispute arising between two or more JCPOA participants.

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47. Iran rejects the arguments raised by the United States in support of the first preliminary objection to jurisdiction. It asserts that the subject-matter of the dispute that it has submitted to the Court is indeed the interpretation and application of the Treaty of Amity, and that the dispute thus falls squarely within the scope of the Treaty's compromissory clause.

48. According to Iran, its Application wholly and exclusively concerns violations of the Treaty of Amity. The measures that it challenges constitute violations of the Treaty of Amity, whether or not they are also associated with, or adopted against the background of, the JCPOA. The question is simply whether, as the Applicant maintains, those measures are inconsistent with the Treaty, without there being any need to determine whether or not they also breach the JCPOA.

49. Iran adds that the fact that the JCPOA makes no reference to the settlement of disputes by the Court is irrelevant, given that the subject-matter of the dispute now before the Court is compliance with the Treaty of Amity, not the JCPOA. Although the JCPOA does in fact contain a specific dispute settlement mechanism, nothing suggests that this mechanism might have the effect of removing from the jurisdiction of the Court any dispute relating to measures which, while falling within the scope of a clause conferring jurisdiction on the Court, might also be relevant to the JCPOA.

50. Finally, in response to the United States' argument that Iran did not challenge the imposition of the disputed measures before the JCPOA was adopted or during the negotiation leading up to its adoption, the Applicant replies that it did in fact protest against the United States' measures, which it considers to be contrary to international law. It adds that it is for each State to determine at what point the circumstances warrant pursuing its rights through judicial means rather than continuing only to seek a diplomatic settlement, which is what the Applicant has done in this instance by deciding to bring the present dispute before the Court.

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51. The Court notes that the Parties do not contest that there is a dispute between them, but they disagree as to whether this dispute concerns the interpretation and application of the Treaty of Amity, as Iran claims, or exclusively the JCPOA, as the United States contends. In the latter case, the dispute would fall outside the scope *ratione materiae* of the compromissory clause of the Treaty of Amity.

52. As the Court has consistently recalled, while it is true that, in accordance with Article 40, paragraph 1, of the Statute, the applicant must indicate to the Court what it considers to be the "subject of the dispute", it is for the Court to determine, taking account of the parties' submissions, the subject-matter of the dispute of which it is seised (see *Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, pp. 447-449, paras. 29-32). As it stated in the *Nuclear Tests* cases:

> "[I]t is the Court's duty to isolate the real issue in the case and to identify the object of the claim. It has never been contested that the Court is entitled to interpret the submissions of the parties, and in fact is bound to do so; this is one of the attributes of its judicial functions." (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 262, para. 29; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 466, para. 30.)

53. The Court's determination of the subject-matter of the dispute is made "on an objective basis" (*Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015 (II)*, p. 602, para. 26), "while giving particular attention to the formulation of the dispute chosen by the Applicant" (*Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 448, para. 30). To identify the subject-matter of the dispute, the Court bases itself on the application, as well as on the written

and oral pleadings of the parties. In particular, it takes account of the facts that the applicant identifies as the basis for its claim (*Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Preliminary Objection, Judgment, I.C.J. Reports 2015 (II)*, pp. 602-603, para. 26).

54. In the present case, according to the submissions presented in its Application and its Memorial, Iran essentially seeks to have the Court declare that the measures reimposed pursuant to the United States' decision expressed in the Presidential Memorandum of 8 May 2018 are in breach of various obligations of the United States under the Treaty of Amity, and consequently to have the situation prior to that decision restored. The United States contests that the impugned measures constitute violations of the Treaty of Amity. Hence there exists an opposition of views which amounts to a dispute relating to the Treaty of Amity.

55. It is true that this dispute arose in a particular political context, that of the United States' decision to withdraw from the JCPOA. However, as the Court has had occasion to observe:

> "[L]egal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and longstanding political dispute between the States concerned. Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them." (*United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 20, para. 37.)

56. The fact that the dispute between the Parties has arisen in connection with and in the context of the decision of the United States to withdraw from the JCPOA does not in itself preclude the dispute from relating to the interpretation or application of the Treaty of Amity (cf. *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, pp. 811-812, para. 21). Certain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the "interpretation or application" of more than one treaty or other instrument. To the extent that the measures adopted by the United States following its decision to withdraw from the JCPOA might constitute breaches of certain obligations under the Treaty of Amity, those measures relate to the interpretation or application of that Treaty.

57. Even if it were true, as the Respondent contends, that a judgment of the Court upholding Iran's claims under the Treaty of Amity would result in the restoration of the situation which existed when the United States was still participating in the JCPOA, it nonetheless would not follow that the dispute brought before the Court by Iran concerns the JCPOA and not the Treaty of Amity.

58. The Court notes that the United States has made clear that it does not assert that the existence of a connection between the dispute and its decision to withdraw from the JCPOA suffices in itself to preclude the Court from finding that it has jurisdiction over Iran's claims under the Treaty of Amity, or that jurisdiction under the Treaty is precluded solely because the dispute is part of a broader context that includes the JCPOA.

59. The Respondent's argument is that the very subject-matter of Iran's claims in this case relates exclusively to the JCPOA, and not to the Treaty of Amity. The Court does not see how it could support such an analysis without misrepresenting Iran's claims as formulated by the Applicant. The Court's "duty to isolate the real issue in the case and to identify the object of the claim" (see paragraph 52 above) does not permit it to modify the object of the submissions, especially when they have been clearly and precisely formulated. In particular, the Court cannot infer the subject-matter of a dispute from the political context in which the proceedings have been instituted, rather than basing itself on what the applicant has requested of it.

60. For the reasons set out above, the Court cannot uphold the first preliminary objection to jurisdiction raised by the United States.

2. Second preliminary objection to jurisdiction: "third country measures"

61. The United States contends that, even if the actual subject-matter of the dispute were the application of the Treaty of Amity and not of the JCPOA, the Court would lack jurisdiction to entertain the vast majority of Iran's claims, as those claims relate to measures which principally concern trade or transactions between Iran and third countries, or between their nationals and companies. According to the Respondent, the Treaty of Amity is applicable only to trade between the two States parties, or their nationals and companies, and not to trade between one of them and a third country, or their nationals and companies.

62. According to the United States, the vast majority of the measures implemented or reinstated under the Memorandum of 8 May 2018 concern the trade or transactions of Iran (or its companies and nationals) with third countries (or their companies and nationals). Indeed, the measures aimed directly at "U.S. persons" (within the specific meaning in which this category of person is defined by the JCPOA), seeking to prohibit such persons from carrying out certain operations with Iran or Iranian entities, had not been lifted by the JCPOA; they were therefore not reinstated by the Memorandum of 8 May 2018 and its implementing measures. Consequently, according to the United States, since Iran is only challenging before the Court the lawfulness of the "8 May measures" under the Treaty of Amity, it is thus complaining of measures of which the vast majority do not affect the commercial or financial relations between the United States and Iran, but between Iran and third countries, or between their companies and nationals. According to the Respondent, such measures, which it characterizes as "third country measures", fall outside the scope of the Treaty of Amity.

63. More specifically, the United States explains that the disputed measures can be divided into four categories, according to their purpose: (i) the reimposition of certain sanctions provisions under United States statutes that had been waived pursuant to the JCPOA; (ii) the reinstatement, through issuance of Executive Order 13846, of certain sanctions authorities that were previously terminated; (iii) the relisting of certain persons on the Department of the Treasury's Specially Designated Nationals and Blocked Persons List or SDN List (which identifies natural or legal persons from specially designated countries or subject to a block on assets); and (iv) the revocation of certain licensing actions related to carpets, foodstuffs, commercial passenger aircraft and parts, and activities of foreign entities owned or controlled by United States natural or legal persons.

The Respondent contends that the measures in the first three categories are "third country measures" which do not fall within the scope of the Treaty of Amity. It states that its second objection to jurisdiction is not directed at Iran's claims relating to measures in the fourth category.

64. As regards the first three categories of measures, and in particular those involving the reimposition of certain statutory provisions governing sanctions which had been withdrawn under the JCPOA, the United States points out that the latter specified that "[t]he sanctions that the United States will cease to apply . . . pursuant to its commitment under Section 4 are those directed towards non-U.S. persons". The JCPOA also clarified that "U.S. persons and U.S.-owned or -controlled foreign entities will continue to be generally prohibited from conducting transactions of the type permitted pursuant to this JCPOA, unless authorised to do so by the U.S. Department of the Treasury". The United States argues that, as a result, leaving aside the limited fourth category referred to in paragraph 63 above, the only sanctions that were lifted during the period of application of the JCPOA were those aimed at third States or their companies and nationals, and that it was only such "third country measures" that were reinstated after 8 May 2018.

65. According to the Respondent, the same applies to the provisions resulting from Executive Order 13846, which reinstated certain earlier Executive Orders that had been terminated or amended in connection with the implementation of the JCPOA. The sanctions reimposed by Executive Order 13846 are those directed at non-United States persons.

66. Lastly, regarding the return of certain persons and assets to the United States Department of the Treasury's SDN List, the Respondent maintains that the relisting of more than 400 individuals or entities principally affected the nationals and companies of third countries by prohibiting those nationals or companies, on pain of sanctions, from supplying goods and services to Iranian persons included in the list.

67. Having so characterized the measures challenged by Iran in these proceedings, the United States argues that such measures do not fall within the terms of any of the provisions of the Treaty of Amity, which contains no clause that might require the United States either to take or to refrain from taking any measures in respect of trade or transactions between Iran and a third country. In particular, according to the United States, such measures do not fall within the terms of any of the provisions of the Treaty of Amity which Iran claims to have been violated, namely Articles IV (paras. 1 and 2), V (para. 1), VII (para. 1), VIII (paras. 1 and 2), IX (paras. 2 and 3) and X (para. 1).

68. The United States maintains that Article IV, paragraph 2, and Article V, paragraph 1, are expressly limited to conduct that occurs within the territory of the United States. Likewise, according to the Respondent, Iran is incorrect in claiming that Article VII, paragraph 1, which prohibits restrictions on the transfer of funds, could apply to the United States' measures that affect payments to or from third countries, and not merely to or from the territory of Iran.

69. With regard to Article VIII, paragraphs 1 and 2, which set forth certain obligations relating to the exportation and importation of products, the United States considers that these provisions concern only products of Iran destined for import to the territory of the United States or products of the United States destined for export to Iran. For similar reasons, according to the United States, the measures concerning third States fall outside the scope of Article IX, paragraphs 2 and 3, which require each party to accord certain treatment to the companies and nationals of the other party in matters of importation and exportation, and in respect of the ability of companies to obtain marine insurance. Lastly, the United States points out that Article X, paragraph 1, which provides that "[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation", contains an "important territorial limitation" and therefore does not apply to goods that are subject to intermediate transactions with third countries.

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70. Iran challenges the concept of "third country measures" which underlies the United States' second preliminary objection to jurisdiction. According to Iran, this is not only an invention on the part of the Respondent, but above all a concept that is misleading, since in reality all the United States' measures at issue in this case are specifically targeted at Iran and Iranian nationals and companies, not at third States or their nationals and companies. Iran cites as evidence of this, in particular, the words of the United States Department of the Treasury of 5 November 2018, which described the measures at issue as "the toughest U.S. sanctions ever imposed on Iran, [which] will target critical sectors of Iran's economy".

71. Taking the example of Article X, paragraph 1, of the Treaty of Amity, which protects "freedom of commerce" "[b]etween the territories of the two High Contracting Parties", Iran points out that it matters little whether an obstruction to that freedom takes the form of the withdrawal by the United States of a licence permitting an American company to sell products to an Iranian company (a measure which the Respondent does not contest falls within the scope of the Treaty), or of a United States' sanction on a third State bank or other business that prevents the Iranian company from paying for or physically acquiring the products sold by the American company (which would be a so-called "third country measure").

72. Iran maintains that its Application is based on certain provisions of the Treaty of Amity interpreted in accordance with the rules codified in the Vienna Convention on the Law of Treaties. The Applicant emphasizes that the ordinary meaning of the text is of key importance and that the context must also be taken into account. In this respect, Iran acknowledges that certain provisions of the Treaty of Amity contain territorial limitations. But the very fact that this is the case in certain provisions is seen by Iran as providing an important part of the context for the interpretation of those provisions where such limitations are absent, since the obvious inference is that such absence is deliberate.

73. Having considered each of the Treaty provisions which it claims that the United States has violated, namely — according to the Application — Articles IV (para. 1), VII (para. 1), VIII (paras. 1 and 2), IX (para. 2) and X (para. 1), together with — under the terms of the Memorial — Articles IV (para. 2), V (para. 1) and IX (para. 3), Iran requests the Court to determine whether, on the basis of the relevant facts which it alleges, there could exist a violation of one or more of those provisions by the United States' measures which it is contesting. According to Iran, the "relevant facts" are in particular: that the object and effect of the United States' measures, including the "third country measures", is to deprive Iranian nationals and companies of their property and enterprises or to harm such property and enterprises on a large scale; that Iranian nationals and companies operating in the key sectors of Iran's economy are being deliberately targeted by the United States' measures; and that the sanctions are destroying the economy and currency of Iran, driving millions of people into poverty.

74. Reviewing the various provisions of the Treaty which it claims have been violated, Iran concludes that "the violations of the Treaty of 1955 pleaded by Iran . . . fall within the provisions of the Treaty and [that], as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain, pursuant to Article XXI, paragraph 2", thus echoing the terms of the well-known statement of the Court in the *Oil Platforms* case.

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75. The Court recalls that, according to its well-established jurisprudence, in order to determine its jurisdiction *ratione materiae* under a compromissory clause concerning disputes relating to the interpretation or application of a treaty, it cannot limit itself to noting that one of the parties maintains that such a dispute exists, and the other denies it. It must ascertain whether the acts of which the applicant complains fall within the provisions of the treaty containing the compromissory clause. This may require the interpretation of the provisions that define the scope of the treaty (see *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 308, para. 46; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 16).

76. The Court observes that the "third country measures" objection does not concern all of Iran's claims, but only the majority of them. Indeed, the Respondent stated that one of the four categories into which it divides the measures put in place or reimposed pursuant to the Presidential Memorandum of 8 May 2018 (see paragraph 63 above) cannot be characterized as "third country measures" and is therefore not included in the second preliminary objection to jurisdiction. This fourth category consists of the revocation of certain licensing actions which had made it possible to engage in certain commercial or financial transactions with Iran during the period of implementation of the JCPOA. According to the Respondent, the licences in question, which were revoked pursuant to the Memorandum of 8 May 2018, benefited "U.S. persons" and their withdrawal is not included in the objection now under consideration.

77. It follows that even if the Court were to uphold the second objection to jurisdiction — and assuming that it does not accept any of the other preliminary objections, each of which concerns all of Iran's claims — the proceedings would not be terminated. They would in any event have to continue to the merits in respect of the category of measures challenged by Iran which, according to the United States, are not "third country measures".

The Court notes, however, that, as regards this category, the United States has declared that it "reserves the right to argue that some or all of Iran's claims based on the revocation of particular licensing actions are outside the scope of the Treaty" at a later stage in the proceedings, should they continue.

78. The Court observes that the Parties are in disagreement about the relevance of the concept of "third country measures" and about the effects that should follow from the application of such a concept in this case. While, according to the United States, the Court should find that it lacks jurisdiction to entertain most of Iran's claims, since the vast majority of the measures complained of by the Applicant are directed against "non-U.S." persons, companies or entities, Iran, on the other hand, contends that the concept of "third country measures" is irrelevant. It is only necessary, according to the Applicant, to examine each category of measures at issue in order to determine whether they fall within the scope of the various provisions of the Treaty of Amity which it claims to have been violated.

79. Moreover, the Parties disagree on the interpretation of the provisions of the Treaty which Iran claims to have been breached by the United States, as regards their territorial scope and their ambit. According to Iran, the provisions that do not contain an express territorial limitation must be interpreted generally as being applicable to activities exercised in all places, whereas, according to the United States, it follows from the object and purpose of the Treaty of Amity that it is concerned only with the protection of commercial and investment activities of one Party, or of its nationals or companies, on the territory of the other or in the context of trade between them. Furthermore, Iran maintains that the Treaty prohibits the United States from impairing the rights guaranteed to Iran and Iranian nationals and companies, not only through measures applied directly to those nationals or companies, or to "U.S. persons" in their relations with Iran, but also through measures directed in the first instance against a third party, whose real aim is however to prevent Iran, its nationals and its companies from enjoying their rights under the Treaty. The United States contests this view.

80. The Court observes that all the measures of which Iran complains — those put in place or reinstated as a result of the Presidential Memorandum of 8 May 2018 — are intended to weaken Iran's economy. Indeed, on the basis of the official statements of the United States' authorities themselves, Iran, its nationals and its companies are the target of what the Respondent describes as "third country measures", as well as of the measures aimed directly against Iranian entities and of those against "U.S. persons" which are intended to prohibit them from engaging in transactions with Iran, its nationals or its companies.

However, it cannot be inferred from the above that all the measures at issue are capable of constituting breaches of the United States' obligations under the Treaty of Amity. What is decisive in this regard is whether each of the measures — or category of measures — under consideration is of such a nature as to impair the rights of Iran under the various provisions of the Treaty of Amity which the Applicant claims to have been violated.

81. Conversely, the fact that some of the measures challenged — whether or not they are "the vast majority", as the United States maintains — directly target third States or the nationals or companies of third States does not suffice for them to be automatically excluded from the ambit of the Treaty of Amity. Only through a detailed examination of each of the measures in question, of their reach and actual effects, can the Court determine whether they affect the performance of the United States' obligations arising out of the provisions of the Treaty of Amity invoked by Iran, taking account of the meaning and scope of those various provisions.

82. In sum, the Court considers that the second preliminary objection of the United States relates to the scope of certain obligations relied upon by the Applicant in the present case and raises legal and factual questions which are properly a matter for the merits (cf. *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)*, p. 586, para. 63). If the case were to proceed to the merits, such matters would be decided by the Court at that stage, on the basis of the arguments advanced by the Parties.

83. In light of the above, the Court finds that the second preliminary objection to jurisdiction raised by the United States cannot be upheld.

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84. For all the reasons set out above, the Court finds that it has jurisdiction *ratione materiae* to entertain the Application of Iran on the basis of Article XXI, paragraph 2, of the 1955 Treaty of Amity.

III. Admissibility of Iran's Application

85. The United States submits, in the alternative, a preliminary objection to the admissibility of Iran's Application. In its view, all claims brought by Iran are inadmissible because they would amount to an abuse of process and would raise questions of judicial propriety.

86. The Respondent observes that there is no comprehensive definition in the Court's jurisprudence of what type of conduct constitutes an abuse of process; what is considered an abuse will vary depending on the circumstances of the case. The United States contends that, while the notion of abuse of process may be tied to the principle of good faith, an analysis of whether a State has acted or is acting in good or bad faith is not necessarily required. The Respondent recalls that the Court may decline to hear a case where there exists clear evidence that the conduct of the applicant State amounts to an abuse of process.

87. The United States maintains that in the present case there are exceptional circumstances that warrant the dismissal by the Court of the entirety of the case on account of an abuse of process. The Respondent contends that through this case Iran is seeking to obtain "an illegitimate advantage" in respect of its nuclear activities and aims to bring "political and psychological pressure on the United States". As with regard to its first objection to the Court's jurisdiction, the United States argues that the dispute exclusively concerns the JCPOA. It asserts that, by bringing this case to the Court, Iran is seeking relief from the sanctions that had been lifted under the JCPOA and that had been reinstated subsequently. The United States points out that political mechanisms were set forth under the JCPOA to address the non-performance by a participant of its commitments, but that the participants did not consent to the jurisdiction of the Court to resolve disputes under that instrument. The Respondent contends that, were the case to proceed to the merits and the Court to grant the relief Iran has requested, the Applicant would obtain the lifting of a specific set of nuclear-related sanctions, which "formed the heart of the bargain in the JCPOA". Iran could be granted relief from United States' nuclear-related sanctions without being bound to uphold its own commitments under the JCPOA. In light of these circumstances, which in the view of the Respondent are exceptional, the Application should be held inadmissible.

88. Moreover, the United States contends that the Court has the inherent power to decline to exercise its jurisdiction in order to protect the integrity of its judicial function. In the Respondent's view, it would be "reasonable, necessary and appropriate" for that purpose for the Court to declare the present case inadmissible. By hearing a case that raises questions deeply entangled with the JCPOA, the Court could compromise its judicial integrity. The United States contends that, if the Court were to grant Iran relief from nuclear-related sanctions, it would be placed "at odds with its inherently judicial function".

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89. Iran points out that the Court has had to consider arguments based on abuse of process in the past, but has stated that an abuse could occur only under exceptional circumstances which have never been found to exist. Iran argues that the threshold for an abuse of process is very high and may be reached only if supported by clear evidence.

90. In the present case, Iran contends that there are no exceptional circumstances that would justify the Court pronouncing an abuse of process. In Iran's view, it is normal that a dispute brought under a treaty has political implications. Responding to the United States' contention that Iran would obtain an "illegitimate advantage" if the Court were to pronounce in its favour, and that the case is really about the JCPOA and not the Treaty of Amity, Iran recalls that the Court has already considered similar contentions in other cases and concluded that the relevant circumstances did not constitute an abuse of process. The Applicant argues that asserting its rights under a treaty in force between the Parties cannot be illegitimate. Moreover, it maintains that access to judicial recourse cannot be barred simply because of the "risk of influencing the execution of another international instrument".

91. Iran further argues that, by exercising its jurisdiction in the present case, the Court would not compromise the integrity of its judicial function. It points out that the United States has not defined the conditions under which the Court should declare a case inadmissible for considerations of judicial propriety. Iran argues that for the Court to decide not to exercise its jurisdiction, there must exist circumstances "of such a nature that they are capable of preventing or hindering the capacity of the Court to address the specific legal and factual subject-matter" of the case. According to Iran, whether the dispute is entangled with the JCPOA, and whether there exists a risk of granting an "illegitimate advantage" to Iran, are not valid reasons for questioning the integrity of the judicial process. Iran argues that none of the claims it presents actually requires the Court to make any legal finding on the JCPOA; the fact that the JCPOA constitutes part of the factual background has no impact on the Court's exercise of its judicial function.

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92. The objection to admissibility raised by the United States is based on the contention that Iran's claims amount to an abuse of process and would work an injustice that would raise serious questions of judicial propriety". This is because "Iran has invoked the Treaty [of Amity] in a case involving a dispute that solely concerns the application of the JCPOA". The Court notes that the United States did not address its objection to the admissibility of Iran's Application during the oral hearings, but expressly maintained that objection.

93. As the Court observed in *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)*, "[i]t is only in exceptional circumstances that the Court should reject a claim based on a valid title of jurisdiction on the ground of abuse of process" (*Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, p. 336, para. 150). The Court has specified that there has to be "clear evidence" that the Applicant's conduct amounts to an abuse of process (for analogous statements, see *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, pp. 42-43, para. 113; *Jadhav (India* v. *Pakistan), Judgment, I.C.J. Reports 2019 (II)*, p. 433, para. 49).

94. In the present case, the Court has already ascertained that the dispute submitted by the Applicant concerns alleged breaches of obligations under the Treaty of Amity and not the application of the JCPOA (see paragraph 60 above). The Court has also found that the compromissory clause included in the Treaty of Amity provides a valid basis for its jurisdiction with regard to the Applicant's claims (see paragraph 84 above). If the Court eventually found on the merits that certain obligations under the Treaty of Amity have indeed been breached, this would not imply giving Iran any "illegitimate advantage" with regard to its nuclear programme, as contended by the United States. Such a finding would rest on an examination by the Court of the treaty provisions that are encompassed within its jurisdiction.

95. In the view of the Court, there are no exceptional circumstances that would justify considering Iran's Application inadmissible on the ground of abuse of process. In particular, the fact that Iran only challenged the consistency with the Treaty of Amity of the measures that had been lifted in conjunction with the JCPOA and then reinstated in May 2018, without discussing other measures affecting Iran and its nationals or companies, may reflect a policy decision. However, as was noted in *Border and Transborder Armed Actions (Nicaragua* v. *Honduras)*, the Court's judgment "cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement" (*Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 91, para. 52). In any event, the fact that most of Iran's claims concern measures that had been lifted in conjunction with the JCPOA and were later reinstated does not indicate that the submission of these claims constitutes an abuse of process.

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

IV. OBJECTIONS ON THE BASIS OF ARTICLE XX, PARAGRAPH 1 *(B)* AND *(D)*, OF THE TREATY OF AMITY

97. The United States maintains that Article 79 (now Article 79*bis*) of the Rules of Court sets out three types of preliminary objections, namely objections to the jurisdiction of the Court, objections to the admissibility of the application, and any "other objection the decision upon which is requested before any further proceedings on the merits". The Respondent contends that the Court has recognized in the past that an objection may fall into this last category and may have an exclusively preliminary character even if it touches on certain aspects of the merits.

98. The United States submits that in the present case its objections based on Article XX, paragraph 1 *(b)* and *(d)* — which provide that the Treaty of Amity does not preclude the application of measures "relating to fissionable materials" or that are necessary to protect a State's "essential security interests" — fall into this third category of objections under Article 79 of the Rules of Court and are of an exclusively preliminary character. The Respondent argues that a determination on these objections can be made on the basis of the facts already before the Court, without deciding on the merits of the case and without prejudging Iran's claims. According to the United States, even though in its jurisprudence the Court has decided that objections based on Article XX, paragraph 1, of the Treaty of Amity were defences on the merits to be considered at a subsequent phase, in the present case the Court should examine them as a preliminary matter, in particular because they are "severable from the merits of Iran's claims". In the "interests of fairness, procedural economy, and the sound administration of justice", the United States maintains that the Court should render an early decision on these questions.

99. The United States argues that both objections cover the entirety of Iran's claims. It maintains, therefore, that a decision on the objections should be made at the preliminary stage of the proceedings.

100. In the United States' view, all measures at issue in this case can be categorized as "nuclear-related"; therefore, they are all covered by Article XX, paragraph 1 *(b)*, of the Treaty of Amity. The United States contends that, in light of the text and context of this provision, the phrase "relating to fissionable materials" gives a party a considerable degree of discretion for taking "a full range of measures developed and adopted to control and prevent proliferation of sensitive nuclear materials", and not only measures regulating direct trade in fissionable materials.

101. The United States notes that the present case is concerned solely with the measures reinstated on 8 May 2018, which were those that had been lifted with the adoption of the JCPOA. The Respondent indicates that all of those measures were categorized by JCPOA participants, including Iran, as "national sanctions related to Iran's nuclear programme". In the Respondent's opinion, for Article XX, paragraph 1 *(b)*, to apply, it is irrelevant that the measures were reimposed for both nuclear and non-nuclear related security reasons.

102. Additionally, the United States contends that the measures at issue fall within Article XX, paragraph 1 *(d)*, of the Treaty of Amity. The Respondent argues that the notion of essential security interests referred to in this provision is broad; to reach the required threshold, measures do not need to be taken in relation to an armed attack, or with regard to matters considered by the Security Council as a threat to international peace and security. The United States contends that "wide discretion" and "substantial deference" must be granted to the State invoking subparagraph *(d)* in determining whether national security is at stake and what measures are necessary.

103. In the present case, the United States indicates that in light of "Iran's ongoing record of violent and destabilizing acts", measures were necessary to protect the Respondent's essential security interests. The decision to reimpose sanctions was taken at the highest level of government, on the basis of an evaluation of Iran's nuclear ambitions, as well as other Iranian policies that were of concern for the United States, such as those related to the financing of terrorism.

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104. Iran argues that the Respondent's objections that are based on Article XX, paragraph 1, do not fall within the objections mentioned in Article 79 of the Rules of Court. Iran acknowledges that some preliminary objections may not be easily classified as either pertaining to the jurisdiction of the Court or to the admissibility of the application, but this does not mean that there exists a "third category" of preliminary objections which may include objections pertaining to the merits. Iran argues that, in order to be dealt with at this stage, "an objection must be jurisdictional in nature without touching upon the substance of the merits of the case". It maintains that the position of the United States, which argues that its objections do not affect the Court's jurisdiction but are nonetheless "preliminary in nature", is contradictory; in Iran's view, a preliminary objection can only be aimed at preventing the Court from exercising its jurisdiction. Iran argues that whether

subparagraphs *(b)* and *(d)* of Article XX, paragraph 1, of the Treaty of Amity cover the entirety of its claims is irrelevant in determining the nature of the objections: these objections remain defences on the merits, whether they cover all of Iran's submissions or not.

105. Iran contends that there is no reason for the Court to depart from its findings in the case concerning *Certain Iranian Assets*, in which it concluded that "subparagraphs *(c)* and *(d)* of Article XX, paragraph 1, do not restrict its jurisdiction but merely afford the Parties a defence on the merits". Moreover, the Applicant submits that an extensive factual analysis would be necessary to decide on the objections based on subparagraphs *(b)* and *(d)* of Article XX, paragraph 1, and that such an analysis can only be conducted at the merits stage; it is "unsuitable and improper" at the present stage. Indeed, the facts and arguments in support of these objections are substantially the same as the ones forming the basis of the case on the merits. The Applicant submits that if the Court were to pronounce at this stage on the defences of Article XX, paragraph 1, Iran's rights would form the very subject-matter of the decision. Moreover, in the Applicant's view, at this stage of the proceedings the Court does not have in its possession all the necessary factual elements to make a determination on the objections raised on the basis of Article XX, paragraph 1 *(b)* and *(d)*.

106. Iran also points out that subparagraph *(b)* must be interpreted in light of the object and purpose of the Treaty and that therefore it only applies to trade, investment or other economic activities in relation to fissionable materials. Measures related to nuclear activity broadly speaking are not covered by Article XX, paragraph 1 *(b)*. In the present case, Iran contends that none of the measures in dispute concerns fissionable materials or their radioactive by-products.

107. In relation to subparagraph *(d)*, Iran maintains that the concerns of the United States with regard to its essential security interests did not justify implementing the measures at hand. The Applicant recalls that it is the Court's role to assess the probative value of the arguments put forward by the Respondent and to determine whether there exist reasonable grounds for the United States to consider that the imposition of the sanctions in dispute was necessary and proportional to protect its security interests. In the present case, Iran contends that the measures reimposed by the United States cannot be considered as necessary in order to protect its essential security interests. According to the Applicant, the invocation of Article XX, paragraph 1 *(d)*, by the United States is "unfounded and abusive".

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108. Article XX, paragraph 1, of the Treaty of Amity reads as follows:

> "1. The present Treaty shall not preclude the application of measures:
>
> . . . . . .
>
> *(b)* relating to fissionable materials, the radio-active by-products thereof, or the sources thereof;
>
> . . . . . .

(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."

109. The Court recalls that in the *Oil Platforms* case *(Islamic Republic of Iran* v. *United States of America)*, it found that "Article XX, paragraph 1 *(d)*, [of the Treaty of Amity] does not restrict its jurisdiction in the present case, but is confined to affording the Parties a possible defence on the merits" (*Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20). A similar view was expressed in the case concerning *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), where the Court noted that the interpretation given to Article XX, paragraph 1, with regard to subparagraph *(d)* also applies to subparagraph *(c)*, which concerns measures "regulating the production of or traffic in arms, ammunition and implements of war". The Court observed that in this respect "there are no relevant grounds on which to distinguish [subparagraph *(c)*] from Article XX, paragraph 1, subparagraph *(d)*" (*ibid.*, p. 25, para. 46). The Court finds that there are equally no relevant grounds for a distinction with regard to subparagraph *(b)*, which may only afford a possible defence on the merits.

110. The Parties do not dispute that arguments based on Article XX of the Treaty of Amity do not affect either the Court's jurisdiction or the admissibility of the application. However, the Respondent argues that objections formulated on the basis of Article XX, paragraph 1 *(b)* and *(d)*, may be presented as preliminary according to Article 79 of the Rules of Court as "other objection[s] the decision upon which is requested before any further proceedings on the merits". For the following reasons, the two objections raised by the United States on the basis of Article XX, paragraph 1 *(b)* and *(d)*, cannot be considered as preliminary. A decision concerning these matters requires an analysis of issues of law and fact that should be left to the stage of the examination of the merits.

111. The Applicant contends that subparagraph *(b)*, which refers to measures "relating to fissionable materials, the radio-active by-products thereof, or the sources thereof", should be interpreted as addressing only measures such as those specifically concerning the exportation or importation of fissionable materials. It was however argued by the Respondent that subparagraph *(b)* applies to all measures of whatever content addressing Iran's nuclear programme, because they may all be said to relate to the use of fissionable materials. The question of the meaning to be given to subparagraph *(b)* and that of its implications for the present case do not have a preliminary character and will have to be examined as part of the merits.

112. The same applies to measures taken by the United States allegedly because they are deemed "necessary to protect its essential security interests" and are therefore argued to be comprised in the category of measures that are outlined in subparagraph *(d)*. The analysis of this objection would raise the question of the existence of such essential security interests and may require an assessment of the reasonableness and necessity of the measures in so far as they affect the obligations under the Treaty of Amity (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 117, para. 224). Such an assessment can be conducted only at the stage of the examination of the merits.

113. For the foregoing reasons, the arguments raised by the Respondent with regard to Article XX, paragraph 1 *(b)* and *(d)*, of the Treaty of Amity cannot provide a basis for preliminary objections, but may be presented at the merits stage. Therefore, the preliminary objections raised by the United States based on these provisions must be rejected.

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114. For these reasons,

THE COURT,

(1) Unanimously,

Rejects the preliminary objection to its jurisdiction raised by the United States of America according to which the subject-matter of the dispute does not relate to the interpretation or application of the Treaty of Amity, Economic Relations, and Consular Rights of 1955;

(2) Unanimously,

Rejects the preliminary objection to its jurisdiction raised by the United States of America relating to the measures concerning trade or transactions between the Islamic Republic of Iran (or Iranian nationals and companies) and third countries (or their nationals and companies);

(3) By fifteen votes to one,

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

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

AGAINST: *Judge* ad hoc Brower;

(4) By fifteen votes to one,

Rejects the preliminary objection raised by the United States of America on the basis of Article XX, paragraph 1 *(b)*, of the Treaty of Amity, Economic Relations, and Consular Rights of 1955;

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

AGAINST: *Judge* ad hoc Brower;

(5) Unanimously,

Rejects the preliminary objection raised by the United States of America on the basis of Article XX, paragraph 1 *(d)*, of the Treaty of Amity, Economic Relations, and Consular Rights of 1955;

(6) By fifteen votes to one,

Finds, consequently, that it has jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of Amity, Economic Relations, and Consular Rights of 1955, to entertain the Application filed by the Islamic Republic of Iran on 16 July 2018, and that the said Application is admissible.

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

AGAINST: *Judge* ad hoc Brower.

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

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe GAUTIER,
Registrar.

Judge TOMKA appends a declaration to the Judgment of the Court; Judge *ad hoc* BROWER appends a separate, partly concurring and partly dissenting, opinion to the Judgment of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.G.

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