INTERNATIONAL COURT OF JUSTICE

CERTAIN IRANIAN ASSETS

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

PRELIMINARY OBJECTIONS
SUBMITTED BY
THE UNITED STATES OF AMERICA

MAY 1, 2017

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CHAPTER 1: INTRODUCTION AND OVERVIEW

1.1 On June 14, 2016, the Islamic Republic of Iran ("Iran") submitted an Application Instituting Proceedings against the United States pursuant to the compromissory clause, Article XXI(2), in the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran ("Treaty of Amity" or "the Treaty").[1] Iran challenges measures the United States has adopted to deter Iran's support for terrorist attacks against the United States and others, as well as to respond to other internationally destabilizing actions taken by Iran. These measures include blocking Iranian assets in the United States and allowing victims of terrorism to recover damages from Iran and Iranian entities in U.S. courts. Pursuant to an Order of the Court,[2] Iran filed its Memorial on the merits on February 1, 2017. In accordance with Article 79(1) of the Rules of Court ("Rules"), the United States hereby submits preliminary objections to the admissibility of the Application and the jurisdiction of the Court, and requests the Court to decide on these objections before any further proceedings on the merits.

1.2 On March 30, 2017, resting on principles of fundamental fairness and equality, the United States submitted a request to the Court to require Iran to disclose certain pleadings and related documents filed in a U.S. judicial proceeding that Iran places at the center of its case. This proceeding concerned funds in which Iran's Central Bank, Bank Markazi, had an interest and which were sought by plaintiffs holding judgments against Iran related to the 1983 bombing of the U.S. Marine barracks in Lebanon (*Deborah Peterson, et al. v. Islamic Republic of Iran, et al.*, case no. 10-cv-4518 (S.D.N.Y.), hereinafter the "*Peterson* enforcement proceeding"). Iran resisted that request, asserting, among other things, that the documents requested were not relevant to Iran's claims, and that Iran does not have access to the documents because it is not a party to the *Peterson* enforcement proceeding. In the light of Iran's response, the Court declined to order Iran to produce the documents in question.

1.3 The reality is that Iran was a party to the *Peterson* enforcement proceeding, even if it elected not to appear. And – as set forth later in this pleading – the United States has reason to believe that the documents in question would demonstrate that Iran, through Bank

[1] Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. 3853, 284 U.N.T.S. 93, Appendix A to these Preliminary Objections.

[2] *Certain Iranian Assets (Iran v. United States)*, Order, July 1, 2016.

Markazi, advanced arguments before the U.S. court that are inconsistent with what Iran is saying to the Court in the present case about the status of Bank Markazi, issues of sovereign immunity, and the Treaty. It is a matter of regret that, given the decision not to order the disclosure of the documents in question, the United States' ability to address inconsistencies at the heart of Iran's claims, potentially amounting to declarations against interest by Iran, has been hampered. Nonetheless, as set out below, the United States demonstrates that Iran's case is fatally flawed.

Section A: Iran's Case

1.4 Iran seeks to focus the Court's attention on just one chapter of the deeply troubled bilateral history between Iran and the United States, and within that chapter on the conduct of just one Party, the United States. Though Iran cannot rationally expect the Court to be unaware of its litany of international transgressions, which have earned it the condemnation of the international community, Iran asks the Court to accord it a remedy for a set of U.S. measures taken in response to Iran's decades of offenses. By bringing these claims, Iran does not seek resolution of a narrow legal dispute concerning the provisions of a commercial treaty. Rather, it attempts to embroil the Court in a broader strategic dispute.

1.5 Iran attempts to found the jurisdiction of the Court on the compromissory clause of the Treaty (Article XXI(2)), which provides, *inter alia*, that a dispute between the Parties "as to the interpretation or application of the present Treaty" shall be submitted to the Court.[3] But in doing so Iran seeks to use the Treaty as an opportunistic – though inapposite – vehicle for its claims, the core of which concerns not commercial entities, but the treatment of Iran itself or its Central Bank, and purported contraventions not of this Treaty's provisions, but of customary international law. Iran thus invites the Court to read into the Treaty provisions it does not contain, to stretch the Treaty, which addresses discrete areas, beyond its breaking point, and to disregard the clear limits on both Parties' consent to jurisdiction.

1.6 Iran's case lacks clarity and definition. This is not surprising given the misfit between the claims and the instrument used to bring them before the Court. For instance, Iran's Memorial does not clearly articulate the contours of its claims under each invoked article of the Treaty and does not identify which specific entities and assets it claims have been denied

[3] Memorial of the Islamic Republic of Iran (hereinafter "Iran's Memorial"), ¶¶ 1.34, 1.36. References to documents annexed to Iran's Memorial are rendered herein as "(IM Annex __)."

Treaty protections. Iran makes the treatment of its Central Bank in a single U.S. court proceeding the centerpiece of its claims, yet it failed to annex to its Memorial copies of the pleadings that allegedly support its assertions and that – as the United States will discuss below – likely further undermine the jurisdictional basis for important aspects of its claims. Moreover, Iran appears to include within the ambit of its claims U.S. court cases that are in various stages of judicial proceedings and therefore plainly unripe or for which remedies in the United States have not been exhausted.[4] Though the United States raises no jurisdictional or admissibility argument related to these types of defects in Iran's claims at this stage, were this case to proceed to a merits phase, claims related to such proceedings should be dismissed.

1.7 Iran's case fails on more fundamental grounds, which are set out in these preliminary objections. Any further proceedings in this case would require Iran to convince the Court of two basic points: first, that the Court ought simply to ignore the context of the U.S. actions, in particular Iran's longstanding and notorious violations of international law aimed at the United States and its nationals, as well as the consequently fractured state of U.S.-Iranian relations; and second, that the Treaty, a commercial and consular instrument of a narrow and well-known type, can properly be relied upon to found the Court's jurisdiction to adjudicate wider aspects of the Parties' relationship. Iran cannot succeed on either front.

Section B: The U.S. Preliminary Objections

1.8 The United States submits a number of preliminary objections to the admissibility of Iran's Application and the jurisdiction of the Court. An overview of these objections is given in the immediately following sections. The objections to admissibility go to the admissibility of the Application as a whole on grounds of Iran's abuse of the Treaty and Iran's unclean hands. Given the overarching character of the objections to admissibility, these are set out first. The objections to jurisdiction address important elements of Iran's case, rather than its claims as a whole, notably concerning the application of Article XX of the Treaty and the character of Iran's principal claims as claims under customary international law rather than

[4] For example, Iran lists (perhaps for optical reasons) a large number of proceedings in which no judgment has yet been rendered, or in which a judgment has merely been registered but no action has been taken to attach or execute upon any specific assets. *See* Application Instituting Proceedings (hereinafter "Iran's Application"), Appendix 2, Tables 1 ("Claims Pending") & 2 ("Judgments Issued"); Iran's Memorial, Attachment 1 ("U.S. courts judgments") & 2 ("Actions filed with U.S. courts to Enforce Judgments"). Where enforcement cases do involve specific assets, Iran has made no attempt to establish exhaustion. *See* Iran's Application, Appendix 2, Table 3 ("Enforcement Proceedings"); Iran's Memorial, Attachment 2.

under the Treaty.

i. Overview of U.S. Objections to Admissibility

1.9 The United States urges the Court to find that Iran's Application is inadmissible for two reasons. The first objection contends that Iran's reliance on the Treaty to found the Court's jurisdiction in this case constitutes an abuse of right. The Treaty was predicated upon, and was designed to govern, normal and ongoing commercial and consular relations between the United States and Iran – a state of affairs that has not existed for nearly four decades. Iran's claims in the present case arise in the context of a protracted and fundamental rupture in relations, during which time there has been no general economic intercourse between Iran and the United States, and no consular relations. Iran has nonetheless attempted to cloak its allegations in the commercial language of the Treaty, but its claims do not genuinely attempt to vindicate any interest protected by the Treaty's provisions. To allow Iran to found jurisdiction on the Treaty in these circumstances would sanction an abuse of right and undermine the integrity of the Court's judicial function.

1.10 Distinct from this objection, Iran's unclean hands should preclude the Court from proceeding with this case. Iran's allegations against the United States are focused on U.S. measures that engage the legal and political responsibility of Iran as a sponsor of terrorism directed at the United States, its nationals, and others over the past forty years, as well as its persistent violations of counter-terrorism, weapons proliferation, and arms trafficking obligations. Iran comes to the Court with unclean hands, and the Court should decline to exercise any such jurisdiction it may have, given that the U.S. measures that Iran now seeks to impugn were taken in response to Iran's own conduct.

ii. Overview of U.S. Objections to Jurisdiction

1.11 Without prejudice to the overarching character of the U.S. objections to admissibility, the United States advances three objections to the jurisdiction of the Court, each going to a different element of the exorbitant character of Iran's jurisdictional case. These objections are partial, going to particular aspects of Iran's claims, rather than to its claims as a whole.

1.12 The first objection to jurisdiction concerns Iran's claims arising from Executive Order 13599, which froze assets of the Iranian government and Iranian financial institutions within the United States' jurisdiction. These claims fall outside the scope of the Treaty and the jurisdiction of the Court pursuant to Article XX(1) of the Treaty. Executive Order 13599 is

part of the United States' sanctions program and works in conjunction with other U.S. and international sanctions and regulations to address a range of illicit Iranian activities, including arms trafficking, support for international terrorism, and the pursuit of ballistic missile capabilities. The blocking measures set out in the Executive Order are thus covered by Article XX(1), which provides that the Treaty shall not preclude the application of, *inter alia*, measures regulating production of or traffic in arms or military supplies, or measures necessary to protect a Party's essential security interests.

1.13 The express language of Article XX(1) makes plain that any measure covered by Article XX(1) is excluded from the ambit of the Treaty, such that there can be no further dispute "as to the interpretation or application" of the Treaty's other provisions with respect to the covered measure. Accordingly, measures covered by Article XX(1) fall outside the jurisdictional grant in Article XXI(2).

1.14 The second objection to jurisdiction concerns the part of Iran's case that is grounded in claimed violations by the United States of customary international law principles relating to jurisdictional immunities and immunities from enforcement.[5] Iran elaborates on these complaints in particular in respect of suits against Iran and the attachment of assets of Bank Markazi, the Central Bank of Iran.[6] Although Iran's submissions are framed by the proposition that the Treaty is "to be interpreted with reference to (and applied in consideration of) relevant rules of customary international law,"[7] Iran's implied, and incorrect, contention is that the Treaty exposes a Party to claimed violations of rules of customary international law concerning sovereign immunity. This cannot be sustained. Aside from issues of consular immunities (which are not engaged by Iran's claims), the Treaty does not contain *any* provisions that afford immunities to Iran or Iranian entities or to the United States or U.S. entities. Such disputes simply do not come within the scope of Article XXI(2) of the Treaty. Neither the Treaty, nor its jurisdictional clause, can be used as a peg on which to hang any and all grievances that Iran may wish to pursue against the United States.

1.15 The third jurisdictional objection also concerns Iran's claims relating to Bank Markazi, its Central Bank. On the one hand, Iran advances a claim of sovereign immunity in respect of Bank Markazi, even though there is no basis in the Treaty to pursue an immunity

[5] Iran's Memorial, Chapter II, Section 2.

[6] *Id.* Chapter II, Section 4.

[7] *Id.* ¶ 3.19.

claim. On the other hand, Iran seeks paradoxically to rebrand Bank Markazi as a "company" in an attempt to bring it within the scope of Articles III, IV, and V of the Treaty. Such rebranding of Iran's Central Bank as a "company" stretches the meaning of the terms of the Treaty beyond the demonstrable intention of the Parties. Such claims must also be dismissed for lack of jurisdiction.

Section C: The Preliminary Character of These Objections

1.16 Each of these objections to admissibility and jurisdiction is properly preliminary in character and necessitates a decision by the Court at a preliminary stage of these proceedings.

1.17 The U.S. objections to admissibility go to the threshold issue of Iran's invocation of, and reliance on, the Treaty to found the jurisdiction of the Court. If upheld, there would be no basis to proceed to an examination of the merits on *any* of Iran's claims.

1.18 The jurisdictional objection based on Article XX also requires a decision at a preliminary stage because measures covered by Article XX fall outside the scope of the Treaty's compromissory clause. The Court cannot proceed to adjudicate the merits of any dispute between Iran and the United States over the interpretation or application of measures taken pursuant to Article XX until it has decided whether those measures fall within the scope of that article.

1.19 The remaining two objections to jurisdiction – concerning Iran's sovereign immunity claims and rebranding claims – are also exclusively preliminary in character. Absent a decision on admissibility that would dispose of the entire case, a decision by the Court on these jurisdictional objections at a preliminary stage would be necessary to clarify and narrow the scope of any case going forward.

Section D: The Structure of These Preliminary Objections

1.20 This pleading is organized into two parts. **Part I**, which encompasses **Chapters 2 through 5**, provides the contextual, evidential, and legal foundations for the objections to admissibility and jurisdiction that follow. **Chapter 2** addresses the origins of the Treaty, and the breakdown of friendly relations between the United States and Iran following the Iranian revolution in 1979 and the seizure of the U.S. hostages.

1.21 **Chapter 3** addresses Iranian sponsorship of terrorism and its persistent violation of weapons proliferation, arms-trafficking, and counter-terrorism obligations. **Chapter 4** describes the measures taken by the United States at issue in this case, as well as other

measures – U.S. and international – relevant to Iran's claims. **Chapter 5** sets forth the law applicable in assessing Iran's claims and the U.S. preliminary objections.

1.22 The objections to admissibility and jurisdiction are developed in **Part II**, which encompasses **Chapters 6 to 9**. Given their threshold and all-encompassing character, **Chapter 6** addresses the U.S. objections to admissibility, including the abuse of right objection (***Section A***) and the unclean hands objection (***Section B***). The Article XX objection is detailed in **Chapter 7**. **Chapter 8** sets out the objection to jurisdiction going to Iran's sovereign immunity claims. **Chapter 9** addresses Iran's misguided attempt to rebrand Bank Markazi as a "company."

1.23 The pleading closes with **Chapter 10**, setting out some concluding observations, followed by the U.S. **Submissions**.

PART I: CONTEXTUAL, EVIDENTIAL, AND LEGAL FOUNDATIONS FOR THE U.S. PRELIMINARY OBJECTIONS TO ADMISSIBILITY AND JURISDICTION

CHAPTER 2: THE TREATY OF AMITY AND U.S.-IRANIAN RELATIONS THEREUNDER

2.1 The United States and Iran entered into the Treaty of Amity in 1955 when friendly relations existed between them and both Parties hoped to further strengthen such relations. In that context, as explained below in Section A, the Treaty sought to facilitate a commercial, trade, and investment relationship by providing protections for each Party's nationals and companies engaged in ordinary commercial and investment transactions and activities. The Treaty was not intended to regulate the bilateral relationship as a whole. As described in Sections B and C, while strong bilateral relations (commercial, consular, and otherwise) existed for some time, these were dramatically curtailed when the Iranian government endorsed and supported the sacking of the U.S. Embassy in Tehran and held U.S. diplomatic personnel and others hostage.

Section A: The Treaty of Amity Is a Commercial and Consular Agreement

2.2 The Treaty of Amity was one in a series of twenty-one post-World War II bilateral commercial and consular treaties, most often referred to as treaties of "Friendship, Commerce and Navigation" ("FCN treaties"), between the United States and other friendly nations, all of which were concluded between 1946 and 1966.[8] The primary purpose of the post-war U.S. FCN treaties was to enable commerce and investment with nations with which the United States had, and expected to continue having, friendly relations.[9] In 1951, Assistant Secretary of State Willard Thorp described the FCN treaties as part of a "program of extending and modernizing the treaty protection of American citizens, corporations, capital, trade and shipping abroad, with special emphasis on establishing conditions favorable to private

[8] The Treaty of Amity was described in 1958 as an "abridged edition" of the standard U.S. FCN treaty. Herman Walker, Jr., *Modern Treaties of Friendship, Commerce and Navigation*, 42 MINN. L. REV. 805, 807 (1958) (US Annex 1).

[9] *See generally* Herman Walker, Jr., *The Post-War Commercial Treaty Program of the United States*, 73 POL. SCI. Q. 57, 57-58 (1958) (US Annex 2); Herman Walker, Jr., *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 AM. J. COMP. L. 229, 230 (1956) (US Annex 3). Herman Walker served as a State Department official between 1946 and 1962, and has been described as the "architect of the modern FCN treaty." *See* Wolfgang Saxon, "Herman Walker, 83, Professor and U.S. Foreign Officer, Dies," N.Y. Times (May 13, 1994) (US Annex 4); *Spiess v. C. Itoh & Co. (America), Inc.*, 643 F.2d 353, 357 (5th Cir. 1981), *vacated*, 457 U.S. 1128 (1982) (US Annex 5).

investment."[10]

2.3 The Treaty of Amity was intended to enable and facilitate engagement by nationals and companies of each country in commerce between the territories of the two Parties. The Treaty seeks to achieve this objective principally by establishing a variety of protections applicable to such nationals and companies in the context of their engagement in ordinary commercial and investment transactions and activities. Rights the Treaty affords the Parties themselves – such as for consular representatives to enjoy privileges and immunities necessary to the performance of their duties – exist to allow the Parties to assist and advise their nationals and companies. As the Court observed in the *Oil Platforms* case, the object and purpose of the Treaty "was not to regulate peaceful and friendly relations between the two States in a general sense."[11] The history of the FCN treaty program and of this particular Treaty indicates that the Treaty was never meant to provide a comprehensive set of rules for every aspect of the Parties' bilateral relationship.

Section B: U.S.-Iranian Relations Around the Time of Entry into the Treaty of Amity

2.4 The United States and Iran entered into the Treaty at a time when the two countries were engaged in strengthening their bilateral relationship. This was consistent with the "peace and friendship" between the Parties, and the desire to, among other things, "encourag[e] mutually beneficial trade and investments and closer economic intercourse. . . . ," as set forth in the preamble and Article I of the Treaty. The Parties' relationship in this period was thus reflected in, for example, the U.S. provision to Iran of economic and technical assistance,[12] agreements to foster trade and economic cooperation,[13] and programs to encourage greater contact and understanding between the people of the two

[10] Memorandum from Willard Thorp, Assistant Secretary for Economic Affairs, to Jack K. McFall, Assistant Secretary for Legislative Affairs (Dec. 29, 1951) (US Annex 6). *See also Commercial Treaties with Iran, Nicaragua, and The Netherlands: Hearing Before the S. Comm. on Foreign Relations*, 84th Cong. (1956) (statement of Thorsten V. Kalijarvi, Dep't of State) (US Annex 7) (explaining that the Treaty of Amity, as well as FCN treaties with Nicaragua and the Netherlands, were negotiated in furtherance of Congress's directive in the Mutual Security Act of 1954 for the President to "accelerate a program of negotiating treaties for commerce and trade . . . which shall include provisions to encourage and facilitate the flow of private investment to nations participating in programs under this act").

[11] *Oil Platforms (Iran v. United States)*, 1996 I.C.J. 803, 814, ¶ 28 (Preliminary Objection Judgment of Dec. 12).

[12] "FOA Announces Program of Aid to Iran," *in* 31 DEP'T OF STATE BULL. 776 (Nov. 22, 1954) (US Annex 8).

[13] *See, e.g.*, Agricultural Commodities Agreement Between the United States and Iran under Title I of the Agricultural Trade Development and Assistance Act, As Amended (July 26, 1960), T.I.A.S. 4544, 384 U.N.T.S. 141 (US Annex 9); General Agreement for Economic Cooperation Between the Government of the United States of America and the Imperial Government of Iran (Dec. 21, 1961), T.I.A.S. 4930, 433 U.N.T.S. 269 (US Annex 10).

countries.[14]

2.5 Aside from those issues covered in the Treaty, the Parties strengthened their relationship through, among other things, a shared security goal of maintaining peace and stability in the Persian Gulf. This was manifest in actions such as U.S. support for the Baghdad Pact (later the Central Treaty Organization (CENTO)), under which the United States agreed to cooperate with member States in their collective security arrangements, and the U.S.-Iran Agreement of Defense Cooperation.[15] The two countries expanded their collaboration over the years, entering into agreements in spheres such as the sharing of satellite data, civil emergency preparedness, and technical cooperation.[16]

Section C: The Seizure of the U.S. Embassy in Tehran and Subsequent Hostage Crisis Ruptured Relations Between the Parties

2.6 The friendly bilateral relationship embodied in the Treaty of Amity came to an abrupt halt on November 4, 1979. As the Court recounted in its Judgment in the *Case Concerning United States Diplomatic and Consular Staff in Tehran*, a group of Iranian armed demonstrators overran the U.S. Embassy in Tehran and seized the diplomatic personnel and others present as hostages.[17] The Iranian authorities took no action to protect the diplomatic premises and personnel as required by the Vienna Conventions on Diplomatic and Consular Relations;[18] instead, the Iranian foreign minister stated during a press conference on November 5 that the action of the militants "enjoys the endorsement and support of the

[14] *See, e.g.*, Agreement Relating to the Establishment of a Peace Corps Program in Iran, U.S.-Iran (Sept. 16, 1962), T.I.A.S. 7078, 791 U.N.T.S. 19 (US Annex 11); Agreement Between the Government of the United States of America and the Imperial Government of Iran for Financing Certain Educational Exchange Programs (Oct. 24, 1963), T.I.A.S. 5451, 489 U.N.T.S. 303 (US Annex 12).

[15] *See, e.g.*, Declaration Respecting the Baghdad Pact (July 28, 1958), T.I.A.S. 4084, 335 U.N.T.S. 205 (US Annex 13); Agreement of Cooperation Between the Government of the United States of America and the Imperial Government of Iran (Mar. 5, 1959), T.I.A.S. 4180 (US Annex 14).

[16] *See* Memorandum of Understanding Between the Plan and Budget Organization of the Imperial Government of Iran and the United States National Aeronautics and Space Administration (Oct. 29, 1974), T.I.A.S. 8203, 1020 U.N.T.S. 155 (US Annex 15); Memorandum of Understanding Between the Government of Iran, Imperial Iranian Army, and the Government of the United States of America, General Services Administration, Federal Preparedness Agency (Nov. 22, 1975), T.I.A.S. 8209 (US Annex 16); Agreement on Technical Cooperation Between the Government of the United States of America and the Imperial Government of Iran (Mar. 4, 1975), T.I.A.S. 8235 (US Annex 17).

[17] *See United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, 1980 I.C.J. 3, 12, ¶ 17 (May 24).

[18] *See id.* at 32, ¶ 67 (citing Vienna Convention on Diplomatic Relations, arts. 22(2), 24-27, 29, Apr. 18, 1961, T.I.A.S. 7502, 500 U.N.T.S. 95; Vienna Convention on Consular Relations, arts. 5, 36, Apr. 24, 1963, T.I.A.S. 6820, 596 U.N.T.S. 261).

government, because America herself is responsible for this incident."[19]

2.7 The Court, in the context of a request for provisional measures from the United States, issued an order demanding that Iran "terminate the unlawful detention" of the U.S. diplomatic and consular staff and other U.S. nationals.[20] Nonetheless, Iran held the American hostages captive for another eight months. Iran repudiated the Treaty's goals of friendship and cooperation through its actions surrounding the taking of the U.S. Embassy in Tehran, and thereby fundamentally altered the bilateral relationship.

* * *

2.8 The Tehran hostage crisis was ultimately resolved with the signing of the Algiers Accords on January 19, 1981.[21] In addition to securing the release of the American hostages, the Accords provided for the transfer of Iran's frozen assets in the United States and the revocation of U.S. trade sanctions then in place against Iran. The Accords also established the Iran-U.S. Claims Tribunal, seated in The Hague, for the purpose of resolving certain disputes between the nationals of one country against the government of the other country, as well as contractual claims between the United States and Iran.

2.9 The possibility thus still existed at the time for the Parties to resume some relationship – even if not to the previous extent – on the basis of the Algiers Accords and the principles enshrined in the Treaty. Regrettably, and as described in detail below, Iran rejected this possibility and embarked on a path of destabilizing and violent conduct directed at the United States and others in which it has persisted for decades.

CHAPTER 3: IRANIAN SPONSORSHIP OF TERRORISM AND OTHER DESTABILIZING ACTS

3.1 For decades, Iran has sponsored and supported international terrorism, as well as taken destabilizing actions in contravention of nuclear non-proliferation, ballistic missile, arms trafficking, and counter-terrorism obligations.

3.2 Iran has established a highly organized State apparatus, maintained and controlled at

[19] *Id.* at 33, ¶ 70 (quoting Foreign Minister Yazdi).

[20] *Id.* at 44-45, ¶ 95(3).

[21] Declarations of the Government of the Democratic and Popular Republic of Algeria concerning commitments and settlement of claims by the United States and Iran with respect to resolution of the crisis arising out of the detention of 52 United States nationals in Iran, with Undertakings and Escrow Agreement (Jan. 19, 1981), 20 I.L.M. 223 (US Annex 18).

the highest levels of its government, to undertake acts of terror – whether through proxies such as Hezbollah or otherwise – as a tool of its foreign policy. This is evidenced in the scores of attacks attributed to the Iranian government, which have resulted in the deaths of untold innocent lives. Destruction like that inflicted on U.S. and French peacekeepers in Beirut in 1983 has been "achieved" by the Iranian government through a variety of means, including terrorist bombings, assassinations, kidnappings, and airplane hijackings. High-ranking Iranian officials have publicly encouraged and promoted such violence and terrorist acts against the United States, its nationals, and others; and the Iranian government has made good on that encouragement by providing financial and other support to terrorist proxies such as Hezbollah willing to carry out its violent foreign policy.

3.3 The abhorrent conduct of the post-revolutionary Iranian regime has not been limited, however, to its sponsorship of terrorism. For more than a decade, Iran failed to comply with its nuclear-related obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and was found in 2005 to be in non-compliance with its International Atomic Energy Agency (IAEA) safeguards obligations. While concerns about Iran's NPT and IAEA non-compliance were resolved in connection with the 2015 Joint Comprehensive Plan of Action (JCPOA) – after years of sanctions imposed under the auspices of the UN – Iran's continued post-JCPOA efforts to obtain the technology necessary to develop ballistic missiles and ongoing arms trafficking and financing to terrorist proxies remain a serious threat.

3.4 The Iranian government has chosen to project its power in the Middle East and the world through violent, destabilizing, and internationally unlawful conduct, examples of which are described in detail in this Chapter. Section A sets forth the evidence of several devastating terrorist bombings attributable to Iran. Section B describes the many assassinations and assassination attempts, kidnappings, and airplane hijackings attributable to Iran. Section C discusses the Iranian government's deep support for terrorism, through its solicitation of violence against those it opposes and through the provision of financial and other support that sustains its terrorist proxies. Finally, Section D describes Iran's past non-compliance with its nuclear non-proliferation obligations, as well as its ongoing violation of obligations with respect to ballistic missiles and arms trafficking.

Section A: Terrorist Bombings Attributable to Iran

3.5 Iran's adoption of terrorism as a tool of its foreign policy, particularly through the use of terrorist bombings, was made clear in October 1983 when members of Hezbollah – a

group founded and supported by Iran – attacked the U.S. and French military barracks in Beirut.[22] It is this heinous act that precipitated the *Peterson* litigation before the U.S. courts, which is at the center of Iran's Application in this case. As part of a multinational peacekeeping force, military personnel of the United States and France were present in Beirut at the request of the Government of Lebanon to help the Lebanese armed forces restore order.[23] The agreement between the U.S. and Lebanese governments specifically provided that the U.S. forces would not engage in combat and would be equipped only with weapons consistent with that non-combat role.[24] Notwithstanding the U.S. peacekeeping role, members of Hezbollah drove a truck loaded with 18,000 pounds of explosives through the barriers at the U.S. Marine barracks on the morning of October 23, 1983, and detonated the bomb, killing 241 U.S. servicemen and gravely wounding many more.[25] Shortly afterward, a similar attack on the French barracks killed 58 French peacekeepers.[26]

3.6 Speaker of the Majlis (and later President of Iran) Akbar Hashemi Rafsanjani touted the Iranian government's responsibility for the bombing in a 1986 address marking the seventh anniversary of the seizure of the U.S. Embassy and hostages, stating that:

> The Americans put the blame for the blow that was delivered to the United States in Lebanon and the disgrace the Americans suffered there on us; and, in fact, they should blame us for it. If the U.S. Marines had to flee Lebanon and if a group of them also went to their graves under those

[22] U.S. DEP'T OF DEFENSE, TERRORIST GROUP PROFILES 16 (1988) (US Annex 19) ("Iran created the [Hezbollah] movement, and some of the [Hezbollah's] cadres are directly tied to the Iranian Revolutionary Guard contingent in Lebanon.").

[23] *See* Letter from Luc de La Barre de Nanteuil, Permanent Representative of France to the United Nations, to the Secretary-General of the United Nations, U.N. Doc. S/15420 (Sept. 21, 1982) (US Annex 20); Letter from Charles M. Lichenstein, Acting Permanent Representative of the United States of America to the United Nations, to the Secretary-General of the United Nations, U.N. Doc. S/15435 (Sept. 24, 1982) (US Annex 21). Italian military personnel also participated in the multinational force.

[24] *See* Exchange of Notes Constituting an Agreement Between the United States of America and Lebanon on United States Participation in a Multinational Force in Beirut (Aug. 20, 1982), 1751 U.N.T.S. 4, 21 I.L.M. 1196 (1982) (US Annex 22).

[25] *See* Matthew Levitt, *The Origins of Hezbollah*, The Atlantic, at 4 (Oct. 23, 2013) (US Annex 23); Thomas L. Friedman, "Beirut Death Toll at 161 Americans; French Casualties Rise in Bombings; Reagan Insists Marines Will Remain; Buildings Blasted," N.Y. Times (Oct. 24, 1983) (US Annex 24); "Beirut Death Toll Is 241," N.Y. Times (Dec. 15, 1983) (US Annex 25).

[26] *See* Friedman, "Beirut Death Toll at 161" (US Annex 24); Levitt, *The Origins of Hezbollah*, at 4 (US Annex 23).

> circumstances, all this was part of the influence of the Islamic Revolution.[27]

3.7 Months later, the Minister of the Iranian Revolutionary Guard Corps (IRGC) boasted that:

> With the victory of the Iranian Revolution, America deeply felt the effect of our hard blow to its corrupt body in Lebanon and other parts of the world. It knows that both the TNT and the ideology which in one blast sent to hell 400 officers, NCOs and soldiers of the Marine Headquarters have been provided by Iran.[28]

3.8 Iran's actions against the United States and its nationals perpetrated through its proxy Hezbollah did not stop there. Hezbollah carried out two separate bomb attacks on the U.S. Embassy in Beirut. The first attack occurred on April 18, 1983, when a suicide bomber drove a truck carrying 2,000 pounds of explosives to the front of the embassy in West Beirut and detonated the bomb, killing sixty-three people.[29] The embassy subsequently relocated to East Beirut, where, on the morning of September 20, 1984, a suicide bomber crashed a stolen van with diplomatic plates through the security checkpoint and blew it up at the entrance to the building.[30] That blast killed twenty-four people.[31]

3.9 Hezbollah and Iran were also charged with criminal responsibility for the July 18, 1994, bombing of the Asociación Mutual Israelita Argentina ("AMIA") building in Buenos Aires, Argentina.[32] That attack killed eighty-five people and injured hundreds of others.[33] Argentine prosecutors later alleged that the attack was "a decision made by the highest authorities of the Islamic Republic of Iran, who then charged the Lebanese group [Hezbollah]

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[27] "Hashemi-Rafsanjani on Alleged McFarlane Visit," Tehran Radio Domestic Service, *in* VII Foreign Broadcast Information Service Daily Rep. 11 (Nov. 5, 1986) (US Annex 26). The Majlis is Iran's national legislative body.

[28] "Speech of Our Brother Rafiqdoust at One of the Country's Factories for Defense," Ressalat (July 20, 1987) (US Annex 27).

[29] *See* Thomas L. Friedman, "U.S. Beirut Embassy Bombed; 33 Reported Killed, 80 Hurt; Pro-Iran Sect Admits Action," N.Y. Times (Apr. 19, 1983) (US Annex 28); Levitt, *The Origins of Hezbollah*, at 3 (US Annex 23). The Islamic Jihad Organization claimed responsibility for the attack; analysts have determined that this was a cover name or earlier iteration of Hezbollah. *See, e.g.*, TERRORIST GROUP PROFILES at 15-16 (US Annex 19); Levitt, *The Origins of Hezbollah*, at 4 (US Annex 23).

[30] *See* John Kifner, "23 Die, Including 2 Americans, in Terrorist Car Bomb Attack on the U.S. Embassy at Beirut; Blast Kills Driver," N.Y. Times (Sept. 21, 1984) (US Annex 29).

[31] *See* Levitt, *The Origins of Hezbollah*, at 4 (US Annex 23).

[32] Hernán Cappiello, "Iran Charged for Attack on AMIA" ["Acusan a Irán por el ataque a la AMIA"], La Nación (Oct. 26, 2006) (US Annex 30).

[33] "Buenos Aires bomber 'identified,'" BBC News (Nov. 10, 2005) (US Annex 31).

with carrying it out."[34] Following the Argentine indictment of Hezbollah and Iran, Interpol Red Notices were issued for six individuals, including five Iranian government officials, in connection with the bombing.[35] Despite Argentina's repeated requests for assistance, however, the Iranian government has refused to cooperate with the Red Notices.[36]

3.10 Iran has been linked to numerous other bombings and attempted bombings. The Kingdom of Bahrain discovered terrorist cells in its territory in November 2011, October 2012, and March 2013, which were financed and directed by the IRGC, as well as facilities that produced bombs used to kill sixteen and injure 3,169 Bahraini police officers.[37] In 2012, Kenyan authorities arrested and convicted two Iranian nationals identified as members of the IRGC-Qods Force (IRGC-QF) in connection with explosives stockpiled for a suspected terrorist attack.[38]

3.11 An unsuccessful plot in 2007 to commit a terrorist attack at John F. Kennedy International Airport by exploding fuel tanks and a fuel pipeline under the airport also has

[34] Cappiello, "Iran Charged for Attack on AMIA" (US Annex 30).

[35] Interpol Media Release, "INTERPOL General Assembly upholds Executive Committee decision on AMIA Red Notice dispute" (Nov. 7, 2007) (US Annex 32). Red Notices were issued for, among others, Ahmad Vahidi, former Iranian defense minister and member of the IRGC-QF; Ali Fallahian, a former Iranian intelligence minister who was also found by the Berlin court in the *Mykonos* case to have been responsible for carrying out the instruction to kill Kurdish leader Sharafkandi, Judgment of the Superior Court of Justice, Berlin, in the Mykonos trial [Kammergericht: Urteil im 'Mykonos' –Prozess], at 22 (Apr. 10, 1997) (US Annex 33); Mohsen Rabbani, the former Iranian cultural attaché in Argentina, who was to meet with Abdul Kadir, one of the defendants convicted in the 2007 plot to bomb John F. Kennedy International Airport, Federal Bureau of Investigation Press Release, "Imam from Trinidad Convicted of Conspiracy to Launch Terrorist Attack at JFK Airport" (May 26, 2011) (US Annex 34); and Mohsen Rezaee, former IRGC commander and member of Iran's Supreme Defense Council. In May 2013, the Argentine prosecutor submitted an indictment "legally accus[ing] Iran of infiltrating several South American countries to install intelligence stations . . . destined to commit, encourage and sponsor terror attacks like the one that took place against AMIA." "Iran 'in Latin America terror plot' - Argentina prosecutor," BBC News (May 29, 2013) (US Annex 35).

[36] UN GAOR, 62nd Sess., 5th plen. Mtg., Address by Nestor Carlos Kirchner, President of the Argentine Republic, U.N. Doc. A/62/PV.5, at 15 (Sept. 25, 2007) (US Annex 36); UN GAOR, 63rd Sess., 5th plen. Mtg., Address by Cristina Fernandez de Kirchner, President of the Argentine Republic, U.N. Doc. A/63/PV.5, at 23 (Sept. 23, 2008) (US Annex 37); UN GAOR, 64th Sess., 5th plen. Mtg., Address by Cristina Fernandez de Kirchner, President of the Argentine Republic, U.N. Doc. A/64/PV.5, at 2-3 (Sept. 23, 2009) (US Annex 38); UN GAOR, 62nd Sess., Agenda item 8, Letter from the Permanent Representative of Argentina to the UN addressed to the President of the General Assembly, U.N. Doc. A/62/519 (Nov. 2, 2007) (US Annex 39); UN GAOR, 63rd Sess., Agenda item 8, Letter from the Permanent Representative of Argentina to the U.N .addressed to the President of the General Assembly, U.N. Doc. A/63/523 (Nov. 7, 2008) (US Annex 40); UN GAOR, 64th Sess., Agenda item 8, Letter from the Permanent Representative of Argentina to the UN addressed to the President of the General Assembly, U.N. Doc. A/64/505 (Oct. 28, 2009) (US Annex 41).

[37] UN GAOR, 70th Sess., Agenda items 85 and 108, Letter from the Permanent Mission of Bahrain to the UN addressed to the Secretary General, U.N. Doc. A/70/445 (Oct. 26, 2015) (US Annex 42).

[38] "In Kenya, two Iranians get life in prison for plotting attacks," L.A. Times (May 6, 2013) (US Annex 43); Cyrus Ombati, "Iranians' 30-bomb plot in Kenya," The Standard (July 4, 2012) (US Annex 44).

been linked to the Government of Iran. Four individuals were convicted in 2011 and 2012 in federal court in New York on terrorism charges and sentenced to prison terms for their involvement in the plot.[39] One of the conspirators advised the others to meet with his contacts in Iran, including Mohsen Rabbani, a former Iranian government official who was indicted for his role in the 1994 AMIA bombing.[40]

Section B: Assassinations, Kidnappings, and Airline Hijackings Attributable to Iran

3.12 Iran has long relied on assassinations to remove dissidents and others in opposition (or perceived opposition) to its regime. Among the most notorious examples is the September 17, 1992, assassination of four members of the Democratic Party of Kurdistan-Iran (DPK-I) at the Mykonos Restaurant in Berlin. Armed with a machine gun and a handgun, two assassins entered the restaurant and killed Dr. Sadegh Sharafkandi, Secretary-General of the DPK-I, Fathol Abdouli, the group's European representative, Homayoun Ardalan, its representative in Germany, and Nuri Dehkurdi, a translator.[41] A number of suspects were arrested soon afterward, and four – at least two of whom were members of Hezbollah – were subsequently convicted by the Berlin Superior Court of Justice on charges of murder or complicity to murder.[42] Moreover, the German authorities issued an arrest warrant for Ali Fallahian, the Iranian Minister of Information and Security, for his involvement in the assassinations.[43] During the related criminal trial, the Berlin Superior Court of Justice confirmed the Iranian government's responsibility for the killing of the four DPK-I members. In its Judgment, the Court stated that:

> The evidence has revealed the decision-making procedures within the Iranian leadership, which in the final analysis has led to the liquidation of opposition politicians abroad. Decisions on such operations are in the hands of the secret, extra-constitutional "Committee for Special Matters," whose members include the President of Iran, the Minister of the Secret

[39] Federal Bureau of Investigation Press Release, "Russell Defreitas Sentenced to Life in Prison for Conspiring to Commit Terrorist Attack at JFK Airport" (Feb. 17, 2011) (US Annex 45).

[40] *See* Federal Bureau of Investigation Press Release, "Kareem Ibrahim Sentenced to Life in Prison for Conspiring to Commit Terrorist Attack at JFK Airport" (Jan. 13, 2012) (US Annex 46).

[41] *See* Parliamentary Human Rights Group, *Iran: State of Terror, An account of terrorist assassinations by Iranian agents*, at (1996) (US Annex 47). As noted in the report, "the Parliamentary Human Rights Group was founded in 1976 as an independent forum in the British Parliament concerned with the defense of international human rights."

[42] *Mykonos* Judgment (US Annex 33).

[43] *See* Parliamentary Human Rights Group, *Iran: State of Terror*, at p. 33 (US Annex 47).

> Service VEVAK, the foreign policy chief, representatives of the security forces and other organizations, as well as the "religious leader."[44]

3.13 The court also found the Iranian government responsible for the July 13, 1989, murder of three other DPK-I leaders in Vienna, stating that "the connection between the assassinations in Vienna and Berlin is obvious. Any suggestion that they were the result of conflicts among Kurdish opposition groups can be ruled out."[45]

3.14 Following this judgment, virtually all member States of the European Union (EU) recalled their ambassadors to Iran.[46] The EU Presidency issued a Declaration in April 1997 stating that "[i]n the findings of the Superior Court of Justice in Berlin in the so-called Mykonos case the involvement of the Iranian authorities at the highest levels was established" and declaring that "[t]he European Union condemns this involvement of the Iranian authorities and regards such behaviour as totally unacceptable in the conduct of international affairs."[47]

3.15 A rash of abductions in the 1980s targeting Westerners has also been attributed to Iran via its proxy Hezbollah. William Buckley, the CIA station chief in Beirut, was abducted on March 16, 1984; his body was dumped near the Beirut airport in December 1991.[48] Lt. Col. Richard Higgins, a military observer with the UN Truce Supervision Organization in Lebanon, was abducted on February 17, 1988, and later killed.[49] Other victims include Terry Anderson, a U.S. journalist abducted on March 16, 1985, and not released until December 4, 1991;[50] Father Lawrence Jenco, a Roman Catholic priest who was the head of Catholic Relief

[44] *Mykonos* Judgment, at 2 (US Annex 33).

[45] *Id.*

[46] "EU Members Urged Not to Send Ambassadors Back to Iran," RadioFreeEurope/RadioLiberty (May 9, 1997) (US Annex 48).

[47] Declaration by the Presidency on behalf of the European Union on Iran (Apr. 10, 1997) (US Annex 49). On April 29, 1997, the EU Council of Foreign Ministers reaffirmed the April 10 Declaration, called on Iran to abide by its commitments under international agreements, and curtailed further engagement with Iran. EU Press Release No. 26/97, "European Union Declaration on Iran" (Apr. 29, 1997) (US Annex 50).

[48] *See* Marilyn Raschka, "Body Dumped in Beirut Identified as Buckley's: Hostage: Former senior CIA official, kidnapped in 1984, was reported slain in 1985," LA Times (Dec. 28, 1991) (US Annex 51).

[49] *See* S.C. Res. 618, U.N. Doc. S/RES/618 (July 29, 1988) (US Annex 52); Timothy McNulty, "FBI: Higgins Most Likely Is Hanged Man," Chicago Tribune (Aug. 8, 1989) (US Annex 53).

[50] *See* Chris Hedges, "The Last U.S. Hostage; Anderson, Last U.S. Hostage, Is Freed By Captors in Beirut," N.Y. Times (Dec. 5, 1991) (US Annex 54).

Services in Beirut, kidnapped on January 8, 1985, and released on July 26, 1986;[51] and Terry Waite, a representative of the Archbishop of Canterbury, in Lebanon to negotiate the release of hostages when he was abducted on January 20, 1987, and not released until November 18, 1991.[52]

3.16 Hezbollah was also responsible for a number of airplane hijackings. These include the June 1985 hijacking of TWA flight 847, in which thirty-nine passengers were held hostage for 17 days and one passenger, U.S. Navy diver Robert Stethem, was killed.[53] In July 1987, an Air Afrique aircraft was hijacked en route from Brazzaville to Paris; a French citizen was killed.[54] Kuwait Airways Flight 422, flying from Bangkok to Kuwait, was hijacked in April 1988 with 112 passengers, including three members of the Kuwaiti royal family, on board.[55] The aircraft landed in Iran and, after several days of negotiations, the hijackers forced the aircraft to fly to Cyprus; the Hezbollah hijackers then killed two passengers before forcing the plane to fly to Algeria, where they escaped.[56]

3.17 The U.K. Parliamentary Human Rights Group has documented many other attacks on dissidents that were directed by the Iranian government, including the murder of Mohammad Hossein Naghdi, the representative of the National Council of Resistance of Iran (NCRI) in Rome, on March 16, 1993; the murders of Zahra Rajabi, a member of the NCRI, and her colleague Abdul Ali Moradi, on February 20, 1996, in Istanbul; and the murder of Reza Mazlouman, a former professor of criminology at Tehran University and former Deputy Minister under the Shah, on May 28, 1996, in Paris.[57] The UN Commission on Human Rights

[51] *See* Clyde R. Mark, Congressional Research Service, 90-133 F, "Lebanon: The Remaining U.S. Hostages, a Chronology, 1984-1988," at 11, 16 (Mar. 6, 1990) (US Annex 55).

[52] *See* Elaine Sciolino, "The Hostage Drama; 2 Western Hostages Freed in Lebanon," N.Y. Times (Nov. 19, 1991) (US Annex 56). Other victims of abductions attributed to Hezbollah during this period include educators at international institutions such as the American University Beirut and numerous U.S., French, and British journalists. *See* Cong. Research Service, "Lebanon: The Remaining U.S. Hostages" (US Annex 55).

[53] *See* TERRORIST GROUP PROFILES at 17 (US Annex 19); Frontline, "Target America," program #2001 transcript, airdate Oct. 4, 2001, pp. 10-12 (US Annex 57).

[54] *See* TERRORIST GROUP PROFILES at 18 (US Annex 19).

[55] *See* "Chronology of Events in Hijacking of Kuwait Airways Flight 422," Associated Press (Apr. 12, 1988) (US Annex 58).

[56] *See id.*; TERRORIST GROUP PROFILES at 18 (US Annex 19).

[57] *See* Parliamentary Human Rights Group, *Iran: State of Terror*, at 11, 17-20, 25-28 (US Annex 47); UN Econ. & Soc. Council, Comm. On Human Rights, *Report on the situation of human rights in the Islamic Republic of Iran*, U.N. Doc. E/CN.4/1995/55, at p. 6 (Jan. 16, 1995) (US Annex 59) (referencing reported assassinations of, among others, Rafour Hamzai, representative of the Democratic Party of Iranian Kurdistan in Baghdad on August 4, 1994; Iranian citizen Assadi Mohammad Ali in Romania on November 12, 1994; and Kazem Radjevi in Switzerland on April 24, 1990).

has also noted its concern over Iran's attacks on its own citizens, stating that it:

> Deplore[d] the continuing violence against Iranians outside the Islamic Republic of Iran, and urge[d] the Government of the Islamic Republic of Iran to refrain from activities against members of the Iranian opposition living abroad and to cooperate wholeheartedly with the authorities of other countries in investigating and punishing offenses reported by them.[58]

3.18 In its 1996 report, the U.K. Parliamentary Human Rights Group stated that, since the revolution, Iran had been tied to over 150 assassination attempts against Iranian dissidents living in other countries, terrorist acts committed in 21 countries, and the deaths of or injuries to 350 people in those attacks.[59] Noting that Iran's "use of terrorism as an adjunct to foreign policy has developed into an organised and professional activity over the last 15 years," the report stated the problem in stark terms:

> The international community has to confront the unthinkable: that a member state of the United Nations is dedicated to subverting international law, and carrying the infection of its own brand of religious terrorism into the four quarters of the globe. . . . the Iranian government is indeed organising an international murder machine.[60]

3.19 Officials in the Iranian military, including the IRGC-QF, were also implicated in the conspiracy to assassinate the ambassador of Saudi Arabia to the United States in 2011. An Iranian-U.S. dual national pleaded guilty to conspiring with Iranian military officials to assassinate the ambassador, including traveling to Mexico to hire individuals to commit the murder and facilitating a $100,000 down-payment for the killing.[61] The Council of the League of Arab States "express[ed] its condemnation and rejection of the criminal Iranian attempt,"[62] and the United Kingdom's Foreign Secretary observed that "[t]he assassination plot appears to constitute a[n] escalation in Iran's sponsorship of terrorism outside its

[58] UN Econ. & Soc. Council, Comm. On Human Rights, *Situation of human rights in the Islamic Republic of Iran*, U.N. Doc. E/CN.4/1996/177, at 275 (Apr. 24, 1996) (US Annex 60).

[59] Parliamentary Human Rights Group, *Iran: State of Terror*, at 3 (US Annex 47).

[60] *Id.* at 5-6 (US Annex 47).

[61] U.S. Dep't of Justice Press Release, "Man Pleads Guilty in New York to Conspiring with Iranian Military Officials to Assassinate Saudi Arabian Ambassador to the United States" (Oct. 17, 2012) (US Annex 61); Letter from the U.S. Dep't of Justice, U.S. Attorney, Southern District New York, *United States v. Manssor Arbabsia*, S1 11 Cr 897 (JFK), Plea Agreement of Manssor Arbabsia (Oct. 17, 2012) (US Annex 62).

[62] Letter addressed to the Secretary-General and the President of the Security Council, Statement issued by the Council of the League of Arab States, U.N. Doc. S/2011/640 (Oct. 17, 2011) (US Annex 63).

borders."[63] In response, the EU imposed sanctions on five individuals, including the head of the IRGC-QF.[64] The UN General Assembly adopted a resolution calling upon Iran "to comply with all of its obligations under international law, including the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents."[65]

3.20 Iran's neighbors also have been the victims of its support for terrorist acts. In Azerbaijan, authorities reported the arrest or conviction of terrorists with links to the Iranian government, including the IRGC, who were planning attacks on the government and Western targets in 1997, 2009, and 2012.[66] In October 2016, the permanent representatives to the UN of eleven Arab States addressed a letter to the Secretary-General in which they noted Iran's "expansionist regional policies, flagrant violations of the principle of sovereignty and constant interference in the internal affairs of Arab States."[67] They stated their deep concern over Iran's activities, "stress[ing] that the Islamic Republic of Iran is a State sponsor of terrorism in our region, from [Hezbollah] in Lebanon and Syria, to Houthis in Yemen and terrorist groups and cells in the Kingdom of Bahrain, Iraq, the Kingdom of Saudi Arabia, Kuwait and elsewhere."[68]

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[63] UK Foreign & Commonwealth Office Announcement, "Foreign Secretary welcomes EU sanctions following assassination plot in the US" (Oct. 21, 2011) (US Annex 64); *see also* UN GAOR, 66th sess., Agenda item 118, Letter from the Permanent Representative of Saudi Arabia to United Nations addressed to the Secretary-General, U.N. Doc. A/66/553 (Nov. 14, 2011) (US Annex 65); UN GAOR, 66th sess./U.N.S.C, 66th year, Agenda item 109, Letter from the Secretary General addressed to the President of the General Assembly and the President of the Security Council, A/66/517, S/2011/649 (Oct. 19, 2011) (US Annex 66).

[64] EU-U.S. Summit joint statement, Memo/11/842 (Nov. 28, 2011) (US Annex 67).

[65] UN GAOR, Resolution adopted by the General Assembly, "Terrorist attacks on internationally protected persons," U.N. Doc. A/RES/66/12 (Nov. 18, 2011) (US Annex 68).

[66] Supreme Court of Azerbaijan Judgment, Case No. 63, at 2 (Apr. 14, 1997) (US Annex 69) (finding that individuals cooperated with Iranian officials for purposes of overthrowing the Government of Azerbaijan and sabotaging American and Israeli institutions); "Azeri, Lebanese Citizens Sentenced in Baku for Plans to Blowup Gabala Radar," Interfax (Oct. 5, 2009) (US Annex 70) (reporting on Azerbaijani court sentencing six persons suspected of terrorism, including planning terrorist acts against Israeli embassy on orders from Hezbollah and IRGC); "Azerbaijan arrests plot suspects, cites Iran link," Reuters (Jan. 25, 2012) (US Annex 71) (reporting on arrest of two men suspected of plotting attack on Israel's ambassador and local rabbi, and Azeri authorities linking of thwarted attack and previous attacks to Iran and Hezbollah); "Azerbaijan arrests 22 alleged Iran-backed attack plotters," Al Arabiya News (Mar. 14, 2012) (US Annex 72) (reporting on arrest of 22 individuals on suspicion of plotting attacks on the U.S. and Israeli embassies on behalf of Iran).

[67] UN GAOR, 71st sess., Agenda item 8, Note verbale from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the Secretary General, U.N. Doc. A/71/581, at 2 (Oct. 31, 2016) (US Annex 73).

[68] Note verbale, U.N. Doc. A/71/581, at 1 (Oct. 31, 2016) (US Annex 73). In 2015, the Gulf Cooperation Council ("GCC") Supreme Council issued a communique stating it "rejected completely the ongoing interference by Iran in the internal affairs of member States and the States of the region" and "urged Iran to

Section C: Iran Has Encouraged, Promoted, and Provided Financial and Other Support for Terrorism

3.21 In both word and deed, Iran has instigated and supported the commission of terrorist acts against the United States, its nationals, and others. Iranian officials have issued death threats and publicly called for acts of terrorism, and Iran has admitted to funding and supporting terrorist entities, which have in turn acknowledged that assistance as fundamental to sustaining their operations. Far from renouncing this behavior, Iran has repeatedly reaffirmed its commitment to a foreign policy of violence and support for terrorist acts.

3.22 A prime example of Iran's calls for violence and terrorist acts (and the very real consequences of such encouragement) is the *fatwa* issued by Ayatollah Khomeini on February 14, 1989, calling for the murder of British novelist Salman Rushdie and of those who facilitated the publication and distribution of his novel, "The Satanic Verses":

> I would like to inform all the intrepid Muslims in the world, that the author of the book entitled "Satanic Verses"—which has been compiled, printed, and published in opposition to Islam, to the Prophet, and to the Koran—as well as those publishers who were aware of its contents are sentenced to death.
>
> I call on all the zealous Muslims to execute them quickly, wherever they find them, so that no one will dare to insult the Islamic sanctities.
>
> Whoever is killed on this path will be regarded as a martyr, God willing. In addition, if anyone has access to the author of the book but does not possess the power to execute him, he should point him out to the people, so that he may be punished for his actions.[69]

3.23 In response to the *fatwa*, in 1991, the Japanese translator of the novel, Professor Hitoshi Igarashi, was stabbed to death at his university outside Tokyo.[70] The same year, Italian translator Ettore Capriole was stabbed at his home in Milan.[71] Two years later, the director of the Norwegian publishing house that published the novel in Norway was shot.[72] Following these attacks, the UN Commission on Human Rights adopted a resolution

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cease such practices immediately." UNSC, Letter dated 10 December 2015 from the Permanent Representative of Saudi Arabia to United Nations addressed to the President of the Security Council, S/2015/954, at 8 (Dec. 21, 2015) (US Annex 74).

[69] "[Khomeini] Exhorts Muslims to 'Execute' Rushdie," Tehran Radio Domestic Service, *in* Foreign Broadcast Information Service Daily Rep., FBIS-NES-89-029 (Feb. 14, 1989) (US Annex 75).

[70] Parliamentary Human Rights Group, *Iran: State of Terror*, at 85 (US Annex 47).

[71] *Id.*

[72] *Id.*

expressing its "grave concern that there are continuing threats to the life of Mr. Salman Rushdie, as well as to individuals associated with his work, which have the support of the Government of the Islamic Republic of Iran."[73] As for Mr. Rushdie, an Iranian State-funded foundation posted a bounty on his head, forcing him to spend years hiding from those seeking to carry out Ayatollah Khomeini's edict.[74]

3.24 Ayatollah Khomeini's *fatwa* is far from the only example of Iran soliciting others to commit violence and terrorist acts. In a speech to the Iranian parliament in 1989, then-Speaker Rafsanjani called for the killing of Americans and other Westerners by saying:

> It is not hard to kill Americans or Frenchmen. It is a bit difficult to [kill] Israelis. But there are so many [Americans and Frenchmen] everywhere in the world.[75]

3.25 In the same speech, Mr. Rafsanjani called for hijacking airplanes and blowing up factories in Western countries, and noted his lack of concern that he would be accused of encouraging violence:

> Now they will start saying that so and so, as a man in charge, and as the speaker of parliament has officially called for acts of terror . . . . But let them say it . . . . Aren't they saying it now?[76]

3.26 Furthermore, officials of the Iranian government have repeatedly endorsed the sentiment of chants of "Death to America" that are a familiar refrain at rallies in Iran. In 1995, Iran's current President, Hassan Rouhani, reportedly stated that "the beautiful cry of 'Death to America' unites our nation."[77] And this was not his last endorsement of such speech: eight years later, as a presidential candidate, Rouhani reportedly stated that "[s]aying 'Death to America' is easy. We need to express 'Death to America' with action."[78] In 2009, Ayatollah Khamenei stated that "[t]he peoples burn [the U.S.] flag. The Islamic peoples all over the world chant: 'Death to America!'"[79]

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[73] ECOSOC, *Situation of human rights in the Islamic Republic of Iran*, at 275 (1996) (US Annex 60).

[74] Robert Tait, "Iran resurrects Salman Rushdie threat," Telegraph (Sept. 16, 2012) (US Annex 76).

[75] "Majlis Speaker Urges Attacks on U.S. Citizens," Tehran IRNA, *in* Foreign Broadcast Information Service Daily Rep., FBIS-NES-89-086, at 45-46 (May 5, 1989) (US Annex 77).

[76] *Id.*

[77] Sohrab Ahmari, "About That New 'Moderate' Iranian Cabinet…", Wall St. J. (Aug. 9, 2013) (US Annex 78).

[78] *Id.*

[79] "Iranian Leader Ali Khamenei in Response to President Obama's Message to the Iranian People: Change in Words Is Not Enough," Middle East Media Research Institute (Mar. 20, 2009) (US Annex 79).

3.27 Were Iran's efforts limited to such statements, they would be cause for concern. Unfortunately, Iran's support for violence and terrorist acts goes well beyond such public provocations. Iran's support for terrorism is widely acknowledged. UN bodies have demanded that Iran "cease forthwith any involvement in or toleration of murder and State-sponsored terrorism against Iranians living abroad and the nationals of other States,"[80] and reaffirmed that "[g]overnments are accountable for assassinations and attacks by their agents against persons in the territory of another State, as well as for the incitement, approval or wilful condoning of such acts."[81]

3.28 As both Iran and its proxies have publicly confirmed, Iran has for decades provided financial and other support for the acts of terrorist organizations in contravention of international law, which – as expressed in UN Security Council resolution 1373 (2001) – requires all States to "[r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts."[82] Despite this, and despite more specific UN Security Council resolutions calling for the withdrawal of foreign forces from Lebanon, the immediate cessation by Hezbollah of all attacks, and the "disbanding and disarmament of all Lebanese and non-Lebanese militias,"[83] Iran has made no secret of its support for its Lebanon-based proxy, Hezbollah.[84]

3.29 A book published by the Iranian Ministry of Foreign Affairs in 2000 states that the "alliance between Hezbollah and the Islamic Republic of Iran is deep, strategic, and unbreakable."[85] Iran's minister for intelligence, Mahmoud Alavi, also made clear Iran's relationship to Hezbollah, stating that "[t]he Americans can't even take on the pupils of our revolution, namely Hezbollah and Hamas."[86] And in November 2014 General Amir Ali Hajizadeh, head of the IRGC Aerospace Force, explained:

[80] UN Econ. & Soc. Council, Comm. On Human Rights, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Sess., U.N. Doc. E/CN.4/1995/2, E/CN.4/Sub.2/1994/56, at 55 (Oct. 28, 1994) (US Annex 80).

[81] ECOSOC, *Situation of human rights in the Islamic Republic of Iran*, at 274 (1996) (US Annex 60).

[82] S.C. Res. 1373, U.N. Doc. S/RES/1373, ¶ 2(a) (Sept. 28, 2001) (US Annex 81).

[83] S.C. Res. 1559, U.N. Doc. S/RES/1559, ¶¶ 2-3 (Sept. 2, 2004) (US Annex 82); S.C. Res. 1701, U.N. Doc. S/RES/1701, ¶ 1 (Aug. 11, 2006) (US Annex 83).

[84] *See* Levitt, *The Origins of Hezbollah* (US Annex 23).

[85] Iranian Ministry of Foreign Affairs, PLAYERS IN THE MIDDLE EAST PEACE PROCESS (2000) (US Annex 84).

[86] Sohrab Ahmari, "About That New 'Moderate' Iranian Cabinet…" (US Annex 78).

> In the past, [Hezbollah] was dependent on us, but today it has progressed so much that sometimes we use its capabilities. If they [still] need our support, we will help them. In effect, the IRGC and [Hezbollah] are a single apparatus joined together, and according to what I know, they have no shortage of missiles and drones.[87]

3.30 Hezbollah officials also have publicly confirmed that the group is funded and trained by Iran. In 1993, a Hezbollah official stated in a televised interview that "the Islamic Revolutionary Guards help us and train us."[88] Hezbollah Deputy Secretary General Naim Qassem has boasted that Iran provided his organization with missiles with "pinpoint accuracy."[89] And in a June 2016 speech, the leader of Hezbollah, Hassan Nasrallah, confirmed Iran's direct and exclusive sponsorship of the group, stating "[w]e are open about the fact that Hezbollah's budget, its income, its expenses, everything it eats and drinks, its weapons and rockets, come from the Islamic Republic of Iran."[90]

Section D: Iran Has Violated Nuclear Non-Proliferation, Ballistic Missile, and Arms Trafficking Obligations

3.31 In addition to its sponsorship of terrorism, Iran engaged in a years-long pattern of conduct in violation of its obligations under the NPT and the resulting restrictions imposed under UN Security Council resolutions. This has included Iran's refusal to abide by restrictions on its nuclear enrichment-related activities, its development of ballistic missiles, and arms transfers to terrorist groups.

i. Iran's Non-Compliance with Its Nuclear Non-Proliferation Obligations

3.32 Iran's past failure to adhere to its nuclear obligations is documented in the reports of the International Atomic Energy Agency (IAEA) and UN Security Council resolutions. After

[87] A. Savyon et al., "Iranian IRGC Missile Unit Commanders: We've Developed 2,000-km Range Missiles And Equipped [Hezbollah] With 300-km Range Missiles; Fars News Agency: Israel's Illusions About Its Natural Gas Fields Will Be Buried In The Mediterranean," Middle East Media Research Institute, at 5 (Dec. 3, 2014) (US Annex 85).

[88] Frontline, "Target America," at 7 (US Annex 57).

[89] Nicholas Blanford, "Hezbollah claims 'pinpoint' Iranian missiles added to its arsenal," Christian Science Monitor (Nov. 23, 2014) (US Annex 86).

[90] "In first, Hezbollah confirms all financial support comes from Iran," Al Arabiya English (June 25, 2016) (US Annex 87). Nor is Iran's assistance limited to Hezbollah. Commanders of the Taliban have confirmed that Iranian officials paid them to attend training courses in Iran devoted to teaching them how to attack NATO troops and convoys, including with IEDs. "Iranians train Taliban to use roadside bombs: report," The Nation (Mar. 21, 2010) (US Annex 88); "Captured Taliban Commander: 'I received Iranian Training,'" RadioFreeEurope/RadioLiberty (Aug. 23, 2011) (US Annex 89).

an inspection of Iran's Natanz facility in 2003, the IAEA Director General issued a report finding that Iran had "failed to meet its obligations under its [NPT] 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."[91] Even though Iran had informed the IAEA that Natanz had not yet received any nuclear material, the IAEA later reported findings of enriched uranium on centrifuge machines in Natanz. [92] The IAEA also documented Iran's failure to declare uranium conversion experiments in the early 1990s,[93] and noted that such failures to meet its NPT Safeguards Agreement obligations had occurred "in a number of instances over an extended period of time."[94]

3.33 In June 2004, the IAEA board issued a resolution deploring Iran's lack of cooperation, noting it had not been "full, timely and proactive,"[95] and in September 2005 found Iran in "non-compliance" as defined under the IAEA Statute based on its "many failures and breaches" of its obligations to comply with its NPT Safeguards Agreement.[96] The next year, the IAEA board voted to refer Iran to the UN Security Council.[97]

3.34 On July 31, 2006, the UN Security Council adopted resolution 1696, noting that Iran had "not taken the steps required of it by the IAEA Board of Governors" and demanding that Iran "suspend all enrichment-related and reprocessing activities, including research and development."[98] Subsequent IAEA reports and UN Security Council resolutions (1737, 1747,

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[91] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2003/40, at 7 (June 6, 2003) (US Annex 90).

[92] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2003/63, at 7 (Aug. 26, 2003) (US Annex 91).

[93] *Id.* at 9.

[94] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2003/75, at 9 (Nov. 10, 2003) (US Annex 92).

[95] International Atomic Energy Agency Board of Governors Resolution, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2004/49, ¶ 2 (June 18, 2004) (US Annex 93).

[96] International Atomic Energy Agency Board of Governors Resolution, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2005/77, ¶ 1 (Sept. 24, 2005) (US Annex 94).

[97] International Atomic Energy Agency Board of Governors Resolution, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2006/14, ¶ 2 (Feb. 4, 2006) (US Annex 95). A follow-up report, issued on February 27, 2006, the IAEA stated it could not "conclude that there are no undeclared nuclear materials or activities in Iran." International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2006/15, at 11 (Feb. 27, 2006) (US Annex 96).

[98] S.C. Res. 1696, U.N. Doc. S/RES/1696 (July 31, 2006) (US Annex 97).

and 1803) documented Iran's continuing refusal to cooperate with the IAEA or to comply with the demands of the resolutions.[99] Throughout this period, Iran continued to install and test centrifuges, reaching ever-higher levels of enrichment,[100] while contentiously asserting that it would "not retreat one iota in its path to nuclear victory."[101]

3.35 The discovery that Iran had constructed an enrichment facility at Qom without notifying the IAEA until September 2009,[102] and of "the possible existence in Iran of past or current undisclosed activities related to the development of a nuclear payload for a missile,"[103] led the UN Security Council to again emphasize Iran's failure to cooperate with the IAEA or to establish "full and sustained suspension of all enrichment-related and reprocessing activities and heavy water-related projects."[104]

3.36 Despite the efforts of the UN Security Council (including the imposition of sanctions),[105] Iran's cooperation did not improve. In a September 2010 report, the IAEA noted that Iran had "not provided the necessary cooperation to permit the Agency to confirm that all nuclear material in Iran is in peaceful activities," and had barred inspectors from

[99] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2006/53 (Aug. 31, 2006) (US Annex 98); International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2006/64 (Nov. 14, 2006) (US Annex 99); S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 27, 2006) (US Annex 100); S.C. Res. 1747, U.N. Doc. S/RES/1747 (Mar. 24, 2007) (US Annex 101); S.C. Res. 1803, U.N. Doc. S/RES/1803 (Mar. 3, 2008) (US Annex 102).

[100] *See* International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran*, IAEA Doc. GOV/2007/22 (May 23, 2007) (US Annex 103); International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran*, IAEA Doc. GOV/2007/48, (Aug. 30, 2007) (US Annex 104); International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737 (2006) and 1747 (2007) in the Islamic Republic of Iran*, IAEA Doc. GOV/2007/58 (Nov. 15, 2007) (US Annex 105); International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737 (2006) and 1747 (2007) in the Islamic Republic of Iran*, IAEA Doc. GOV/2008/4 (Feb. 22, 2008) (US Annex 106).

[101] "Iran Vows Not to 'Retreat One Iota' in Nuclear Pursuit," CNN (Feb. 22, 2007) (US Annex 107).

[102] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1835 (2008) in the Islamic Republic of Iran*, IAEA Doc. GOV/2009/74, at 2-4, 7 (Nov. 16, 2009) (US Annex 108).

[103] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1835 (2008) in the Islamic Republic of Iran*, IAEA Doc. GOV/2010/10, at 9 (Feb. 18, 2010) (US Annex 109).

[104] S.C. Res. 1929, U.N. Doc. S/RES/1929 (June 9, 2010) (US Annex 110).

[105] *See infra* Chapter 4.

visiting its facility at Natanz.[106] As late as November 2012, the IAEA Director General reported that the IAEA could not "conclude that all nuclear material in Iran is in peaceful activities."[107]

3.37 It was only in 2015, nine years after the UN Security Council adopted its first resolution addressed to Iran's nuclear program, that the JCPOA was concluded to address the international community's concerns on that issue. As a result of the JCPOA, the UN Security Council (and the United States, among others) took action to lift nuclear-related sanctions on Iran.[108]

ii. Iran's Violation of Ballistic Missile and Arms Trafficking Obligations

3.38 Iran was also engaged in efforts to develop the means to deliver weapons of mass destruction beyond its borders through the development of ballistic missile capabilities.[109] In 2011, for example, the IAEA reported on connections between Iran's nuclear and missile programs,[110] and a UN-created panel of experts noted that "[t]he Iranian arsenal of ballistic missiles is widely recognized as one of the largest in the region."[111]

3.39 Despite prohibitions established by UN Security Council resolutions, Iran continued to illicitly procure ballistic missile-related goods and conduct missile launches. For example, in 2010, the United States sanctioned an Iranian-owned German bank together with the Export Development Bank of Iran for "enabl[ing] Iran's missile programs to purchase more than $3 million of material."[112] And in March 2011, Singapore reported intercepting a

[106] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran*, IAEA Doc. GOV/2010/46, at 10-11 (Sept. 6, 2010) (US Annex 111).

[107] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran*, IAEA Doc. GOV/2012/55, at 9, 12 (Nov. 16, 2012) (US Annex 112).

[108] S.C. Res. 2231, U.N. Doc. S/RES/2231 (July 20, 2015) (US Annex 122) (providing for the termination of provisions of resolutions 1737, 1747, 1803, and 1929).

[109] *See, e.g.*, IAEA Director General, *August 2007 Implementation Report* (US Annex 104); IAEA Director General, *February 2008 Implementation Report* (US Annex 106).

[110] International Atomic Energy Agency Director General, *Implementation of the NPT Safeguards Agreement and Relevant Provisions of Security Council Resolutions in the Islamic Republic of Iran*, IAEA Doc. GOV/2011/65, at 7-8 (Nov. 8, 2011) (US Annex 113).

[111] *Final Report of the Panel of Experts Established Pursuant to Resolution 1929 (2010)*, U.N. Doc. S/2012/395, at 20 (June 4, 2012) (US Annex 114).

[112] U.S. Dep't of the Treasury Press Release, "Treasury Department Targets Iranian-Owned Bank in Germany Facilitating Iran's Proliferation Activities" (Sept. 7, 2010) (US Annex 116).

shipment of 18 tons of aluminium powder, for which the "most likely end-use is solid propellant for missiles."[113] Iran also held a series of missile launches, including in August 20 and 25, 2010, October 2010, February 2011, June 2011, July 2012, and February 2015.[114]

3.40 Iran has also engaged in widespread arms trafficking, supplying terrorist proxies with weapons, equipment, and training.[115] For example, in December 2010, the Chair of a UN Committee tasked with monitoring Iranian compliance with the relevant UN Security Council resolutions observed that "it is a matter of grave concern that the apparent pattern of sanctions violations involving prohibited arms transfers from Iran, first highlighted publicly by the committee a year ago, is continuing," citing reports from Nigeria regarding thirteen shipping containers of illegal arms that originated from Iran, and a report from Italy regarding a container of high explosives aboard a vessel from Iran bound for Syria.[116] The United Kingdom reported on April 21, 2011, that Afghan forces had intercepted a shipment of ammunition supplied by Iran to the Taliban.[117] Two Iranians were convicted for importing explosives from Iran in connection with planning terrorist-related activities in Kenya.[118] And Bahrain reported seizing Iranian-produced explosives smuggled by individuals who

[113] *Final Report of the Panel of Experts Established Pursuant to Resolution 1929 (2010)*, at 15-16 (May 7, 2011) (US Annex 115).

[114] *See, e.g.*, Panel of Experts, *2011 Final Report*, at 30 (US Annex 115) ("Iran continues to maintain and develop a diverse and highly operational arsenal of ballistic missiles."); Panel of Experts, *2012 Final Report*, at 3 (US Annex 114) ("The Iranian ballistic missile programme continues to develop, as demonstrated by additional launches, their prohibition under resolution 1929 (2010) notwithstanding."); *Final Report of the Panel of Experts Established Pursuant to Resolution 1929 (2010)*, U.N. Doc. S/2013/331, at 5 (June 3, 2013) (US Annex 117) ("The Islamic Republic of Iran has launched ballistic missiles, in violation of its Security Council obligations . . . ."); *Final Report of the Panel of Experts Established Pursuant to Resolution 1929 (2010)*, U.N. Doc. S/2014/394, at 3 (June 5, 2014) (US Annex 118) ("The Islamic Republic of Iran has continued to engage in ballistic missile activities."); *Final Report of the Panel of Experts Established Pursuant to Resolution 1929 (2010)*, U.N. Doc. S/2015/401, at 3 (June 1, 2015) (US Annex 119) ("During the current mandate . . . . the Fajr satellite was launched by a Safir space launch vehicle and the Islamic Republic of Iran's annual Great Prophet military exercise reportedly involved the Fateh 110 ballistic missile.").

[115] *See, e.g.*, Panel of Experts, *2011 Final Report*, at 2 (US Annex 115) ("Iran's circumvention of sanctions across all areas, in particular . . . the transfer of conventional arms and related materiel, is willful and continuing," and "IRGC entities and individuals" are "actively involved in the illicit shipment of arms from Iran to other countries."); Panel of Experts, *2012 Final Report*, at 4 (US Annex 114) ("The Islamic Republic of Iran has continued to defy the international community through illegal arms shipments."); Panel of Experts, *2013 Final Report*, at 32 (US Annex 117) ("[T]he Islamic Republic of Iran continues to transport concealed and undocumented shipments of arms and related materiel by sea."); Panel of Experts, *2014 Final Report*, at 9 (US Annex 118) (Arms transfers "are substantiated by numerous media reports and statements by concerned States and recipient groups."); Panel of Experts, *2015 Final Report*, at 3 (US Annex 119) ("The Islamic Republic of Iran's arms transfers have actively continued.").

[116] UNSC, 6442d Mtg., U.N. Doc. S/PV.6442 (Dec. 10, 2010) (US Annex 120).

[117] *See* Panel of Experts, *2012 Final Report*, at 27 (US Annex 114) (noting the shipment of 48 122mm rockets and 1,000 rounds of ammunition).

[118] Panel of Experts, *2014 Final Report*, at 17 (US Annex 118)

confessed to receiving training from the IRGC.[119]

iii. Iranian Actions in Violation of Its International Obligations Continue

3.41 While the JCPOA addressed concerns about Iran's nuclear program, the UN Security Council has continued to call on Iran to refrain from undertaking activities related to ballistic missiles and also has maintained restrictions on the supply, sale, or transfer of certain ballistic-missile-related items to Iran as well as of arms or related material to and from Iran.[120] There is good reason for this. Iran has continued to launch ballistic missiles, leading the UN Secretary General in 2016 to express concern and to "call upon the Islamic Republic of Iran to refrain from conducting such launches."[121] The United States has sanctioned individuals and entities responsible for supporting Iran's ballistic missile program, including by "obfuscat[ing] the end user of sensitive goods for missile proliferation by using front companies in third countries to deceive foreign suppliers."[122]

3.42 Iran has also continued its policy of arming militants and terrorist entities. For example, the UN Secretary General expressed "concern[] [over] the reported seizure of an arms shipment by the United States Navy in the Gulf of Oman in March 2016," which the United States concluded had originated from Iran and was bound for Yemen.[123] France also reported an additional intercepted arms shipment, and Israel provided information concerning the use of commercial flights by the IRGC to transfer arms and related materiel to Hezbollah

[119] *Id.* at 18. This and the other incidents noted are only examples of Iran's arms trafficking, which also includes shipments to Yemen. Following the interception of arms on board a vessel bound for Yemen in 2013, analysis "suggest[ed] that the Islamic Republic of Iran was the origin of these shipments, and that the intended recipients were the Houthis in Yemen." Panel of Experts, *2015 Final Report*, at 14 (US Annex 119). Other such shipments bound for Yemen included, among others, an Iranian vessel that unloaded crates of weapons on to Yemeni boats in April 2009; an Iranian fishing vessel seized in February 2011 carrying 900 Iranian-made anti-tank and anti-helicopter rockets; and an Iranian vessel carrying more than 180 tons of weapons and military equipment that reportedly arrived in Yemen in March 2015. *Id.* Annex 1. Nor was Iran only exporting weapons: in December 2009, 35 tons of North Korean weapons were intercepted aboard a transport aircraft bound for Iran. Daniel Michaels & Margaret Coker, "Seized Arms Iran-bound, Report Says," Wall St. J. Asia (Dec. 21, 2009) (US Annex 121).

[120] S.C. Res. 2231, Annex B, ¶¶ 3-5, 6(b) (US Annex 122).

[121] UN Secretary General, *Report on the Implementation of Security Council Resolution 2231 (2015)*, U.N. Doc. S/2016/589, at 3 (July 12, 2016) (US Annex 123).

[122] U.S. Dep't of the Treasury Press Release, "Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran" (Jan. 17, 2016) (US Annex 124); *see also* U.S. Dep't of the Treasury Press Release, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Terrorism-Designated Mahan Air" (Mar. 24, 2016) (US Annex 126).

[123] UN Secretary General, *First Implementation Report*, at 3 (US Annex 123).

in contravention of UN Security Council resolution 2231.[124] The UN Secretary General also expressed concern as to the statement of Hezbollah's Secretary-General that Iran had supplied that organization with weapons and missiles, noting that this may have been contrary to UN Security Council resolutions.[125]

* * *

3.43 The facts set forth above and the extensive documentary evidence supporting them, as annexed to this Memorial, establish an unmistakeable pattern of violent and destabilizing conduct on the part of the Iranian government that has repeatedly put in jeopardy the peace and security of the United States and the broader international community. As set forth in detail in Part II of this Memorial, the admissibility of Iran's application – raising claims as to the measures adopted to address this conduct – and the Court's jurisdiction to hear those claims in this case must be assessed in light of this factual record.

CHAPTER 4: THE UNITED STATES HAS TAKEN MEASURES TO ADDRESS IRAN'S SPONSORSHIP OF TERRORISM AND OTHER DESTABILIZING ACTS

4.1 The fractured and unfriendly relations that have existed between the United States and Iran since 1979 have been defined in large part by Iran's illicit sponsorship of terrorism and other internationally destabilizing conduct described above. Actions on both sides within this context have inevitably altered the commercial relationship between the two countries. For its part, the United States has acted – consistent with applicable UN Security Council resolutions, and often in alignment with the actions of other States and multilateral entities – in a measured and peaceful way through sanctions and other actions aimed at counteracting and deterring Iran from these destabilizing activities, including by blocking property of the Government of Iran and certain Iranian entities, and by allowing U.S. victims of terrorism to pursue litigation against Iran and Iranian entities for their injuries. And the Iranian government, even beyond its violent and destabilizing behavior, has taken measures targeting the United States and its nationals and companies that have further constricted economic relations. In sum, the actions of both States have led to a dramatic contraction in the overall commercial relationship between them, rendering it a mere shadow of what it was prior to 1979.

[124] UN Secretary-General, *Second Report on the Implementation of Security Council Resolution 2231 (2015)*, U.N. Doc. S/2016/1136, at 2, 7 (Dec. 30, 2016) (US Annex 125).

[125] *Id.* at 6-7.

4.2 This Chapter proceeds in two parts. Section A addresses the U.S. measures at issue in this case, as well as others, both U.S. and international, that provide important context. Section B explains the consequences of the Parties' unfriendly relations – including by reference to measures Iran has taken against the United States – on the U.S.-Iranian relationship, and particularly on the two States' commercial relationship.

Section A: The United States and Others Have Taken Measures to Combat Iran's Unlawful Conduct

4.3 In an effort to counteract and deter Iran's sponsorship of terrorism and other internationally destabilizing conduct described above (*e.g.*, with respect to nuclear non-proliferation, ballistic missiles, and arms trafficking), the United States has taken a range of measured legislative and executive actions over the years. In January 1984, only months after the Beirut Marine barracks bombing, the United States designated Iran as a State sponsor of terrorism based on the finding that Iran had "repeatedly provided support for acts of international terrorism."[126] In 1987, President Reagan banned the importation of most Iranian goods and services into the United States, including oil, due to Iran's "active[] support[] [for] terrorism as an instrument of state policy," and to prevent such imports from "contribut[ing] financial support to terrorism."[127] In 1995, among other things, President Clinton barred all new U.S. investment in Iran and broadly prohibited exports to Iran.[128]

4.4 In 1996, the U.S. Congress amended the Foreign Sovereign Immunities Act of 1976 (FSIA) in relation to States, including Iran, that are designated as sponsors of terrorism.[129] The new law provided that such States would not enjoy jurisdictional immunity in certain

[126] *See* Determination Pursuant to Section 6(i) of the Export Administration Act of 1979 – Iran, 49 Fed. Reg. 2836 (Jan. 23, 1984) (US Annex 127). Iran has remained a designated State sponsor of terrorism since 1984. U.S. Dep't of State, *State Sponsors of Terrorism*, https://www.state.gov/j/ct/list/c14151.htm (last visited Apr. 14, 2017) (US Annex 128). Two other States are currently designated as sponsors of terrorism: Syria and Sudan. *Id.*

[127] Executive Order 12613, 52 Fed. Reg. 41940 (Oct. 30, 1987) (US Annex 129). As the Court has noted, the sanctions imposed in 1987 suspended all imports of crude oil into the United States from Iran, which was an essential aspect of the U.S.-Iranian commercial relationship at the time. *Oil Platforms (Iran v. United States)*, 2003 I.C.J. 161, 207, ¶ 98 (Judgment of Nov. 6).

[128] *See* Executive Order 12957, 60 Fed. Reg. 14615 (Mar. 15, 1995) (US Annex 130); Executive Order 12959, 60 Fed. Reg. 24757 (May 6, 1995) (US Annex 131). Executive Order 13059 later revoked Executive Order 12613, noted above, with respect to transactions occurring after Executive Order 13059's effective date and consolidated the provisions of Executive Orders 12957 and 12959. Executive Order 13059, 62 Fed. Reg. 44531 (Aug. 19, 1997) (US Annex 132).

[129] Antiterrorism and Effective Death Penalty Act of 1996, §221, codified at 28 U.S.C. §§ 1605 et seq. (IM Annex 10).

cases involving acts of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support for such acts, and it provided exceptions to execution immunity applicable in such cases.[130] (Further amendments to these provisions were made in 2008, including by providing that certain property in the United States of agencies or instrumentalities of State sponsors of terrorism would be available for execution upon judgments entered against such States.[131]) The ability to bring actions under this exception to jurisdictional immunity is restricted to U.S. nationals, U.S. military personnel, employees and contractors of the U.S. government, and their estates.[132]

4.5 On September 23, 2001, only days after the attacks of September 11, President George W. Bush issued Executive Order 13224 targeting persons who commit, threaten to commit, or support terrorism.[133] Among other things, the order blocked the property and interests in property of specific listed persons, as well as persons later determined to have committed acts of terrorism; prohibited United States persons from engaging in transactions or dealings with such persons; and afforded greater authority to target those who provide financial and other support for terrorist acts.[134] Five days later, the UN Security Council issued resolution 1373, which, pursuant to Chapter VII of the UN Charter, imposed an obligation on all member States to:

> 1. (a) Prevent and suppress the financing of terrorist acts; . . .
>
> 2. (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists; . . .
>
> (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens; [and]
>
> (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens[.][135]

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[130] *Id.*

[131] National Defense Authorization Act for Fiscal Year 2008, § 1083 (IM Annex 15).

[132] Foreign Sovereign Immunities Act, 28 U.S.C. § 1605A(2)(A)(ii) (2017) (US Annex 133).

[133] Executive Order 13224, 66 Fed. Reg. 49077 (Sept. 23, 2001) (US Annex 134).

[134] *Id.*

[135] S.C. Res. 1373, ¶¶ 1-2 (US Annex 81). The United States later reported to the UN Security Council on its actions taken to combat terrorism and comply with resolution 1373, including certain actions taken under

4.6 The next year, the U.S. Congress passed the Terrorism Risk Insurance Act of 2002 (TRIA) to further address foreign States' support for terrorism.[136] Section 201 of TRIA provides that persons obtaining a judgment against a "terrorist party" (defined to include, among others, designated State sponsors of terrorism) on a claim "based upon an act of terrorism," or for which that party is not immune under the terrorism exception to immunity in the FSIA, may execute upon, or attach in aid of execution, the blocked assets of the terrorist party.[137] In adopting TRIA, Congress stated that Section 201 was intended "to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism."[138]

4.7 As noted above, Iran's years-long refusal to cooperate with the IAEA resulted in a host of UN Security Council resolutions to address Iran's nuclear enrichment-related and reprocessing activities, as well as its efforts to obtain ballistic missiles capable of delivering a nuclear weapon.[139] Resolution 1696, adopted on July 31, 2006, demanded that Iran suspend its nuclear enrichment program.[140] When Iran refused, the UN Security Council adopted resolution 1737 in December 2006, imposing (i) an obligation on Iran to suspend all enrichment-related activities and heavy water-related projects; (ii) sanctions requiring States to prevent the supply, sale, and transfer of items, materials, equipment, goods, and technology to Iran that would contribute to enrichment-related, reprocessing, or heavy water-related activities or to the development of nuclear weapon delivery systems; and (iii) a freeze on the assets of Iranian organizations and individuals involved with Iran's nuclear programs.[141] Subsequently, Iran's continued non-compliance resulted in the imposition of

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Executive Order 13224. *See, e.g.*, UN Security Council, Counter-Terrorism Comm., *Report on the Implementation of Resolution 1373 (2001) by the United States of America*, U.N. Doc. S/2001/1220, at 4 (Dec. 19, 2001) (US Annex 135); UN Security Council, Counter-Terrorism Comm., *Response of the United States to the Counter-Terrorism Committee on Security Council Resolution 1373*, U.N. Doc. S/2006/69, at 4-5 (Jan. 26, 2006) (US Annex 136) ("Taken together, the [Immigration and Nationality Act] and EO 13224 comprise a comprehensive regime providing for criminal prosecution and economic sanctions against terrorists and their supporters, both foreign and domestic.").

[136] Terrorism Risk Insurance Act of 2002, § 201, codified at 28 U.S.C. § 1610 note (IM Annex 13).

[137] *Id.*

[138] Conference Report on the Terrorism Risk Protection Act, H.R. Rep. No. 107-779, at 27 (2002) (US Annex 137)

[139] *See supra* Chapter 3, Sec. D.

[140] S.C. Res. 1696 (US Annex 97) (calling on States to "prevent the transfer of any items, materials, goods and technology that could contribute to Iran's . . . ballistic missile programmes").

[141] S.C. Res. 1737 (US Annex 100) (determining to "adopt[] appropriate measures to . . . constrain Iran's development of sensitive technologies in support of its nuclear and missile programmes," and freezing assets of

further sanctions and restrictions in UN Security Council resolutions 1747 (2007), 1803 (2008), and 1929 (2010) [142] directed at a wide range of activities, including nuclear proliferation, ballistic missile development, and arms trafficking.[143]

4.8 The United States and the EU took a series of actions against Iran's nuclear and ballistic missile programs in line with these UN Security Council resolutions. The EU adopted escalating sanctions targeting, among other things, Iran's energy and financial sectors.[144] These complemented U.S. measures, such as the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA), which, among other things, imposed sanctions on the sale to Iran of refined petroleum products (such as gasoline) exceeding a certain value and on Iranian financial institutions whose property was blocked by the United States in connection with Iran's proliferation of weapons of mass destruction or support for international terrorism.[145]

4.9 In the same general time period, the multilateral Financial Action Task Force (FATF) issued a series of warnings concerning the terrorism-finance and money-laundering risks posed by Iran. The FATF is an inter-governmental body with representatives from many

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persons and entities involved in Iran's ballistic missile programme).

[142] S.C. Res. 1747 (US Annex 101) (prohibiting the importation by Iran of any missiles or missile systems, and freezing assets of additional persons and entities involved in ballistic missile activities); S.C. Res. 1803 (US Annex 102) (widening the scope of restrictive measures taken in S.C. Res. 1737 and 1747); S.C. Res. 1929 (US Annex 110) (prohibiting Iran from "undertak[ing] any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology").

[143] For example, resolution 1737 required States to prevent the supply, sale, or transfer of certain listed ballistic missile-related items, materials, equipment, goods and technology to Iran. S.C. Res. 1737, OP3 (US Annex 100). Resolution 1747 was directed at Iran's persistent arms trafficking, including to terrorist organizations, providing that "Iran shall not supply, sell or transfer directly or indirectly from its territory or by its nationals . . . any arms or related material." S.C. Res. 1747, ¶ 5 (US Annex 101). Resolution 1929 banned Iran from investing in missile technology abroad and provided that Iran "shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology." Resolution 1929 also imposed an arms embargo on Iran requiring States to prevent the supply, sale or transfer to Iran of any battle tanks, armoured combat vehicles, large caliber artillery systems, attack helicopters, warships, missiles, or missile systems and related materiel. S.C. Res. 1929 (US Annex 110).

[144] *See* Council Common Position No. 2007/140/CFSP of 27 February 2007, 2007 O.J. (L 61) 49 (US Annex 138) (implementing UN Security Council resolution 1737); Council Common Position No. 2007/246/CFSP of 23 April 2007, 2007 O.J. (L 106) 67 (US Annex 139) (implementing UN Security Council resolution 1747); Council Common Position No. 2008/652/CFSP of 7 August 2008, 2008 O.J. (L 213) 58 (US Annex 140) (implementing UN Security Council resolution 1803); Council Decision No. 2010/413/CFSP of 26 July 2010, 2010 O.J. (L 195) 39 (US Annex 141) (implementing UN Security Council resolution 1929); *see also* Council Decision No. 2012/35/CFSP of 23 January 2012, 2012 O.J. (L 19) 22 (US Annex 142); Council Decision No. 2012/152/CFSP of 15 March 2012, 2012 O.J. (L 77) 18 (US Annex 143); Council Decision No. 2012/635/CFSP of 15 October 2012, 2012 O.J. (L 282) 58 (US Annex 144).

[145] Comprehensive Iran Sanctions, Accountability and Divestment Act § 102(a)(3), Pub. L. No. 111-195 (July 1, 2010), 124 Stat. 1312 (hereinafter "CISADA") (US Annex 198) (amending section 5(a) of the Iran Sanctions Act); *id.* § 104(c).

regions of the world (including the United States), whose purpose is to set standards and promote the effective implementation of legal, regulatory, and operational measures for combating money laundering, terrorist financing, and related threats to the integrity of the international financial system. With respect to Iran, in 2007 the FATF instructed financial institutions to use "enhanced due diligence" in dealings with Iran given Iran's failure to implement a comprehensive anti-money laundering or anti-terrorist financing regime, which represented "a significant vulnerability within the international financial system."[146] In 2009, the FATF began urging States to apply "[e]ffective counter-measures to protect their financial sectors from money laundering and financing of terrorism [] risks emanating from Iran."[147]

4.10 Based on similar concerns, the United States took progressive steps to respond to Iran's support for terrorism. For example, in 2007 the United States designated the IRGC-QF under Executive Order 13224 (noted above) for providing weapons and financial support to the Taliban and other designated terrorist organizations, and also designated an Iranian bank, Bank Melli, for, among other things, sending at least $100 million to the IRGC-QF and facilitating purchases of sensitive materials for Iran's nuclear and missile programs.[148] The UN, the EU, Japan, South Korea, and other States likewise targeted the IRGC and its affiliates for sanctions because of the organization's illicit activities.[149]

4.11 The U.S. Treasury Department also published a finding in 2011 that Iran was a jurisdiction of primary money laundering concern.[150] That finding was based on "a growing body of public information about [Iranian banks'] illicit and deceptive conduct designed to

[146] Financial Action Task Force Statement on Iran (Oct. 11, 2007) (US Annex 145).

[147] Financial Action Task Force Statement on Iran (Feb. 25, 2009) (US Annex 146).

[148] U.S. Dep't of the Treasury, "Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism" (Oct. 25, 2007) (US Annex 147); *see also* U.S. Dep't of the Treasury, "Fact Sheet: Treasury Strengthens Preventive Measures Against Iran" (Nov. 6, 2008) (US Annex 148). The United States in August 2010 designated other individuals and entities to target Iran's support for terrorism and terrorist organizations, including Hezbollah, Hamas, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine-General Command, and the Taliban. U.S. Dep't of the Treasury, "Fact Sheet: U.S. Treasury Department Targets Iran's Support for Terrorism; Treasury Announces New Sanctions Against Iran's Islamic Revolutionary Guard Corps-Qods Force Leadership" (Aug. 3, 2010) (US Annex 149). Subsequently, the United States designated other Iranian entities for providing material support for terrorism, including weapons to Hezbollah on behalf of the IRGC." U.S. Dep't of the Treasury, "Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL" (Dec. 21, 2010) (US Annex 150).

[149] U.S. Dep't of the Treasury, "Fact Sheet: Treasury Sanctions Major Iranian Commercial Entities," at 2 (June 23, 2011) (US Annex 151).

[150] Finding that the Islamic Republic of Iran is a Jurisdiction of Primary Money Laundering Concern, 76 Fed. Reg. 72756, 72756-63 (Nov. 18, 2011) (US Annex 152); Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations – Imposition of Special Measure Against the Islamic Republic of Iran as a Jurisdiction of Primary Money Laundering Concern, 76 Fed. Reg. 72878 (Nov. 28, 2011) (US Annex 153).

facilitate the Iranian government's support for terrorism and its pursuit of nuclear and ballistic missile capabilities."[151] Specific examples cited in the finding include Bank Saderat's transfer of $50 million from the Central Bank of Iran through its subsidiary in London to its branch in Beirut for the benefit of Hezbollah fronts in Lebanon that support acts of violence; Ansar Bank and Mehr Bank providing financial services to the IRGC; Bank Melli employing deceptive banking practices to obscure its involvement when handling financial transactions on behalf of the IRGC; Iran permitting al-Qaida to funnel funds and operatives through its territory; and the IRGC-QF providing as much as $200 million in financial support for Hezbollah per year, and providing the Taliban with weapons, funding, logistics, and training in support of anti-U.S. and anti-coalition activity.[152]

4.12 In 2012, in the wake of this U.S. Treasury Department finding and following years of evasion by Iran and its entities (particularly through the use of Iranian financial institutions) of sanctions aimed at, among other illicit activities, Iranian proliferation, arms trafficking, and terrorist financing, President Obama issued Executive Order 13599. That Order blocks all property and interests in property of the Government of Iran, including the Central Bank of Iran, and of Iranian financial institutions, where such assets are subject to U.S. jurisdiction.[153]

4.13 That same year, Congress passed the Iran Threat Reduction and Syria Human Rights Act of 2012 to further address Iran's support for terrorism, its pursuit of nuclear weapons and related delivery systems (*e.g.*, ballistic missiles), and other threatening activities.[154] Among other things, the law imposed sanctions targeting Iran and Iranian entities involved in terrorism and proliferation activities.[155] It also addressed issues relating to the *Peterson*

[151] 76 Fed. Reg. at 72757 (US Annex 152).

[152] 76 Fed. Reg. at 72758, 72760-61 (US Annex 152).

[153] E.O. 13599, 77 Fed. Reg. 6659 (February 5, 2012) (IM Annex 22). For further discussion of Executive Order 13599, *see infra* Chapter 7. Executive Order 13599 implemented the sanctions required by Section 1245(c) of the 2012 National Defense Authorization Act. *See* National Defense Authorization Act for Fiscal Year 2012, Section 1245(c), Pub. L. 112-81, 125 Stat. 1647 (IM Annex 17). That section also expressed Congress's concerns regarding Iran's continued support for terrorism, its proliferation activity, and its use of deceptive financial practices to evade sanctions. *See id.* Sections 1245(a) and (b).

[154] *See generally* Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. 112-158, 126 Stat. 1214, 22 U.S.C. § 8701 (US Annex 154).

[155] *See, e.g., id.* § 203 (expanding sanctions on persons exporting goods or technology that "would contribute materially to the ability of Iran to (I) acquire or develop . . . nuclear weapons or related technologies; or (II) acquire or develop destabilizing numbers and types of advanced conventional weapons"), § 208 (noting that Iran's energy sector "remains a zone of proliferation concern since the Government of Iran continues to divert substantial revenues derived from sales of petroleum resources to finance its illicit nuclear and missile activities" and calling on the President to impose sanctions to address that threat), § 211 (imposing sanctions on the provision of vessels or shipping services to transport goods "that could materially contribute to the activities

enforcement proceeding.[156]

4.14 On July 14, 2015, the JCPOA – a multilateral arrangement to address the international community's concerns with Iran's nuclear program – was concluded. UN Security Council resolution 2231 endorsed the JCPOA and provided for the termination of the provisions of resolutions 1737, 1747, 1803, and 1929 concerning Iran's nuclear program, but maintained certain non-nuclear provisions, including calling upon Iran to refrain from undertaking any activity related to ballistic missiles designed to be capable of delivering nuclear weapons.[157] Resolution 2231 also imposed a requirement largely identical to that contained in resolution 1747 with regard to arms trafficking, requiring States to, among other things, "[t]ake the necessary measures to prevent, except as decided otherwise by the UN Security Council in advance on a case-by-case basis, the supply, sale, or transfer of arms or related material from Iran."[158] U.S., UN, and other multilateral (*e.g.*, FATF) measures and recommendations related to Iran's ballistic missile program, arms trafficking, and terrorist financing remain in place to this day.[159]

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of the Government of Iran with respect to the proliferation of weapons of mass destruction or support for acts of international terrorism"), § 217 (providing for the continuation of sanctions set out in Executive Order 13599 until the President makes certain certifications).

[156] The law specified that, provided the court made certain factual findings relating to assets at issue in the *Peterson* enforcement proceeding, those assets would be subject to execution or attachment to satisfy compensatory damages portions of terrorism-related judgments entered against Iran. *Id.* at § 502, codified at 22 U.S.C. § 8772. Bank Markazi raised various arguments in opposition to attachment of the funds, including by challenging the constitutionality of § 8722 – a challenge the U.S. Supreme Court rejected in April 2016. *See Bank Markazi, aka Cent. Bank of Iran v. Peterson, et al.*, 136 S.Ct. 1310 (2016) (IM Annex 66).

Notably, despite arguing throughout its Memorial that the treatment of Bank Markazi and its funds in the *Peterson* enforcement proceeding violated various articles of the Treaty and putting in issue arguments raised in those proceedings (*see, e.g.*, Iran's Memorial, ¶¶ 2.43, 5.12), Iran did not annex to its Memorial any of the pleadings from the District Court proceedings that allegedly support its position. Those filings were sealed subject to a "Protective Order," based on protections that U.S. law provides to certain banking and commercial information. Although Iran was a defendant in that proceeding, the U.S. government was not a party and the District Court has not previously granted the U.S. government access to the sealed pleadings. On April 20, 2017, the Court denied the United States' request for Iran to be ordered to produce the documents in advance of the United States' preliminary objections filing. The United States elaborates further below on the relevance of these undisclosed documents to the United States' preliminary objections.

[157] S.C. Res. 2231, Annex B, ¶ 3 (US Annex 122).

[158] *Id.* Annex B, ¶ 6(b). The restriction is to continue until October 2020, or until the date on which the IAEA submits its Broader Conclusion report, whichever is earlier. Other restrictions also effectively remained in place under Resolution 2231, including various restrictions on the supply, sale, and transfer of nuclear-related materials.

[159] Recently, FATF suspended counter-measures for a period of 12 months (ending June 2017) to monitor Iran's progress in implementing an action plan to address deficiencies in its anti-money laundering provisions and actions to combat the financing of terrorism. FATF made clear, however, that until Iran implemented the necessary measures to address deficiencies in its regulatory system, it would "remain concerned with the terrorist financing risk emanating from Iran and the threat this poses to the international financial system." The

Section B: The Parties No Longer Maintain Normal, Ongoing Commercial Relations

4.15 Concurrent with the U.S. measures discussed above, the Iranian government has enacted measures deterring U.S. nationals or companies from engaging in commerce in or with Iran. For example, 1989 legislation referencing the so-called "terrorist activities" of the United States government requires the Iranian president to arrest and punish U.S. citizens.[160] In 2015, Iran enacted an import ban on U.S. consumer goods, following Ayatollah Khamenei's instruction "not to allow import of US consumer goods which symbolize presence of the USA in the country."[161] A 2016 law directs the Government of Iran to seek compensation and restitution from the United States for its alleged role in wars and other purported interferences in Iranian internal affairs.[162] Iran has also implemented legislation allowing Iranian nationals to file claims against a foreign State when that State has purportedly violated Iran's immunity.[163] The text of that law does not name the United States,

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FATF also continues to advise that financial institutions apply "enhanced due diligence" in their dealings with Iranian companies and individuals. Financial Action Task Force Statement on Iran (Feb. 24, 2017) (US Annex 155). The United States has also made clear that its sanctions relating to ballistic missiles and support for terrorism would remain in place following implementation of the JCPOA. *E.g.*, U.S. Dep't of the Treasury Press Release, "Written Testimony of Adam J. Szubin, Acting Under Secretary of Treasury for Terrorism and Financial Intelligence, before the U.S. Senate Committee on Banking, Housing, and Urban Affairs" (Aug. 5, 2015) (US Annex 156); U.S. Dep't of the Treasury Press Release, "Treasury Sanctions Supporters of Iran's Ballistic Missile Program and Iran's Revolutionary Guard Corps" (Feb. 3, 2017) (US Annex 157).

[160] RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Law Intensifying [Countermeasures] Against the United States Government's Terrorist Activities (1989), No. 13024, p. 534 (US Annex 159) (referencing the crimes of kidnapping and conspiring against the lives of Iranian citizens).

[161] "Iran bans import of consumer goods from USA," BBC (Nov 5, 2015) (US Annex 158).

[162] Information Site of the Government of the Islamic Republic of Iran, Law Requiring the Government of Iran to Pursue Damages Resulting from the United States' Activities and Crimes (2016), pub. June 6, 2016 (US Annex 163).

[163] RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Law of Jurisdiction of the Justice Dep't of the Islamic Republic of Iran for Hearing Civil Claims against Foreign Governments (2012), No. 19566, p. 769 (US Annex 162) (reenacting, with a few amendments, legislation originally enacted in 1999 and amended in 2000); *see also* RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Law of Jurisdiction of the Justice Dep't of the Islamic Republic of Iran for Hearing Civil Claims against Foreign Governments (1999), No. 15950, p. 473 (US Annex 160); RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Law Amending the Law of Jurisdiction of the Justice Dep't of the Islamic Republic of Iran for Hearing Civil Claims against Foreign Governments (2000), No. 16284, p. 1423 (US Annex 161); RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Executive Regulations of the Law of Jurisdiction of the Justice Dep't of the Islamic Republic of Iran for Hearing Civil Claims Against Foreign Governments Enacted in the Year 1999, No. 16905, p. 395 (US Annex 164); RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Amendment to the Executive Regulations of the Law of Jurisdiction of the Justice Dep't of the Islamic Republic of Iran for Hearing Civil Claims Against Foreign Governments Enacted in the Year 1999, No. 16213, p. 1099 (US Annex 165); RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Executive Regulations of the Law of Jurisdiction of the Justice Dep't of the Islamic Republic of Iran for Hearing Civil Claims Against Foreign Governments (2012), No. 20050, p. 1369 (US Annex 166).

but the parliamentary debate on the bill – featuring chants of "Death to America" – makes clear its purpose and intended target.[164] Since its enactment, a large number of cases have been initiated by Iranian nationals, resulting in significant judgments against the United States.[165] In short, Iran does not welcome Americans or American firms, and in fact it actively seeks to deter any such business with Iran.[166]

4.16 The measures taken by both States are reflective of the rupture in relations that followed the 1979 attack on the U.S. Embassy in Tehran and the ensuing hostage crisis. The result has been a fundamental breakdown in the commercial, trade, and investment relationship that existed between them prior to 1979, and which the Treaty of Amity was intended to protect and promote. Neither government has taken steps to encourage commerce between them and their nationals for decades. On the contrary, both countries have taken measures expressly intended to deter it.

CHAPTER 5: THE APPLICABLE LEGAL FRAMEWORK

5.1 This Chapter sets forth the law that applies in assessing the United States' preliminary objections and the law governing Iran's claims in this case. The United States brings its objections under Article 79(1) of the Rules of Court, which provides that the respondent may request a decision on preliminary objections "before any further proceedings on the merits," and that such objections may go to the admissibility of the application, the jurisdiction of the Court, or any other matter requiring resolution prior to the merits.[167]

5.2 Each of the United States' objections is exclusively preliminary in character. These

[164] RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Parliamentary Debates, Public Session No. 42, pp. 28-30 (Nov. 1, 2000) (US Annex 168); *see also* RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Parliamentary Debates, Public Session No. 323, at pp. 32-33 (Nov. 8, 1999) (US Annex 167) (deputy stating that "fortunately this bill has been brought before the Islamic Consultative Assembly around November 3 [Aban 13], which is the day of Death to America.").

[165] *See, e.g.*, *Shafiei v. Government of the United States of America*, Case No. 987/3/80, Judgment (Tehran Public Court, Div. 3, Mar. 31, 2003) (US Annex 170) (basing jurisdiction on Iran's 1999 immunity-stripping law, and ordering damages in favor of plaintiffs – the survivors of an Iranian deputy commander allegedly killed in 1987 in an engagement with U.S. armed forces in the Persian Gulf – amounting to 220 billion rials in compensatory damages, 2 trillion rials ["equivalent to 329 kg of gold"] in punitive damages, 44.4 billion rials as "procedure cost," and 221 billion rials as "attorney's fee").

[166] Iran continues to impose measures on American nationals and companies, even during the pendency of these proceedings. "In reciprocal act, Iran sanctions 15 American companies," Iran News Agency (Mar. 26, 2017) (US Annex 171).

[167] Rules, art. 79(1).

are not circumstances in which the Court lacks the facts necessary to decide the objections, or where resolving the objections would involve adjudication of the merits of the dispute.[168] Rather, the United States' objections can be decided without prejudging issues that relate to the merits of Iran's claims, and the purpose and effect of the objections is to "to prevent, *in limine*, any consideration of the case on the merits."[169]

5.3 The Court has broad inherent power to decline to hear a case where doing so would protect the integrity of the Court's judicial function.[170] As the Court explained in the *Northern Cameroons* case, "[t]here are *inherent* limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore."[171] Thus, as discussed in greater detail in Chapter 6, the Court has the power and ample grounds to dismiss all of Iran's claims as inadmissible at the threshold of the case.

5.4 Further, as explained below and in Chapters 7-9, the Court should dismiss for lack of jurisdiction *ratione materiae* important elements of Iran's claims in this case, which concern matters that are plainly not governed by the Treaty. This is because the exclusive basis for the Court's jurisdiction in this case is the compromissory clause of the Treaty. Yet, Iran wrongly grounds important aspects of its claims in customary international law, or seeks redress for measures that either are not governed by the Treaty articles that Iran invokes or fall within explicit exclusions set out in the text of the Treaty itself.[172] Iran claims that its distorted reading of the Treaty is supported by the general proposition that treaties may "be interpreted with reference to (and applied in consideration of) relevant rules of customary international

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[168] *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, 2007 I.C.J. 832, 852, ¶ 51 (Preliminary Objections Judgment of Dec. 13); *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Preliminary Objection Judgment, ¶ 52 (I.C.J., Sept. 25, 2015); *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, Preliminary Objections, 1925 P.C.I.J. (ser. A) No. 6, at 15 (Aug. 25).

[169] *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United States)*, 1998 I.C.J. 115, 131-132, ¶ 46 (Preliminary Objections Judgment of Feb. 27) (citing *Panevezys-Saldutiskis Railway (Estonia v. Lithuania)*, 1939 P.C.I.J. (ser. A/B) No. 76, at 16 (Feb. 28)).

[170] *See, e.g., Free Zones of Upper Savoy and the District of Gex (France v. Switzerland)*, 1932 P.C.I.J. (ser. A/B) No. 46, at 161-62 (June 7) (declining to adjudicate claims where the Parties sought to subject the Court's judgment to their approval).

[171] *Northern Cameroons (Cameroon v. United Kingdom)*, 1963 I.C.J. 15, 29 (Dec. 2) (declining to decide a case where the question was inoperative or moot). *See also infra* Section 6.A.iii.

[172] Iran's "Applicable Law" section of its Memorial contains a dozen pages detailing "Other Sources of International Law" that it claims the Court may apply – twice as many pages as Iran devotes to its section on "The Treaty of Amity." *See* Iran's Memorial, Chapters III.1 and III.2. This notably lopsided distribution is symptomatic of the fundamental lack of connection between Iran's claims and the provisions of this commercial treaty.

law,"[173] but Iran makes no effort to conduct a proper treaty interpretation analysis that would establish jurisdiction over its claims. That is presumably because a straightforward application of the well-established rules of treaty interpretation makes clear that a number of Iran's claims fall outside the scope of the Treaty.

5.5 Where, as here, jurisdiction is founded only on a treaty's compromissory clause giving the Court jurisdiction over the treaty's "interpretation and application," the Court is empowered only to apply the treaty and not rules of customary international law that exist apart from the treaty.[174] To do otherwise would be to exceed the basis of the Court's jurisdiction, which is the consent of the Parties as expressed within the context of the treaty.[175] A treaty, particularly a treaty such as the Treaty of Amity that governs only a specific, narrow set of subject matters, cannot be used as a convenient doorway through which the entire corpus of international law may enter.

5.6 The Court has explained that its jurisdictional inquiry requires the Court to interpret the relevant provisions of the Treaty at the preliminary objections phase of the case.[176] In *Oil Platforms*, the Court rejected Iran's claim that it need only demonstrate, at the jurisdictional stage, a "*bona fide* question" as to whether "the Treaty does, or does not, apply to the conduct of the Respondent which is the subject of the complaint."[177] Rather, on a challenge to jurisdiction *ratione materiae*, the Court made clear that it must "ascertain whether the

[173] Iran's Memorial, ¶ 3.19.

[174] *See Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, 2006 I.C.J. 6, 32, ¶ 65 (Feb. 3) ("As it recalled in its Order of 10 July 2002, the Court has jurisdiction in respect of States only to the extent that they have consented thereto . . . . When a compromissory clause in a treaty provides for the Court's jurisdiction, that jurisdiction exists only in respect of the parties to the treaty who are bound by that clause and within the limits set out therein[.]).

[175] *Id.*; *Mutual Assistance in Criminal Matters (Djibouti v. France)*, 2008 I.C.J. 177, 200-201 & 203, ¶¶ 48 & 60 (June 4); *see also Aerial Incident of 10 August 1999 (Pakistan v. India)*, 2000 I.C.J. 12, 45-46 (June 21) (Separate Opinion of Judge Koroma) ("[T]he issue whether there is a conflict of legal rights and obligations between parties to a dispute and the application of international law (justiciability) is different from *whether the Court has been vested with the necessary authority by the parties to a dispute to apply and interpret the law in relation to that dispute*. The Court is forbidden by its Statute and jurisprudence from exercising its jurisdiction in a case in which the parties have not given their consent. It is on this basis that the Court has reached its Judgment. . . . [S]uch judgment should not be seen as an abdication of the Court's function but rather a reflection of the system within which the Court is called upon to render justice." (emphasis added)).

[176] *Oil Platforms*, 1996 I.C.J. at 812, ¶ 23; *see also Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections Judgment, ¶ 33 (I.C.J., Mar. 17, 2016) ("That question [of whether the Court lacks jurisdiction in respect of the proceedings], has to be answered by the application to the relevant provisions of the Pact of Bogota of the rules on treaty interpretation enshrined in Article 31 to 33 of the Vienna Convention.").

[177] *Compare Oil Platforms*, 1996 I.C.J. at 809-810, ¶ 16, *with* Verbatim Record of the Public Sitting of the I.C.J. Held on Sept. 20, 1996, at 48, ¶ 18, *Oil Platforms (Iran v. United States)* (Professor Crawford on behalf of Iran).

violations of the Treaty of 1955 pleaded by Iran *do or do not* fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain."[178] To make this determination, the Court must consider as a legal matter whether the measures Iran places in issue fall within the jurisdiction of the Court by application of the Treaty provisions invoked, or whether Iran is instead attempting to bring before the Court claims relating to matters that the Treaty does not regulate.[179]

5.7 Because the Court cannot found its jurisdiction on "an impressionistic basis," it "must bring a detailed analysis to bear" when it interprets the articles of the Treaty that are said to have been violated by the Respondent.[180] Determining whether the Treaty governs the claims before the Court thus requires reference to the customary international law rules of treaty interpretation enshrined in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT).[181] Under those familiar rules, the Treaty of Amity

> must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Under Article 32, recourse may be had to supplementary means of interpretation such as the preparatory work and the circumstances in which the treaty was concluded.[182]

5.8 In the preliminary objections phase of *Oil Platforms*, the Court assessed Iran's claims against the text of the particular provisions invoked in light of the object, purpose, context, and history, including in connection with similar FCN treaties concluded by the United States during the same time period. The Court observed that the "object [of the treaty] is . . . the 'encouraging of mutually beneficial trade and investments and closer economic intercourse generally' as well as 'regulating consular relations' between the two States"[183] and

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[178] *Oil Platforms*, 1996 I.C.J. at 809-810, ¶ 16 (emphasis added). The Court took the same approach in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)* case, where it concluded that "[t]o found its jurisdiction, the Court must, however, still ensure that the dispute in question *does indeed fall* within the provisions of the provisions of Article IX of the Genocide Convention." 1996 I.C.J. 595, 615, ¶ 30 (Preliminary Objections Judgment of July 11) (emphasis added).

[179] *Oil Platforms*, 1996 I.C.J. at 820, ¶ 51. *See also id.* at 856, ¶ 33 (Separate Opinion of Judge Higgins).

[180] *Id.* at 855, ¶ 29 (Separate Opinion of Judge Higgins); *see also Delimitation of the Continental Shelf*, Preliminary Objections Judgment, ¶¶ 31-46 (resolving Colombia's objection to the Court's jurisdiction *ratione temporis* through a thorough review of the text of the relevant article of the Bogota Pact, in light of its context and the object and purpose of the Pact, as well as the Parties practice and a review of the *travaux preparatoires*).

[181] *Oil Platforms*, 1996 I.C.J. at 812, ¶ 23.

[182] *Id.*.

[183] *Id*. at 813, ¶ 27.

characterized the Treaty as "relating to trade and commerce in general."[184] Reviewing the Treaty's substantive provisions, the Court underscored that the Treaty was of a limited and focused character, and that its object and purpose "was not to regulate peaceful and friendly relations between the two States in a general sense."[185] The Court thus rejected Iran's claim that Article I's reference to "firm and enduring peace and sincere friendship" between the Parties could be interpreted "as incorporating into the Treaty all of the provisions of international law concerning such relations."[186] Further examining the scope of the articles invoked by Iran in this light, the Court held that claims under one article, IV(1), had to be rejected as outside the Court's jurisdiction because the provision did not "lay down any norms applicable to this particular case."[187]

5.9 Hence, the Court has recognized that it may dismiss as a preliminary matter claims that would require expanding the scope of the Parties' agreement or importing additional legal rules into a treaty where, as here, the Treaty text, context, and practice of the Parties do not support such a reading.

5.10 This basic proposition is illustrated even in cases applying the *prima facie* jurisdictional test applicable to provisional measures applications. For example, in *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, the Court recently rejected Equatorial Guinea's request for the Court to order France to suspend criminal proceedings against its Vice-President as a provisional measure, based on the Court's finding that it lacked *prima facie* jurisdiction under the compromissory clause of the Convention against Transnational Organized Crime. In support of its request, Equatorial Guinea cited Article 4 of that Convention, which provides that "States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other

[184] *Id.* at 817, ¶ 41.

[185] *Id.* at 814, ¶ 28; *see also id.* at 817, ¶ 41 (referencing indications in the Treaty "of an intention of the parties to deal with trade and commerce in general"). The Court also emphasized that the compromissory clauses of FCN treaties dating from this period had been "consistently referred to by the Department of State as being 'limited to differences arising immediately from the specific treaty concerned', as such treaties deal with 'familiar subject matter' in relation to which 'an established body of interpretation already exists.'" *Id.* at 814, ¶ 29.

[186] *Id.* at 814, ¶ 28.

[187] *Id.* at 816, ¶ 36.

States."[188]

5.11 After reviewing the Convention's text and context and the relevant practice of the Parties, the Court explained that the purpose of this language was to ensure that States Parties performed *their obligations under the Convention* in accordance with the principles outlined in Article 4.[189] Article 4 did not serve "to create new rules concerning the immunities of holders of high-ranking office in the State or incorporate rules of customary international law concerning those immunities."[190] The Court therefore found that it had no *prima facie* jurisdiction under the invoked Convention to indicate the measure requested by Equatorial Guinea.[191] Plainly, if the Court will assess and reject jurisdiction based on the scope of the applicable legal instrument at the provisional measures phase (under a more permissive *prima facie* test), it should *a fortiori* undertake a more rigorous assessment at the preliminary objections phase where it must determine whether claims "do or do not" fall under a treaty.

5.12 Iran utterly fails to conduct the requisite treaty interpretation analysis in its Memorial so as to establish a basis for jurisdiction over its claims. Instead, Iran appeals to VCLT Article 31(3)(c), which provides that "relevant rules of international law applicable in the relations between the parties" shall be "taken into account, together with the context." But this provision of the VCLT does not permit Iran to disregard the result arrived at through application of the other provisions of Article 31 or to accrete unrelated rules to the treaty text. Were it employed in such a way, the Parties' ability to agree on the scope of their obligations would be effectively nullified. Rather, the sole purpose of Article 31(3)(c) is to assist in interpreting the treaty text; thus, a rule of international law that is to be used in this interpretive exercise must be "relevant," in that it concerns the subject matter of the provision at issue. As explained authoritatively by Richard Gardiner,

> Located in its immediate context of treaty interpretation, article 31(3)(c) implicitly invites the interpreter to draw a distinction between using rules of international law as part of the apparatus of treaty interpretation and applying the rules of international law directly to the facts in the context of

[188] *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Order on Request for the Indication of Provisional Measures, ¶¶ 9, 32, 41 (I.C.J., Dec. 7, 2016).

[189] *Id.* ¶¶ 43-50.

[190] *Id.* ¶ 49.

[191] *Id.* ¶ 50.

> which the treaty is being considered. The former is within the scope of the Vienna rules, *the latter is not*.[192]

5.13 The history of Article 31(3)(c) underscores this limited purpose. During the negotiation of the 1969 VCLT, States provided comments on a 1964 draft convention prepared by the International Law Commission (ILC) that included language similar to the current Article 31(3)(c). The Netherlands proposed to delete the provision in its entirety, out of a concern that it might invite efforts to consider "the meaning of … concepts elsewhere in international law and independently of the treaty to be interpreted."[193] That is, The Netherlands was concerned about the very type of argument that Iran is making here – that the provision would be taken as license to import customary international law concepts into a treaty independently of the terms of the treaty under the guise of interpretation "in light of rules of general international law."

5.14 The ILC emphatically rejected the notion that the draft provision was ever intended, or could properly be understood, to operate in the way The Netherlands feared. Sir Humphrey Waldock, the ILC Special Rapporteur for the project, explained:

> The objection taken by the Netherlands Government . . . does not seem to the Special Rapporteur to carry conviction; for it involves interpreting the sub-paragraph in a manner which could hardly be justified as an interpretation in good faith. Certainly, it is a manner of interpreting the reference to rules of international law which has not occurred to any other Government and which did not occur to members of the Commission in 1964 or to members of the Institute of International Law in 1956 when they adopted the resolution on the interpretation of treaties mentioned in the Special Rapporteur's third report. Paragraph 1 has to be read as a whole and, when this is done, it does little more than say that the terms of a treaty have to be interpreted in the light of the fact that it is an instrument concluded under the international legal order existing at the time of its conclusion.[194]

5.15 The Court affirmed the narrow purpose of VCLT Article 31(3)(c) in *Pulp Mills*, rejecting Argentina's reliance on Article 31(3)(c) to expand the Court's jurisdiction under a 1975 Statute between Argentina and Uruguay.[195] Argentina urged the Court to interpret the

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[192] RICHARD K. GARDINER, TREATY INTERPRETATION 320 (2d ed. 2015) (emphasis added).

[193] *Sixth Report on the Law of Treaties*, Sir Humphrey Waldock, Special Rapporteur, [1966] 2 Y.B. INT'L L. COMM'N 51, 92, U.N. Doc. A/CN.4/SER.A/1966/Add.1 (US Annex 245).

[194] *Id*. at 96.

[195] *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2010 I.C.J. 14, 42-43 & 46-47, ¶¶ 55 & 66 (Apr. 20).

Statute to take account of all "relevant rules" of international law applicable between the Parties.[196] It argued that two of the Statute's articles could be interpreted to contain "referral clauses" such that obligations arising under other treaties and international agreements would fall within the Court's jurisdiction.[197] The Court rejected these arguments, holding that "whether these are rules of general international law or contained in multilateral conventions to which the two States are Parties, nevertheless has no bearing on the scope of the jurisdiction conferred on the Court under [the compromissory clause] of the 1975 Statute, which remains confined to disputes concerning the interpretation or application of the Statute."[198]

* * *

5.16 It is thus clear that the Court must determine, as a matter of law, whether Iran's claims as pleaded "do or do not fall within the provisions of the Treaty and whether, as a consequence, the dispute is one which the Court has jurisdiction *ratione materiae* to entertain."[199] These questions – and those of admissibility addressed in Chapter 6 – require resolution at a preliminary stage to avoid abuse of the Court's jurisdiction, and will not require the Court to engage with the merits of Iran's claims.

[196] *Id.* at 42-43, ¶ 55.

[197] *Id.* at 43, ¶ 56.

[198] *Id.* at 46-47, ¶ 66.

[199] *Oil Platforms*, 1996 I.C.J. at 809-810, ¶ 16 (emphasis added).

PART II: U.S. OBJECTIONS TO ADMISSIBILITY AND JURISDICTION

CHAPTER 6: U.S. OBJECTIONS TO ADMISSIBILITY

6.1 This Chapter sets forth two objections upon which the Court can and should hold Iran's Application inadmissible. The first, described in Section A, explains that Iran's attempt to found jurisdiction on the Treaty, notwithstanding the longstanding absence of normal commercial or consular relations between the Parties, constitutes in the circumstances of this case an abuse of right, which is meant not to vindicate interests protected by the Treaty but rather to embroil the Court in the Parties' broader strategic dispute. The second, addressed in Section B, details how the U.S. actions at issue in this case derive from Iran's own unclean hands – as a sponsor of terrorism and its repeated violations of counter-terrorism, weapons proliferation, and arms trafficking obligations – thus strongly counseling the Court to decline any jurisdiction it may have over Iran's claims.

Section A: The Court Should Decline to Found Jurisdiction on the Treaty of Amity in the Circumstances of the Present Case

6.2 Apart from the United States' specific objections to the Court's jurisdiction under Article XXI(2) of the Treaty,[200] the Court should decline to found jurisdiction on the Treaty of Amity in the circumstances of the present case. The activity that the Treaty was intended to govern – namely, normal and ongoing bilateral commercial and consular relations – has not existed in any meaningful sense between the United States and Iran for nearly four decades. In these circumstances, Iran's attempt to found jurisdiction on Article XXI(2) of the Treaty is disingenuous and should be rejected as an abuse of right. The integrity of the Court's judicial function compels the Court to reject Iran's reliance on the Treaty in this case. A long-running strategic dispute cannot properly be permitted to masquerade in the costume of a commercial and consular treaty case.

i. The Fundamental Conditions Underlying the Treaty of Amity No Longer Exist Between the Parties

6.3 The Treaty provides the sole basis for the Court's jurisdiction in the present case.[201]

[200] The United States' objections to the Court's jurisdiction are stated *infra*, Chapters 7-9.

[201] Article XXI(2) of the Treaty allows only for the submission of disputes arising out of the Treaty itself: "Any dispute between the High Contracting Parties as to the interpretation or application ***of the present Treaty***, not

The objective of the Treaty, as confirmed by its text and by the prior decisions of the Court, was to foster ongoing and amicable commercial and consular relations between the United States and Iran.[202] The situation that exists between the Parties today is far removed from that contemplated by the Parties in 1955 and crystallized in the text of the Treaty.

6.4 The Parties intended the Treaty to regulate and cultivate friendly "economic relations" and consular rights. The Treaty's preamble states the Parties' desire to "emphasiz[e] the friendly relations which [had] long prevailed between their peoples" and to "encourag[e] mutually beneficial trade and investments." It makes plain that the Treaty was an instrument to cement relations and put in place a basis and a means of oiling the day-to-day wheels of the "economic intercourse generally between their peoples, and of regulating consular relations."

6.5 The Parties, moreover, agreed that the commercial and consular activity contemplated in the Treaty would be predicated on a state of peace and friendly relations between Iran and the United States. Article I of the Treaty states this plainly, providing: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran."

6.6 The Treaty thus protected interests arising from a particular kind of activity – commercial and consular relations – which the parties anticipated would flow from an underlying state of persistent peace and friendship. The findings of the Court in its 1996 *Oil Platforms* judgment reinforce this conclusion. In a passage that warrants quotation at length, the Court stated as follows:

> Article I is in fact inserted . . . into a treaty of "Amity, Economic Relations and Consular Rights" whose object is, according to the terms of the Preamble, the "encouraging [of] mutually beneficial trade and investments and closer economic intercourse generally" as well as "regulating consular relations" between the two States. The Treaty regulates the conditions of residence of nationals of one of the parties on the territory of the other (Art. II), the status of companies and access to the courts and arbitration (Art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), the conditions for the purchase and sale of real property and protection of intellectual property (Art. V), the tax system (Art. VI), the system of transfers (Art. VII), customs duties and other import restrictions (Arts.

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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."

[202] *See supra* Chapter 2.

> VIII and IX), freedom of commerce and navigation (Arts. X and XI), and the rights and duties of Consuls (Arts. XII-XIX).
>
> It follows that the object and purpose of the Treaty of 1955 was not to regulate peaceful and friendly relations between the two States in a general sense. Consequently, Article I cannot be interpreted as incorporating into the Treaty all of the provisions of international law concerning such relations. Rather, by incorporating into the body of the Treaty the form of words used in Article I, ***the two States intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations and that such a development would in turn reinforce that peace and that friendship***. It follows that Article I must be regarded as fixing an objective, in the light of which the other Treaty provisions are to be interpreted and applied.[203]

6.7 The Court's conclusion in its 1996 *Oil Platforms* Judgment, issued more than 20 years ago, captures the purpose of the Treaty and the nature of the interests protected thereby. The Treaty was not intended by the Parties to govern all aspects of U.S.-Iranian relations – that is, relations "in a general sense." Rather, the Treaty addresses narrower transactional interests: investment, trade, and consular relations. Moreover, the Parties expected that this commercial and consular activity would take place on the basis of ongoing peace and friendship between the two countries.

6.8 Today, the picture could not be more different. There are no meaningful commercial or consular relations between the United States and Iran as were envisaged in the Treaty. Friendly relations between the two countries ended 38 years ago, when Iran seized and held hostage U.S. diplomats in Tehran for 444 days.[204] The rupture continued with Iran's support for terrorist acts aimed directly at the United States and its nationals.[205]

6.9 There has been no general economic intercourse between the peoples of the United States and Iran in any normal sense since then. There have been no consular relations. Both sides have adopted laws and policies aimed at curtailing, if not eliminating altogether, all normal economic intercourse and relations between the two countries and their nationals.[206]

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[203] *Oil Platforms*, 1996 I.C.J. at 813-814, ¶¶ 27-28.

[204] *See supra* Chapter 2, Sec. C.

[205] *See supra* Chapter 3.

[206] *See supra* Chapter 4.

Even in the period since the filing of Iran's Memorial in this case, Iran has announced new sanctions against U.S. companies.[207]

6.10 In short, the situation that has persisted between the Parties over the better part of four decades bears little resemblance to the relationship on which the Treaty was based. What has taken place between the Parties since 1979 is a long-running strategic dispute, which has involved matters such as Iran's support for terrorism and its destabilizing pursuit of nuclear capability and ballistic missiles. Iran may wish to regard the Treaty as a vehicle for waging this wider strategic dispute. But to permit Iran to do so in the present case would subvert the purpose of the Treaty and misappropriate the Court's judicial function.

6.11 Although the Treaty remains in force, the assertion that the compromissory clause of the Treaty is appropriately invoked to address the rupture between the United States and Iran today should be treated with considerable caution. The United States' contention, as detailed in the following sections, is that Iran's claim in the present case does not constitute a *bona fide* invocation of the Treaty, and the Court accordingly should not assume jurisdiction in this case.[208]

ii. Iran's Claims Are Abusive and Must Be Deemed Inadmissible

6.12 Iran's claims in this case constitute an abuse of the rights afforded by the Treaty, and Iran's assertion of jurisdiction based on the Treaty should therefore be rejected as inadmissible. Iran's claims are abusive in the circumstances of the present case because they subvert the purposes of the Treaty.

6.13 The principle that all treaties in force must be performed in good faith is well-established in customary international law.[209] The obligation to act in good faith entails the correlative principle – widely recognized by international tribunals – that rights shall not be

[207] *See id.* Sec. B.

[208] This objection is of necessity a case-specific determination. *See, e.g.*, *Mobil Corporation, Venezuela Holdings, B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction ¶ 177 (June 10, 2010) (US Annex 172) ("Under general international law . . ., abuse of right is to be determined in each case, taking into account all the circumstances of the case.").

[209] Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 331 ("Every treaty in force is binding upon the parties to it and must be performed by them in good faith."); *Mutual Assistance in Criminal Matters*, 2008 I.C.J. at 229, ¶ 145 (noting that exercise of a treaty right is "subject to the obligation of good faith"); *Third Report on the Law of Treaties*, Sir Humphrey Waldock, Special Rapporteur, U.N. Doc. A/CN.4/167, at pp. 5, 7-8 (1964) (US Annex 173).

abused.[210] Abuse of right occurs where, *inter alia*, a party exercises a right in a manner that is not "genuinely in pursuit of those interests which the right is destined to protect,"[211] or where a party exercises a treaty right or power for an improper purpose.[212] Where the initiation of a legal proceeding is founded on an abuse of rights, the claims in that proceeding are inadmissible.[213]

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[210] *See, e.g.*, *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, 1952 I.C.J. 176, 212 (Aug. 27) (finding that, pursuant to the Act of Algeciras, the power to set values on imported goods for customs purposes "rests with the Customs authorities, but it is a power which must be exercised reasonably and in good faith"); *Fisheries Case (United Kingdom v. Norway)*, 1951 I.C.J. 116, 141-142 (Dec. 18) (stating that "manifest abuse" may be taken into account when determining whether general principles were complied with in the determination of the baseline of territorial waters); *Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, 1926 P.C.I.J. (ser. A) No. 7, at 30 (Merits Judgment of May 25) (finding that a "misuse of" Germany's sovereign right to dispose of property in Upper Silesia pending the transfer of sovereignty "could endow any act of alienation with the character of a breach" of German's international obligations); *Free Zones of Upper Savoy and the District of Gex (France v. Switzerland)*, 1932 P.C.I.J. (ser. A/B) No. 46, at 167 (June 7) (rejecting Switzerland's argument that a treaty prohibition on customs duties in the free zones also prohibited France from charging other duties and taxes with respect to Swiss imports, but stating that a "reservation must be made as regards the case of abuses of a right"); *Mobil v. Venezuela*, ¶¶ 169-176 (US Annex 172) (collecting authorities).

[211] BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 131-32 (1953) ("It follows from th[e] interdependence of rights and obligations that rights must be reasonably exercised. The reasonable and bona fide exercise of a right implies an exercise which is genuinely in pursuit of those interests which the right is destined to protect and which is not calculated to cause any unfair prejudice to the legitimate interests of another State, whether these interests be acquired by treaty or by general international law.").

[212] *E.g.*, *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, 1997 I.C.J. 7, 78-79, ¶ 142 (Sept. 25) (stating that the principle of good faith "implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized."); *Mutual Assistance in Criminal Matters*, 2008 I.C.J. at 279, ¶ 6 (Declaration of Judge Keith) ("I now consider the reasons given by the judge in her *soit-transmis* against the principles of good faith, abuse of rights and *détournement de pouvoir*. Those principles require the State agency in question to exercise the power for the purposes for which it was conferred and without regard to improper purposes or irrelevant factors."); *Miroļubovs & autres c. Lettonie*, Req. No. 798/05, Arrêt, ¶ 62 (Eur. Ct. H.R., Dec. 15, 2009) (US Annex 174) ("La Cour considère donc que la notion d'« abus », au sens de l'article 35 § 3 de la Convention, doit être comprise dans son sens ordinaire retenu par la théorie générale du droit – à savoir le fait, par le titulaire d'un droit, de le mettre en œuvre en dehors de sa finalité d'une manière préjudiciable."); Emmanuel Gaillard, *Abuse of Process in International Arbitration*, 32 ICSID REV. 17, 36 (2017) (US Annex 175) (explaining that the "abuse of process principle could . . . allow for the dismissal of claims initiated for purposes ulterior to the resolution of a genuine dispute").

[213] *See, e.g.*, *Philip Morris Asia Ltd. v. Commonwealth of Australia*, UNCITRAL, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility ¶ 588 (Dec. 17, 2015) (US Annex 176) ("[T]he Tribunal cannot but conclude that the initiation of this arbitration constitutes an abuse of rights [in light of the claimant's opportunistic corporate restructuring]. Accordingly, the claims raised in this arbitration are inadmissible and the Tribunal is precluded from exercising jurisdiction over this dispute."); *Churchill Mining PLC & Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case Nos. ARB/12/14 & ARB/12/40, Award ¶ 528 (Dec. 6, 2016) (US Annex 177) ("[T]he general principle of good faith and the prohibition of abuse of process entail that the claims before this Tribunal cannot benefit from investment protection under the Treaties and are, consequently, deemed inadmissible."); *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, 1992 I.C.J. 240, 255, ¶ 38 (June 26) (indicating, while rejecting an objection to admissibility, that an objection could have been upheld if the applicant's conduct had amounted "to an abuse of process").

6.14 Iran's claims in this case do not concern disputes arising in the course of ordinary and friendly economic or consular activity, for the simple reason that, as noted above, such activity currently does not exist between the parties. Iran's effort to funnel the claims it seeks to pursue in the present case into the language of the Treaty thus constitutes an abuse of rights.

6.15 The claims that Iran raises in this case, by their own terms, do not concern interests arising out of the kind of activity that the Treaty was designed to protect. For instance, Iran challenges sanctions imposed by the United States, which, in concert with other U.S. and multilateral actions, target Iran's pursuit of ballistic missile capability and its support for and facilitation of terrorism, including through the provision of arms.[214] Iran also challenges various legislative measures taken by the United States under which individuals may obtain reparation for injury and death caused by acts of terrorism carried out by or with the support of State officials, employees, or agents.[215]

6.16 In this respect, Iran's claims concerning sovereign immunity are particularly egregious. Prior to initiating this claim, Iran had repeatedly *resisted* the notion that the sole provision of the Treaty that addresses sovereign immunity – the waiver of immunity contained in Article XI(4) – reaches Iran or any Iranian State entities that are not "enterprises" within the meaning of that provision.[216] And in the *Peterson* enforcement proceeding itself, Bank Markazi went so far as to argue that the Treaty of Amity was *not* a "provision of law relating to sovereign immunity."[217] Nevertheless, Iran now asserts that the Treaty *requires* the extension of "[g]enerally applicable immunities" under customary international law to Iran and Iranian entities.[218] This attempt to rewrite the Treaty to suit Iran's present needs violates basic principles of good faith[219] and serves only to demonstrate the abusive manner in which Iran seeks to manipulate the Treaty in disregard of its object and purpose.

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[214] *See supra* Chapter 4, Sec. A.

[215] *See id.*

[216] *See infra* Chapter 8, Sec. B.

[217] Brief for Defendant-Appellant Bank Markazi at 45, *Deborah Peterson, et al. v. Islamic Republic of Iran, et al.* (No. 13-2952) (2d Cir. Nov. 19, 2013) (US Annex 233).

[218] *E.g.*, Iran's Memorial, ¶ 5.44(a).

[219] *See, e.g.*, CHENG at 141 ("It is a principle of good faith that 'a man shall not be allowed to blow hot and cold—to affirm at one time and deny at another.'").

6.17 Despite Iran's efforts, the present dispute cannot be disguised as a transactional dispute that simply engages technical questions regarding the application of the Treaty to ongoing commercial or consular activity. Rather, Iran's claims concern various actions taken in the context of long-running antagonism between the parties. This dispute has nothing to do with the interests protected by the Treaty.

6.18 The Court accordingly should find that Iran's claims constitute an abuse of the rights afforded by the Treaty, and should decline to exercise jurisdiction based thereon. To find otherwise would be to rest on a fiction that the present dispute is no more than a transactional dispute between States engaged in routine commercial and economic relations. It is not.

iii. Exercising Jurisdiction in this Case Would Undermine the Integrity of the Court's Judicial Function

6.19 The integrity of the Court's judicial function compels the Court to decline to exercise jurisdiction in the circumstances of the present case. The Court has long recognized that its judicial functions must be limited by considerations of integrity and propriety.[220] In the present case, for the reasons stated above, Iran's claims are incompatible with the Court's judicial function.

6.20 In its 1963 Judgment in the *Northern Cameroons* case, the Court emphasized that the integrity of the judicial function did not oblige it to exercise jurisdiction in all cases. On the contrary, the Court observed that if adjudication on the merits "would be inconsistent with its judicial function, it should refuse to do so."[221] The Court further stated:

> It is the act of the Applicant which seises the Court but even if the Court, when seised, finds that it has jurisdiction, the Court is not compelled in every case to exercise that jurisdiction. There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court's judicial integrity.[222]

[220] *Frontier Dispute (Burkina Faso v. Niger)*, 2013 I.C.J. 44, 69, ¶ 45 (Apr. 16); *Nuclear Tests Case (New Zealand v. France)*, 1974 I.C.J. 457, 477, ¶¶ 60-61 (Dec. 20); *Nuclear Tests Case (Australia v. France)*, 1974 I.C.J. 253, 271, ¶¶ 57-58 (Dec. 20); *Northern Cameroons*, 1963 I.C.J. at 29.

[221] *Northern Cameroons*, 1963 I.C.J. at 37.

[222] *Id.* at 29.

6.21 The Court endorsed this principle more recently in its 2013 Judgment in the *Frontier Dispute (Burkina Faso/Niger)* case.[223]

6.22 In *Northern Cameroons*, the issue was the interpretation of a treaty that was no longer in force. The Treaty in the present case has not been terminated, but there should be no illusion that the Treaty can sustain the weight that Iran now seeks to place on it. It cannot. A judgment of the Court on the merits of the present case would rest on a fiction.

6.23 To exercise jurisdiction in these circumstances would do no favor to the Parties. It would not serve or enhance the Court. And it would call into question the credibility of the judicial settlement of disputes. The integrity of the Court's judicial function thus counsels that Iran's claims be held inadmissible.

* * *

6.24 For the foregoing reasons, the Court should decline to assume jurisdiction on the basis of the Treaty in the circumstances of the present case.

Section B: Iran's Unclean Hands, Soiled by Decades of Support for Terrorism and Other Destabilizing Actions in Violation of International Law, Render Its Claims Inadmissible

6.25 As established in Chapter 3, Iran has engaged for years in a persistent pattern of conduct in flagrant violation of international law. Iran's threatening conduct includes its sponsorship of terrorist acts against Americans and nationals of many other countries, including material and financial support for proxies who act on its behalf, such as the terrorist organization Hezbollah; breaches of its nuclear non-proliferation obligations and defiance of UN Security Council resolutions adopted to address those breaches; its continuing effort to obtain and put into use a ballistic missile capability; its trafficking in arms destined for terrorist organizations and financing of such organizations; and the enlistment of its financial sector to enable this conduct and conceal it from those who would otherwise seek to block such efforts.[224]

6.26 The internationally wrongful nature of Iran's behavior is indisputable. The terrorist acts attributable to Iran – through its proxies or otherwise – cannot be justified under

[223] *Frontier Dispute*, 2013 I.C.J. at 69, ¶ 45 (finding that the Court must verify whether the jurisdiction conferred on it by the Parties' special agreement "falls within the Court's judicial function," and quoting *Northern Cameroons*).

[224] *See supra* Chapters 3 & 4.

international law, which, pursuant to Security Council resolution 1373 (2001), requires States, among other things, to "[p]revent and suppress the financing of terrorist acts . . . [and to] [r]efrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts."[225] Iran also blatantly violated a multitude of UN Security Council resolutions and multilateral treaty obligations directed at its nuclear and ballistic missile programs, and illicit arms trafficking.[226]

6.27 It beggars belief that Iran now seeks to use a narrow commercial and consular treaty as a means to ask the Court to shield it from the peaceful measures taken by the United States (often in alignment with the international community) to confront Iran's systematic pattern of unlawful and destabilizing conduct. For example, Iran's central claim challenges the blocking and subsequent attachment of assets in which Iran's central bank, Bank Markazi, had an interest in the *Peterson* enforcement proceeding. But that proceeding related to funds blocked under U.S. law as part of the effort to prevent Iran from evading sanctions targeting its illicit activities and to compensate U.S. victims of the deadly bombing of the U.S. Marine barracks

[225] S.C. Res. 1373, prmbl. and ¶¶ 1-2 (US Annex 81) (reaffirming that "every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State" and deciding that all States shall "[p]revent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens"); *see also*, *e.g.*, S.C. Res. 748, U.N. Doc. S/RES/748, prmbl. (Mar. 31, 1992) (US Annex 178) (reaffirming States' duty "to refrain from organizing, instigating, assisting or participating in terrorist acts"); G.A. Res. 49/60, Measures to Eliminate International Terrorism, U.N. Doc. A/RES/49/60, prmbl. & ¶¶ 4-5 (Feb. 17, 1995) (US Annex 179) ("*Convinced* also that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is an essential element for the maintenance of international peace and security"); S.C. Res. 1189, U.N. Doc. S/RES/1189, prmbl. (Aug. 13, 1998) (US Annex 180) (noting that "suppression of acts of international terrorism is essential for the maintenance of international peace and security, and reaffirming the determination of the international community to eliminate international terrorism in all its forms and manifestations"); G.A. Res. 60/288, United Nations Global Counter-Terrorism Strategy, U.N. Doc. A/RES/60/288, Annex (Sept. 20, 2006) (US Annex 181) (resolving to undertake measures "to prevent and combat terrorism"); S.C. Res. 2253, U.N. Doc. S/RES/2253, prmbl. (Dec. 17, 2015) (US Annex 182) ("Recognizing the need to take measures to prevent and suppress the financing of terrorism . . . even in the absence of a link to a specific terrorist act"); International Convention for the Suppression of Terrorist Bombings (Dec. 15, 1997), 2149 U.N.T.S. 256 (US Annex 183) (entering into force in 2001, this treaty has 170 Parties, including the United States, but not Iran); International Convention for the Suppression of the Financing of Terrorism (Dec. 9, 1999), 2178 U.N.T.S. 197 (US Annex 184) (entering into force in 2002, there are 188 Parties, including the United States, but not Iran).

[226] *See* Treaty on the Non-Proliferation of Nuclear Weapons (July 1, 1968), 729 U.N.T.S. 168 (US Annex 185) (entered into force on March 5, 1970; broadly requires non-nuclear weapon States Party to that treaty, like Iran, to accept IAEA safeguards on their nuclear material to prevent diversion of nuclear energy from peaceful uses to nuclear weapons, among other things). *See also supra* Chapter 4, Sec. A (setting forth the various UN Security Council resolutions enacted to deter Iran's nuclear and ballistic missile programs, as well as impose on it certain arms trafficking obligations). While it may be true that the UN Security Council's consideration of the issue of Iran's nuclear program (and related violations of international law) is now informed by the JCPOA – only after years of sanctions brought Iran to the negotiating table – the U.S. measures taken to address those violations in line with UN Security Council mandates must be viewed in the context of the time in which they were taken. Moreover, other Iranian conduct – such as its ballistic missile program and arms trafficking, left unaddressed by the JCPOA – continue to constitute a threat.

in Beirut in 1983. This is the very same terrorist attack that was the subject of boastful speeches by senior Iranian government officials celebrating Iran's responsibility for the deaths of hundreds of U.S. nationals.[227]

6.28 In short, Iran comes to the Court with unclean hands and asks the Court to rule on U.S. measures, while ignoring Iran's own conduct giving rise to those measures. In such circumstances, the Court should refuse to entertain Iran's claims on the merits in this case. Iran's claims against the United States – which derive from Iran's own violations of international law – are unsuitable for adjudication by the Court.

6.29 This section is comprised of two parts. Part (i) sets forth the legal basis for the objection to admissibility of Iran's Application under well-established general principles of law forming the "clean hands" doctrine. Part (ii) applies those general principles in the context of Iran's illicit conduct, described in Chapter 3, and the U.S. measures taken in response, described in Chapter 4.

i. General Principles of Law Provide a Basis to Decline to Examine Iran's Claims on the Merits

6.30 General principles of law,[228] grounded in equity and the requirement of good faith, should lead the Court to decline to review Iran's claims on the merits.[229] To do otherwise would be to reward Iran's internationally wrongful conduct, as a consequence of which the United States took the very measures that Iran complains of now. These general principles, making up the "clean hands" doctrine, have been expressed in a variety of ways, including *nullus commodum capere de sua injuria propria* ("no one can be allowed to take advantage of his own wrong") (hereinafter *nullus commodum*) and *ex delicto non oritur actio* ("an

[227] *See supra* Chapter 3.

[228] The Court is empowered to, and "shall apply: . . . the general principles of law recognized by civilized nations." Statute of the International Court of Justice, art. 38.

[229] *See Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, 1998 I.C.J. 275, 296, ¶ 38 (June 11) ("the principle of good faith is a well-established principle of international law"); *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, 1993 I.C.J. 38, 191 (June 14, 1993) (Separate Opinion of Judge Shahabuddeen) ("Equity itself being part of the law, there is no question either of equity correcting law or law correcting equity."); Margaret White, *Equity – A General Principle of Law Recognised by Civilised Nations?*, 4 QUEENSLAND U. TECH. L. & JUST. J. 103, 109 (2004) (US Annex 186) ("The general understanding of the drafters of Article 38 appears to have been that . . . particular equitable principles, as recognised within the various legal systems of the world, might play a role as 'general principles' of international law.").

unlawful act cannot serve as the basis of an action") (hereinafter *ex delicto*).[230] The premise of these principles – that even a claimant seeking relief for purportedly unlawful actions may be barred from obtaining that relief where those actions resulted from the claimant's own wrongful conduct[231] – has been recognized by members of the Court, in the practice of States, and by many highly regarded scholars.

6.31 Members of the Court have on several occasions confirmed the general principle that a Party should not be permitted to benefit from its own wrong. For example, Judge Ajibola, in his separate opinion in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, asserted that "an applicant who 'wants equity must do equity' implying that the applicant 'must come with clean hands.'"[232] And notably, in evaluating the conduct of Iran and the United States under the Treaty of Amity in *Oil Platforms*, the Court did not rule out the possibility of finding – had circumstances been different – that Iran's

[230] Similar principles include *ex injuria . . ., ex turpi . . ., ex malo . . .,* and *ex dolo malo non oritur actio* (i.e., "a wrong . . ., an immoral act . . ., a bad act . . ., a fraud cannot serve as the basis of an action"); *inadimplenti non est adimplendum* ("he who seeks equity must do equity"); and "he who comes for relief must come with clean hands." *See, e.g.*, Gerald G. Fitzmaurice, *The General Principles of International Law Considered from the Standpoint of the Rule of Law*, 92 COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW 1, 117-119 (1957); CHENG at 149-158. The late Judge Anzilotti called the principle *inadimplenti non est adimplendum* "so just, so equitable, so universally recognized, that it must be applied in international relations also . . . It is one of these 'general principles of law recognized by civilized nations' which the Court applies in virtue of Article 38 of its Statute." *Diversion of Water from the River Meuse (Belgium v. Netherlands)*, 1937 P.C.I.J. (ser. A/B) No. 70, at 50 (June 28) (Dissenting Opinion of Judge Anzilotti).

[231] *See Gabčíkovo-Nagymaros Project*, 1997 I.C.J. at 67, ¶ 110 (stating that the Court could not "overlook" that Czechoslovakia's act was "a result of Hungary's own prior wrongful conduct," and finding that "Hungary, by its own conduct, had prejudiced its right to terminate the Treaty") (citing *Factory at Chorzów (Germany v. Poland)*, 1927 P.C.I.J. (ser. A) No. 9, at 31 (Judgment on Jurisdiction of July 26) (adopting related clean hands principle in finding a Party could not avail itself of the other Party's failure to fulfill an obligation where it had caused that Party, through some illegal act, to be unable to fulfill it)). Both cases stand for the more general proposition that a Party will not be permitted under international law to object to actions that were undertaken in direct response to its own internationally wrongful conduct.

[232] *Application of the Convention and Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, 1993 I.C.J. 325, 395 (Order on Further Requests for the Indication of Provisional Measures of Sept. 13) (Separate Opinion of Judge Ajibola); *see also Legal Status of Eastern Greenland (Denmark v. Norway)*, 1933 P.C.I.J. (ser. A/B) No. 53, at 95 (Apr. 5) (Dissenting Opinion of Judge Anzilotti) (stating that "an unlawful act cannot serve as the basis for an action at law."). Other members of the Court have expressed similar views. For example, Judge Read declared in his dissenting opinion in *Interpretation of Peace Treaties* that "in any proceeding which recognized the principles of justice," no state would be allowed to "profit from its own wrong." *Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania*, Advisory Opinion (Second Phase), 1950 I.C.J. 221, 244 (July 18) (Dissenting Opinion of Judge Read). Likewise, Judge Schwebel asserted in dissent in *Military and Paramilitary Activities* that Nicaragua's illegal conduct should have barred it from complaining about corresponding illegalities alleged to have been committed by the United States, "especially because, if these were illegalities, they were consequential on or were embarked upon in order to counter Nicaragua's own illegality[.]" *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, 1986 I.C.J. 14, 394, ¶ 272 (Merits Judgment of June 27) (Dissenting Opinion of Judge Schwebel). The Court declined to address the question of the clean hands doctrine in that case, after finding that the facts as adduced would not support its application.

claims should be rejected because the actions of the United States had been the consequence of Iran's own unlawful conduct.[233]

6.32 The practice of States similarly supports the continuing vitality of these general principles of law and equity, as States continue to invoke forms of the "clean hands" doctrine in a variety of circumstances.[234] The *Legality of Use of Force* cases provide a good example of this, in which several States asserted a clean hands argument, often explicitly as an objection to admissibility, both in the context of Yugoslavia's request for provisional measures and in later preliminary objections to Yugoslavia's application.[235] Iran itself has relied on the doctrine before the Iran-U.S. Claims Tribunal, calling it a "universal, equitable doctrine . . . which is supported by a vast and diverse body of international legal literature, State practice and international case law."[236]

6.33 The clean hands doctrine has also been recognized widely by scholars.[237] Edwin

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[233] *See Oil Platforms*, 2003 I.C.J. at 177, ¶ 29.

[234] *See, e.g.*, Preliminary Objections of the Kingdom of Belgium (July 5, 2000), ¶¶ 481-483, *Legality of Use of Force (Serbia and Montenegro v. Belgium)* (in which Belgium argued that since "[Yugoslavia] has acted, and continues to act, in bad faith . . . [its] application must be considered inadmissible"); Verbatim Record of the Public Sitting of the I.C.J. Held on May 11, 1999, at 23, ¶ 3.17, *Legality of Use of Force (Yugoslavia v. United States)* (United States argued that provisional measures would be inappropriate because Yugoslavia "does not come to the Court with clean hands"); Verbatim Record of the Public Sitting of the I.C.J. Held on May 11, 1999, at 15-16, ¶ 24, *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)* (in which the United Kingdom argued that the clean hands doctrine is "deeply rooted in the essential nature of the judicial function" and "should be regarded as a 'general principle of law' within the meaning of Article 38 of the Statute"); Verbatim Record of the Public Sitting of the I.C.J. Held on May 11, 1999, at 11, ¶ 3.1.4, *Legality of Use of Force (Serbia and Montenegro v. Portugal)* (in which Portugal argued that "[b]earing in mind the 'clean hands' criterion, the request of the Federal Republic of Yugoslavia is not legitimate" since the facts at the origin of Yugoslavia's request were caused by Yugoslavia's "illicit conduct"); Verbatim Record of the Public Sitting of the I.C.J. Held on May 11, 1999, at 15-16, ¶¶ 44, 48(d), *Legality of Use of Force (Serbia and Montenegro v. Netherlands)* (The Netherlands asserted the Court should deny Yugoslavia's request because of Yugoslavia's "extremely dirty hands"); Verbatim Record of the Public Sitting of the I.C.J. Held on May 11, 1999, at 10, ¶ 1.6, *Legality of Use of Force (Serbia and Montenegro v. Germany)* (Germany argues that Yugoslavia "does not come to the Court with 'clean hands'"); Verbatim Record of the Public Sitting of the I.C.J. Held on May 10, 1999, at 7, ¶ 5, *Legality of Use of Force (Serbia and Montenegro v. Canada)* (same for Canada).

[235] *See id.*

[236] *Aryeh v. Iran*, Case Nos. 842, 843 & 844, Respondent's Hearing Memorial and Written Evidence, Vol. III, (Mar. 23, 1993) (Doc. 80), Exhibit C, p. 44 (Iran-U.S. Claims Tribunal) (US Annex 187). *See also Mohtadi v. Iran*, Case No. 271, Award No. 573-271-3 (Dec. 2, 1996), 32 IRAN-U.S. CL. TRIB. REP. 124, 134 (US Annex 188) (noting that Iran had raised clean hands as a reason to dismiss a claim); *Karubian v. Iran*, Case No. 419, Award No. 569-419-2 (Mar. 6, 1996), 32 IRAN-U.S. CL. TRIB. REP. 3, 36 (US Annex 189) (asserting that claims were barred by clean hands doctrine, among other things).

[237] *See, e.g.*, Fitzmaurice at 119; CHENG at 149-58 (surveying the application of *nullus commodum* and *ex delicto*); CHRISTOPHER R. ROSSI, EQUITY AND INTERNATIONAL LAW: A LEGAL REALIST APPROACH TO INTERNATIONAL DECISION MAKING 164-65 (1993); C. WILFRED JENKS, THE PROSPECTS OF INTERNATIONAL ADJUDICATION 412-14 (1964); Stephen M. Schwebel, *Clean Hands in the Court*, 31 STUD. TRANSNAT'L LEGAL POL'Y 74, 74 (1999) (US Annex 244). Notably, the UN Special Rapporteur on State Responsibility, James Crawford, found "no basis for including the clean hands doctrine as a new circumstance precluding

Borchard wrote in 1915 that "it is an established maxim of all law, municipal and international, that no one can profit by his own wrong, and that a plaintiff or a claimant must come into the court with clean hands."[238] Sir Gerald Fitzmaurice observed in 1957 that "a State which is guilty of illegal conduct may be deprived of the necessary *locus standi in judicio* for complaining of corresponding illegalities on the part of other States, especially if these were consequential on or were embarked upon in order to counter its own illegality – in short were provoked by it."[239] Bin Cheng, in his 1953 treatise on general principles applied by international courts and tribunals, noted that the principle *ex delicto* is "generally upheld by international tribunals."[240] And international tribunals other than the Court have also applied the clean hands doctrine, in some form, since at least the mid-nineteenth century.[241]

ii. Iran's Sponsorship of Terrorism and Other Destabilizing Conduct Should Cause the Court to Decline to Hear Iran's Claims

6.34 Applying the general principles of law described above to this case, the Court should find Iran's Application inadmissible and refuse as a preliminary matter to entertain Iran's claims. Unlike in *Oil Platforms*,[242] the Court need not engage in a review of the merits of this case to reach a judgment about the appropriate legal consequences of Iran's conduct. The

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wrongfulness." *Second Report on State Responsibility, Mr. James Crawford, Special Rapporteur*, [1999] 2 Y.B. INT'L L. COMM'N 3, 83, U.N. Doc. A/CN.4/SER.A/1999/Add.1 (Part 1) (US Annex 190). In reaching this conclusion, Professor Crawford reasoned that the concept of clean hands related to "such procedural questions as *locus standi* or the admissibility of claims," which were not addressed in detail by the Draft Articles. *Id.* In commentaries to the Articles, the ILC further explained that "[t]he principle that a State may not benefit from its own wrongful act is capable of generating consequences in the field of State responsibility but it is rather a general principle than a specific circumstance precluding wrongfulness." *Report of the International Law Commission on the Work of Its Fifty-Third Session*, [2001] 2 Y.B. INT'L L. COMM'N 1, 72, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2) (US Annex 191).

[238] EDWIN BORCHARD, DIPLOMATIC PROTECTION OF CITIZENS ABROAD 713 (1915).

[239] Fitzmaurice at 119.

[240] CHENG at 155. Among other things, Bin Cheng cites *The Montijo Case* for the proposition that "no one can be allowed to take advantage of his own wrong." *Id.* at 149, citing 2 MOORE INT'L ARB. 1421, 1437 (1875).

[241] *See, e.g., Plama Consortium Ltd. v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award ¶¶ 142-46 (Aug. 27, 2008) (US Annex 192) (relying on the principle of good faith and the "clean hands" principles *ex turpi causa non oritur actio* and *nemo auditur propriam turpitudinem allegans* ("nobody can benefit from his own wrong") to bar an investor's claim as a result of its bad acts); *Tippetts et al. v. Iran et al.*, Case No. 7, Award No. 141-7-2 (June 22, 1984), 6 IRAN-U.S. CL. TRIB. REP. 219, 228 (US Annex 194) (recognizing the principle of *nullus commodum*) (citing CHENG at 149); *The Medea* and *The Good Return Cases* (1865), 2 MOORE INT'L ARB. 1572, 1573 (because the claims "arose out of a transaction" – acts of piracy – "in which [the claimants] violated the laws of the United States [and] disregarded solemn treaty obligations," claimants forfeited their standing as U.S. citizens before the claims commissioners).

[242] *See Oil Platforms*, 2003 I.C.J. at 177-178, ¶¶ 29-30 (deciding that it could not make the findings sought by the United States without delving into the merits of the case).

Court may – for the sole purpose of this preliminary "unclean hands" determination – accept as true Iran's allegations as to the measures taken by the United States. It need only review the abundant evidence of Iran's misconduct to find that the U.S. measures are insulated from judicial scrutiny under the Treaty of Amity because they represent the United States' attempt to respond peacefully to Iran's repeated unlawful actions.

6.35 Contrary to Iran's suggestion in its Memorial, its unlawful actions are established by far more than "mere allegation[s] of involvement by Iran in alleged terrorist acts"[243] and do not reflect simply the unilateral findings of the United States. Rather, evidence from a multiplicity of sources – documented in the materials annexed to this Memorial – establishes Iran's sponsorship of, and support for, terrorist acts, including through proxies such as Hezbollah, as well as its repeated violations of UN Security Council resolutions aimed at Iran's nuclear and ballistic missile programs and illicit arms trafficking.[244] The United States' position is fully consistent with, and supported by, the detailed judicial proceedings in the *Mykonos* case in Germany, and the conclusions reached by organs of the UN, the EU, and others as to Iran's sponsorship of terrorism, which has resulted in terrorist bombings such as the one in Beirut in 1983 that killed some 241 U.S. peacekeepers, the assassinations of Iranian political dissidents and others in foreign countries, kidnappings, airplane hijackings, and other violent acts aimed at the United States, its nationals, and others.[245]

6.36 The evidence of Iran's internationally unlawful conduct makes plain the threat to the international community that Iran's actions have posed over the last three-plus decades – a threat that continues to exist today.[246] Recognizing that threat, and the specific threat to itself and its nationals, the United States has taken a series of progressive measures intended to counteract Iran's actions and deter it from continuing on the course of conduct it has undertaken.[247] The United States' right to invoke such measures as a means to peacefully address Iran's terroristic foreign policy must be viewed through the prism of Iran's persistent (and dangerous) refusal to conduct itself in accordance with international law.

[243] Iran's Memorial ¶ 5.44(f).

[244] *See supra* Chapters 3 & 4.

[245] *See supra* Chapter 3.

[246] *See supra* Chapters 3 & 4.

[247] *See supra* Chapter 4, Sec. A.

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6.37 In his well-known opinion in *Diversion of Water from the River Meuse*, Judge Hudson acknowledged the Court's "freedom to consider principles of equity as part of the international law it must apply," and in doing so highlighted an "important principle of equity" representative of the clean hands doctrine.[248] The opinion stressed, however, the need to make only "sparing application" of this general principle.[249] The United States concurs in this assessment. And "[y]et, in a proper case, and with scrupulous regard for the limitations which are necessary, *a tribunal bound by international law ought not to shrink from applying a principle of such obvious fairness*."[250]

6.38 The United States submits that this case presents exactly the sort of exceptional circumstances for which the clean hands doctrine was intended. It is difficult to fathom a more extraordinary set of circumstances – in which a State that has sponsored terrorist attacks and financed and supported terrorist organizations since at least 1983, and continues to be regarded by its neighbors, the UN Security Council, and the broader international community as a serial violator of international law, seeks to pursue claims before the Court alleging that peaceful measures taken to respond to its own violations entitle it to reparations. Iran's claims, which derive directly from its own violations of international law, should therefore be deemed inadmissible.[251]

[248] *Diversion of Water from the River Meuse (Netherlands v. Belgium)*, 1937 P.C.I.J. (ser. A/B), No. 70, at 77 (June 28) (Individual Opinion of Judge Hudson) (addresses the circumstance where two Parties, having "assumed an identical or reciprocal obligation," and where one Party seeks to take advantage of the non-performance of the other despite its own non-performance of the same obligation). While these are not precisely the circumstances of this case, Judge Hudson's opinion stands in support of the clean hands doctrine more broadly, such as expressed in the Latin maxims *nullus commodum capere de sua injuria propria* and *ex delicto non oritur actio* referenced above.

[249] *Id.*

[250] *Id.* (emphasis added).

[251] Should the Court decide not to uphold, or otherwise withhold judgment on, this preliminary objection to the admissibility of Iran's Application, the United States reserves its right to raise these arguments again with respect to the merits or to any reparation to which Iran asserts it is entitled.

CHAPTER 7: MEASURES COVERED BY ARTICLE XX OF THE TREATY OF AMITY FALL OUTSIDE THE JURISDICTION OF THE COURT

7.1 Although Iran's claims in this case largely concern U.S. measures relating to terrorism-related litigation in U.S. courts, Iran also challenges Executive Order 13599.[252] That Order blocks (or "freezes") the property and interests in property of the Government of Iran and Iranian financial institutions when such assets are subject to the United States' jurisdiction. Iran claims that Executive Order 13599 breaches several provisions of the Treaty,[253] but it is evident as a threshold matter that the Executive Order is outside the scope of the Treaty by the Treaty's own terms.

7.2 As part of the United States' sanctions program, Executive Order 13599 works in conjunction with other U.S. and international sanctions and regulations that together address a wide range of Iranian illicit activities, including arms trafficking, support for international terrorism, and the pursuit of ballistic missile capabilities. Executive Order 13599 is thus outside the scope of the Treaty of Amity by virtue of Article XX(1)(c) and (d), which supply general exclusions for measures regulating the production and trafficking of arms and military supplies and for measures protecting essential security interests.

7.3 Article XX(1) of the Treaty provides:

> The present Treaty shall not preclude the application of measures:
>
> (a) regulating the importation or exportation of gold or silver;
>
> (b) relating to fissionable materials, the radio-active by-products thereof, or the sources thereof;
>
> (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.

7.4 First, as discussed in Section A and as the *chapeau* text makes plain, any measure covered by any one of the subsections of Article XX(1) is excluded from the ambit of the Treaty, and hence from the Court's jurisdiction. Second, as discussed in Section B, Article

[252] Executive Order 13599, Feb. 5, 2012, 77 Fed. Reg. 6659 (IM Annex 22). Executive Order 13599 is the only U.S. blocking measure specifically referenced in Iran's Memorial.

[253] *See* Iran's Memorial, ¶¶ 4.29, 5.12-5.14, 6.5-6.9, 6.19.

XX(1)(c) applies to Executive Order 13599 because the Order addresses Iran's evasion of U.S. and international sanctions targeting its support for terrorism, arms trafficking to militant and terrorist groups, and pursuit of ballistic missile capabilities. Third, as discussed in Section C, Article XX(1)(d) also applies to Executive Order 13599, because the Order is necessary to protect the United States' essential security interests in (1) preventing and deterring terrorism and the financing and arming of terrorist groups; and (2) preventing the advancement of Iranian ballistic missile capabilities.

Section A: The Exceptions in Article XX(1) Exclude Qualifying Measures from the Court's Jurisdiction

7.5 Article XX(1) states that "[t]he present Treaty shall not preclude the application of" covered measures, thus placing such measures outside the scope of the Treaty. Therefore, once Article XX(1) is determined to apply to a given measure, there can be no further dispute as to the "interpretation or application" of any other Treaty provisions with respect to that measure. Accordingly, where Article XX(1) is invoked, the Court's jurisdiction is limited to deciding, as an initial matter, whether the exclusions therein apply to the challenged measure.[254] If the answer is affirmative, jurisdiction ceases to exist with respect to any claims predicated on the excluded measures.

7.6 In the *Oil Platforms* case, the United States left the invocation of the Article XX(1)(d) "essential security" clause to the merits phase,[255] but did so without conceding that this was the only proper way to plead the provision (*i.e.*, that Article XX(1)(d) could never pose a jurisdictional question). In fact, the United States took care *not* to make such a categorical

[254] *Accord, e.g., EnCana Corp. v. Republic of Ecuador*, UNCITRAL, LCIA Case No. UN3481, Award ¶¶ 140-149 (Feb. 3, 2006) (US Annex 195) (excluding as outside the scope of the treaty and hence outside the tribunal's jurisdiction a claim arising out of a measure to which a similarly worded exception in the relevant treaty applied).

[255] Verbatim Record of the Public Sitting of the I.C.J. Held on Sept. 17, 1996, at 32-33, *Oil Platforms (Iran v. United States)* (Mr. Crook for the United States). In *Oil Platforms*, the United States made a broader preliminary objection to the effect that the *entire subject matter* of the dispute was outside the Treaty's scope, because "the 1955 Treaty does not regulate the conduct of military hostilities, and therefore, that such conduct should never – never – be the subject of any merits proceedings in this Court under the Treaty." Verbatim Record of the Public Sitting of the I.C.J. Held on Sept. 23, 1996, at 35-36, *Oil Platforms (Iran v. United States)* (Mr. Crook for the United States). The United States cited Article XX(1)(d) as evidence that the Parties intended security matters such as the use of force to fall outside the Treaty: the United States' "preliminary objection suggested that, as a jurisdictional matter, [the essential security] provision helped to show that Articles I, IV, and X, those invoked by Iran, were not designed or intended to govern Iran's claims regarding the use of force. This is because Article XX(1)(d) manifested the parties' intent to keep such matters outside the scope of the Treaty. We believe that jurisdictional point remains valid." Verbatim Record of the Public Sitting of the I.C.J. Held on Sept. 17, 1996, at 32-33, *Oil Platforms (Iran v. United States)* (Mr. Crook for the United States).

claim, arguing that essential security "neither authorizes nor disallows any particular measure that is necessary to protect a Party's essential security interest," but rather "*removes* such measures from the scope, operation and application of the Treaty."[256]

7.7 Here, the Court need make no findings going to the merits of Iran's claims in order to hold that Executive Order 13599 is excluded under Article XX(1).[257] As the Court held in its *Oil Platforms* Preliminary Objections Judgment, Article XX(1)(d) of the Treaty

> could be interpreted as excluding certain measures from the actual scope of the Treaty and, consequently, as excluding the jurisdiction of the Court to test the lawfulness of such measures.[258]

The Court in *Oil Platforms* went on to note that it had treated a substantively identical clause in the *Nicaragua* case as affording a defense on the merits, and that the United States was content to leave the issue to the merits phase in the case before it. The Court "accordingly [took] the view" that the provision "does not restrict its jurisdiction *in the present case*, but is confined to affording the Parties a possible defence on the merits to be used should the occasion arise."[259]

7.8 The earlier *Nicaragua* Merits Judgment similarly did not bar consideration of the equivalent clause as a jurisdictional objection. The Court in that case did not explicitly engage with the question of whether a measure, once found to fall within an exception, could be excluded from the Court's jurisdiction. Rather, the Court held that it had jurisdiction to determine *whether the exceptions article applied* to the challenged measures.[260]

7.9 In light of the above, the Court may consider a preliminary jurisdictional objection based on Article XX(1) in this case. Moreover, even were Article XX(1) found not to afford a *jurisdictional* objection, this would not bar the Court from considering an objection under the article as a *preliminary* matter. Article 79(1) of the Rules refers to the submission of "[a]ny objection by the respondent to the jurisdiction of the Court or to the admissibility of the

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[256] Rejoinder Submitted by the United States of America (Mar. 23, 2001), ¶ 4.02, *Oil Platforms (Iran v. United States)*.

[257] This is particularly so with regard to Article XX(1)(c) (which was not invoked in *Oil Platforms*), as to which the Court need only make a finding that the Executive Order was a measure regulating arms production, arms trafficking, or military supply, without considering any of the facts that Iran has alleged as the basis for its claims.

[258] *Oil Platforms*, 1996 I.C.J. at 811, ¶ 20.

[259] *Id.* (emphasis added).

[260] *Military and Paramilitary Activities*, 1986 I.C.J. at 116, ¶ 222.

application, *or other objection the decision upon which is requested before any further proceedings on the merits*." As a successful invocation of Article XX(1) would remove any need for the Court to further consider the measures excluded under the article, the Court should decide the question before proceeding to any merits phase, whether or not it ultimately considers the question to be jurisdictional in nature. Given that a decision on the issue will not require the Court to engage with the merits of Iran's claims, it is suitable for decision now, as a preliminary matter, without joinder to the merits.

Section B: Executive Order 13599 Is Excluded from the Treaty Pursuant to Article XX(1)(c) as a Measure Regulating Arms Production, Arms Trafficking, and Military Supplies

7.10 Executive Order 13599 is excluded from the scope of the Treaty pursuant to Article XX(1)(c). Subsection (c) supplies a general exclusion for any measures "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." This exclusion applies to Executive Order 13599 because the Order was imposed to address Iran's evasion of U.S. and international sanctions relating to its development of ballistic missiles and its provision of arms and other support to militant and terrorist groups.

7.11 Iran's pursuit of ballistic missile capabilities is by now well-documented. At the time of Executive Order 13599, it was widely known that Iran was developing ballistic missiles in violation of multiple resolutions of the UN Security Council.[261] For example, at a meeting of the UN Security Council, the representative from France stated, "[t]he facts are overwhelming; there is no room for doubt . . . Iran has developed a programme for missiles capable of carrying nuclear warheads."[262] UN Security Council resolution 2231 (endorsing the JCPOA) specifically called upon Iran to refrain from undertaking any activity related to

[261] *See supra* Chapter 3, Sec. D & Chapter 4, Sec. A. *See also, e.g.*, S.C. Res. 1929, ¶¶ 1, 9 (US Annex 110); 76 Fed. Reg. at 72758 (US Annex 152) (Annex 152) ("Iran also continues to defy the international community by pursuing nuclear capabilities and *developing ballistic missiles* in violation of seven UNSCRs." (emphasis added)).

[262] UNSC, 6335th Mtg., U.N. Doc. S/PV.6335, at p. 7 (June 9, 2010) (US Annex 196) (statement of France) (also noting that "Iran has worked on advanced military studies that are the missing link between enrichment and the ballistic missile programme, in particular on building a delivery vehicle in which a nuclear warhead can be placed . . . .").

ballistic missiles capable of delivering nuclear weapons.[263] Nevertheless, Iran today persists in developing and testing ballistic missiles.[264] Reflective of the serious concerns over Iran's pursuit of ballistic missiles, the United States continues to impose sanctions relating to Iran's ballistic missile program.[265]

7.12 Iran also has a longstanding history of supplying arms and other support to militant and terrorist groups abroad.[266] Iran has routinely provided arms and ammunition, as well as funding and training, to a number of terrorist or militant organizations, including the Taliban, Hezbollah, Hamas, Palestinian Islamic Jihad, and, more recently, the Houthis in Yemen.[267] Iran's arms trafficking activities are undertaken in violation of binding resolutions of the UN Security Council, which since 2007 has sharply restricted all sales or transfers of conventional arms by the Iranian government and Iranian nationals.[268]

7.13 In particular, Iran relies on the IRGC-QF – a branch of the Iranian Revolutionary Guards Corps and an element of the Iranian military establishment – to cultivate and support terrorist and militant groups abroad.[269] The United States has blocked the assets of the IRGC-QF pursuant to Executive Order 13224, one of its terrorism-related sanctions authorities,

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[263] *See, e.g.*, S.C. Res. 2231, ¶ 7 & Annex B, ¶ 3 (US Annex 122) (calling upon Iran "not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons"). *See also id.*, ¶ 7 & Annex B ¶ 4 (requiring States to obtain the UN Security Council's permission "in advance on a case-by-case basis" before providing to Iran items, materials, equipment, goods and technology listed in the Missile Control Technology Regime, and any other items "that the State determines could contribute to the development of nuclear weapon delivery systems").

[264] *See supra* Chapter 3, Sec. D.

[265] *See supra* ¶ 4.14.

[266] *See supra* Chapter 3, Secs. C & D.

[267] *See, e.g.*, 76 Fed. Reg. at 72757-72758 (US Annex 152) ("Iran remains the most active of the listed state sponsors of terrorism, routinely providing substantial resources and guidance to multiple terrorist organizations. Iran has provided *extensive funding, training, and weaponry to Palestinian terrorist groups,* including Hamas and the Palestinian Islamic Jihad ("PIJ"). . . . The Qods Force [of the Islamic Revolutionary Guards Corps] reportedly has been active in the Levant, where it has a long history of supporting [Hezbollah's] military, paramilitary, and terrorist activities, and provides [Hezbollah] with as much as $200 million in funding per year. Additionally, the Qods Force provides the Taliban with *weapons, funding, logistics, and training* in support of anti-U.S. and anti-coalition activity. Information dating from at least 2006 indicates that Iran has arranged *frequent shipments to the Taliban of small arms and associated ammunition, rocket propelled grenades, mortar rounds, 107 mm rockets, and plastic explosives*." (emphasis added)). *See also supra* Chapter 4, Sec. A.

[268] *See, e.g.*, S.C. Res. 2231, ¶ 7 & Annex B, ¶ 6(b) (US Annex 122) (providing that all States are to "[t]ake the necessary measures to prevent, except as decided otherwise by the UN Security Council in advance on a case-by-case basis, the supply, sale, or transfer of arms or related materiel from Iran by their nationals or using their flag vessels or aircraft, and whether or not originating in the territory of Iran," for a specified period) (Annex 122); S.C. Res. 1747, ¶ 5 (US Annex 101) (deciding "that Iran shall not supply, sell or transfer directly or indirectly . . . any arms or related material, and that all States shall prohibit the procurement of such items from Iran ").

[269] *See, e.g.*, 76 Fed. Reg. at 72757-72758 (Annex 152).

since 2007, in response to the unit's provision of support, including frequent arms shipments, to the Taliban, Hezbollah, and other terrorist or militant organizations.[270] Just before the adoption of Executive Order 13599, the U.S. Treasury Department noted that the IRGC and the IRGC-QF nonetheless continued to use deceptive financial practices to evade sanctions, engaging "in seemingly legitimate activities that provide cover for intelligence operations and support terrorist groups such as [Hezbollah], Hamas, and the Taliban."[271]

7.14 Executive Order 13599 builds on and complements earlier international and U.S. sanctions addressing these illicit activities.[272] Prior to Executive Order 13599, these measures included requirements to block the assets of specific Iranian agencies, institutions, and individuals that engaged in or supported terrorism or Iran's ballistic missile program.[273] The United States has long used blocking measures as a means to deter illicit conduct,[274] and the UN Security Council has both required States to apply asset freezing measures in a number of circumstances and recognized in various contexts that asset freezes are a "significant tool" for combatting activity that it has determined constitutes a threat to international peace and security.[275]

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[270] U.S. Treasury Dep't Oct. 25, 2007 Fact Sheet (US Annex 147); *see also* S.C. Res. 1747 (Annex 101) (imposing sanctions on the commander of the IRGC-QF).

[271] 76 Fed. Reg. at 72762 (Annex 152).

[272] *See supra* Chapter 4, Sec. A. In particular, Executive Order 13599 refers to the earlier Executive Order 12957, declaring a national emergency with respect to Iran. That Order was issued "in response to actions and policies of the Government of Iran, including support for international terrorism, efforts to undermine the Middle East peace process, and the acquisition of weapons of mass destruction and the means to deliver them." President William J. Clinton, *Message to the Congress on Iran*, 34 WEEKLY COMP. PRES. DOCS. 446 (Mar. 16, 1998) (US Annex 193).

[273] *See, e.g.*, Executive Order 13224 (US Annex 134) (blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism); Executive Order 13382, 70 Fed. Reg. 38567 (June 28, 2005) (US Annex 197) (blocking property of those who engage in or support proliferation of "weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons)"). The UN Security Council also imposed asset freezes relating to these activities. *See, e.g.*, S.C. Res. 1737, ¶ 12 (US Annex 100) (deciding that "all States shall freeze the funds, other financial assets and economic resources . . . that are owned or controlled" by designated persons and entities involved in the nuclear and ballistic missile program); S.C. Res. 1747 (US Annex 101) (adding additional entities and persons, including IRGC affiliates, to the list of sanctioned persons); S.C. Res. 1803 (US Annex 102) (further intensifying sanctions); S.C. Res. 1929 (US Annex 110) (similar); S.C. Res. 2231, ¶ 7(b) & Annex B ¶ 6(c) (US Annex 122) (deciding that, for a period of time following adoption of the JCPOA, all States shall continue asset freezes of certain designated individuals and entities).

[274] *See, e.g.*, Szubin Testimony (US Annex 156) (explaining that, following the JCPOA, the United States would maintain and vigorously enforce longstanding sanctions targeting, *inter alia*, Iran's support for terrorist groups, Iran's missile program, and the Iranian Revolutionary Guards Corps).

[275] *E.g.*, S.C. Res. 1373, ¶ 1 (US Annex 81) (requiring States to "freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons;

7.15 In the period leading up to Executive Order 13599, the international community's sanctions on Iran became increasingly strict in response to Iran's intransigence, and Iran increased its efforts to evade detection using complex financial transactions and front companies to mask its unlawful activities. The U.S. Treasury Department in November 2011 found that Iran was relying on an array of agencies, instrumentalities, and financial institutions to evade sanctions and to further its support for terrorism abroad and its pursuit of ballistic missiles domestically.[276] These entities included a number of well-known Iranian financial institutions, such as Bank Sepah,[277] Bank Melli,[278] Bank Mellat,[279] Bank Saderat,[280] and the Central Bank of Iran (Bank Markazi),[281] among others.[282] The UN Security Council also recognized that Iranian banks were being used to pursue illicit activity, calling on all

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and of persons and entities acting on behalf of, or at the direction of such persons and entities"); S.C. Res. 1989, U.N. Doc. S/RES/1989, prmbl. & ¶ 1 (June 17, 2011) (US Annex 199) ("*Emphasizing* that sanctions are an important tool under the Charter . . . and stressing in this regard the need for robust implementation of the [asset freeze] measures in paragraph 1 of this resolution as a significant tool in combating terrorist activity"); S.C. Res. 1807, U.N. Doc. S/RES/1807, prmbl. & ¶ 11 (Mar. 31, 2008) (US Annex 200) (determining that the situation in the DRC continues to constitute a threat to international peace and security in the region, deciding that all States shall freeze the funds, other financial assets and economic resources on their territories of persons and entities designated by the sanctions committee); S.C. Res. 2293, U.N. Doc. S/RES/2293, ¶ 5 (June 23, 2016) (US Annex 201) (renewing resolution 1807); S.C. Res. 2140, U.N. Doc. S/RES/2140, prmbl. & ¶ 11 (Feb. 26, 2014) (US Annex 202) (determining that the situation in Yemen constitutes a threat to international peace and security in the region, and deciding that all Member States shall freeze without delay all funds, financial assets and economic resources which are on their territories, which are owned or controlled, directly or indirectly, by the individuals or entities designated by the sanctions committee); S.C. Res. 2342, U.N. Doc. S/RES/2342, ¶ 2 (Feb. 23, 2017) (US Annex 203) (renewing resolution 2140).

[276] 76 Fed. Reg. at 72756 (US Annex 152) (designating Iran as a "jurisdiction of primary money laundering concern" on the basis of its support for terrorism, pursuit of nuclear and ballistic missile capability, use of deceptive financial practices to evade sanctions, serious deficiencies in its controls to combat money laundering and terrorist finance, and lack of cooperation with U.S. law enforcement and regulatory officials).

[277] *Id.* at 72759 (noting that Bank Sepah provided "direct and extensive financial services to Iranian entities responsible for developing ballistic missiles," including the Aerospace Industries Organization and the Shahid Hemat Industrial Group).

[278] *Id.* (noting that Bank Melli "facilitated numerous purchases of sensitive materials for Iran's nuclear and missile programs on behalf of UN-designated entities").

[279] *Id.* (noting public findings by the United States, the United Kingdom, and the UN Security Council that Bank Mellat had been extensively involved in financing Iran's ballistic missile program).

[280] *Id.* at 72758 (noting that Bank Saderat had been used to support terrorist organizations, and that from 2001 to 2006 it "transferred $50 million from the Central Bank of Iran through its subsidiary in London to its branch in Beirut for the benefit of [Hezbollah] fronts in Lebanon that support acts of violence").

[281] *Id.* at 72760 (finding that the Central Bank of Iran had used a variety of payment schemes to evade terrorism- and proliferation-related sanctions and had deliberately attempted to conceal the involvement of sanctioned Iranian banks in international transactions).

[282] *Id.* (referring to Post Bank, which operated on behalf of Bank Sepah; the Iranian-owned German bank EIH which served Bank Mellat, Post Bank, and others; Bank Refah, which provided services to the sanctioned Iranian Ministry of Defense and Armed Forces Logistics; the Bank of Industry and Mines, which provided services to Bank Mellat and EIH; and Ansar Bank and Mehr Bank, which served the IRGC).

States to exercise vigilance with respect to Iranian banks,[283] and identifying certain banks that were involved in Iran's nuclear and ballistic missile programs.[284]

7.16 In light of this evidence, the U.S. Treasury Department concluded that Iran and Iranian financial institutions were engaged in a concerted effort to evade U.S. and multilateral sanctions targeting, *inter alia*, weapons proliferation and the provision of support to terrorist groups. In November 2011, the Treasury Department stated:

> As a result of the strengthened U.S. sanctions and similar measures taken by the United Nations and other members of the global community, Iran now faces significant barriers to conducting international transactions. *In response, Iran has used deceptive financial practices to disguise both the nature of transactions and its involvement in them in an effort to circumvent sanctions*. This conduct puts any financial institution involved with Iranian entities at risk of unwittingly *facilitating transactions related to terrorism, proliferation, or the evasion of U.S. and multilateral sanctions*. Iranian financial institutions, including the Central Bank of Iran ("CBI"), and other state-controlled entities, willingly engage in deceptive practices to disguise illicit conduct, evade international sanctions, and undermine the efforts of responsible regulatory agencies around the world.[285]

7.17 These findings concerning Iran's efforts to evade sanctions targeting its illicit activity – in particular the provision of arms and other support to terrorist groups and the continued pursuit of ballistic missile capabilities – led directly to the blocking measures established by Executive Order 13599. This cause and effect is evident from the fact that Section 1245 of the 2012 National Defense Authorization Act (2012 NDAA), which Executive Order 13599 implemented, refers directly to the U.S. Treasury Department's November 2011 findings that the entire Iranian financial sector posed risks relating to the support of terrorism and to

[283] S.C. Res. 1929, prmbl. (US Annex 110) ("recalling in particular the need to exercise vigilance over transactions involving Iranian banks, including the Central Bank of Iran, so as to prevent such transactions contributing to proliferation-sensitive activities, or to the development of nuclear weapon delivery systems"); S.C. Res. 1803, ¶ 10 (US Annex 102) ("*Calls upon* all States to exercise vigilance over the activities of financial institutions in their territories with *all banks domiciled in Iran*, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems" (emphasis added)).

[284] *See, e.g.*, S.C. Res. 1929, Annex I, p. 11 (US Annex 110) ("Over the last seven years, Bank Mellat has facilitated hundreds of millions of dollars in transactions for Iranian nuclear, missile, and defense entities."); S.C. Res. 1747, Annex I, p. 5 (US Annex 101) (finding that Bank Sepah was a key provider of financial services to two Iranian firms listed by the UN Security Council for their role in Iran's ballistic missile programs).

[285] 76 Fed. Reg. at 72760 (US Annex 152) (emphasis added).

weapons proliferation.[286] The relevant section of the 2012 NDAA therefore directed the President, pursuant to applicable law, to block all assets of Iranian financial institutions within the United States or in the possession or control of U.S. persons.[287] The Act explicitly recognized the connection between the deceptive financial practices used by Iranian institutions and the underlying illicit activities of the Iranian government, stating:

> The financial sector of Iran, including the Central Bank of Iran, is designated as a primary money laundering concern . . . because of the threat to government and financial institutions resulting from the illicit activities of the Government of Iran, including *its pursuit of nuclear weapons, support for international terrorism, and efforts to deceive responsible financial institutions and evade sanctions*.[288]

7.18 Executive Order 13599 directly addressed these concerns by blocking all property within the United States' jurisdiction of the Iranian government and Iranian financial institutions.[289] In stating the motivations for these asset freezes, the Order refers specifically to "the deceptive practices of the Central Bank of Iran and other Iranian banks to conceal transactions of sanctioned Parties."[290] The focus on "deceptive practices" stated in the Order follows from the concern, documented extensively in the above findings, that Iran, with the assistance of Iranian financial institutions, had bolstered its efforts to hide its provision of material support (including arms) to terrorist and militant organizations and its pursuit of ballistic missile capability.[291]

7.19 In light of the foregoing, the blocking requirements imposed in Executive Order 13599 constitute measures "regulating the production of or traffic in arms, ammunition or

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[286] National Defense Authorization Act for Fiscal Year 2012, Section 1245(a)-(b), Pub. L. 112-239, 126 Stat. 2006 (IM Annex 17) (quoting the findings of the Treasury's Financial Crimes Enforcement Network, and adding that "[o]n November 22, 2011, the Under Secretary of the Treasury for Terrorism and Financial Intelligence, David Cohen, wrote, 'Treasury is calling out the entire Iranian banking sector, including the Central Bank of Iran, as posing terrorist financing, proliferation financing, and money laundering risks for the global financial system.").

[287] *Id.*, § 1245(c).

[288] *Id.*, § 1245(b) (emphasis added).

[289] Subsequently, the Secretary of the Treasury, acting pursuant to Executive Order 13599, has identified additional Iranian entities that assisted in circumventing existing sanctions. *See, e.g.*, U.S. Dep't of the Treasury Press Release, "Treasury Targets Iranian Attempts to Evade Sanctions" (May 9, 2013) (US Annex 204); U.S. Dep't of the Treasury Press Release, "Treasury Exposes Iranian Attempts to Evade Oil Sanctions" (Sept. 6, 2013) (US Annex 205).

[290] Exec. Order No. 13599, 77 Fed. Reg. 6659 (Feb. 5, 2012) (IM Annex 22).

[291] *See* 76 Fed. Reg. at 72756 (US Annex 152); National Defense Authorization Act for Fiscal Year 2012, Section 1245(a)-(b), Pub. L. 112-239, 126 Stat. 2006 (IM Annex 17).

implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment," within the meaning of Article XX(1)(c). These blocking measures form part of a regulatory scheme – encompassing U.S and international sanctions – designed to address Iranian arms trafficking, its ballistic missile program, and its support for terrorism. The asset freezes imposed by the United States on Iran and Iranian entities are designed to deter these activities by means of financial pressure. Executive Order 13599 thus works in conjunction with other proliferation- and terrorism-related measures to deter – and thus to "regulate" within the meaning of the Treaty – Iranian pursuit of ballistic missiles, its traffic in such missiles or their component parts, its traffic in arms and supplies to terrorist and militant organizations abroad, and traffic in arms and other military supplies to sanctioned entities within the Iranian military establishment, such as the IRGC-QF.

7.20 For these reasons, the blocking measures challenged by Iran fall within the exclusion in Article XX(1)(c) of the Treaty of Amity, and the Court therefore has no jurisdiction to decide whether these measures are consistent with any other provisions of the Treaty.

Section C: Executive Order 13599 Is Excluded from the Treaty Under Article XX(1)(d) as a Measure Necessary to Protect the United States' Essential Security Interests

7.21 In addition to being excluded from the Treaty's scope pursuant to the provisions of Article XX(1)(c), Executive Order 13599 is also placed outside the Treaty by virtue of Article XX(1)(d) because it is a measure necessary to protect the United States' essential security interests in preventing terrorism and the financing and arming of terrorist groups, and in halting the advancement of Iran's ballistic missile capability.

i. The United States Has Essential Security Interests in Preventing Terrorism and Terrorist Financing, and in Halting the Advancement of Iran's Ballistic Missile Program

7.22 The United States unquestionably has an essential security interest in preventing terrorist attacks, including by preventing the provision of arms, materiel, training, and funds to terrorist groups and suppressing the use of money laundering and other deceptive financial practices to finance terrorism. It has a similarly clear essential security interest in halting Iran from advancing its ballistic missile program.

7.23 Thousands of U.S. nationals have been killed or wounded in terrorist attacks in the past decades, including in attacks carried out by groups and individuals sponsored and

directed by Iran.[292] The international community has long condemned such acts of terrorism, and State involvement in terrorism, in the strongest possible terms. For example, in 1994 the UN General Assembly adopted a resolution urging States "to take all appropriate measures at the national and international levels to eliminate terrorism," stating that the General Assembly was

> Deeply disturbed by the world-wide persistence of acts of international terrorism in all its forms and manifestations, *including those in which States are directly or indirectly involved*, which endanger or take innocent lives, have a deleterious effect on international relations and may jeopardize the security of States, . . . [and]
>
> Convinced . . . that *the suppression of acts of international terrorism*, including those in which States are directly or indirectly involved, is an *essential element* for the maintenance of international peace and security.[293]

7.24 The UN Security Council reaffirmed its determination that acts of international terrorism constitute a threat to international peace and security in 2001, and declared that the "acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations."[294] It accordingly mandated that States "[p]revent and suppress the financing of terrorist acts" and that they freeze "funds and other financial assets or economic resources" of those who commit or support terrorism.[295] The Council also recognized the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism.[296] The UN Security Council has since repeatedly recognized that terrorism poses a threat to international peace

[292] *See supra* Chapter 3. *See also, e.g., The Foreign Sovereign Immunities Act: Hearing Before the Subcomm. on Courts and Admin. Practice of the S. Comm. on the Judiciary*, 103rd Cong., at p. 22-23 (1994) (statement of Senator Arlen Specter, sponsor of Senate Bill 825 amending the Foreign Sovereign Immunities Act) (noting that, between 1980 and 1992, American casualties in international terrorist incidents amounted to over one thousand dead or wounded) (US Annex 206).

[293] G.A. Res. 49/60, at 1-3 (US Annex 179) (underlining in original; italics added); *see also* S.C. Res. S/RES/1373, ¶ 3 (US Annex 81) ("reaffirming" that acts of international terrorism "constitute a threat to international peace and security").

[294] S.C. Res. 1373, prmbl & ¶ 5 (US Annex 81).

[295] *Id.* ¶ 1.

[296] *Id.*, prmbl.

and security,[297] and that "countering this threat requires collective efforts on national, regional, and international levels."[298]

7.25 The international community also recognizes the danger of permitting Iran's pursuit of ballistic missile capabilities. As discussed in the preceding section, the UN Security Council has explicitly called upon Iran "not to undertake any activity related to ballistic missiles designed to be capable of delivering nuclear weapons."[299] In the wake of Iran's March 2016 ballistic missile launches, the UN Secretary General called on Iran "to refrain from conducting such launches."[300] For its part, the United States has been clear in voicing its conviction that Iran's ballistic missile program poses a "fundamental threat[] to the region and beyond."[301]

7.26 As the Court held in *Nicaragua*, the concept of essential security interests "certainly extends beyond the concept of an armed attack, and has been subject to very broad interpretations in the past."[302] The interests identified here – the prevention of terrorism and terrorist financing and the prevention of ballistic missile proliferation – must on any view

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[297] S.C. Res. 1455, U.N. Doc. S/RES/1455, prmbl. (Jan. 17, 2003) (US Annex 207); S.C. Res. 1963, U.N. Doc. S/RES/1963, prmbl. (Dec. 20, 2010) (US Annex 208); S.C. Res. 2129, U.N. Doc. S/RES/2129, prmbl. (Dec. 17, 2013) (US Annex 209); S.C. Res. 2178, U.N. Doc. S/RES/2178, prmbl. (Sept. 24, 2014) (US Annex 210); S.C. Res. 2253, prmbl. (US Annex 182); S.C. Res. 2341, U.N. Doc. S/RES/2341, prmbl. (Feb. 13, 2017) (US Annex 211).

[298] S.C. Res. 2253, prmbl. (US Annex 182); S.C. Res. 2341, prmbl. (US Annex 211).

[299] S.C. Res. 2231, ¶ 7 & Annex B, ¶ 3 (US Annex 122).

[300] UN Secretary General, *First Implementation Report*, at 3 (US Annex 123).

[301] Statement of Thomas A. Shannon, Jr., Under Secretary for Political Affairs, U.S. Dep't of State, Before the Senate Foreign Relations Comm., *Iran's Recent Actions and Implementation of the JCPOA*, at 1 (Apr. 5, 2016), *available at* https://2009-2017.state.gov/p/us/rm/2016/255510.htm (last visited Apr. 23, 2017) (US Annex 212) ("While we are encouraged by Iran's adherence to its nuclear commitments thus far, I assure you that the Administration shares your concerns about the government of Iran's actions beyond the nuclear issue, including its *destabilizing activities in the Middle East* and its human rights abuses at home. *Iran's support for terrorist groups like [Hezbollah], its assistance to the Assad regime in Syria and the Houthi rebels in Yemen, and its ballistic missile program are at odds with U.S. interests, and pose fundamental threats to the region and beyond*.") (emphasis added); *see also* Szubin Testimony (US Annex 156); United States Mission to the United Nations, *Remarks of U.S. Ambassador Power at the Security Council Stakeout Following Consultations on Iran* (Mar. 14, 2016), *available at* https://2009-2017-usun.state.gov/remarks/7187 (last visited Apr. 23, 2017) (US Annex 213) (condemning Iran's ballistic missile launches as "dangerous, destabilizing, and provocative," and stating that "[g]iven the multiple, interrelated conflicts in the Middle East today, such launches – accompanied by strident and militaristic rhetoric – undermine prospects for peace. . . . Beyond just destabilizing the region, these launches were also in defiance of provisions of UN Security Council Resolution 2231, the resolution that came into effect on January 16, on Implementation Day for the JCPOA."); U.S. Treasury Dep't Jan. 17, 2016 Press Release (US Annex 124) (quoting Under Secretary Adam J. Szubin's statement that "Iran's ballistic missile program poses a significant threat to regional and global security, and it will continue to be subject to international sanctions.").

[302] *Military and Paramilitary Activities*, 1986 I.C.J. at 117, ¶ 224.

qualify under the provision. They have been recognized as essential not only by the United States, but by the UN Security Council and the broader international community.

ii. Executive Order 13599 Is Necessary to Protect the United States' Essential Security Interests in Preventing and Deterring Terrorist Attacks and Preventing the Advancement of Iran's Ballistic Missile Program

7.27 Executive Order 13599 is a measure necessary to protect the essential security interests identified in the preceding section, and the Court should accord substantial deference to the United States' own determination to that effect. As the Court noted in its 2008 Judgment in *Djibouti v. France*, the Treaty of Amity's essential security clause affords the invoking State "wide discretion":

> [W]hile it is correct, as France claims, that the terms of Article 2 [of the treaty at issue in the case] provide a State to which a request for assistance has been made with a very considerable discretion, this exercise of discretion is still subject to the obligation of good faith codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties [citations omitted]; *for the competence of the Court in the face of provisions giving wide discretion*, see [citations to *Nicaragua* Merits Judgment ¶ 222, *Oil Platforms* Merits Judgment ¶ 43].[303]

7.28 The history of this Treaty and similar FCN treaties confirms the Court's interpretation. The Sullivan Study, a study commissioned by the U.S. Department of State to provide commentary and analysis concerning the provisions of U.S. FCN treaties, discusses the "broad freedom of action extended to each treaty partner by the essential security reservation."[304] The negotiating history of the present Treaty is consistent with that view of the clause: in responding to a proposed Iranian amendment to Article II(1) of the Treaty to provide the Parties with latitude with respect to internal safety regulations, the State Department noted that "[s]ecurity interests" were already "provided for in XX-1-d," and that the "Treaty fully recognizes [the] *paramount right* [of the] state [to] take measures to protect

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[303] *Mutual Assistance in Criminal Matters*, 2008 I.C.J. at 229, ¶ 145 (emphasis added); *see also* Rejoinder Submitted by the United States of America (Mar. 23, 2001), ¶¶ 4.24-4.35, *Oil Platforms (Iran v. United States)* (arguing that the Court "should allow the Party invoking Article XX(1)(d) a measure of discretion in its application").

[304] CHARLES H. SULLIVAN, U.S. DEP'T OF STATE, STANDARD DRAFT TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION: ANALYSIS AND BACKGROUND 308 (1981) (hereinafter "SULLIVAN STUDY") (US Annex 214). Both parties have submitted excerpts from the Sullivan Study. Iran has submitted pages 1-2, 11, 59-68, 98-123, 170-83, 206-21, 270-97, 315-26, and 369-73 in its Annex 20, and the United States here submits pages 124-28, 260-69, and 302-09 as its Annex 214. Where the Sullivan Study is referenced in this pleading, the appropriate citation is provided to the annex containing the relevant pages.

itself and public safety."[305]

7.29 As the United States previously stated in the *Oil Platforms* briefing concerning the history and context of Article XX(1)(d), records concerning other FCN treaties from the same time period also make clear that the essential security clause affords the treaty parties ample space to adopt national security measures.[306] For example, in FCN negotiations with Germany carried out in the same year as the start of the negotiations with Iran, the United States explained that the essential security clause's "language had been drafted in such a manner as to leave a *wide area of discretion* to both parties in order to allow for necessary action over an indefinite future," emphasizing that the words "necessary" and "essential" had been "added to emphasize that the reservation was not to be invoked in a *frivolous* manner."[307] In response to a question from the German side as to whether the clause was justiciable, the United States responded that "national as well as international courts would probably give *very heavy weight to arguments presented by the government invoking the reservation* and would have difficulty in finding a justiciable issue."[308]

7.30 In short, while the essential security clause in this Treaty is not "self-judging," its history and context, taken together with the Court's own view as expressed in *Mutual*

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[305] Telegram No. 1561 from U.S. Dep't of State to U.S. Embassy Tehran (Feb. 15, 1955) (US Annex 215).

[306] *See* Counter-Memorial and Counter-Claim Submitted by the United States of America (June 23, 1997), ¶¶ 3.23-3.38, *Oil Platforms (Iran v. United States)*; *Message from the President of the United States Transmitting a Treaty of Friendship, Commerce, and Navigation Between the United States of America and the Republic of China*, at 3, 80th Cong. (Mar. 20, 1947) (US Annex 216) (State Department report to the U.S. Senate on the China FCN, noting that "exceptions also are included to give the two parties *the requisite freedom of action* in times of national emergency" (emphasis added)); *Hearing Before a Subcomm. of the S. Comm. on Foreign Relations on a Treaty of Friendship, Commerce, and Navigation Between the United States of America and the Republic of China*, at 30, 80th Cong. (1948) (statement of Charles Bohlen, Dep't of State) (US Annex 217) (noting that "certain important subjects, notably . . . the 'essential interests of the country in time of national emergency', are specifically excepted from the purview of the Treaty. In view of the above, it is difficult to conceive of how [the compromissory clause] could result in the Government's being impleaded in a matter in which it might be embarrassed."); 99 CONG. REC. 8577, 9315 (1953) (US Annex 218) (in debate concerning ratification of several FCN treaties, U.S. Senator Hickenlooper states that "[t]hese treaties have been formulated . . . to avoid any interference with or qualifications of the right of the United States to apply such security measures as it may find necessary. . . . Each of the treaties [then under consideration] . . . contains a general reservation making it clear that nothing in the treaty shall be deemed to affect the right of either party to apply measures 'necessary to protect its essential security interests.'"); Dispatch No. 238 from U.S. Embassy The Hague to U.S. Dep't of State, at 2 (Sept. 15, 1954) (US Annex 219) (in negotiating the Dutch FCN treaty, the U.S. delegation "emphasized that the presence in the Treaty of an ample security reservation was . . . deemed essential by the United States," resisting any attempt to narrow it and "emphasiz[ing] that each Party would have to determine, according to its own discretion, what was essential from the viewpoint of its security interests").

[307] Dispatch No. 2254 from U.S. High Commission, Bonn to U.S. Dep't of State, at 1-2 (Feb. 17, 1954) (US Annex 220) (emphasis added).

[308] *Id.* at 3 (emphasis added).

Assistance, indicate that invocation of the clause calls for a deferential review.

7.31 With respect to the present case, the essential-security rationale for adopting Executive Order 13599 is evident. As indicated in the preceding section, Executive Order 13599 implements the sanction required by Section 1245(c) of the 2012 NDAA.[309] Among the Congressional findings included in Section 1245 is a reference to the U.S. Treasury Department's November 2011 finding (discussed in the preceding section) identifying Iran as a jurisdiction of "primary money laundering concern," and the statement of the Under Secretary of the Treasury for Terrorism and Financial Intelligence that the "entire Iranian banking sector, including the Central Bank of Iran" posed "terrorist financing, proliferation financing, and money laundering risks for the global financial system."[310]

7.32 The U.S. Treasury Department's conclusions accorded with findings of the multilateral Financial Action Task Force (FATF), discussed in Chapter 4 above, to the effect that Iran's financial sector posed serious risks with regard to terrorism finance.[311] By way of example, on October 28, 2011, the FATF indicated "with a renewed urgency" that it was "*particularly and exceptionally concerned* about Iran's failure to address the risk of terrorist financing and the *serious threat this poses* to the integrity of the international financial system[.]"[312] Iran is on FATF's list of "high-risk and non-cooperative jurisdictions"; in fact, it is one of only two jurisdictions (together with the Democratic People's Republic of Korea) on FATF's "call to action" list of countries against which States are advised to take measures.[313]

7.33 As this history makes clear, Executive Order 13599 was adopted to protect the United States' interest in combatting Iranian support for terrorism and terrorist financing, and

[309] Notably, Iran cites this authority but not the Congressional findings that underpin it. Iran's Memorial, n.81.

[310] National Defense Authorization Act for Fiscal Year 2012, Section 1245(a), Pub. L. 112-239, 126 Stat. 2006 (IM Annex 17).

[311] 76 Fed. Reg. at 72757-58 (US Annex 152) ("Iran remains the most active of the listed state sponsors of terrorism, routinely providing substantial resources and guidance to multiple terrorist organizations. . . . Iran is known to have used state-owned banks to facilitate terrorist financing."); 76 Fed. Reg. at 72879-80 (US Annex 153) (discussing findings concerning Iran's role in terrorist financing, as well as multilateral findings or actions by the UN Security Council and the FATF).

[312] Financial Action Task Force (FATF), *Public Statement –28 October 2011, available at* http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-28october2011.html (last visited Apr. 23, 2017) (US Annex 222); *see supra* ¶ 4.9 (discussing the FATF's findings and recommendations concerning Iran).

[313] *See* Financial Action Task Force, *High-risk and non-cooperative jurisdictions, available at* http://www.fatf-gafi.org/countries/#high-risk (last visited Apr. 23, 2017) (US Annex 223). *See also supra* n.159.

thereby preventing future acts of terrorism. It is a measure necessary to the achievement of that purpose. As the UN Security Council has recognized, asset freezes are an important method of "prevent[ing] and suppress[ing] the financing of terrorist acts" – which States are obliged to do under UN Security Council Resolution 1373[314] – "even in the absence of a link to a specific terrorist act[.]"[315]

7.34 In addition to its purpose of combatting terrorism financing, Section 1245 of the 2012 NDAA makes plain that Executive Order 13599 was also adopted as a measure necessary to protect against the "proliferation financing" risks posed by Iran and the Iranian financial sector.[316] The United States is not alone in its concern regarding Iran's ballistic missile program and the involvement of Iran's financial sector in contributing to Iranian proliferation efforts. The UN Security Council called upon States to "exercise vigilance" over transactions involving Iranian banks, including Bank Markazi and Bank Melli, "so as to prevent such transactions contributing to Iran's proliferation-sensitive nuclear activities or to *the development of nuclear weapon delivery systems*."[317] And in its 2015 resolution endorsing the JCPOA, the UN Security Council continued to impose measures restraining Iranian efforts to develop a ballistic missile that could serve as a delivery vehicle for a nuclear weapon.[318]

7.35 Furthermore, as discussed in the previous section, the United States adopted Executive Order 13599 only after Iran persisted in violating, through the use of deceptive practices, an array of more targeted sanctions relating to its support for terrorism and its pursuit of vehicles for delivering weapons of mass destruction. Iran had also ignored repeated

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[314] *See* S.C. Res. 1373, ¶ 1 (US Annex 81) (deciding that States shall "[f]reeze without delay funds or other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts[.]").

[315] S.C. Res. 2253, prmbl ¶ 24 (US Annex 182).

[316] National Defense Authorization Act for Fiscal Year 2012, Sections 1245(a) and (b), Pub. L. 112-239, 126 Stat. 2006 (IM Annex 17); *see also* 76 Fed. Reg. at 72757-62 (discussing evidence "that organized criminal groups, international terrorists, or entities *involved in the proliferation of weapons of mass destruction or missiles*, have transacted business in that jurisdiction" (emphasis added)).

[317] S.C. Res. 1929, prmbl. & ¶ 23 (US Annex 110) ("recalling in particular the need to exercise vigilance over transactions involving Iranian banks, *including the Central Bank of Iran*" and calling upon States to take "appropriate measures" that prohibit financial institutions within their territories providing certain financial services if they have reasonable grounds to believe that such services "could contribute to Iran's proliferation-sensitive nuclear activities *or the development of nuclear weapon delivery systems*"); S.C. Res. 1803, ¶ 10 (US Annex 102) ("[c]all[ing] upon all States to exercise vigilance over *the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat* . . . in order to avoid such activities contributing to the proliferation sensitive nuclear activities, *or to the development of nuclear weapon delivery systems* . . . .").

[318] S.C. Res. 2231, ¶ 7 & Annex B, ¶ 4 (US Annex 122).

calls to address the serious terrorist financing risks posed by its financial sector.[319] The Executive Order thus became necessary, and was adopted, due to Iran's own concerted efforts to frustrate these earlier measures targeting Iran's illicit conduct.

7.36 In light of the above, Executive Order 13599 is removed from the scope of the Treaty as a measure necessary to protect the United States' essential security interests.

* * *

7.37 For all of the above reasons, Executive Order 13599 is placed firmly outside the four corners of the Treaty and hence outside the Court's jurisdiction. It cannot form the basis for any of Iran's claims in this case.

CHAPTER 8: IRAN'S SOVEREIGN IMMUNITY-RELATED CLAIMS FALL OUTSIDE THE SCOPE OF ARTICLE XXI(2) OF THE TREATY

8.1 At the core of Iran's case is its claim that many of the U.S. measures at issue offend customary international law principles of sovereign immunity. Under almost every article of the Treaty it invokes, Iran complains that rules of State immunity have been disregarded in connection with terrorism-related litigation in U.S. courts – ranging from the denial of Iran's own sovereign immunity,[320] to the immunity of its central bank, Bank Markazi,[321] to immunities of other Iranian State entities.[322] These claims must be dismissed at a preliminary stage because they "do not fall within the provisions of the Treaty."[323] Applying well-established treaty interpretation rules to the provisions Iran invokes – as the Court indicated was the appropriate approach to determining jurisdiction *ratione materiae* in its Preliminary Objections Judgment in *Oil Platforms* – makes clear that the Treaty does not afford sovereign immunity protections and therefore does not "lay down any norms applicable to" those claims.[324] Because the Treaty alone supplies the applicable law in this case, all of Iran's

[319] *See, e.g.*, Financial Action Task Force (FATF), *Public Statement –28 October 2011* (US Annex 222).

[320] *See* Iran's Memorial, ¶¶ 5.13, 5.44, 6.19 (asserting that Iran's sovereign immunity was improperly denied in connection with claims under Articles XI(4), IV(1), and X(1) of the Treaty).

[321] *See* Iran's Memorial, ¶¶ 5.13, 5.17, 5.44-48, 5.57-60, 6.19 (asserting that Bank Markazi's sovereign immunity was improperly denied in connection with claims under Articles IX(4), III(2), IV(1), IV(2), and X(1) of the Treaty).

[322] *See* Iran's Memorial, ¶ 5.18 (asserting that other Iranian State-owned companies were not afforded sovereign immunity protections available under U.S. law to agencies and instrumentalities of foreign States that are not designated State sponsors of terrorism, in connection with claims under Article III(2) of the Treaty).

[323] *Oil Platforms*, 1996 I.C.J. at 809-810, ¶ 16.

[324] *Id.* at 816, ¶ 36.

sovereign immunity claims must be dismissed as a preliminary matter.

8.2 As discussed in Section A below, the Treaty does not confer sovereign immunity. This is clear from the Treaty text, as well as its object and purpose of protecting individuals and companies – primarily private companies – conducting commercial activities in, or commerce with, the other State. Apart from a single provision *barring* State-owned business enterprises from raising a sovereign immunity defense in the other State's courts (Article XI(4)), the Treaty does not govern, and was not intended to govern, questions relating to sovereign immunity of the State as such or other State entities. The subsequent practice of both Parties reviewed in Section B further confirms this conclusion. Iran and Iranian State entities have passed up numerous opportunities in litigation before U.S. courts to claim sovereign immunity as a Treaty right. The United States' practice similarly reflects the view that the Treaty is not a source of sovereign immunity entitlements.

8.3 Section C explains that Iran's efforts to shoehorn its sovereign immunity-related claims into inapposite Treaty provisions would work a gross distortion of the Treaty and contravene settled rules of treaty interpretation. Iran puts forward three theories: (1) that Article XI(4) of the Treaty creates a broad implied obligation to afford sovereign immunity protections; (2) that customary international law immunity rules have "direct application" because Article IV(2) of the Treaty refers to "international law"; and (3) that VCLT Article 31(3)(c) permits customary international law immunity rules to be imported wholesale into unrelated provisions of the Treaty. Iran's case fails on all counts, as none of these theories is tenable when viewed against the Treaty text, placed in its proper context and viewed in light of the Parties' practice.

8.4 None of the jurisdictional analysis set forth below intrudes upon issues that go to the merits of Iran's claims. The analysis does not turn on the facts relating to Iran's sovereign immunity claims in particular contexts, whether such facts would sustain a violation of the purported rules laid down by the Treaty, or whether any defenses would be available.[325] The Court recently made clear that it can conduct an analysis of treaty provisions to determine its subject matter jurisdiction at an even earlier stage in *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, where it rejected a similarly unfounded effort to import customary international law immunity rules into an unrelated treaty in its decision on

[325] *See id.* at 856-857, ¶ 34 (Separate Opinion of Judge Higgins).

provisional measures.[326] The same result is warranted here. All of Iran's claims concerning the alleged sovereign immunity rights of the Government of Iran, of Bank Markazi, or of Iran's other State entities must be dismissed as outside the scope of the Treaty and the Court's jurisdiction.

Section A: It Is Clear from the Text and Context of the Treaty of Amity That It Does Not Confer Sovereign Immunity

8.5 Iran does not identify any text in the Treaty providing that the Parties themselves or other State entities shall enjoy sovereign immunity in any respect. This is because no such text exists. FCN treaties are not, and were never intended to be, vehicles for codifying sovereign immunity protections enjoyed by States or other State entities; these questions were left to be regulated by other rules existing separate from these treaties.

8.6 None of the articles of the Treaty Iran relies upon to bring its sovereign immunity claims in this case – namely, Articles III(2), IV(1), IV(2), X(1), and XI(4) – say anything about providing sovereign immunity protections. Articles III(2), IV(1), and IV(2) set out certain rights that citizens and companies of one High Contracting Party will have in respect of their treatment by the other Party, including access to the courts and protections for their property, enterprises, and other legally acquired rights. Article X(1) states that there shall be "freedom of commerce and navigation" between the territories of the two Parties. And Article XI(4) *limits* any immunity a State-owned enterprise might attempt to claim in the other Party's territory.

8.7 Had the Parties chosen to codify sovereign immunity protections in this commercial treaty, they would have done so simply and directly. The Treaty explicitly provides immunities to consular officers and employees of the Parties. In particular, Articles XII(1) and XVIII state that consular officers and employees "shall enjoy the privileges and immunities accorded to officers and employees of their rank or status by general international usage," and "are not subject to local jurisdiction for acts done in their official character and within the scope of their authority." No similar provisions were added to establish sovereign

[326] *See Immunities and Criminal Proceedings*, Order on Request for the Indication of Provisional Measures, ¶ 49 (ruling that the alleged dispute concerning "whether the Vice-President of Equatorial Guinea enjoys immunity *ratione personae* under customary international law and, if so, whether France has violated that immunity by instituting proceedings against him" is a "distinct issue" that does not relate to the manner in which France performed its obligations under the referenced articles of the United Nations Convention against Transnational Organized Crime).

immunity protections – neither a general provision stating that sovereign immunity shall be enjoyed by the Parties and other State entities and their property in accordance with customary international law, nor any specific provisions setting out particular circumstances in which immunity will be enjoyed.

8.8 The absence of any treaty text conferring an entitlement to sovereign immunity is unsurprising, given that codifying sovereign immunity protections does not logically relate to the Treaty's object and purpose. The Treaty is concerned with the commercial and consular relations between the two countries and sets forth regulations that pertain to activities in those spheres.[327] As the Court observed in *Oil Platforms*, the Treaty

> regulates the conditions of residence of nationals of one of the parties on the territory of the other (Art. II), the status of companies and access to the courts and arbitration (Art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), the conditions for the purchase and sale of real property and protection of intellectual property (Art. V), the tax system (Art. VI), the system of transfers (Art. VII), customs duties and other import restrictions (Arts. VIII and IX), freedom of commerce and navigation (Arts. X and XI), and the rights and duties of Consuls (Arts. XII-XI).[328]

8.9 The Treaty does not set out to govern how the Parties treat each other in their sovereign capacities, or to regulate the bilateral relationship between the governments in any general sense. That is why the Court recognized in *Oil Platforms* that Article I's reference to "firm and enduring peace and sincere friendship between the United States . . . and Iran" could not be interpreted "as incorporating into the Treaty all of the provisions of international law concerning such relations"; such a result would expand the Treaty well beyond the "specific fields" provided for in this and other similar FCN treaties.[329] Rules relating to the immunity of States and State entities acting in a sovereign capacity are likewise outside the scope of activities addressed by the Treaty.

8.10 The context for the waiver of immunity in Article XI(4) further confirms that it would

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[327] *Oil Platforms*, 1996 I.C.J. at 813-814, ¶ 27 (describing the Treaty's object as "encouraging mutually beneficial trade and investments and closer economic intercourse generally" and "regulating consular relations" between the two States).

[328] *Id.*

[329] *Id.* at 814, ¶ 28 (noting that this conclusion is in conformity with the one the Court reached with respect to the Treaty of Friendship of 1956 between the United States and Nicaragua). Iran acknowledges that the Treaty of Amity is similar to other FCN treaties, and references the Sullivan Study in its Memorial. *See* Iran's Memorial, ¶¶ 3.7, 4.6.

be at odds with the overall scheme of the Treaty for it to be treated as a source of sovereign immunity guarantees. Like other similar FCN treaties, the Treaty of Amity includes provisions designed to address issues arising from government control over economic enterprises – provisions that seek to *reduce* any unfair advantages that State-owned companies might claim in the commercial sphere by virtue of their State ownership.[330] Thus, Article XI(1) of the Treaty enables nationals and companies of each Party to compete or bid on certain purchases or sales by State enterprises of the other Party, and Article XI(3) provides that, where State manufacturing and trading enterprises enter into competition with private enterprises of the other Party, those private enterprises will be entitled to the same tax and other economic advantages, with certain exceptions. Article XI(4) further ensures that if State-owned enterprises engage in commercial or business activities in the other Party's territory, they will not enjoy immunity and will be subject to the same liabilities "to which privately owned and controlled enterprises are subject therein."[331] Article XI(4) is thus a key element of the Treaty's effort to level the playing field between State enterprises and their private counterparts engaged in activities in the specific fields governed by the Treaty.[332] The inclusion of Article XI(4) in no way indicates that the Treaty was also intended to be a source of affirmative sovereign immunity rights.

8.11 Finally, the historical context surrounding questions of State immunity also confirms that the Treaty cannot be understood as silently regulating matters of State immunity in the absence of express text. At the time the United States was negotiating the Treaty of Amity and similar FCN treaties, there was a diversity of views internationally regarding the absolute

[330] *See Hearing Before a Subcomm. of the S. Comm. on Foreign Relations on Treaties of Friendship, Commerce, and Navigation Between the United States and Colombia, Israel, Ethiopia, Italy, Denmark, and Greece*, 82nd Cong. (1952) (statement of Harold F. Linder, Dep't of State) (US Annex 224) ("Another significant feature of the postwar treaties of interest to the prospective investor is the body of provisions which deals with problems arising from the state ownership of economic enterprise. There is a growing tendency abroad for the real competitor of private business to be the government itself. The Department of State has, accordingly, endeavored to work out treaty provisions designed to reduce the hazards of unfair competition from state-controlled businesses"); SULLIVAN STUDY, p. 270 (IM Annex 20) ("Although Article XVIII [in the standard draft – Article XI here], taken in its entirety, may seem to be made up of disparate elements, it has a unifying theme, which is the restraint of unfair competition.").

[331] *See* R.R. WILSON, UNITED STATES COMMERCIAL TREATIES AND INTERNATIONAL LAW 21-22 (1960) ("Where there is specific mention of state trading and public control of commercial enterprises, it is, typically, for the purpose of securing assent to the application of 'commercial considerations' (as in connection with purchases and sales) or operation on a plane of legal equality with private enterprises (as in connection with waivers of jurisdictional immunity)."). *See generally* SULLIVAN STUDY, pp. 270-82 (IM Annex 20).

[332] Even Iran acknowledges that the purpose of the provision is to ensure that State enterprises engaging in commercial activities do not enjoy a competitive advantage over privately owned companies. *See* Iran's Memorial, ¶ 5.8.

and restrictive theories of sovereign immunity in international law.[333] In light of these two schools of thought and the general uncertainty about the applicable international law rules, specificity in the Treaty text would have been necessary to confirm what view of sovereign immunity the Parties were memorializing as the operative one between the two countries.

8.12 The record of negotiations lends additional support to this point (should the Court feel it needs to look to the Treaty's *travaux*).[334] The negotiating documents do not reflect any discussion of either Party's views on questions of State immunity under international law. Nor do they include any statements indicating that the Treaty would affect the sovereign immunity of the States as such or afford immunity to State-owned companies in circumstances in which immunity was not waived.[335] In this context, inferring that the Treaty silently codifies sovereign immunity rights is not tenable.

Section B: The Subsequent Practice of the Parties Confirms That the Treaty of Amity Is Not a Source of Sovereign Immunity Rights

8.13 The subsequent practice of the Parties further confirms that the Treaty of Amity is not a source of sovereign immunity rights. The Court acknowledged in *Oil Platforms* the significance of past failures by the Parties to rely upon the Treaty of Amity for a claimed right.[336] Iran and Iranian State entities have faced a range of litigation in U.S. courts in the decades since the Treaty was concluded. Yet, Iran has repeatedly declined to assert that the Treaty provides it with sovereign immunity protections in circumstances where it would have been expected to do so, including in connection with the terrorism-related proceedings that it places in issue in this case. Iran has also taken the position that the waiver of immunity contained in Article XI(4) does not reach Iran or any Iranian State entities that are not "enterprises," even in connection with their commercial activities, and indicated that the Treaty is not relevant to questions of sovereign immunity outside the four corners of Article

[333] *See, e.g.*, Letter from Jack B. Tate, Acting Legal Adviser, to Philip B. Perlman, Acting Attorney General (May 19, 1952), *in* 26 DEP'T. STATE BULL. 984 (1952) (US Annex 225) (the "Tate Letter"). In the Tate Letter, the State Department announced its decision to abandon the absolute theory in favour of the restrictive theory of immunity in international law.

[334] *See Oil Platforms*, 1996 I.C.J. at 814-815, ¶ 29 (noting in relation to Iran's argument about Article I that "it may be thought that, if that Article had the scope that Iran gives it, the Parties would have been led to point out its importance during the negotiations or the process of ratification").

[335] *See, e.g.*, Cable from American Embassy, Tehran, to the Department of State, Oct. 16, 1954, Ref: Department Instruction No. A-18, no.15 (IM Annex 2); Cable from U.S. Dep't of State to U.S. Embassy Tehran (Dec. 4, 1954) (US Annex 226); Cable from U.S. Dep't of State to U.S. Embassy Tehran (Dec. 18, 1954) (US Annex 227).

[336] *Oil Platforms*, 1996 I.C.J. at 815, ¶ 30.

XI(4).

8.14 By way of example, in defending against a contract action brought against Iran, its Social Security Organization, and its Ministry of Health and Welfare in the late 1970s and early 1980s, Iran argued that the Treaty did not waive the immunity of Iran or of its non-commercial agencies or instrumentalities. It did not, however, suggest that the lower court's alleged failure to respect the defendants' immunity amounted to a violation of the Treaty, instead taking the position that the FSIA, not the Treaty, governed the question of the defendants' immunity.[337] Iran explained to the U.S. Court of Appeals for the Fifth Circuit that the Treaty of Amity, like other FCNs, serves a different, narrower purpose than the FSIA, in that the Treaty does not seek to regulate sovereign immunity issues generally but instead bars immunity claims for only a specific type of State actor: State-owned businesses "that are counterparts of, and are in competition with, private enterprises."[338] In particular, Iran stated:

> [I]t has never been considered to be within the province of any U.S. commercial treaty to provide the legal basis for establishing jurisdiction with respect to conduct of a foreign state or its agencies arising from proprietary functions, even though that conduct relates "to purchases and sales, to all types of contracts, and torts…"[339] . . . From the foregoing, it is submitted that the Treaty of Amity between Iran and the United States does not constitute a waiver of sovereign immunity either explicitly or implicitly by any of the Defendants. *The Treaty does not apply to the Government of Iran but only to its "enterprises" that are engaged "in commercial, industrial, shipping or business activities within the territories of" the United States*, and there was no evidence before the District Court to even suggest that either [the Social Security Organization] or the Ministry were engaged in activities of that nature.[340]

[337] Brief for Appellants Soc. Sec. Org. of Gov't of Iran, Ministry of Health & Welfare of Gov't of Iran, & Gov't of Iran at 13-14, 36-42, *Elec. Data Sys. Corp. Iran v. Soc. Sec. Org. of Gov't of Iran, et al.* (No. 79-2641) (5th Cir. Aug. 15, 1979) (US Annex 228). *See also id.* at 44 ("Plaintiff has openly and unquestionably violated *the Foreign Sovereign Immunities Act of 1976* in every respect.") (emphasis added).

[338] *Id.* at 33.

[339] *Id.* at 34. Iran's brief cited extensively to the writings of Vernon Setser, who was the Chief of the Commercial Treaties Branch in the State Department's Bureau of Economic & Business Affairs at the time the Treaty was negotiated, including for the point that "commercial treaties such as the Treaty of Amity do not apply to proprietary acts of a sovereign but govern only economic enterprises controlled by a foreign state that are in competition with private enterprises for economic profits." *Id.* (citing Vernon G. Setser, *The Immunity Waiver for State-Controlled Business Enterprises in United States Commercial Treaties*, 55 AM. SOC. INT'L L. PROC. 89 (1961) (US Annex 229)).

[340] *Id.* at 35 (emphasis added).

8.15 In a later brief in the same case, Iran further stated:

> The United States entered into the FCN treaties, including the Treaty of Amity with Iran, during the decade following World War II. Recognizing the extensive nationalization of previously private enterprises, the contracting states, through the immunity waiver provisions, sought to put state enterprises on an equal footing with private enterprises. *Thus the FCN treaties serve different purposes and express different policies than the Foreign Sovereign Immunities Act. The treaties are concerned with the nature of the entity involved, and waive immunity only for state-owned businesses. They do not waive the immunity of the contracting states and their non-commercial agencies and instrumentalities, even for commercial activity.* The Act, on the other hand, is addressed to the nature of the activity involved and, accordingly, withdraws immunity for commercial activity regardless of which governmental agency engages in it or its purpose.[341]

8.16 Iran emphasized that its views on these points were aligned with those of the United States, and it urged the Court of Appeals to adopt the U.S. government's interpretation of the Treaty.[342] In support of its position, Iran submitted to the Court of Appeals a brief the U.S. government had filed in a related case, which underscored that Article XI(4) "*manifestly does not reveal an intent on the part of the contracting parties to deal with the sovereign immunity of the Contracting State as such*."[343] Like Iran, the U.S. brief indicated that the FSIA, rather than FCN treaties, provided the governing framework for questions of sovereign immunity relating to the State and other State entities beyond the narrow confines of the treaty waiver provisions.[344]

8.17 In connection with the later terrorism-related litigation against Iran that is at issue in the present case, Iran and Iranian entities have passed up numerous opportunities to assert that alleged failures to properly accord sovereign immunity protections amounted to

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[341] Brief for Defendants-Appellants at 30, *Elec. Data Sys. Corp. Iran v. Soc. Sec. Org. of Gov't of Iran, et al.* (No. 80-1641) (5th Cir. Oct. 1, 1980) (US Annex 230).

[342] *See id.* at ii (listing as Addendum A the Brief of the United States in *Electronic Data Systems Corp. Iran v. The Social Security Organization of the Government of Iran, et al.*) & 25-36 (setting out and urging the court to adopt the U.S. view).

[343] Brief for the United States as Amicus Curiae at 8, *Elec. Data Sys. Corp. Iran v. Soc. Sec. Org.of Gov't of Iran, et al.* (No. 79-7696) (2d Cir. Oct. 18, 1979) (US Annex 231) (emphasis added).

[344] *Id.* at 24-26. The U.S. brief reviews additional practice evidencing that the United States did not view FCN treaties as codifying sovereign immunity rules in any general sense. For example, the brief notes that, in response to a query about whether Iranian air force property was subject to state taxes in California in 1979, the Department of State explained that Article XI(4)'s waiver did not apply and indicated that that the property's immunity would derive from customary international law, not the Treaty. *See id.* at 12 & Appendix B (Letter from David Small, Assistant Legal Adviser for Near Eastern and South Asian Affairs to Ralph Long, Deputy County Counsel, County of Santa Clara, July 24, 1979).

violations of the Treaty. Notably, Iran made no reference to the Treaty in its 1998 diplomatic note objecting to one of the initial judgments entered against Iran under the FSIA's terrorism exception.[345] Nor do the parliamentary debates surrounding legislation enacted by Iran to strip the United States of immunity in Iranian courts refer to those measures as a response to perceived violations of the Treaty.[346]

8.18 And where Iran and Iranian entities have appeared in terrorism-related U.S. court proceedings, they have not argued that the courts' denial of their immunity claims amounted to a violation of a right to sovereign immunity contained in the Treaty. For example, in the *Peterson* enforcement proceeding, Bank Markazi asserted before the U.S. Court of Appeals for the Second Circuit that turnover of the assets at issue contravened several different provisions of the Treaty of Amity but did *not* allege a breach based on the lower court's denial of Iran's claim that the assets enjoyed sovereign immunity.[347] To the contrary, Bank Markazi argued that the Treaty was *not* a "provision of law relating to sovereign immunity."[348] Consistent with Iran's views in the earlier cases described above, Bank Markazi's only immunity-based argument was cast exclusively in terms of the FSIA.[349] Nor did Iran specify that it believed the denial of immunity to Bank Markazi's property to be a violation of the Treaty in diplomatic correspondence sent in February 2016.[350] And while Iran

[345] *See* Message from the Ministry of Foreign Affairs of I.R. Iran to the United States, July 14, 1998 (IM Annex 89) (referring to sovereign immunity protections as "principles of international law"). The only reference to the United States' treaty obligations in the note concerns the United States' successful opposition to plaintiff's effort to attach Iran's diplomatic properties, which the United States argued was barred by the Vienna Convention on Diplomatic Relations. *See id. See also Stephen Flatow, et al. v. Islamic Republic of Iran, et al.*, 76 F. Supp. 2d 16, 20-22 (D.D.C. 1999) (US Annex 232).

[346] *See* Parliamentary Debates on 1999 Law Stripping Immunity, Public Session No. 323 pp. 32-33 and Public Session No. 324 at pp. 32-33 (US Annex 167); RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Parliamentary Debates, Public Session No. 41, pp. 24-25 (Oct. 31, 2000) & Public Session No. 42, pp. 28-30 (Nov. 1, 2000) (US Annex 168); RUZNAMEHI RASMI JUMHURI ISLAMI IRAN [THE OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN], Parliamentary Debates, Session No. 403, pp. 15-18 (Mar. 6, 2012) & Session No. 404, p. 2 (Mar. 7, 2012) (US Annex 169).

[347] Brief for Defendant-Appellant at 44-48, *Peterson* (2d Cir. Nov. 19, 2013) (US Annex 233) (citing Articles IV(1), V(1), III(2), IV(2), and III(1)).

[348] In particular, Bank Markazi argued that 22 U.S.C. § 8722 should not be understood to abrogate the Treaty and its protections because the statute's use of "particularized" language in its "notwithstanding clause" (which provides that § 8722 applies "notwithstanding any other provision of law, *including any provision of law relating to sovereign immunity and preempting any inconsistent provision of State law*") did not include the Treaty. *Id*. at 43 (emphasis in original); Reply Brief for Defendant-Appellant Bank Markazi, Cent. Bank of Iran, at 13, *Deborah Peterson, et al. v. Islamic Republic of Iran, et al.* (No. 13-2952) (2d Cir. Feb. 18, 2014) (US Annex 234).

[349] Brief for Defendant-Appellant at 34-35, *Peterson* (2d Cir. Nov. 19, 2013) (US Annex 233).

[350] *See* Note Verbale of the Iranian Ministry of Foreign Affairs to the U.S. Department of State, dated Feb. 3, 2016 (IM Annex 91) (containing no reference to the Treaty of Amity, instead describing State immunity as "a

did not annex copies of Bank Markazi's District Court pleadings in *Peterson* to its Memorial – meaning neither the United States nor the Court has a complete picture of what arguments Bank Markazi raised at that stage – there is no indication in public materials that it took a different approach in those pleadings.[351] Finally, in a related enforcement proceeding brought by the *Peterson* plaintiffs, Bank Markazi similarly argued questions of immunity under the FSIA, not the Treaty, and took the position that Article XI(4)'s immunity waiver was not a basis for attaching its funds because that provision does not reach State entities that do not qualify as "enterprises."[352]

8.19 This practice accords with the Treaty's text and context described above. Sovereign immunity protections are not codified in the Treaty, and any claims relating to the denial of sovereign immunity thus fall entirely outside the Court's jurisdiction.

Section C: Iran's Theories for Converting Sovereign Immunity into a Treaty Right Are Untenable

8.20 The Court should reject Iran's attempts, through overreaching theories offered under the guise of treaty interpretation, to circumvent a straightforward reading of the Treaty text, in its proper context and in accordance with the practice of the Parties described above.

i. The Restriction on Claims of Sovereign Immunity by State Enterprises in Article XI(4) of the Treaty Does Not "*A Contrario*" Amount to a Grant of Sovereign Immunity Rights

8.21 Iran invites the Court to adopt an "*a contrario*" reading of Article XI(4) such that the provision would silently guarantee immunity "so far as concerns acts *jure imperii* and/or

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long-established principle of customary international law" and stating that the principle "has also been codified in international law of treaties and in the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)," and urging that the United States "cease all measures taken and comply with its obligations under the relevant international instruments and, in particular, the United Nations Convention on Jurisdictional Immunities of States and Their Property").

[351] The District Court's February 28, 2013 Opinion and Order nowhere suggests that Bank Markazi argued that the funds enjoyed sovereign immunity *under the Treaty*. *See* Opinion and Order at 51-54, 63, *Deborah Peterson, et al. v. Islamic Republic of Iran, et al.*, No. 10 civ. 4518 (S.D.N.Y. Feb. 28, 2013) (IM Annex 58).

[352] Brief for Defendant-Appellee Bank Markazi, aka Cent. Bank of Iran, at 37-40, *Deborah Peterson, et al. v. Islamic Republic of Iran, et al.* (No. 15-0690) (2d Cir. Aug. 31, 2015) (US Annex 235) (arguing that the Article XI(4) immunity waiver "applies solely to state-owned *business enterprises doing business in the United States*, not to Iran's agencies or instrumentalities arguably engaged in a 'commercial activity' in the United States within the meaning of Section 1610 of the FSIA," and emphasizing that the waiver "looks to the nature and function of the *entity* in question and applies only to 'enterprises' engaged in a 'business activity,' not to instrumentalities acting in a sovereign capacity (such as Bank Markazi) irrespective of the commercial nature of the acts they engage in while performing their sovereign functions.") (citing and attaching Setser, 55 AM. SOC. INT'L L. PROC 89 (US Annex 229)).

where State of Iran and Iranian State-owned companies did not engage in commercial activities within the United States."[353] But as the Court made clear in its Preliminary Objections Judgment in *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast*, an "*a contrario* reading of a treaty" is "only warranted . . . when it is appropriate in light of the text of all the provisions concerned, their context and the object and purpose of the treaty."[354] Iran cites this case in its Memorial but neglects to explain how Iran's *a contrario* reading satisfies this standard. More generally, Iran has not supplied any authorities supporting the novel proposition that when States agree to a *waiver* of sovereign immunity, such waivers are understood to create binding treaty obligations conferring sovereign immunity in circumstances not addressed.

8.22 Article XI(4) of the Treaty of Amity protects private, not sovereign, prerogatives, and it would be inappropriate to read Article XI(4)'s restriction on claims of immunity by State enterprises as a grant of immunity in all, or some, other circumstances. The text of Article XI(4) provides in full:

> No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

A plain reading of Article XI(4) does not reveal (nor even suggest) any intent to address the immunity of the contracting governments or other government-related entities falling outside of the provision's scope. It refers only to State "enterprise[s]" engaged in business or other commercial activities in the other Party's territory, and does not pertain to the "Part[ies]" themselves or to their non-commercial agencies or instrumentalities.

8.23 The context for Article XI(4) is equally dispositive. As discussed above, Article XI(4) appears in an article of the Treaty that contains several provisions that seek to restrict unfair competition from State-owned or controlled enterprises operating in competition with private enterprises. Paragraph 4 is addressed to one of the specific problems relating to such

[353] Iran's Memorial, ¶ 5.13. *See also id.* ¶¶ 5.7-5.8.

[354] *See Delimitation of the Continental Shelf*, Preliminary Objections Judgment, ¶ 35.

enterprises and arising in the sphere of activities governed by the Treaty. That is, if State enterprises are to obtain protections under the Treaty when they engage in commercial activities in the United States, it would be unfair for them to be able to avoid the same burdens and liabilities as private companies under domestic law.[355] By barring immunity broadly for all such enterprises and their property (i.e., "from taxation, suit, execution of judgment or other liability"), Article XI(4) insures against this result.[356] In the U.S. court litigation described above, Iran embraced this context for Article XI(4) and vigorously disputed the proposition that Article XI(4) could implicitly affect the immunity of the States themselves or other State entities outside of its textual scope.[357] Negotiating documents do not reflect any agreement that Article XI(4) supplies rules governing other questions of immunity or contains the broad implied obligation Iran now asserts, nor has Iran pointed to any support for its theory in the literature relating to these FCN provisions.[358] The Court should therefore reject Iran's proposed "a contrario" reading of Article XI(4) as inappropriate.

ii. Article IV(2) of the Treaty Does Not Import International Law Rules Unrelated to the Protection and Security of Private Property

8.24 Iran further contends that the Court has a basis for adjudicating sovereign immunity

[355] Setser explained the context for these provisions in 1961, stating "[i]f treaty assurances are to be given to foreign economic enterprises, then it is reasonable and appropriate to provide for equalization of the situation in the event that foreign state enterprises become competitors of American or the treaty-protected alien private enterprises." Setser, 55 AM. SOC. INT'L L. PROC. at 99, 104 (US Annex 229). Likewise, the Sullivan Study observed that the immunity waiver included in FCNs was aimed at "ensur[ing] that state-owned enterprises with a claim to treaty rights would not be able to escape the liabilities to which private United States enterprises in competition with them were subject." SULLIVAN STUDY at 272 (IM Annex 20).

[356] As noted earlier, Iran acknowledges that the purpose of the provision is to ensure that State enterprises engaging in commercial activities do not enjoy a competitive advantage over privately owned companies. Iran's Memorial, ¶ 5.8.

[357] *See supra* at Chapter 8, Sec. B. Iran's briefs in earlier litigation referenced documents relating to other FCN treaties concluded during this time period which further confirm that the limited immunity waivers in these treaties were not intended to govern additional issues relating to sovereign immunity between the treaty partners and were "without prejudice" to those larger questions. For example, Iran's brief in *Elec. Data Sys. Corp. Iran* (5th Cir. Oct. 1, 1980) (US Annex 230), referred to Herman Walker's annotation of a similar provision in the draft FCN with Portugal, which explained "[t]he waiver of immunity is only for 'business enterprises.' *The situation of other types of government entities, agents and activities is left open, without prejudice*. Beds for the government's tourist hotel are covered, but those for the Army are not." *Id.* at 31.

[358] *See e.g.*, Setser, 55 AM. SOC. INT'L L. PROC. at 101 (US Annex 229) (noting that it was not "considered the province of the United States commercial treaty to provide the legal basis for establishing jurisdiction" over private acts of the governments themselves); SULLIVAN STUDY 272 (IM Annex 20) (explaining that the policy represented by the FCN immunity waiver "antedated, and had no direct connection with the issuance of the Tate letter," which announced the State Department's general adoption of the restrictive theory of immunity).

claims based on customary international law in this case because Article IV(2) of the Treaty refers to "international law." Iran claims that the protection and security assured to property of nationals and companies "in no case less than that required by international law" under Article IV(2) includes the application of any customary international law immunity rules relating to the availability of such companies' property for execution (including, in its view, property of the Parties' central banks).[359] Iran's theory founders when considered against the text of the Treaty, its context, and the shared practice of the Parties. Where Iranian State-owned entities have rights under Article VI(2), it is *on the same basis as private companies*, which have no claim to sovereign immunity, and Article XI(4) further ensures that any immunity from execution is waived. Moreover, in construing Article IV(2) of this commercial treaty to govern issues well beyond its scope, Iran's theory would lead to bizarre, anomalous results.

8.25 Article IV(2) 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.

A straightforward reading of this provision does not indicate that extending the "most constant protection and security . . . in no case less than that required by international law" to property of nationals and companies is intended to extend sovereign immunity protections to property of sovereign entities. A reference to "international law" in a treaty does not sweep in areas of customary international law that lie beyond and are simply irrelevant to the Parties' agreement as memorialized in the Treaty. Here, the international law rules suggested by the text are those that pertain to the applicable minimum standard of treatment for the property of aliens in the host State and not those that concern State-to-State matters.[360]

[359] Iran's Memorial, ¶¶ 3.13, 3.14, 3.20, 5.57, 5.60, 5.70.

[360] The negotiating history relating to Article IV(2) indicates that the Parties agreed it would reflect the minimum standard for the treatment of aliens and their property and contain no reference to sovereign immunity. *See* Cable from American Embassy, Tehran, to the Department of State, Nov. 27, 1954 (IM Annex 4) (reporting that the Iranian negotiators wanted to include the "in no case less than that required by international law" phrase because "They said they saw advantages in including minimum standard of protection and security

8.26 The context for Article IV(2) confirms this reading. Article IV(2) appears among provisions in the Treaty (Articles III through V) that provide basic protections to both nationals and companies of each Party. These articles regulate "the status of companies and access to the courts and arbitration (Art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), [and] the conditions for the purchase and sale of real property and protection of intellectual property (Art. V)."[361] Like the provisions of Article IV(1) that the Court addressed in *Oil Platforms*, these articles are "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."[362] They seek to ensure that nationals and companies of the other Party will not be unduly disadvantaged in the other Party's territory by virtue of their *nationality* when conducting their private and business affairs. Iran itself has previously asserted that the provisions of Article IV "set the legal standards on the treatment of Iranian nationals and companies *engaged in commercial activities* and that of their properties in the United States."[363] Because customary international law rules pertaining to circumstances in which property of State-owned companies may enjoy sovereign immunity do not apply to private companies – nor even to State-owned companies engaged in commercial activities – there is no basis to inject such rules into Article IV(2).

8.27 In any event, Iran's reading of Article IV(2) would be wholly at odds with the text and context of Article XI(4) described above, under which State-owned entities acting in the

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of property," and with this addition the article would be in closer conformity with what the United States had agreed to in the U.S.-Irish FCN treaty); Cable from U.S. Dep't of State to U.S. Embassy Tehran (Dec. 8, 1954) (US Annex 236) (agreeing to this phrasing). In relation to a substantially similar provision in the U.S.-Ethiopia FCN, the Department of State sent a diplomatic note to the Ethiopia's Foreign Ministry explaining that the purpose of the "international law" language in the protection and security provision "was simply to reaffirm the rules of international law with respect to protection and security of aliens and their property." *See* Diplomatic Note from U.S. Department of State to Ato Ketema Yifru, Minister of Foreign Affairs of the Imperial Ethiopian Government (Apr. 14, 1966) (US Annex 237).

[361] *See Oil Platforms*, 1996 I.C.J. at 813-814, ¶ 27 (providing an overview of the Treaty's provisions).

[362] *Id.* at 816, ¶ 36 (emphasis added); *see also id.* at 858, ¶ 39 (Separate Opinion of Judge Higgins) (explaining that Article IV(1) uses the "language of foreign investment protection," employing "legal terms of art well known in the field of overseas investment protection, which is what is there addressed").

[363] *See* Letter from the Agent of Iran to the Iran-U.S. Claims Tribunal to the Agent of the United States to the Iran-U.S. Claims Tribunal, Feb. 12, 2008 (IM Annex 90) (emphasis added) (asserting that the attachment of Bank Melli's property in the *Weinstein* proceeding "violates the rules of international law and specifically the provisions of Article III(1) and IV of the Treaty of Amity of 1955 which set the legal standards on the treatment of Iranian national and companies engaged in commercial activities and that of their properties in the United States. In particular, the blocking and potential execution of the said property is taking not for a public purpose and without prompt payment of just compensation.").

marketplace alongside private companies and with a claim to treaty rights were *not* to be able to claim sovereign immunity for their property.[364]

8.28 Iran's theory that the reference to "international law" in Article IV(2) encompasses principles of State immunity law would in effect require constructing two types of obligations that would flow from Article IV(2): one set supported by the Treaty, and the other invented from whole cloth. The first set of obligations would be grounded in the Treaty's text, object, and purpose, and would provide certain rights to property of all "companies" on the same terms, regardless of their State or private ownership – rights that may be interpreted and understood by the Parties based on authorities interpreting treaty provisions of this type.[365] The second set of purported obligations would be unmoored from the text and overall scheme of the Treaty, and would provide that certain State-owned companies, depending on the circumstances, would have a claim to sovereign protections for their property that derive from an entirely different source of law, which governs activities outside the sphere of private and commercial activities to which this provision is addressed.

8.29 As the Court recognized in *Oil Platforms*, the compromissory clause in similar FCN treaties was "consistently referred to by the Department of State as being 'limited to differences arising immediately from the specific treaty concerned,' as such treaties deal with 'familiar subject matter' in relation to which 'an established body of interpretation already exists.'"[366] Iran has offered no indications from the Parties' practice or the *travaux* suggesting that the Parties ever understood Article IV(2) to be a source of sovereign immunity guarantees for the property of State-owned companies.[367] To the contrary, the Parties' practice and the *travaux* reviewed above support the proposition that the Treaty is *not* a source of sovereign immunity rights. Nor has Iran identified in the jurisprudence and literature interpreting "protection and security" provisions in FCN treaties any suggestion that such provisions have been understood to contain sovereign immunity protections. In sum, Iran has pointed to no source that supports, or even suggests the possibility of, a second, contradictory set of "shadow" obligations relating to sovereign immunity in Article IV(2).

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[364] *See* SULLIVAN STUDY 272 (IM Annex 20); Setser, 55 AM. SOC. INT'L L. PROC. at 99 (US Annex 229).

[365] *See, e.g., Case Concerning Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)*, 1989 I.C.J. 15, 66-67, ¶ 111 (July 20) ("The primary standard laid down by Article V [of the U.S.-Italian FCN treaty] is 'the full protection and security required by international law', in short, the 'protection and security' must conform to the minimum international standard").

[366] *Oil Platforms*, 1996 I.C.J. at 814-815, ¶ 29.

[367] *See supra* n.360 (discussing the Article IV(2) negotiating history).

iii. VCLT Article 31(3)(c) Does Not Import International Law Unrelated to the Treaty Provisions Being Interpreted and Does Not Transform Articles III(2), IV(1), or X(1) of the Treaty Into Sources of Sovereign Immunity Rights

8.30 Lastly, Iran makes a sweeping appeal to VCLT Article 31(3)(c) for the importation of customary international law principles of State immunity into this case. Iran claims that the specific protections afforded to "companies" under both Articles III(2) and IV(1) may be interpreted as preventing the other Party from denying State-owned companies (including, in its view, its central bank) any immunities recognized under customary international law,[368] and that Article X(1) (relating to "freedom of commerce and navigation" between the territories of the two Parties) may be interpreted even more broadly – to encompass an obligation to afford sovereign immunity protections to the Parties themselves, as well as to State-owned companies and their property.[369] Again, this theory simply is not tenable when assessed in light of the conventional treaty interpretation analysis set forth in Sections A and B above. Iran's use of Article 31(3)(c) amounts to an effort to rewrite the Treaty, rather than to interpret the text of the Treaty that the Parties actually concluded.

8.31 As discussed Chapter 5, VCLT Article 31(3)(c) is a rule of treaty interpretation and cannot function as an independent source of substantive obligations for the treaty Parties, or as a basis for supplementing what the treaty Parties themselves agreed to in the treaty. Its sole purpose is to assist in interpreting the treaty text. None of the articles of the Treaty cited by Iran in connection with its VCLT Article 31(3)(c) theory contain any reference to sovereign immunity, nor can those provisions be properly understood as laying down rules establishing sovereign immunity guarantees. VCLT Article 31(3)(c) cannot change that result.

8.32 The protections set out in Articles III(2) and IV(1) – as with Article IV(2) discussed above – provide certain rights to "nationals and companies" of the other Party in their private and professional activities, including in relation to access to the courts and treatment of their

[368] As to Article III(2), *see* Iran's Memorial ¶¶ 3.15-3.16, 3.20, 5.5-5.9, and as to Article IV(1), *see* Iran's Memorial, ¶¶ 5.36, 5.39, 5.41. These claims necessarily cannot include any claims relating to the treatment of Iran itself or any Iranian-government entities that are not properly considered companies under the Treaty. In relation to Article IV(1), however, Iran goes so far as to suggest that this article provides the Court with jurisdiction to consider issues of sovereign immunity relating to *Iran itself*. *See* Iran's Memorial, ¶¶ 5.36, 5.44. Iran provides no support for such a proposition, which is flatly inconsistent with the Court's ruling in *Oil Platforms*, and the Court should reject such claims out of hand. *See Oil Platforms*, 1996 I.C.J. at 816, ¶ 36 (ruling that the provision concerns "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").

[369] Iran's Memorial, ¶ 3.15, 6.19(a), 6.19(e).

property, enterprises, and other legally acquired rights and interests. To that end, the articles provide that the other Party's nationals and companies can claim certain protections for their private and business activities and property, and they specify where treatment must be no less favorable than that provided to nationals and companies of the host State or third countries.[370]

8.33 As with Article IV(2), where Iranian State-owned companies have rights under these articles, it is both (a) on the same basis as private companies, which have no claim to sovereign immunity, and (b) in connection with commercial activities, such that Article XI(4) ensures that any immunity is waived. Iran has pointed to no practice of the Parties, *travaux*, or even secondary sources that would support reading either of these standard FCN provisions as a source of sovereign immunity protections. Because the protections set out in those articles do not include sovereign immunity rights that State-owned companies may have in particular circumstances, it would be inappropriate to import such rules via VCLT Article 31(3)(c).[371]

8.34 Iran's effort to bring sovereign immunity claims under Article X(1) is similarly unavailing. Article X(1) relates to "freedom of commerce and navigation"; it provides no foundation for a treaty obligation to afford sovereign immunity protections based on customary international law. Iran acknowledges in its Memorial that the restrictive theory of sovereign immunity in international law distinguishes between a sovereign's public acts (*jure imperii*), and commercial or private acts (*jure gestionis*).[372] Yet Iran fails to explain how a commercial treaty provision relating to freedom of *commerce* between the territories of the two Parties can coherently be understood to create obligations relating to the circumstances in which the Parties will afford sovereign immunity protections to each other's *sovereign* acts. Such protections are not commonly understood to involve "activities integrally related to

[370] *See generally* SULLIVAN STUDY 124 (US Annex 214) ("National treatment . . . best expresses in realistic terms the essential equity sought by the treaty as the underlying principle for the conduct of economic activities in a foreign country; that is, the alien enterprise shall be equated with the like domestic enterprise"); *id.* at 319 (IM Annex 20) (for purposes of national treatment, an "alien company is entitled to be equated with the domestic companies with which it is in like situation, namely, domestic companies organized under the general corporation laws of the treaty partner and engaged in the same type of activity.").

[371] As a result, contrary to Iran's contention that Bank Markazi is entitled under Article III(2) to the same treatment as central banks of other foreign States, *see* Iran's Memorial, ¶ 5.17, the relevant point of comparison under that article would be to *private* U.S. or foreign companies in connection with their private and business activities.

[372] Iran's Memorial, ¶ 3.21(c).

commerce."[373]

8.35 Moreover, and not surprisingly given the context, Iran has pointed to no practice of the Parties or negotiating documents indicating that Article X(1) provides affirmative sovereign immunity protections, which in any event would have been at odds with the Treaty's overall aim and scope. Again, VCLT Article 31(3)(c) cannot be used to import unrelated international law rules.

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8.36 As demonstrated above, the Treaty of Amity does not codify sovereign immunity protections for Iran, Bank Markazi, or any other Iranian State entities, and Iran cannot rely on Articles III(2), IV(1), IV(2), X(1), or XI(4) as a basis for jurisdiction over sovereign immunity-related claims. The Court should dismiss all such claims from the case.

CHAPTER 9: IRAN CANNOT REBRAND BANK MARKAZI AS A "COMPANY" ENTITLED TO RIGHTS UNDER ARTICLES III, IV, AND V OF THE TREATY

9.1 Iran's distortions of the Treaty do not end with its unsustainable sovereign immunity claims. In tacit acknowledgment of the frailty of its case on sovereign immunity, Iran paradoxically claims that its Central Bank, Bank Markazi, is both a sovereign entity entitled to immunity *and* a "company" entitled to the protections set out in Articles III, IV, and V of the Treaty.[374] On this basis, Iran brings claims alleging breaches of Bank Markazi's purported rights as a "company" to recognition of juridical status, access to courts, most constant protection and security, compensation for expropriation, and other protections arising out of Bank Markazi's treatment in connection with the *Peterson* enforcement proceeding in U.S. courts.[375] Iran's opportunistic rebranding of Bank Markazi as a "company" whose treatment

[373] *Oil Platforms*, 1996 I.C.J. at 819-820, ¶¶ 49-50 (concluding that Article X(1) restricts acts impeding freedom of commerce, which it interpreted as including "commercial activities in general – not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce.").

[374] *Compare* Iran's Memorial, ¶¶ 5.13, 5.17, 5.44-48, 5.57-60, 6.19 (asserting that Bank Markazi's sovereign immunity was improperly denied in connection with claims under Articles XI(4), III(2), IV(1), IV(2), and X(1) of the Treaty) *with id.* Chapter IV(1)(B), ¶¶ 4.4-4.7 (claiming that Bank Markazi is a "company" under Article III(1) of the Treaty).

[375] These claims range well beyond the question of Bank Markazi's purported sovereign immunity rights. *See, e.g.*, Iran's Memorial, ¶ 4.35 (arguing that the U.S. courts in the *Peterson* enforcement proceeding violated the Article III(1) obligation to recognize juridical status with respect to Bank Markazi); *id.* ¶¶ 5.14-5.16 (alleging violation of the Article III(2) obligation regarding access to courts, on multiple bases, including with specific respect to Bank Markazi); *id.* ¶¶ 5.44-5.47 (alleging abrogation of the Article IV(1) obligations regarding fair and equitable treatment, unreasonable or discriminatory measures, and effective means of enforcement, including with specific respect to Bank Markazi); *id.* ¶¶ 5.60 & 5.69 (alleging abrogation of Article IV(2)

is governed by these provisions must also be dismissed as a threshold matter.

9.2 As set out in Section A below, both Iran and Bank Markazi itself characterize Bank Markazi as a traditional central bank, exercising sovereign functions. According to Iran, Bank Markazi is not a commercial entity and does not compete with ordinary commercial enterprises. In light of this characterization, Iran's attempt to simultaneously claim "company" rights for Bank Markazi under the Treaty cannot succeed. As indicated in Section B, it is clear from the Treaty's context, object, and purpose, and from the Court's own jurisprudence on the interpretation of this Treaty, that Articles III, IV and V were never intended to govern the treatment of sovereign entities such as Bank Markazi claims to be. Rather, Articles III, IV, and V provide assurances to "companies" or "nationals and companies" of the other High Contracting Party in their performance of private and commercial activities. These articles do *not* supply rules governing the treatment to be accorded to High Contracting Parties themselves or to their State entities carrying out sovereign functions.[376]

9.3 Iran's claims in this case based on its own or Bank Markazi's purported entitlements under Articles III, IV, and V therefore fall outside the scope of the articles and hence outside the Court's jurisdiction. The Court need not engage with the merits of Iran's claims in order to find that Iran cannot base any part of its claims on allegations – such as those relating to 22 U.S.C. § 8772 and the *Peterson* enforcement proceeding – that treatment accorded to the Government of Iran or to its Central Bank violated Articles III, IV, or V of the Treaty. Such claims must be dismissed for lack of jurisdiction.[377]

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obligations regarding protection and security and compensation for expropriation, including with specific respect to Bank Markazi); *id.* ¶ 5.75 (alleging abrogation of Article V(1) obligation concerning the lease, acquisition, and disposal of property).

[376] The United States made this point to the U.S. Supreme Court when its views as *amicus curiae* were solicited in the course of the *Peterson* litigation. Brief for the United States as Amicus Curiae at 22, *Bank Markazi, aka Cent. Bank of Iran v. Deborah Peterson, et al.* (No. 14-770) (S. Ct. Aug. 2015) (US Annex 238) (stating that the Treaty's "companies" definition "is not naturally read to include entities like [Bank Markazi]," as the "central bank of Iran is an agency of the state that carries out sovereign functions").

[377] Because of the lack of specificity in Iran's Memorial, it is not clear precisely what claims of what other Iranian entities Iran seeks to espouse as claims of "companies" in this case. For example, Iran references in the first section of its Memorial several companies that are incorporated outside of Iran, such as Bank Sepah International PLC, Bank Melli PLC UK, and IRISL Benelux. *See* Iran's Memorial, ¶ 1.17 & n.116; Bank Sepah International PLC, *About Us*, *available at* http://www.banksepah.co.uk/?page=2 (last visited Apr. 22, 2017) (US Annex 239) ("Based in the City of London. . . [Bank Sepah International plc] is a UK incorporated bank specialising in providing finance and services for international trade worldwide."); Melli Bank plc, *Welcome to Melli Bank plc*, *available at* http://www.mellibank.com/ (last visited Apr. 22, 2017) (US Annex 240) (indicating incorporation in the United Kingdom); Articles of Association of IRISL Benelux NV (IM Annex 88) (indicating

Section A: On Iran's Own Case, Bank Markazi Is a Sovereign Entity Exercising Sovereign Functions, Including in the Context of These Claims

9.4 Throughout its Memorial,[378] Iran emphasizes Bank Markazi's role as its central bank, and the immunity that Bank Markazi is allegedly owed as a "specific entitlement" due to that status.[379] Iran places particular emphasis on the sovereign functions of a central bank such as Bank Markazi:

> The essential duty of a central bank is to serve as the guardian and regulator of the monetary system and currency of that State both internally and internationally. *Central banks therefore play a key role in the exercise of a State's monetary sovereignty*.[380]

9.5 As Iran states in its Memorial, Bank Markazi receives its personality from Iran's 1972 Monetary and Banking Act.[381] That Act provides that Bank Markazi "shall have the task of formulating and implementing monetary and credit policies on the basis of the general economic policy of the State," and that the "objectives of the Central Bank of the Islamic Republic of Iran are to maintain the value of the currency and the equilibrium in the balance of payments, to facilitate trade transactions, and to assist the economic growth of the country."[382] The chapter of that Act setting out the Bank's "functions and powers" states that the Central Bank serves "as the regulatory authority of the monetary and credit system of the State" and "as the banker to the Government,"[383] and that the Bank also has the power to

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incorporation in Belgium). To the extent that any of Iran's claims relate to purported Treaty breaches concerning such entities, they must be dismissed as outside the Court's jurisdiction. Article III(1) of the Treaty refers to "[c]ompanies *constituted under the applicable laws and regulations of either High Contracting Party*," and Articles III(2), IV, and V each extend only to "nationals and companies *of either High Contracting Party*." Iran appears to acknowledge that the Court lacks jurisdiction over these claims, as it does not mention these three entities in the section of its Memorial describing the purported "Iranian entities at issue" in this case (Iran's Memorial, ¶¶ 4.7-4.15), but it is not clear why these entities are referenced elsewhere in its Memorial, or why Iran annexed the articles of association of one of the entities. Moreover, should any portion of Iran's case be held over to the merits, the United States reserves all rights to raise additional objections to Iran's claims.

[378] Because this objection to jurisdiction may be resolved as a legal matter on the face of Iran's case as it is pleaded, it is not necessary for the United States to take, and it does not take, any position with regard to Bank Markazi's status or its activities at issue in this case.

[379] Iran's Memorial, ¶ 1.25; *see also id.* ¶ 2.34 (central bank should receive special immunity); *id.* ¶¶ 3.23, 3.25 (central bank should be immune regardless of whether it is a separate juridical person from the State); *id.* ¶ 3.40 (special protection for central bank).

[380] *Id.* ¶ 3.24 (emphasis added).

[381] *Id.* ¶ 4.7; *id.* Monetary and Banking Act, art. 10(c) (IM Annex 73).

[382] Monetary and Banking Act (IM Annex 73), art. 10(a) & (b).

[383] *Id.* arts. 11 & 12.

"intervene in and supervise over monetary and banking affairs."[384] Further, the Governor of the Central Bank is to serve as "the representative of the State at the International Monetary Fund," and the "liaison of the State with the International Monetary Fund shall be through the Central Bank[.]"[385]

9.6 Structurally, the 1972 Act makes clear that Bank Markazi, while having juridical status as an entity,[386] will be subject to the control of the Iranian government. The President of Iran serves directly as Chairman of the Bank's General Assembly – the powers of which include election of members of the Bank's Supervisory Board and setting the salaries of the Bank's Governor and Vice-Governor – and each of the remaining members of the Assembly is a cabinet-level minister.[387] The Governor of the Central Bank is nominated by the President of Iran, confirmed by the Central Bank's General Assembly, and then appointed by decree of the President.[388]

9.7 With specific regard to the *Peterson* enforcement proceeding that Iran places at issue here, Bank Markazi explicitly took the position that it acted in a sovereign – *not* commercial – capacity in all relevant respects. While the United States does not have access to all of Bank Markazi's pleadings because it was not a party and relevant filings before the District Court were sealed, there is certainly no indication that Bank Markazi contended that it was operating in the manner of a private company in any relevant respect. Bank Markazi argued that the assets at issue were not subject to attachment and enjoyed central bank immunity because they were purportedly being "used for the classic central banking purpose of

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[384] *Id.* art. 14.

[385] *Id.* art. 15; *see* International Monetary Fund, *IMF Members' Quotas and Voting Power, and IMF Board of Governors*, *available at* http://www.imf.org/external/np/sec/memdir/members.aspx#I (listing Valiollah Seif, Governor of the Central Bank of Iran, as Iran's IMF Governor, and Gholamali Kamyab, the Central Bank's Vice Governor for Foreign Exchange Affairs, as alternate) (last visited Apr. 22, 2017) (US Annex 241); *see also* Central Bank of the Islamic Republic of Iran, *Executive Board and Vice Governors*, *available at* http://www.cbi.ir/simplelist/1389.aspx (last visited Apr. 22, 2017) (US Annex 242).

[386] Monetary and Banking Act (IM Annex 73), art. 10(c) (the Central Bank "enjoys legal personality and shall be governed by the laws and regulations pertaining to joint-stock companies *in matters not provided for in this Act*").

[387] *Id.* arts. 17 & 20 (note that the translation provided by Iran uses the term "General Meeting," while the English webpage of the Central Bank of Iran uses "General Assembly." The latter has been adopted here.); Central Bank of the Islamic Republic of Iran, *Organization*, *available at* http://www.cbi.ir/page/1383.aspx (last visited Apr. 22, 2017) (US Annex 243). In addition to the President, the General Assembly includes the Minister of Economic Affairs and Finance, the Head of the State Management and Planning Organization, the Minister of Industry, Mines, and Trade, and one further minister selected by the Council of Ministers.

[388] Monetary and Banking Act, art. 19(a), note 35 (IM Annex 73); Central Bank of Iran, *Organization* (US Annex 243).

investing Bank Markazi's currency reserves."[389] In a related but separate proceeding, Bank Markazi similarly argued to the U.S. Court of Appeals for the Second Circuit that the waiver of sovereign immunity contained in Article XI(4) of the Treaty did not apply to it because the waiver "applies only to 'enterprises' engaged in 'business activity,' not to *instrumentalities acting in a sovereign capacity (such as Bank Markazi)*, irrespective of the commercial nature of the acts they engage in while performing their sovereign functions."[390]

9.8 Iran's and Bank Markazi's position is therefore clear: Bank Markazi has acted, at least in the context of this case, in its sovereign capacity as a traditional central bank, performing classic central-bank functions. According to Iran, Bank Markazi does not operate on the same plane as ordinary commercial enterprises; rather, it is a sovereign entity, with no private-sector counterpart.

Section B: As an Entity Purportedly Exercising Exclusively Sovereign Functions, Bank Markazi Cannot Claim Protections as a "Company" Under the Treaty

9.9 Iran's claims relating to the treatment of Bank Markazi in its role as a central bank purportedly carrying out entirely sovereign functions are outside the scope of the protections provided to "companies" under Articles III, IV, and V of the Treaty, and should therefore be dismissed as a preliminary matter. These articles do not govern how the Parties treat entities of the other Party carrying out sovereign functions. This is the inevitable conclusion flowing from a good-faith review of the articles' plain text, in context and in light of the Treaty's object and purpose.[391] It is confirmed by the negotiating history of this and other similar treaties. Iran, for its part, has cited no sources at all in support of its novel view that a State entity exercising sovereign functions should qualify as a "company" whose treatment is governed by these Treaty articles.

9.10 As Iran acknowledges in its Memorial,[392] Articles III, IV, and V impose certain obligations on the Parties concerning the treatment of "companies" or "nationals and

[389] Brief for Defendant-Appellant at 35-36, *Peterson* (2d Cir. Nov. 19, 2013) (US Annex 233). *See also* Opinion and Order at 40, *Peterson* (S.D.N.Y. Feb. 28, 2013) (IM Annex 58) (referencing Bank Markazi's argument that the assets "are immune central banking assets under FSIA § 1611(b)(1)").

[390] Brief for Defendant-Appellee at 38, *Peterson* (2d Cir. Aug. 31, 2015) (US Annex 235) (emphasis added).

[391] VCLT, art. 31.

[392] Iran's Memorial, Chapter IV ("Iran's Entitlement to the Recognition of the Separate Juridical Status of Its Companies Under Article III(1) of the Treaty of Amity") & Chapter V ("Breach of Protections Under Articles III(2), IV(1), IV(2), and V(1) of the Treaty of Amity Granted Expressly in Respect of Nationals and Companies").

companies,"[393] but impose no such obligations with regard to treatment of the other Party in its own right. Iran accordingly makes no attempt to argue that the Government of Iran should itself be considered a "company,"[394] nor could it be heard to do so.

9.11 The term "companies" is defined in Article III(1) of the Treaty to mean "corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit." Contrary to what Iran would have the Court believe, the analysis as to whether a State entity is eligible for the protections granted to "companies" in Articles III, IV, and V cannot simply begin and end with the question of whether the entity has separate juridical status, and so sweep in even State entities carrying out sovereign functions, such as traditional central banks or other government bodies.[395] The term "companies" is not naturally read to include such entities, nor do the protections provided by the Treaty to "companies" pertain to how the Parties will treat each other's government entities carrying out *sovereign* functions. Only by reading Article III(1) in complete isolation, ignoring context, object, purpose, and negotiating history, could such a result be achieved. Whether a government entity is entitled to protections as a "company" within the meaning of the Treaty does not depend on its name or its articles of incorporation, but rather on the functions it performs. This functional understanding is the only way to make sense of the Treaty's provisions.

9.12 As discussed in Chapters 2 and 8, this Treaty – like similar FCN treaties – sought to further commercial relations between the Parties by codifying various basic treatment obligations that each Party would observe with respect to each other's "nationals" and

[393] In context, the Treaty makes clear that a "national" is a natural person, a point which Iran apparently does not dispute. *See* Treaty Articles II(1) (nationals may enter and remain in territories); II(2) (nationals may be permitted to travel and reside, enjoy freedom of conscience and the right to hold religious services, may engage in the practice of professions); II(4) (nationals when in custody shall receive reasonable and humane treatment, consular representation, prompt information of accusations, and "a prompt and impartial disposition of his case"); XIX (consular officers have the right to assist their nationals, and nationals have the right to communicate with and visit consular officers).

[394] Nonetheless, as indicated *supra* n.368, Iran inexplicably includes arguments under Article IV(1) concerning treatment of Iran itself. *See* Iran's Memorial, ¶¶ 5.36, 5.44. Such arguments are at odds with the plain text of the article and cannot be accepted. Article IV(1) provides protections to "nationals and companies," not to the High Contracting Parties themselves. Moreover, to the extent Iran bases its Article III, IV, or V claims on the *Ministry of Defense of Iran et al. v. Cubic Defense System* case discussed at paragraph 2.62 of its Memorial, those claims must also be dismissed for lack of jurisdiction. The Iranian Ministry of Defense is unquestionably a part of the Government of Iran, and cannot be a "company" afforded rights under the Treaty.

[395] *Cf.* Iran's Memorial, ¶¶ 4.4-4.6.

"companies," creating an environment conducive to investment and commerce.[396]

9.13 In pursuance of the Treaty's objectives, and recognizing the increasing role of State-owned business enterprises in the economic sphere, the Parties to this and other FCN treaties agreed that State-owned enterprises acting in the marketplace alongside private companies – and *only* those enterprises, as Iran has previously accepted[397] – would enjoy such treaty rights, but that they should not occupy a privileged position by virtue of their government ownership.[398] Accordingly, such enterprises were singled out in several provisions that have the "unifying theme" of "restraint of unfair competition."[399] The relevant provisions are set out in Article XI of the Treaty of Amity (titled "Cartels and State Business Practices" in the Standard Draft FCN Treaty[400]). As previously discussed in Chapter 8, the immunity waiver provision (Article XI(4)) sought to "ensure that state-owned enterprises with a claim to treaty rights would not be able to escape the liabilities to which private United States enterprises in competition with them were subject."[401]

9.14 As Setser explained, "[i]f treaty assurances are to be given to foreign economic enterprises, then it is reasonable and appropriate to provide for equalization of the situation in the event that foreign state enterprises become competitors of American or the treaty-protected alien private enterprises."[402] Where State entities are concerned, Article XI

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[396] *Oil Platforms*, 1996 I.C.J. at 813-814, ¶ 27 (noting protections pertaining to "the status of companies and access to the courts and arbitration (Art. III), safeguards for the nationals and companies of each of the contracting parties as well as their property and enterprises (Art. IV), the conditions for the purchase and sale of real property and protection of intellectual property (Art. V). . . .").

[397] *See* Brief for Appellants at 35, *Elec. Data Sys. Corp. Iran* (5th Cir. Aug. 15, 1979) (US Annex 228) (arguing that "commercial treaties such as the Treaty of Amity do not apply to proprietary acts of a sovereign but *govern only economic enterprises controlled by a foreign state that are in competition with private enterprises for economic profits*" (emphasis added)). *See also* Setser, 55 AM. SOC. INT'L L. PROC at 101 (US Annex 229) ("The commercial treaties do not concern themselves in any very significant way with the regulation of the normal functions of government in its proprietary capacity.").

[398] *See supra* Section Chapter 8, Sec. A. *See also* SULLIVAN STUDY at 263-64 (US Annex 214) (use of term "commercial considerations" in article on State trading [Article XI(1) in the Iran Treaty] indicates rules "are not intended to apply to transactions by a government in its sovereign capacity, as for example, in the purchase of arms, but to transactions by the Government in the capacity of a merchant or entrepreneur. . . . [T]he intent is to seek to ensure that state trading organizations act as though they were private companies interested solely in making the best possible business deals"; provision is intended to "establish certain rules to enable private businesses to co-exist with state trading organizations"); and 266 (article on government contracting [Article XI(2) in the Iran Treaty] "seeks to regulate situations in which private enterprise directly faces the state").

[399] SULLIVAN STUDY 270 (IM Annex 20).

[400] *Id.*

[401] *Id.* at 272.

[402] Setser, 55 AM. SOC. INT'L L. PROC. at 101, 104 (US Annex 229).

therefore provides indispensable context for interpreting the Treaty's treatment obligations, including those set out in Articles III, IV, and V.

9.15 When government entities carry out *sovereign* functions, rather than operating as commercial enterprises, the very nature of such functions means that they cannot be acting like private companies. They are instead operating in a realm that is not the subject of a commercial treaty.[403] Such functions are simply not regulated by the Treaty's "nationals and companies" treatment provisions, which as discussed in Chapter 8 apply to private and State entities *on the same basis* in conducting their private and business affairs. Articles III, IV, and V do not set out rules governing how the Parties will treat traditional central banking activities of the other Party any more than they can be understood to regulate activities relating to government agencies carrying out foreign assistance or military activities.[404] Nor is it even clear how such provisions could be coherently applied to such activities. As the Court held in its *Oil Platforms* Judgment on Preliminary Objections (with regard to Article IV(1)),

> The whole of these provisions is 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. In other words, these detailed provisions concern the treatment by each party of the nationals and companies of the other party, as well as their property and enterprises. *Such provisions do not cover the actions carried out in this case by the United States against Iran.*[405]

9.16 Given that State entities exercising sovereign functions were never intended to fall within the "private and professional activities" scope of the Treaty's "nationals and companies" provisions, such entities were also logically considered to fall outside the scope of the Treaty's immunity waiver: the waiver applied only to those State entities in competition with private enterprises. For example, in the case of a central bank, the U.S. negotiators of the analogous Netherlands FCN treaty noted:

> There can be said to be a presumption . . . that a State's "central bank" which acts as an arm of the Government in executing the Government's

[403] *See supra* Chapter 2, Sec. A; Chapter 8, Secs. A & C.

[404] In fact, where the Treaty of Amity does expressly address central banking activities, in Article VII concerning the application of exchange restrictions, it does so in a provision addressed to the High Contracting Parties themselves. Had the Parties wanted the protections in Articles III, IV, and V to pertain to the treatment of government entities acting in a sovereign capacity, presumably they would similarly have made such provision explicit by including a reference to the High Contracting Parties.

[405] *Oil Platforms*, 1996 I.C.J. at 816, ¶ 36 (emphasis added).

> monetary control and fiscal policy represents the Government in its sovereign capacity, and is not a commercial (or business) enterprise within the purview of the [immunity waiver] provision. This presumption is, of course, rebuttable if the evidence in the instance of a given central bank does not bear it out.[406]

9.17 It is thus of great significance for purposes of the Treaty's application whether the State entity in question is exercising what Iran has referred to in prior litigation as "proprietary functions" of the government[407] or if it instead acts like a private commercial enterprise. For example, in the prior litigation in U.S. federal court described in Chapter 8 concerning a contract claim against Iran, its Social Security Organization (SSO), and its Ministry of Health and Welfare, Iran argued that the SSO – a separate juridical entity from the government itself[408] – could not be an "enterprise" under Article XI(4) of the Treaty because it was not "established for commercial purposes" and had "never engaged in competition with domestic enterprises."[409] Were such an entity insulated from the obligations of Article XI, including the waiver of immunity, but simultaneously considered a "company" entitled to protection under the Treaty's treatment articles, the careful equilibrium sought by the Treaty drafters would be disrupted.

9.18 The Treaty of Amity's negotiating history reveals no intention of the Parties to cause such a disruption. Iran and the United States unsurprisingly agreed that the term "companies" in the Treaty of Amity would not be categorically limited to "privately owned"[410] entities, given the need to address the "trend toward state enterprises" in the business arena.[411] Iran indicated simply that it wished it to be "understood that all *Iranian companies operating in the United States* would enjoy the benefits of Article III, including those Iranian companies

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[406] Department of State Instruction A-52 to Embassy The Hague, Aug. 4, 1953, at 2, *in* Brief for the United States, Appendix C, *Elec. Data Sys. Corp. Iran* (2d Cir. Oct. 18, 1979) (US Annex 231).

[407] Brief for Appellants at 36, *Elec. Data Sys. Corp. Iran* (5th Cir. Aug. 15, 1979) (US Annex 228).

[408] Brief for Defendants-Appellants at 40-41, *Elec. Data Sys. Corp. Iran* (5th Cir. Oct. 1, 1980) (US Annex 230) ("Under the Social Security law of Iran, SSO is a separate juridical entity; it is subject to its own specific regulations concerning its financial applications[.] . . . SSO can sue and be sued in the court of Iran[.]").

[409] Brief for Appellants at 36, *Elec. Data Sys. Corp. Iran* (5th Cir. Aug. 15, 1979) (US Annex 228). *See also* Brief for Defendants-Appellants at 29, *Elec. Data Sys. Corp. Iran* (5th Cir. Oct. 1, 1980) (US Annex 230) (arguing that the SSO's "function is exclusively governmental" and it has "no counterpart in the private sector").

[410] Letter of the U.S. Embassy in Tehran to the U.S. Department of State, Oct. 16, 1954, p. 3 (IM Annex 2).

[411] Telegram of the U.S. Department of State to the U.S. Embassy in Tehran, Dec. 13, 1954 (IM Annex 5); *see supra* Chapter 8, Sec. A (history and purpose of Article XI(4)).

which might be *financed* in whole or in part by the Government of Iran."[412] There was no suggestion by either Party, however, that the Treaty's provisions should depart from normal FCN practice and govern the treatment of entities exercising the sovereign powers of their governments.

9.19 In sum, the obligations contained in Articles III, IV, and V must be read naturally and in their proper context, meaning, where a State entity is concerned, in concert with Article XI. Entities that exercise sovereign functions – acting as "the State as such"[413] – are not properly considered "companies" under the Treaty, and the manner in which such entities are treated is not regulated by the rules set out in these articles. This being the case, Iran's claims relating to the treatment of Bank Markazi fall outside of the "company" protections in Articles III, IV, and V and must be dismissed.

* * *

9.20 Iran does not claim that Bank Markazi was established for commercial purposes to compete with private banking institutions, nor that it engages in any commercial or business activities in the United States. Instead, it emphasizes Bank Markazi's *sovereign* role. But Bank Markazi cannot on the one hand be acting as Iran's Central Bank in a sovereign capacity and purportedly immune from jurisdiction and enforcement, and on the other hand be a "company" engaged in commerce and entitled to rights that apply in the private and commercial sphere under Articles III, IV, and V of the Treaty. Iran's claims concerning the treatment of Bank Markazi must therefore be dismissed as outside the scope of these articles and hence outside of the Court's jurisdiction.

CHAPTER 10: CONCLUDING OBSERVATIONS

10.1 The Court should not permit Iran's claims to proceed. As the United States has established, the Court can and should reject Iran's claims as inadmissible in their entirety.

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[412] Letter of the U.S. Embassy in Tehran to the U.S. Department of State, Oct. 16, 1954, p. 3 (IM Annex 2); *see* Aide Memoire of the U.S. Embassy in Tehran, Nov. 20, 1954, at 1 (IM Annex 3) (same).

[413] SULLIVAN STUDY, p. 318 (IM Annex 20); *see also* WILSON at 328-329 ("*These [U.S. commercial] treaties look primarily to the needs of individual human beings and private companies, rather than to rights of collectivities of people (the party states) as such*. Eight of the nine 'establishment' subjects that have received special attention in the present study touch individuals directly, while the ninth (on companies) touches them indirectly. . . . . *Directed to practical problems in day-to-day relations of individuals and companies with foreign governments*, this type of agreement seems to receive less publicity and to arouse less nationalistic feeling than do other types of international legal arrangements." (emphasis added)).

Iran's attempt to found jurisdiction on the Treaty, in the face of the long-running absence of normal, ongoing commercial and consular relations between the two States, is not a genuine attempt to vindicate the interests protected by the Treaty, and its claims should be rejected as an abuse of right. Additionally, Iran brings these claims to the Court with hands sullied by, among other grave transgressions, decades of sponsorship of terrorist acts that have earned it widespread condemnation. The equities weigh heavily against granting Iran a day in court, and the doctrine of clean hands provides the Court with a firm basis on which to declare Iran's application inadmissible.

10.2 As to the jurisdictional footing for its case, while Iran may disagree with the U.S. actions at issue on the basis of other sources of law beyond the Treaty, this Court *does not have jurisdiction* to hear claims that go beyond disputes concerning the interpretation or application of *the Treaty*. The Treaty is a narrow instrument based on the consent of the parties, and Iran cannot unilaterally expand it for purposes of putting its case before the Court.

10.3 Iran's overreach is manifest in its complaints as to the U.S. measures blocking Iranian assets. The United States has shown that these measures are necessary responses to Iran's actions and thus excluded from the Treaty's scope by operation of Article XX(1). It is clear by reference to public sources and statements that these measures were intended to regulate both Iranian arms trafficking to terrorist organizations and Iran's own attempts to develop ballistic missiles. Moreover, they were necessary to protect the United States' essential security interests in preventing Iranian support for and financing of terrorism, and preventing Iranian weapons proliferation. These are not just the essential security interests of the United States: the active role that the UN Security Council has assumed in addressing Iran's misconduct and the threat posed by terrorism demonstrates that Iran's actions have also posed a threat to international peace and security. The United States' peaceful measures taken to address these risks and protect its national security, adopted only after Iran had persistently evaded earlier, narrower measures, were necessary steps.

10.4 Iran's claims concerning its Central Bank are a further case in point. In an effort to bring the *Peterson* enforcement proceeding before this Court by any means, Iran first insists that Bank Markazi is entitled to sovereign immunity as a purportedly traditional, non-commercial central bank, but then endeavors to rebrand the Bank as an ordinary Iranian entity whose treatment is governed by the "nationals and companies" articles of the Treaty. This is simply smoke and mirrors. The United States has established, by application of

familiar principles of treaty interpretation, that sovereign immunity is not a subject matter on which this Treaty provides the applicable law, except within the narrow confines of the Treaty's immunity *waiver*. In the only instance where the Treaty does supply immunity of any kind (to consular officials), it does so expressly. Reading implicit immunity protections into the Treaty, as Iran demands, would run counter to the Treaty's context, object, purpose, practice, and history. And for fundamentally similar reasons – the Treaty's object of addressing commercial matters, and not the sovereign activities of the respective parties in their own right – neither the Government of Iran nor its Central Bank may claim protections under provisions of the Treaty that explicitly accord such protections only to "nationals and companies."

10.5 For the reasons given above, the Court should reject this case as inadmissible. If it does not do so, the Court should at the very least dismiss the three categories of claims that the United States has identified for lack of jurisdiction, namely, those concerning sovereign immunity; those concerning Iran itself or Bank Markazi under Articles III, IV, or V; and those concerning Executive Order 13599.

SUBMISSIONS

In light of the foregoing, the United States of America requests that the Court uphold the objections set forth above as to the admissibility of Iran's claims and the jurisdiction of the Court, and decline to entertain the case. Specifically, the United States of America requests that the Court:

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

(b) Dismiss as outside the Court's jurisdiction all claims that U.S. measures that block or freeze assets of the Iranian government or Iranian financial institutions (as defined in Executive Order 13599) violate any provision of the Treaty.[414]

(c) Dismiss as outside the Court's jurisdiction all claims, brought under any provision of the Treaty of Amity, that are predicated on the United States' purported failure to accord sovereign immunity from jurisdiction and/or enforcement to the Government of Iran, Bank Markazi, or Iranian State-owned entities.[415]

(d) Dismiss as outside the Court's jurisdiction all claims of purported violations of Articles III, IV, or V of the Treaty that are predicated on

[414] *See* Iran's Memorial, ¶ 4.29 (asserting that E.O. 13599 breaches Article III(1) on recognition of juridical status); 5.12-5.14 (asserting that E.O. 13599 breaches Article III(2) on access to courts); *id.* ¶¶ 6.5-6.9 (asserting that E.O. 13599 breaches Article VII(1) on freedom from restrictions on transfers of funds); *id.* ¶ 6.19 (asserting that "[t]he blocking of the assets of Iran, Iranian agencies and instrumentalities, and of companies that are owned or controlled by Iran" breached Article X(1) on freedom of commerce).

[415] *See* Iran's Memorial, ¶¶ 5.13, 5.44, 6.19 (asserting that Iran's sovereign immunity was improperly denied in connection with claims under Articles XI(4), IV(1), and X(1) of the Treaty); *id.* ¶¶ 5.13, 5.17, 5.44-48, 5.57-60, 6.19 (asserting that Bank Markazi's sovereign immunity was improperly denied in connection with claims under Articles XI(4), III(2), IV(1), IV(2), and X(1) of the Treaty); *id.* ¶ 5.18 (asserting that other Iranian state-owned companies were not afforded sovereign immunity protections available under U.S. law to agencies and instrumentalities of foreign states not designated as State sponsors of terrorism, in connection with claims under Article III(2) of the Treaty).

treatment accorded to the Government of Iran or to Bank Markazi.[416]

Respectfully submitted,

Richard C. Visek

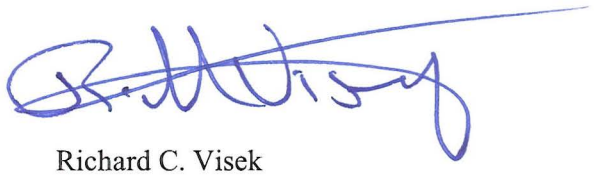
Agent of the United States of America

May 1, 2017

[416] The only claim Iran has explicitly raised under these articles as to treatment of the Government of Iran itself is under Article IV(1), concerning sovereign immunity. *See* preceding footnote. For non-immunity-related claims concerning Bank Markazi, *see* Iran's Memorial, ¶¶ 4.27-4.29 (arguing that a section of the 2012 Iran Threat Reduction and Syria Human Rights Act on the *Peterson* enforcement proceeding, as well as E.O. 13599, violated the Article III(1) obligation to recognize juridical status, including with respect to Bank Markazi); *id.* ¶ 4.35 (arguing that the U.S. courts in the *Peterson* enforcement proceeding violated the Article III(1) obligation to recognize juridical status with respect to Bank Markazi); *id.* ¶¶ 5.14-5.16 (alleging violation of the Article III(2) obligation regarding access to courts, on multiple bases, including with respect to Bank Markazi); *id.* ¶¶ 5.44-5.49 (alleging abrogation of Article IV(1) obligations regarding fair and equitable treatment, unreasonable or discriminatory measures, and effective means of enforcement, including with respect to Bank Markazi); *id.* ¶¶ 5.60 & 5.69 (alleging abrogation of Article IV(2) obligations regarding protection and security and compensation for expropriation, including with respect to Bank Markazi); *id.* ¶ 5.75 (alleging abrogation of Article V(1) obligation concerning the lease, acquisition, and disposal of property). In addition, given Iran's argument that Bank Markazi is a "company" under the Treaty, any of Iran's claims based generically on the treatment purportedly accorded to "Iranian companies" may be intended to include Bank Markazi.

CERTIFICATION

I, Richard C. Visek, Agent of the United States of America, hereby certify that the copies of this pleading and all documents annexed to it are true copies of the originals and that all translations submitted are accurate.



Richard C. Visek

Agent of the United States of America

May 1, 2017

List of Annexes Accompanying the Preliminary Objections Submitted by the United States of America

May 1, 2017

ANNEX	DESCRIPTION
1	Herman Walker, Jr., *Modern Treaties of Friendship, Commerce and Navigation*, 42 MINN. L. REV. 805 (1958)
2	Herman Walker, Jr., *The Post-War Commercial Treaty Program of the United States*, 73 POL. SCI. Q. 57 (1958)
3	Herman Walker, Jr., *Treaties for the Encouragement and Protection of Foreign Investment: Present United States Practice*, 5 AM. J. COMP. L. 229 (1956)
4	Wolfgang Saxon, "Herman Walker, 83, Professor and U.S. Foreign Officer, Dies," N.Y. Times (May 13, 1994)
5	*Spiess v. C. Itoh & Co. (America), Inc.*, 643 F.2d 353 (5th Cir. 1981)
6	Memorandum from Willard Thorp, Assistant Secretary for Economic Affairs, to Jack K. McFall, Assistant Secretary for Legislative Affairs (Dec. 29, 1951)
7	*Commercial Treaties with Iran, Nicaragua, and The Netherlands: Hearing Before the S. Comm. on Foreign Relations*, 84th Cong. (1956) (statement of Thorsten V. Kalijarvi, Dep't of State)
8	"FOA Announces Program of Aid to Iran," *in* 31 DEP'T OF STATE BULL. 776 (Nov. 22, 1954)
9	Agricultural Commodities Agreement Between the United States and Iran under Title I of the Agricultural Trade Development and Assistance Act, As Amended (July 26, 1960), T.I.A.S. 4544, 384 U.N.T.S. 141
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207	S.C. Res. 1455, U.N. Doc. S/RES/1455 (Jan. 17, 2003)
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225	Letter from Jack B. Tate, Acting Legal Adviser, to Philip B. Perlman, Acting Attorney General (May 19, 1952), *in* 26 DEP'T. STATE BULL. 984 (1952)
226	Cable from U.S. Dep't of State to U.S. Embassy Tehran (Dec. 4, 1954)
227	Cable from U.S. Dep't of State to U.S. Embassy Tehran (Dec. 18, 1954)
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229	Vernon G. Setser, *The Immunity Waiver for State-Controlled Business Enterprises in United States Commercial Treaties*, 55 AM. SOC. INT'L L. PROC. 89 (1961)
230	Brief for Defendants-Appellants, *Elec. Data Sys. Corp. Iran v. Soc. Sec. Org. of Gov't of Iran*, 651 F.2d 1007 (5th Cir. 1981) (No. 80-1641)
231	Brief for the United States as Amicus Curiae, *Elec. Data Sys. Corp. Iran v. Soc. Sec. Org.of Gov't of Iran*, 610 F.2d 94 (2d Cir. 1979) (No. 79-7696)
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233	Brief and Special Appendix for Defendant-Appellant Bank Markazi, Cent. Bank of Iran, *Peterson v. Islamic Republic of Iran*, 758 F.3d 185 (2d Cir. 2014) (No. 13-2952)
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236	Cable from U.S. Dep't of State to U.S. Embassy Tehran (Dec. 8, 1954)
237	Diplomatic Note from U.S. Department of State to Ato Ketema Yifru, Minister of Foreign Affairs of the Imperial Ethiopian Government (Apr. 14, 1966)
238	Brief for the United States as Amicus Curiae, *Bank Markazi v. Peterson*, 136 S. Ct. 1310 (2016) (No. 14-770)

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239	Bank Sepah International PLC, *About Us*
240	Melli Bank plc, *Welcome to Melli Bank plc*
241	International Monetary Fund, *IMF Members' Quotas and Voting Power, and IMF Board of Governors*
242	Central Bank of the Islamic Republic of Iran, *Executive Board and Vice Governors*
243	Central Bank of the Islamic Republic of Iran, *Organization*
244	Stephen M. Schwebel, *Clean Hands in the Court*, 31 STUD. TRANSNAT'L LEGAL POL'Y 74 (1999)
245	*Sixth Report on the Law of Treaties*, Sir Humphrey Waldock, Special Rapporteur, [1966] 2 Y.B. INT'L L. COMM'N 51, U.N. Doc. A/CN.4/SER.A/1966/Add.1

IRAN

Amity, Economic Relations, and Consular Rights

Treaty signed at Tehran August 15, 1955;
Ratification advised by the Senate of the United States of America July 11, 1956;
Ratified by the President of the United States of America September 14, 1956;
Ratified by Iran April 30, 1957;
Ratifications exchanged at Tehran May 16, 1957;
Proclaimed by the President of the United States of America June 27, 1957;
Entered into force June 16, 1957.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty of amity, economic relations, and consular rights between the United States of America and Iran was signed at Tehran on August 15, 1955, the original of which treaty, being in the English and Persian languages, is word for word as follows:

Appendix A

TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS BETWEEN THE UNITED STATES OF AMERICA AND IRAN

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Appendix A

TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS BETWEEN THE UNITED STATES OF AMERICA AND IRAN

The United States of America and Iran, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and of regulating consular relations, have resolved to conclude, on the basis of reciprocal equality of treatment, a Treaty of Amity, Economic Relations, and Consular Rights, and have appointed as their Plenipotentiaries:

The President of the United States of America:
Mr. Selden Chapin, Ambassador Extraordinary and Plenipotentiary of the United States of America at Tehran;
and
His Imperial Majesty, the Shah of Iran:
His Excellency Mr. Mostafa Samiy, Under Secretary of the Ministry of Foreign Affairs;

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following articles:

Article I

There shall be firm and enduring peace and sincere friendship between the United States of America and Iran.

Article II

1. Nationals of either High Contracting Party shall be permitted, upon terms no less favorable than those accorded to nationals of any third country, to enter and remain in the territories of the other High Contracting Party for the purpose of carrying on trade between their own country and the territories of such other High Contracting Party and engaging in related commercial activities, and for the purpose of developing and directing the operations of an enterprise in which they have invested, or in which they are actively in the process of investing, a substantial amount of capital.

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2. Nationals of either High Contracting Party within the territories of the other High Contracting Party shall, either individually or through associations, and so long as their activities are not contrary to public order, safety or morals: (a) be permitted to travel therein freely and reside at places of their choice; (b) enjoy freedom of conscience and the right to hold religious services; (c) be permitted to engage in philanthropic, educational and scientific activities; and (d) have the right to gather and transmit information for dissemination to the public abroad, and otherwise to communicate with other persons inside and outside such territories. They shall also be permitted to engage in the practice of professions for which they have qualified under the applicable legal provisions governing admission to professions.

3. The provisions of paragraphs 1 and 2 of the present Article shall be subject to the right of either High Contracting Party to apply measures which are necessary to maintain public order, and to protect public health, morals and safety, including the right to expel, to exclude or to limit the movement of aliens on the said grounds.

4. Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. When any such national is in custody, he shall in every respect receive reasonable and humane treatment; and, on his demand, the diplomatic or consular representative of his country shall without unnecessary delay be notified and accorded full opportunity to safeguard his interests. He shall be promptly informed of the accusations against him, allowed all facilities reasonably necessary to his defense and given a prompt and impartial disposition of his case.

Article III

1. 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.

2. 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.

3. The private settlement of disputes of a civil nature, involving nationals and companies of either High Contracting Party, shall not be discouraged within the territories of the other High Contracting Party; and, in cases of such settlement by arbitration, neither the alienage of the arbitrators nor the foreign situs of the arbitration proceedings shall of themselves be a bar to the enforceability of awards duly resulting therefrom.

Article IV

1. 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.

2. 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.

3. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either High Contracting Party located within the territories of the other High Contracting Party shall not be subject to entry or molestation without just cause. Official searches and examinations of such premises and their contents, shall be made only according to law and with careful regard for the convenience of the occupants and the conduct of business.

4. Enterprises which nationals and companies of either High Contracting Party are permitted to establish or acquire, within the

territories of the other High Contracting Party, shall be permitted freely to conduct their activities therein, upon terms no less favorable than other enterprises of whatever nationality engaged in similar activities. Such nationals and companies shall enjoy the right to continued control and management of such enterprises; to engage attorneys, agents, accountants and other technical experts, executive personnel, interpreters and other specialized employees of their choice; and to do all other things necessary or incidental to the effective conduct of their affairs.

Article V

1. 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 nationals and companies of any third country.

2. Upon compliance with the applicable laws and regulations respecting registration and other formalities, nationals and companies of either High Contracting Party shall be accorded within the territories of the other High Contracting Party effective protection in the exclusive use of inventions, trade marks and trade names.

Article VI

1. Nationals and companies of either High Contracting Party shall not be subject to the payment of taxes, fees or charges within the territories of the other High Contracting Party, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country. In the case of nationals of either High Contracting Party residing within the territories of the other High Contracting Party, and of nationals and companies of either High Contracting Party engaged in trade or other gainful pursuit or in non-profit activities therein, such payments and requirements shall not be more burdensome than those borne by nationals and companies of such other High Contracting Party.

2. Each High Contracting Party, however, reserves the right to: (a) extend specific tax advantages only on the basis of reciprocity, or pursuant to agreements for the avoidance of double taxation or the mutual protection of revenue; and (b) apply special

requirements as to the exemptions of a personal nature allowed to non-residents in connection with income and inheritance taxes.

3. Companies of either High Contracting Party shall not be subject, within the territories of the other High Contracting Party, to taxes upon any income, transactions or capital not attributable to the operations and investment thereof within such territories.

Article VII

1. 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.

2. If either High Contracting Party applies exchange restrictions, it shall promptly make reasonable provision for the withdrawal, in foreign exchange in the currency of the other High Contracting Party, of: (a) the compensation referred to in Article IV, paragraph 2, of the present Treaty, (b) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services, or otherwise, and (c) amounts for amortization of loans, depreciation of direct investments and capital transfers, giving consideration to special needs for other transactions. If more than one rate of exchange is in force, the rate applicable to such withdrawals shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of a rate so approved, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

3. Either High Contracting Party applying exchange restrictions shall in general administer them 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; and shall afford such other High Contracting Party adequate opportunity for consultation at any time regarding the application of the present Article.

Article VIII

1. Each High Contracting Party shall accord to products of the other High Contracting Party, from whatever place and by whatever type of carrier arriving, and to products destined for

exportation to the territories of such other High Contracting Party, by whatever route and by whatever type of carrier, treatment no less favorable than that accorded like products of or destined for exportation to any third country, in all matters relating to: (a) duties, other charges, regulations and formalities, on or in connection with importation and exportation; and (b) internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither High Contracting Party shall impose restrictions or prohibitions on the importation of any product of the other High Contracting Party or on the exportation of any product to the territories of the other High Contracting Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

3. If either High Contracting Party imposes quantitative restrictions on the importation or exportation of any product in which the other High Contracting Party has an important interest:

(a) It shall as a general rule give prior public notice of the total amount of the product, by quantity or value, that may be imported or exported during a specified period, and of any change in such amount or period; and

(b) If it makes allotments to any third country, it shall afford such other High Contracting Party a share proportionate to the amount of the product, by quantity or value, supplied by or to it during a previous representative period, due consideration being given to any special factors affecting the trade in such product.

4. Either High Contracting Party may impose prohibitions or restrictions on sanitary or other customary grounds of a noncommercial nature, or in the interest of preventing deceptive or unfair practices, provided such prohibitions or restrictions do not arbitrarily discriminate against the commerce of the other High Contracting Party.

5. Either High Contracting Party may adopt measures necessary to assure the utilization of accumulated inconvertible currencies or to deal with a stringency of foreign exchange. However, such measures shall deviate no more than necessary from a policy designed to promote the maximum development of nondiscriminatory multilateral trade and to expedite the attainment of a balance-of-payments position which will obviate the necessity of such measures.

6. Each High Contracting Party reserves the right to accord special advantages: (a) to products of its national fisheries, (b) to adjacent countries in order to facilitate frontier traffic, or (c) by virtue of a customs union or free trade area of which either High Contracting Party, after consultation with the other High Contracting Party, may become a member. Each High Contracting Party, moreover, reserves rights and obligations it may have under the General Agreement on Tariffs and Trade, and special advantages it may accord pursuant thereto.

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61 Stat., pts. 5 and 6.

Article IX

1. In the administration of its customs regulations and procedures, each High Contracting Party shall: (a) promptly publish all requirements of general application affecting importation and exportation; (b) apply such requirements in a uniform, impartial and reasonable manner; (c) refrain, as a general practice, from enforcing new or more burdensome requirements until after public notice thereof; (d) provide an appeals procedure by which prompt and impartial review of administrative action in customs matters can be obtained; and (e) not impose greater than nominal penalties for infractions resulting from clerical errors or from mistakes made in good faith.

2. Nationals and companies of either High Contracting Party shall be accorded treatment no less favorable than that accorded nationals and companies of the other High Contracting Party, or of any third country, with respect to all matters relating to importation and exportation.

3. Neither High Contracting Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either High Contracting Party.

Article X

1. Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either High Contracting Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that High Contracting Party both on the high seas and within the ports, places and waters of the other High Contracting Party.

3. Vessels of either High Contracting Party shall have liberty, on equal terms with vessels of the other High Contracting Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other High

Contracting Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters of such other High Contracting Party; but each High Contracting Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.

4. Vessels of either High Contracting Party shall be accorded national treatment and most-favored-nation treatment by the other High Contracting Party with respect to the right to carry all products that may be carried by vessel to or from the territories of such other High Contracting Party; and such products shall be accorded treatment no less favorable than that accorded like products carried in vessels of such other High Contracting Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature.

5. Vessels of either High Contracting Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other High Contracting Party, and shall receive friendly treatment and assistance.

6. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraphs 2 and 5 of the present Article, include fishing vessels or vessels of war.

Article XI

1. Each High Contracting Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other High Contracting Party solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that the nationals, companies and commerce of such other High Contracting Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.

2. Each High Contracting Party shall accord to the nationals, companies and commerce of the other High Contracting Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country,

with respect to: (a) the governmental purchase of supplies, (b) the awarding of government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.

3. The High Contracting Parties recognize that conditions of competitive equality should be maintained in situations in which publicly owned or controlled trading or manufacturing enterprises of either High Contracting Party engage in competition, within the territories thereof, with privately owned and controlled enterprises of nationals and companies of the other High Contracting Party. Accordingly, such private enterprises shall, in such situations, be entitled to the benefit of any special advantages of an economic nature accorded such public enterprises, whether in the nature of subsidies, tax exemptions or otherwise. The foregoing rule shall not apply, however, to special advantages given in connection with: (a) manufacturing goods for government use, or supplying goods and services to the Government for government use; or (b) supplying at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

4. No enterprise of either High Contracting Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, industrial, shipping or other business activities within the territories of the other High Contracting Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

Article XII

Each High Contracting Party shall have the right to send to the other High Contracting Party consular representatives, who, having presented their credentials and having been recognized in a consular capacity, shall be provided, free of charge, with exequaturs or other authorization.

Article XIII

1. Consular representatives of each High Contracting Party shall be permitted to reside in the territory of the other High Contracting Party at the places where consular officers of any third country are permitted to reside and at other places by consent of the other High Contracting Party. Consular officers and employees shall enjoy the privileges and immunities accorded

to officers and employees of their rank or status by general international usage and shall be permitted to exercise all functions which are in accordance with such usage; in any event they shall be treated, subject to reciprocity, in a manner no less favorable than similar officers and employees of any third country.

2. The consular offices shall not be entered by the police or other local authorities without the consent of the consular officer, except that in the case of fire or other disaster, or if the local authorities have probable cause to believe that a crime of violence has been or is about to be committed in the consular office, consent to entry shall be presumed. In no case shall they examine or seize the papers there deposited.

Article XIV

1. All furniture, equipment and supplies consigned to or withdrawn from customs custody for a consular or diplomatic office of either High Contracting Party for official use shall be exempt within the territories of the other High Contracting Party from all customs duties and internal revenue or other taxes imposed upon or by reason of importation.

2. The baggage, effects and other articles imported exclusively for the personal use of consular officers and diplomatic and consular employees and members of their families residing with them, who are nationals of the sending state and are not engaged in any private occupation for gain in the territories of the receiving state, shall be exempt from all customs duties and internal revenue or other taxes imposed upon or by reason of importation. Such exemptions shall be granted with respect to the property accompanying the person entitled thereto on first arrival and on subsequent arrivals, and to that consigned to such officers and employees during the period in which they continue in status.

3. It is understood, however, that: (a) paragraph 2 of the present Article shall apply as to consular officers and diplomatic and consular employees only when their names have been communicated to the appropriate authorities of the receiving state and they have been duly recognized in their official capacity; (b) in the case of consignments, either High Contracting Party may, as a condition to the granting of exemption, require that a notification of any such consignment be given, in a prescribed manner; and (c) nothing herein authorizes importations specifically prohibited by law.

Article XV

1. The Government of either High Contracting Party may, in the territory of the other, acquire, own, lease for any period of

time, or otherwise hold and occupy, such lands, buildings, and appurtenances as may be necessary and appropriate for governmental, other than military, purposes. If under the local law the permission of the local authorities must be obtained as a prerequisite to any such acquiring or holding, such permission shall be given on request.

2. Lands and buildings situated in the territories of either High Contracting Party, of which the other High Contracting Party is the legal or equitable owner and which are used exclusively for governmental purposes by that owner, shall be exempt from taxation of every kind, national, state, provincial and municipal, other than assessments levied for services or local public improvements by which the premises are benefited.

Article XVI

1. No tax or other similar charge of any kind, whether of a national, state, provincial, or municipal nature, shall be levied or collected within the territories of the receiving state in respect of the official emoluments, salaries, wages or allowances received (a) by a consular officer of the sending state as compensation for his consular services, or (b) by a consular employee thereof as compensation for his services at a consulate. Likewise, consular officers and employees, who are permanent employees of the sending state and are not engaged in private occupation for gain within the territories of the receiving state, shall be exempt from all taxes or other similar charges, the legal incidence of which would otherwise fall upon such officers or employees.

2. The preceding paragraph shall not apply in respect of taxes and other similar charges upon: (a) the ownership or occupation of immovable property situated within the territories of the receiving state; (b) income derived from sources within such territories (except the compensation mentioned in the preceding paragraph); or (c) the passing of property at death.

3. The provisions of the present Article shall have like application to diplomatic officers and employees, who shall in addition be accorded all exemptions allowed them under general international usage.

Article XVII

The exemptions provided for in Articles XIV and XVI shall not apply to nationals of the sending state who are also nationals of the receiving state, or to any other person who is a national of the receiving state, nor to persons having immigrant status who have been lawfully admitted for permanent residence in the receiving state.

Article XVIII

Consular officers and employees are not subject to local jurisdiction for acts done in their official character and within the scope of their authority. No consular officer or employee shall be required to present his official files before the courts or to make declaration with respect to their contents.

Article XIX

A consular officer shall have the right within his district to: (a) interview, communicate with, assist and advise any national of the sending state; (b) inquire into any incidents which have occurred affecting the interests of any such national; and (c) assist any such national in proceedings before or in relations with the authorities of the receiving state and, where necessary, arrange for legal assistance to which he is entitled. A national of the sending state shall have the right at all times to communicate with a consular officer of his country and, unless subject to lawful detention, to visit him at the consular office.

Article XX

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

(a) regulating the importation or exportation of gold or silver;

(b) relating to fissionable materials, the radio-active by-products thereof, or the sources thereof;

(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.

2. The present Treaty does not accord any rights to engage in political activities.

3. The stipulations of the present Treaty shall not extend to advantages accorded by the United States of America or its Territories and possessions, irrespective of any future change in their political status, to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone.

4. The provisions of Article II, Paragraph 1, shall be construed as extending to nationals of either High Contracting Party seeking

to enter the territories of the other High Contracting Party solely for the purpose of developing and directing the operations of an enterprise in the territories of such other High Contracting Party in which their employer has invested or is actively in the process of investing a substantial amount of capital: provided that such employer is a national or company of the same nationality as the applicant and that the applicant is employed by such national or company in a responsible capacity.

Article XXI

1. Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other High Contracting Party may make with respect to any matter affecting the operation of the present Treaty.

2. 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.

Article XXII

1. The present Treaty shall replace the following agreements between the United States of America and Iran:

(a) the provisional agreement relating to commercial and other relations, concluded at Tehran May 14, 1928, and — EAS 19. 47 Stat. 2644.

(b) the provisional agreement relating to personal status and family law, concluded at Tehran July 11, 1928. — EAS 20. 47 Stat. 2652.

2. Nothing in the present Treaty shall be construed to supersede any provision of the trade agreement and the supplementary exchange of notes between the United States of America and Iran, concluded at Washington April 8, 1943. — EAS 410. 58 Stat. 1322.

Article XXIII

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Tehran as soon as possible.

2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either 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.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and Persian languages, both equally authentic, at Tehran this fifteenth day of August one thousand nine hundred fifty-five, corresponding with the twenty-third day of Mordad one thousand three hundred and thirty-four.

SELDEN CHAPIN	MOSTAFA SAMIY
[SEAL]	[SEAL]

Appendix A

ماده بیست وسوم

۱ــ عهدنامه فعلی بتصویب خواهد رسید واسناد مصوبه آن هرچه زودتر در تهران مبادله خواهد شد .

۲ــ عهدنامه فعلی یکماه پس از تاریخ مبادله اسناد مصوبه بموقع اجراگذاشته خواهد شد . این عهدنامه مدت ده سال معتبر خواهد بود وپس از آن نیز تا موقعیکه بترتیب مقرر در این عهدنامه خاتمه پذیرد بقوت خود باقی خواهد بود .

۳ــ هریک از طرفین معظمین متعاهدین میتواند باداده اخطار کتبی بمدت یکسال بطرف معظم متعاهد دیگر در انقضاء مدت ده سال اول یا هرموقع پس از آن این عهدنامه را خاتمه دهد (فسخ کند)

بنابمراتب فوق نمایندگان تام الاختیار طرفین عهدنامه فعلی را امضاء ویامهرخود مهر نموده اند .

در دو نسخه بانگلیسی وفارسی تهیه شد وهردو زبان متساویا معتبر است .

تهران روز بیست وسوم ماه مرداد یکهزاروسیصد وسی وچهار شمسی هجری مطابق با پانزدهم اوت یکهزارونهصد وپنجاه وپنج مسیحی .

[SEAL] [SEAL]

TIAS 3853

Appendix A

٤ــ مقررات بند اول ماده دوم باید طوری تفسیر شود که شامل این اشخاص گردد :
اتباع هریك ازطرفین معظمین متعاهدین که بخواهند وارد قلمرو طرف معظم متعاهد دیگر شوند وقصد شان فقط توسعه واداره عملیات موسسه‌ای باشد که درقلمرو طرف معظم متعاهد دیگر واقع است وکارفرمای آنها درقلمرو مزبور مبلغ متعنابهی ازسرمایه خود رابکاراند اخته یاعملا درجریان بکاراند اختن است مشروط براینکه کارفرمای مزبور ازاتباع یاشرکتهای کشور درخواست کننده باشد ودرخواست کننده ازطرف تبعه یاشرکت مزبور باسمت مسئولی استخدام شده باشد .

ماده بیست ویکم

۱ــ هریك ازطرفین معظمین متعاهدین نسبت به هراعتراضی که طرف معظم متعاهد دیگرممکن است درمورد هرموضوعی که موثر دراجرای عهد نامه فعلی باشد بعمل آورد توجه دوستانه خواهد نمود وفرصت کافی برای مشاوره درآن موضوع قائل خواهد شد .

۲ــ هراختلافی بین طرفین معظمین متعاهدین درمورد تفسیر یااجرای عهد نامه فعلی که ازطریق دیپلماسی به نحورضایت بخش فیصله نیابد بدیوان دادگستری بین المللی ارجاع خواهد شد مگراینکه طرفین معظمین متعاهدین موافقت کنند که اختلاف بوسائل صلح جویانه دیگری حل شود .

ماده بیست ودوم

۱ــ عهد نامه کنونی جایگزین قرار دادهای ذیل بین ایران ودول متحده آمریکا خواهد شد :

(الف) قرارداد مونت مربوط بتجارت ومناسبات دیگر منعقده درتهران بتاریخ ۲۴ اردیبهشت ۱۳۰۷ شمسی هجری (۱۴ ماه مه ۱۹۲۸ مسیحی)

(ب) قرارداد مونت مربوط بمسائل شخصیه و قانون خانوادگی منعقده در تهران بتاریخ ۲۰ تیرماه ۱۳۰۷ شمسی هجری (یازدهم ماه ژوئیه ۱۹۲۸ مسیحی)

۲ــ هیچ چیزی درعهد نامه کنونی طوری تفسیر نخواهد شد که ناسخ وجایگزین هیچیك ازمقررات قرارداد بازرگانی ومبادله نامه های متمم آن باشد که بین ایران ودول متحده آمریکا بتاریخ ۱۸ فروردین ۱۳۲۲ شمسی هجری (هشتم آوریل ۱۹۴۳) درواشنگتن منعقد گردیده است .

Appendix A

وی موثر باشد تحقیقات بعمل آورد و (ج) درجریان محاکمات وی در برابر مقامات کشور مقصد یا در روابط وی با مقامات کشور مقصد ویرا یاری نماید وهرجاکه بداشتن وکیل ومشاور حقوقی ذیحق است برای جلب کمك چنین اشخاص ترتیب لازم بدهد . تبعهٔ کشور مبدأ درهمه اوقات حق خواهد داشت باصاحب منصب کنسولی کشور خود ارتباط پیدا کند و باستثنای مواردی که طبق قانون بازداشت شده است صاحب منصب مزبور رادر اداره کنسولی ملاقات نماید .

ماده بیستم

۱ــ عهدنامه فعلی مانع اجرای اقدامات ذیل نخواهد بود :

(الف) اقدامات مربوط به تنظیم ورود یاصدور زر وسیم

(ب) اقدامات مربوط بموادی که ذرات آنها قابل شکافتن است ومواد فرعی رادیو اکتیو یامنابع آن

(ج) اقدامات مربوط به تنظیم تولید یاتجارت اسلحه ومهمات وآلات و ادوات جنگی یا تجارت سایر موادی که مستقیم یاغیر مستقیم بمنظور تهیه لوازم برای یك موسسه نظامی صورت پذیرد .

(د) اقدامات لازم جهت ایفاء تعهدات یك طرف معظم متعاهد برای حفظ یاالعاده صلح وامنیت بین المللی یاجهت حفظ منافع اساسی طرف مزبور از لحاظ امنیت .

۲ــ عهدنامه فعلی حقی جهت اشتغال به فعالیتهای سیاسی اعطاء نمیکند .

۳ــ مقررات عهدنامه فعلی شامل مزایائی نخواهد بود که دول متحده آمریکا یاقلمرو اراضی ومتصرفات آن صرفنظر ازهرگونه تغییری که درآینده در وضع سیاسی آنها پیدا شود بیك دیگر یابه جمهوری کوبا یابه جمهوری فیلیپین یابه جزایر اقیانوس آرام که تحت قیمومت هستند یابه منطقه کانال پاناما اعطاء نموده‌اند .

۲ــ بند فوق شامل مالیاتهای عوارض مشابه دیگری که در موارد ذیل تعلق میگیرد نخواهد بود : (الف) برمالکیت یاتصرف اموال غیر منقول واقع درقلمرو کشور مقصد (ب) برعواید حاصله ازمنابع واقعه در قلمرو مزبور (باستثنای پاداش مذکور دربند قبل) یا (ج) برانتقال اموال درنتیجه فوت .

۳ــ مقررات این ماده همچنان شامل صاحب منصبان سیاسی وکارمندان سیاسی خواهد بود وبعلاوه کلیه معافیتهائیکه طبق عرف عمومی بین‌الملل در باره آنها قائل شده اند بآنان اعطاء خواهد گردید .

ماده هفدهم

اتباع کشور مبدأ که همچنان ازاتباع کشور مقصد باشند یاهرشخص دیگری که ازاتباع کشور مقصد باشد یااشخاصی که حالت مهاجر دارند وبرای اقامت دائم درکشور مقصد قانونا اجازه ورود بآنها داده شده است مشمول معافیتهای مندرجه درمواد چهاردهم وشانزدهم نخواهند بود .

ماده هیجدهم

صاحب منصبان کنسولی وکارمندان کنسولی برای اعمالی که بسمت رسمی درحدود اختیارات خود انجام میدهند تابع مقررات محلی نمیباشند . هیچیک ازصاحب منصبان کنسولی یا کارمندان کنسولی ملزم نخواهند بود پرونده های رسمی خود رابمحاکم ارائه دهند یادر باره محتویات پرونده ها اظهاراتی بکنند .

ماده نوزدهم

صاحب منصب کنسولی درحوزه ماموریت خودحق خواهد داشت :

(الف) باهریك ازاتباع کشور مبدأ مصاحبه کند وبااو ارتباط داشته باشد و اورا کمك نماید وباو نظر بدهد (ب) درباره هرگونه حوادثی که پیش آید ودرمصالح یامنافع

قانون صریحا منع کرده است هیچ مجوزی دراین قرار داد وجود ندارد .

ماده پانزدهم

۱ـ دولت هریك ازطرفین معظمین متعاهدین ممکن است درقلمرو طرف دیگر برای هرمدتی اراضی وابنیه ومتعلقات آنرا که برای مقاصد دولتی غیرازمقاصد نظامی لازم ومقتضی باشد تحصیل یا تملك یا اجاره کند یا بنحو دیگرنگاه دارد یادرآنجا ساکن شود . هرگاه طبق قانون محل برای تحصیل یانگاهداشتن اراضی وابنیه ومتعلقات آن کسب اجازه قبلی ازمقامات محلی ضرورت داشته باشد بمجرد درخواست اجازه مزبور داده خواهد شد .

۲ـ اراضی وابنیه واقعه درقلمرو هریك ازطرفین معظمین متعاهدین که طرف معظم متعاهد دیگر قانونا وحقا مالك آن باشد وازطرف مالك مزبورمنحصرا" برای مقاصد دولتی مورد استفاده قرارگیرد ازهرگونه مالیات اعم از ملی و دولتی وایالتی وبلدی معاف خواهد بود مگرعوارض که بابت خدمات (سرویسها) یاعمران واصلاحات عمومی محلی وضع گردد واراضی وامکنه مزبور نیز ازآن اصلاحات استفاده کند .

ماده شانزدهم

۱ـ درقلمرو کشور مقصد ازعواید رسمی وحقوق ومزد وکمك خرجهائی که (الف) یك صاحب منصب کنسولی کشور مبدا" بعنوان پاداش خدمات کنسولی خود یا (ب) یك کارمند کنسولی کشور مبدا" بعنوان پاداش خدمات خود دریك کنسولخانه دریافت میدارد هیچگونه مالیات یاعوارض مشابه دیگری اعم ازملی و دولتی وایالتی وبلدی گرفته نخواهد شد . همچنین صاحب منصبان کنسولی وکارمندان کنسولی که از مستخدمین دائمی کشور مبدا" میباشند ومنظور انتفاع شاغل شغل خصوصی درقلمرو کشور مقصد نیستند ازکلیه مالیاتها یاعوارض مشابه دیگری که درغیر این صورت برصاحب منصبان یا کارمندان مزبور قانونا تعلق میگیرد معاف خواهند بود .

Appendix A

بود که از رفتار باصاحب منصبان وکارمندان مشابه هرکشورثالثی بهیچوجه نامساعد تر نباشد .

۲ــ شهربانی یادیگر مقامات محلی بی موافقت صاحب منصب کنسولی وارد ادارات کنسولی نخواهند شد مگر درمورد حریق یا بلیه دیگر یا هرگاه مقامات محلی بدلائل احتمالی معتقد شوند که باعمال زور جنایتی در اداره کنسولی واقع شده یا درشرف وقوع است درآنصورت چنین تصورخواهد شد که باورود (مامورین مزبور) موافقت شده است . در هیچ موردی مقامات شهربانی یامقامات محلی دیگر اوراقی راکه درآنجا سپرده شده است معاینه یاضبط نخواهند کرد .

ماده چهاردهم

۱ــ کلیه اثاث ووسائل ولوازمی که بواسطه یکی از ادارات کنسولی یا سیاسی هریک ازطرفین متعاهدین برای استفاده رسمی وارد گمرک شود یا ازگمرک خارج گردد درقلمروطرف معظم متعاهد دیگرازکلیه حقوق گمرکی وعوائد داخلی یامالیاتهای دیگریکه بواردات تعلق میگیرد یابدلیل ورود وضع میشود معاف خواهد بود .

۲ــ اسباب سفروأثاثه واشیاء دیگریکه منحصرا برای استفاده شخصی صاحب منصبان کنسولی وکارمندان سیاسی وکنسولی واعضاء خانواده های آنان که باهم (دریک جا) سکونت دارند وتبعه کشورمبداء میباشند ودرقلمرو کشورمقصد بهیچ کارخصوصی بقصد انتفاع اشتغال ندارند ازکلیه حقوق گمرکی وعوائد داخلی یا مالیاتهای دیگری که بواردات تعلق میگیرد یابدلیل ورود وضع میشود معاف خواهد بود . معافیتهای مزبور شامل اموالی خواهد بود که شخص مستحق معافیت دراول ورود ودرد فعات بعدکه وارد میشود باخود میآورد وهمچنین درمدتی که صاحب منصبان وکارمندان مزبور بخدمت اشتغال دارند اموالی که برای آنان فرستاده میشود مشمول معافیتهای مزبور خواهد بود .

۳ــ لکن معلوم است که : (الف) بند ۲این ماده تنهاوقتی شامل حال صاحب منصبان کنسولی وکارمندان سیاسی وکنسولی خواهد شد که اسامی آنان بمقامات مربوطه کشورمقصد ابلاغ شده وبسمت رسمی خود بترتیب صحیح ومقرر شناخته شده باشند (ب) هریک از طرفین معظمین متعاهدین ممکن است درمورد محمولات برای اعطاء معافیت شرط کنند که بترتیب مقرر حمل آن اطلاع داده شود و (ج) برای ورود اشیائیکه

در قلمرو خود یا موسسات دیگری رقابت کنند که باشخاص یا شرکتهای خصوصی طرف معظم متعاهد دیگر تعلق دارد و تحت نظارت چنین اشخاص و شرکتها باشد باید شرایط مساوی در رقابت حفظ گردد. علیهذا اینکونه موسسات خصوصی در چنین موارد حق خواهند داشت از هرگونه مزایای خاص که جنبه انتظامی داشته باشد و بموسسات دولتی مزبور داده شود اعم از اینکه کمک مالی یا معافیت از مالیات غیر ذلک باشد استفاده کنند. لکن قاعده مذکور در فوق شامل مزایای خاصی که راجع بموارد ذیل باشد نخواهد بود: (الف) ساختن اجناس برای استفاده دولت یا تهیه کالا یا عرضه داشتن خدمات (سرویسها) بدولت برای استفاده دولت یا (ب) تهیه کالاهای ضروری و عرضه داشتن خدمات (سرویسهای) مورد احتیاج جماعات خاصی از نفوس که عملا جماعات مزبور نتوانند آن کالاها و خدمات را بطریق دیگر بدست آورند و قیمت آن بمیزان قابل توجهی کمتر از قیمتی باشد که در نتیجه رقابت حاصل شود.

٤ــ هیچیك از موسسات طرفین معظمین متعاهدین از جمله شرکتها و هیئتها و نمایندگی ها و بنگاهها و عوامل دولتی که متعلق به دولت یا تحت نظر دولت باشد در صورتیکه در قلمرو طرف معظم متعاهد دیگر بکار بازرگانی یا صنعت یا کشتیرانی یا سایر فعالیتهای تجاری اشتغال یابد حق نخواهد داشت در موارد ذیل چه برای خود چه برای اموال خود ادعای مصونیت کند یا از مصونیت بهره مند شود: مصونیت از مالیات در قلمرو مزبور یا تعقیب یا اجرای احکام قضائی یا سایر تعهدات و مسئولیتهای موسسات خصوصی آن کشور که متعلق باشخاص یا تحت نظارت اشخاص باشد.

ماده دوازدهم

هریك از طرفین معظمین متعاهدین حق خواهد داشت نمایندگان کنسولی بکشور طرف معظم متعاهد دیگر بفرستد. بعد از آنکه نمایندگان مزبور اعتبارنامه‌های خود را ارائه دادند و بسمت کنسولی شناخته شدند روانامه یا اجازه نامه های دیگری مجانا بآنها داده خواهد شد.

ماده سیزدهم

۱ــ نمایندگان کنسولی هریك از طرفین معظمین متعاهدین اجازه خواهند داشت در قلمرو طرف معظم متعاهد دیگر در نقاطی که صاحب منصبان کنسولی هر کشور ثالث دیگری در آنجا اجازه سکونت داشته باشند یا در نقاط دیگری که مورد موافقت طرف معظم متعاهد دیگر قرار گیرد ساکن شوند. صاحب منصبان کنسولی و کارمندان کنسولی از مزایا و مصونیتهائیکه طبق عرف عمومی بین الملل در مورد صاحب منصبان و کارمندان هم رتبه و همکارشان قائل میشوند برخوردار خواهند بود و اجازه خواهند داشت کلیه کارهائی را که مطابق عرف عمومی بین الملل باشد انجام دهند بهرصورت رفتاریکه با آنان خواهد شد طبق اصل معامله متقابله وطوری خواهد

Appendix A

حمل کرده یا ازقلمرو مزبورفرستاده شود رفتارملی ورفتارملل کاملة الوداد خواهد کرد و رفتاری که باآن محصولات میشود درمورد (الف) حقوق وعوارض ازهرقبیل (ب) تشریفات گمرکی و(ج) جوائز واسترداد حق گمرك درصورت صدور وامثال این مزایا بهیچوجه نامساعدتر ازرفتاری نخواهد بود که نسبت بمحصولات مشابهی بعمل آید که درکشتیهای طرف معظم متعاهد دیگرحمل شده باشد .

۵ــ درصورتیکه کشتیهای هریك ازطرفین معظمین متعاهدین دچارآسیب شده باشند مجازخواهند بود که درنزدیکترین بندریا لنگرگاه طرف معظم متعاهد دیگرپناهنده شوند وازرفتار دوستانه ومساعدت برخوردارگردند .

۶ــ کلمه "کشتیها" که دراین عهدنامه بکاررفته بمعنی کلیه اقسام کشتی است اعم ازاینکه متعلق باشخاص باشد واشخاص آن کشتیها رابکاراندا خته باشند یا متعلق بدولت باشد ودولت آنها رابکاراندا خته باشد امااین کلمه جز درمورد بند ۲ ماده این ماده شامل کشتیهای ماهیگیری یا کشتیهای جنگی نخواهد بود .

ماده یازدهم

۱ــ هریك ازطرفین معظمین متعاهدین تعهد میکند که : (الف) موسسات متعلق بآن دولت یا تحت نظارت آن دولت وموسسات انحصاری یا نمایندگیهائیکه درقلمرو آن دولت مزایای خاص یا مانع للغیر بآنها اعطا گردیده است خرید وفروش خودرا که مربوط به واردات یا صادراتی باشد که درتجارت طرف معظم متعاهد دیگرموثراست صرفا طبق ملاحظات تجاری ازجمله قیمت وجنس وموجود بودن وقابلیت فروش وحمل ونقل وسایرشرایط خرید یا فروش انجام دهد (ب) باتباع وشرکتها وتجارت طرف معظم متعاهد دیگرطبق مرسوم دادوستد فرصت کافی داده شود که برای شرکت دراین قبیل خرید وفروشها رقابت کنند .

۲ــ رفتارهریك ازطرفین معظمین متعاهدین نسبت باتباع وشرکتها وتجارت طرف معظم متعاهد دیگریا مقایسه برفتاریکه نسبت باتباع وشرکتها وتجارت هرکشورثالثی درموارد ذیل میشود رفتارمنصفانه وعادلانه خواهد بود : (الف) خرید لوازم ازطرف دولت (ب) بستن قراردادهای دولتی و(ج) عرضه داشتن هرخدمت (سرویس) که ازطرف دولت یا ازطرف هرکونه موسسات انحصاری یا نمایندگی بفروش برسد وبآن موسسات انحصاری ونمایندگیها مزایای مانع للغیر یا مزایای خاص اعطا شده باشد .

۳ــ طرفین معظمین متعاهدین تصدیق میکنند که هرگاه موسسات تجاری یا موسسات سازنده هریك ازطرفین معظمین متعاهدین که متعلق بدولت یا تحت نظارت دولت باشد

مراتب زیررارعایت خواهد کرد : (الف) فوراکلیه مقررات عمومی راکه مربوط به واردات و صادرات باشد منتشرخواهد ساخت (ب) این مقررات رابطوریکسان وبیطرفانه ومعقـــول اجراخواهد کرد (ج) بطورکلی ازاجرای مقرراتجدید یامقررات سنگین ترازآنکه برای اطلاع عموم اعلام گردد خودداری خواهد نمود (د) برای رسیدگی استینافی ترتیبی خواهد داد که بتوان نسبت به اقدامات اداری در مسائل گمرکی مورا وبیطرفانه تجدید نظر نمود و (ه) بابت تخلفات ناشی ازسهو رکتابت یاناشی ازاشتباهات بدون سوءنیت فقط مجازات یـا جریمه جزئی تعیین خواهد کرد .

۲ــ رفتاری که با اتباع وشرکتهای هریك ازطرفین معظمین متعاهدین درمورد کلیـــه امور مربوط بواردات وصادرات میشود بهیچوجه نامساعدتر ازرفتاری نخواهد بود که با اتباع وشرکتهای طرف معظم متعاهد دیگریا اتباع وشرکتهای هرکشورثالثی میشود .

۳ــ هیچیك ازطرفین معظمین متعاهدین اقدام تبعیض آمیزی نخواهد کرد که وارد کننده یاصادرکننده محصولات هریك ازدوکشوررا ازتحصیل بیمه دریائی درباره آن محصولات در شرکتهای هریك ازطرفین معظمین متعاهدین مانع شود یابرای آنها مشکلاتی ایجاد نماید .

ماده دهم

۱ــ بین قلمروهای طرفین معظمین متعاهدین آزادی تجارت ودریانوردی برقرار خواهد بود .

۲ــ کشتیهائیکه پرچم یکی ازطرفین معظمین متعاهدین رادارند واسنادی راکه طبق قانون آن کشور جهت اثبات ملیت لازم استباخود همراه دارند هم دردریاهای آزاد و هم دربنادروجاهاوآبهای طرف معظم متعاهد دیگرکشتیهای طرف معظم متعاهـــدی شمرده خواهد شد کاسناد مزبوررا صادرکرده واجازه استفاده ازپرچم خود رادادهاست .

۳ــ کشتیهای هریك ازدوطرف معظم متعاهد باشرایط متساوی باکشتیهای طرف معظم متعاهـــد دیگروکشتی های هر کشور ثالثی آزاد خواهند بود که با محمولات خود بـه کلیه بنادروجاهاوآبهای طرف معظم متعاهد دیگرکه بروی تجارت خارجی ودریانوردی بازباشد بیایند . نسبت باین کشتیها ومحمولات آنها درتمام موارد دربنادروآبهـــا و جاهای متعلق بطرف معظم متعاهد دیگررفتارملی ورفتارکاملةالوداد مراعات خواهد شد . اما هریك ازطرفین معظمین متعاهدین میتوانند درمورد تجارت ساحلی ودریانوردی داخلی و شیلات ملی برای کشتیهای خود حقوق ومزایای انحصاری حفظ نماید .

۴ــ هریك ازطرفین معظمین متعاهدین نسبت به کشتیهای طرف معظم متعاهد دیگر درمورد حق حمل کلیه محصولاتی که ممکن است بوسیله کشتی بقلمرو طرف معظم متعاهـــد

Appendix A

صادرات هرمحصولی قائل گردد درصورتیکه طرف معظم متعاهد دیگر منافع مهمی درآن محصول داشته باشد طرف معظم متعاهد ایجاد کننده آن تضییقات مراتب زیر رارعایت خواهد کرد :

(الف) بطورکلی مجموع مقدار محصولی راکه ازلحاظ کمیت یاقیمت میتوان درمدت مشخص وارد یاصادر نمود وهرگونه تغییری که در مقدار یامدت مزبور داده شود باید قبلا برای اطلاع عموم اعلام شود .

(ب) اگربرای کشورثالثی سهمیه هائی اختصاص میدهد باتوجه به هرگونه عوامل خاصی که در تجارت آن محصول موثراست برای واردات یاصادرات طرف معظم متعاهد دیگرسهمی تعیین خواهد نمود که ازحیث کمیت یاقیمت متناسب بامقدارمحصولی باشد که قبلا درمدت معینی ازآن کشور وارد یاصادر شده است وآن مدت بعنوان نمونه درنظرگرفته شود .

٤ــ هریك ازطرفین معظمین متعاهدین میتوانند بدلائل بهداشتی یادلائل معموله دیگرکه جنبه بازرگانی نداشته باشد یابرای جلوگیری ازاعمال فریبنده یاغیرعادلانه ممنوعیت هایامحدودیتهائی وضع نماید مشروط برآنکه این ممنوعیت ها یامحدودیتها بطور دل بخواه بزیان تجارت طرف معظم متعاهد دیگر تبعیض آمیزنباشد .

٥ــ هریك ازطرفین معظمین متعاهدین میتواند برای تامین استفاده ازپولهای راکد وغیرقابل تبدیل یابرای مقابله باکمبود ارزخارجی اقدامات لازم اتخاذ نماید . لکن این اقدامات بیش ازحد لزوم ازسیاستی منحرف نخواهد شدکه بقصد تشویق حداکثرترقی و توسعه درتجارت خالی ازتبعیض چندجانبه و بمنظور تسریع حصول وضع تعادل پرداخت های ارزهای خارجی طرح شده باشد تابدین طریق ازاقدامات مزبور بی نیازی حاصل شود .

٦ــ هریك ازطرفین معظمین متعاهدین این حق رامحفوظ میدارد که مزایای خاصی نسبت بموارد ذیل قائل شود : (الف) نسبت بمحصولات شیلات ملی خود (ب) نسبت بکشورهای همسایه بمنظور تسهیل تجارت مرزی یا (ج) بموجب اتحاد گمرکی یا ناحیه تجارت آزاد که هریك ازطرفین معظمین متعاهدین پس ازمشاوره باطرف معظم متعاهد دیگرمیتواند عضوآن شود . بعلاوه هریك ازطرفین معظمین حقوق وتکالیفی راکه ممکن است طبق موافقت نامه عمومی درباره تعرفه هاوامورباز رگانی داشته باشد ومزایای خاصی راکه ممکن است طبق آن موافقتنامه قائل گردد برای خود محفوظ میدارد .

ماده نهم

١ــ هریك ازطرفین معظمین متعاهدین دراجرای آئین نامه ها وتشریفات گمرکی خود

قرارمعقول برای استرداد وانتقال ارز خارجی بپول رائج طرف معظم متعاهد دیگردر موارد ذیل خواهد داد : (الف) غرامت مذکوردربند ۲ ماده ٤ عهدنامه حاضر (ب) درآمدها بصورت حقوق (ماهانه) بهره ، سود ، سهام ، حق العمل ، حق الامتیاز اجرت خدمات فنی یاغیرآن و(ج) مبالغ مخصوص استهلاک دیون واستهلاک سرمایه هائیکه مستقیما بکارافتاده وانتقالات سرمایه باتوجه به حوائج خاص برای سایرمعاملات اگربرای ارز بیش ازیك نرخ مجری باشد نرخی که درمورد اینگونه انتقالات مجری خواهد بود نرخی است که مصرحا ازطرف صندوق بین المللی پول جهت اینگونه معاملات تصویب شده باشد یااگر چنین نرخی ازطرف صندوق تصویب نشده باشد نرخ خالصی مجری خواهد بود که بادرنظرگرفتن هرگونه مالیات یاعوارض اضافی برای انتقالات ارزی معقول وعادلانه باشد .

۳ــ هریك ازطرفین معظمین متعاهدین که تضییقات ارزی قائل میشود بطورکلی این تضییقات رابه نحوی اجراخواهد نمود که ازنظر رقابت درتجارت وحمل ونقل یابکاراندا ختن سرمایه طرف معظم متعاهد دیگریامقایسه باتجارت یاحمل ونقل یا بکاراندا ختن سرمایه هرکشورثالثی تانیرزیان آوری نداشته باشد ودرهرموقع بطرف معظم متعاهد دیگربرای مشاوره درباب اجرای این ماده فرصت کافی خواهد داد .

ماده هشتم

۱ــ هریك ازطرفین معظمین متعاهدین نسبت بمحصولات طرف معظم متعاهد دیگرازهرنقطه ای که باشد ویاهرنوع وسیله ای که وارد شود ونسبت بمحصولاتی که مقرر است بمقصد طرف معظم متعاهد دیگرصادرگردد ازهرطریق ویاهروسیله‌ای که باشد درکلیه امور مربوط به مطالب ذیل رفتاری خواهد کرد که نسبت بمحصولات مشابه هرکشور ثالث یامحصولات مشابهی که بمقصد هرکشورثالث مقرراست صادرگردد بهیچوجه نامساعد نباشد : (الف) گمرك وسایرعوارض ومقررات وتشریفات مربوط بواردات وصادرات و(ب) مالیات داخلی وفروش وتوزیع وانبارکردن ومصرف . همین قاعده درمورد انتقال وجوه پرداختی ازیك کشوربه کشوردیگربرای واردات وصادرات مجری خواهد بود .

۲ــ هیچیك ازطرفین معظمین متعاهدین محدودیت یاممنوعیتی نسبت بورود هرگونه محصول طرف معظم متعاهد دیگریانسبت بصدورهرگونه محصولی بقلمرو طرف معظم متعاهد دیگرقائل نخواهد شد مگراینکه ورود محصول مشابه ازکلیه کشورهای ثالث یاصدورمحصول مشابه بکلیه کشورهای ثالث همچنان محدود یاممنوع شده باشد .

۳ــ اگرهریك ازطرفین معظمین متعاهدین ازلحاظ کمیت تضییقاتی نسبت بواردات یا

Appendix A

هریك ازطرفین متعاهدین درقلمرو طرف معظم متعاهد دیگربرای استفاده انحصاری ازاختراعات وعلائم تجاری واسامی بازرگانی بنحو موثری موردحمایت قرارخواهند گرفت .

ماده ششم

۱ــ باتباع وشرکتهای هریك ازطرفین معظمین متعاهدین درقلمروطرف معظم متعاهد دیگرمالیات یاعوارض یاحقوقی سنگین تراز آنچه باتباع وساکنین وشرکتهای هر کشورثالثی تعلق میگیرد تعلق نخواهد گرفت یامقرراتی سنگین ترازآنچه درمورد اتباع و ساکنین وشرکتهای هرکشور ثالثی ازحیث وضع ووصول مالیات یاعوارض یاحقوق مزبور اجرا میشود اجرا نخواهد شد . درمورد اتباع هریك ازطرفین معظمین متعاهدین که درقلمرو طرف معظم متعاهد دیگراقامت دارند واتباع وشرکتهای هریك ازطرفین معظمین متعاهدین که بکارتجارت یاسایرامورسود آوریافعالیتهای غیرانتفاعی درآن کشور اشتغال دارند مبالغی راکه باید بدینطریق بپردازند سنگین ترازمبالغی نخواهد بود که اتباع وشرکتهای طرف معظم متعاهد دیگرمیپردازند ومقرراتی راکه باید بشرح فوق رعایت کنند سنگین ترازمقرراتی نخواهد بود که اتباع وشرکتهای طرف دیگررعایت میکنند .

۲ــ معذالك هریك ازطرفین معظمین متعاهدین این حق رامحفوظ میدارد که (الف) فقط براساس معامله متقابله یاطبق قرارداد جهت احتراز ازاخذ مالیات مضاعف یابرای حفظ متقابل درآمد مزایای خاص مالیاتی قائل شود و (ب) شرایط خاصی رادرمورد معافیتهائی اجرانماید که جنبه شخصی داشته باشد ونسبت باشخاص غیرمقیم درمورد مالیات بردرآمد ومالیات برارث مجازاست .

۳ــ شرکتهای هریك ازطرفین معظمین متعاهدین درداخل قلمرو طرف معظم متعاهد دیگرنسبت به تحصیل درآمد یامعاملاتی که درداخل قلمرو مزبورصورت نگرفته ویا نسبت بسرمایه‌ای که درآنجا بکارنیانداخته باشد موظف بپرداخت مالیات نخواهد بود .

ماده هفتم

۱ــ هیچیك ازطرفین معظمین متعاهدین درمورد پرداخت وارسال وسایرانتقالات پولی بقلمرو طرف معظم متعاهد دیگریااز قلمرو طرف معظم متعاهد دیگربه قلمرو خود تضییقاتی قائل نخواهد شد مگر (الف) تاحدی که برای تامین ارز خارجی جهت پرداخت بهای کالاها وخدمات (سرویسهای) ضروری برای بهداشت ورفاه مردم لازم باشد یا (ب) در مورد یك عده وصندوق بین المللی پول تضییقاتی که مصرحا بتصویب صندوق رسیده باشد .

۲ــ اگرهریك ازطرفین معظمین متعاهدین تضییقات ارزی بکاربرد باسرع اوقات

Appendix A

این اموال جز بمنظور نفع عامه آنهم بی آنکه غرامت عادلانه آنها باسرع اوقات پرداخت شود گرفته نخواهد شد . غرامت مزبور باید بوجه موثری قابل تحقق باشد وبنحوکامل معادل مالی خواهد بود که گرفته شده است وقبل ازآنکه گرفته شود یادرحین گرفتن مال قرار کافی جهت تعیین مبلغ غرامت وپرداخت آن داده خواهد شد .

۳ــ به محل سکنی ودفترو انبار وکارخانه وسایرامکنه اتباع وشرکتهای هریک از طرفین معظمین متعاهدین که درقلمرو طرف متعاهد معظم دیگر واقع باشد نباید بی علت صحیح داخل شد یا مزاحمت فراهم ساخت . بازرسی ومعاینه رسمی این امکنه ومحتویات آنها فقط طبق قانون وباتوجه دقیق ومراعات آسایش ساکنین وجریان کسب و کارآنان انجام داده خواهد شد .

۴ــ موسساتی که اتباع وشرکتهای هریک ازطرفین معظمین متعاهدین مجازند درقلمروطرف معظم متعاهد دیگر تاسیس یاتحصیل نمایند اجازه خواهند داشت ازادانه به فعالیتهای خود درآن قلمرو اشتغال یابند . شرایط اشتغال آن موسسات ازشرایط موسسات دیگریکه وارد فعالیتهای مشابهی باشند قطع نظرازملیت موسسات مزبوربهیچوجه نامساعدترنخواهد بود . اتباع وشرکتهای مزبور حق خواهند داشت پیوسته درموسسات مزبور واداره امور آن نظارت داشته باشند ووکلاء دادگستری ونماینده ومحاسب وسایر کارشناسان فنی وکارکنان اداری ومترجم وکارمندان متخصص دیگر به انتخاب خود استخدام کنند وبهرکار دیگریکه برای حسن جریان امورخود لازم بدانند یابالتبع پیش آید وبرای حسن جریان امورموثرباشد اقدام نمایند .

ماده پنجم

۱ــ اتباع وشرکتهای هریک ازطرفین معظمین متعاهدین درقلمرو طرف معظم متعاهد دیگرمجاز خواهند بود که (الف) درمدتهای مناسب اموال غیرمنقول لازم را برای سکونت یافعالیتهای تابع ازعهدنامه حاضر اجاره نمایند (ب) اموال منقول شخصی راازهرقبیل خریداری یابنحودیگرتحصیل کنند و(ج) اموال خودراازهرقبیل بوسیله فروش یاوصیت یاغیرآن واگذارنمایند . رفتاری که دراین موارد بعمل میآید درهیچ موردی ازرفتاری که نسبت باتباع وشرکتهای هرکشورثالثی بعمل میآید نامساعدترنخواهد بود .

۲ــ بارعایت قوانین ومقررات مربوطه درمورد ثبت وسایرتشریفات اتباع وشرکتهای

Appendix A

وکمپانیها وسایر هیئت ها (associations) که بامسئولیت محدود یاغیر محدود
وبه قصد انتفاع پولی یا غیرپولی تشکیل یافته باشد .

۲ــ اتباع وشرکتهای هریك ازطرفین معظمین متعاهدین بمنظوراینکه عدالت بیطرفانه باسرع اوقات اجرا شود درکلیه مراحل قضائی هم درد فاع وهم در تعقیب حقوق خود به محاکم دادگستری وموسسات اداری طرف معظم متعاهد دیگر ازادانه دسترس خواهند داشت . بهرصورت شرایطی که بموجب آن شرایط چنین دسترسی حاصل میشود بهیچوجه نامساعدتر ازشرایطی نخواهد بود که درمورد اتباع وشرکتهای طرف معظم متعاهد دیگریا هرطرف ثالثی مجری است . حتی شرکتهائیکه درداخل کشور فعالیتی ندارند بی آنکه احتیاج به ثبت رسیدن یامحلی شدن داشته باشند ازدسترسی مذکور برخوردار خواهند بود .

۳ــ ازحل وفصل خصوصی اختلافاتی که جنبه حقوقی داشته ومربوط به اتباع وشرکتهای هریك ازطرفین معظمین متعاهدین باشد در قلمرو طرف معظم متعاهد دیگر جلوگیری نخواهد شد ودرمواردی که حل وفصل مزبور ازطریق حکمیت به عمل آید نه بیگانگی حکمها ونه خارج بودن محل وقوع حکمیت بخودی خود مانع اجرای آراء صادره ازحکمیت نخواهد شد .

ماده چهارم

۱ــ هریك ازطرفین معظمین متعاهدین درتمام موانع نسبت به اتباع وشرکتهای طرف معظم متعاهد دیگر واموال وموسسات ایشان رفتار منصفانه وعادلانه مرعی خواهد داشت وازاتخاذ اقدامات غیرمعقول وتبعیض آمیزی که به حقوق ومنافع مکتسبه قانونی ایشان لطمه وارد آورد خودداری خواهد نمود وبرای اجرای حقوق قانونی آنان که درنتیجه قرارداد ی بدست آمده باشد وسایل موثری طبق قوانین مربوطه تهیه وتامین خواهد کرد .

۲ــ اموال اتباع وشرکتهای هریك ازطرفین معظمین متعاهدین ازجمله منافع اموال ازحد اعلای حمایت وامنیت دائم به نحوی که درهیچ موردکمترازمقررات قانون بین المللی نباشد درداخل قلمرو طرف متعاهد معظم دیگر برخوردارخواهد بود .

۲ــ اتباع هریك ازطرفین معظمین متعاهدین درقلمرو طرف معظم متعاهد دیگر منفرد ایا بوسیله هیئتها (associations) ومادام که فعالیت ایشان مخایرنظم عمومی یاامنیت یااخلاق نباشد ازمراتب ذیل برخوردارخواهند بود : (الف) اجازه مسافرت آزاد درداخله واختیار سکونت درهرمحل (ب) آزادی وجدان وحق اجرای مراسم مذهبی (ج) اجازه اشتغال بفعالیتهای نوع پرورانه وتربیتی وعلمی و(د) حق جمع آوری وارسال اطلاعات جهت انتشار درخارجه برای آگاهی عامهٔ مردم وبطریق دیگر ارتباط یافتن بااشخاصی که داخل یاخارج آن قلمرو هستند . همچنین آنها مجازخواهند بود بمشاغل وحرفی که برای آن واجد صلاحیت میباشند طبق مقررات قانون مربوط باجازه اشتغال بمشاغل وحرف مزبور اشتغال یابند .

۳ــ مقررات بند ۱ و۲ این ماده متفرع برحق هریك ازطرفین معظمین متعاهدین است که برای حراست نظم وامنیت عمومی وحفظ بهداشت واخلاق اقدامات لازم بعمل آورد وهمچنین بدلائل مزبوراتباع خارجه رااخراج کند بآنها اجازه ورود ندهد یامسافرت آنهارا درداخله خود محدود سازد .

٤ــ اتباع هریك ازطرفین معظمین متعاهدین درقلمرو طرف معظم متعاهد دیگر ازحد اعلای حمایت وامنیت باید برخوردارخواهند بود . هرموقع چنین فردی دربازداشت باشد ازهرجهت بنحوعادلانه وباانسانیت باوی رفتارخواهد شد وطبق تقاضای او بی آنکه تاخیرغیرلازمی روی دهد به نمایندهٔ سیاسی یاکنسولی کشوراواطلاع وفرصت کامل داده خواهد شد تامنافع اورامحافظت نماید . اتهاماتی که علیه اوانامه شده باسرع اوقات باطلاع او خواهد رسید وکلیه تسهیلاتی که جهت دفاع وی بنحومعقول لازم باشد فراهم خواهد شد وپرونده اوفورا وبیطرفانه مورد رسیدگی وقطع وفصل قرارخواهد گرفت .

ماده سوم

۱ــ شرکتهائی که طبق قوانین ومقررات مربوطه هریك ازطرفین معظمین متعاهدین تشکیل گردیده است درقلمرو طرف معظم متعاهد دیگرشخصیت حقوقی آنها شناخته خواهد شد . لکن معلوم است که شناختن شخصیت حقوقی بخودی خود بشرکتها حق نمیدهد بفعالیتهائی اشتغال جویند که برای آن تشکیل یافته اند . منظوراز "شرکتها" دراین عهدنامه عبارت است ازشرکتها (corporations, partnerships)

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عهدنامه مودت وروابط اقتصادی وحقوق کنسولی بین

دول متحده آمریکا وایران

چون دولت متحده آمریکا ودولت شاهنشاهی ایران مایلند مناسبات دوستانه ای را که ازدیرزمان بین مردم این دوکشور وجود بوده است بنحومکدی مورد توجه قرارد هند واصول عالیه‌ای راکه برای تنظیم اموربشری ملزم برعایت آن میباشند بار دیگر تائید کنند وبازرگانی و بکاراند اختن سرمایه روابط نزدیکتراقتصادی رابطورکلی بین مردم این دوکشور ونفع طرفین تشویق نمایند و ناسبات کنسولی راتحت نظم وقاعده درآورند لذا بانعقاد عهدنامه مودت وروابط اقتصادی وحقوق کنسولی براساس رفتارمساوی متقابل مصمم گردیده واشخاص ذیل را بعنوان نمایندگان تام الاختیار خود تعیین نمودند :

رئیس جمهوری کشورهای متحده آمریکا :

جناب آقای سلدن چیپین سفیرکبیرفوق العاده ومختارکشورهای متحده آمریکادرتهران

و

اعلیحضرت همایون شاهنشاه ایران :

جناب آقای مصطفی سمیعی معاون دائمی وزارت امورخارجه

نمایندگان مزبور پس ازتبادل اختیار نامه های خود وتصدیق صحت ورسمیت آن نسبت بمواد ذیل موافقت نمودند :

ماده اول

بین دول متحده آمریکا وایران صلح استوار وپایدار ودوستی صمیمانه برقرار خواهد بود .

ماده دوم

۱ــ اتباع هریک ازطرفین معظمین متعاهدین مجاز خواهند بود که بقصد بازرگانی بین کشورخود وقلمرو طرف معظم متعاهد دیگرواشتغال بفعالیتهای تجاری مربوطه بآن وبقصد توسعه وهدایت عملیات مربوطه بکاری که مقدارمعتنابهی سرمایه درآن کارنهاده‌اند یاعملا درحال نگاردن سرمایه میباشند بقلمرو طرف معظم متعاهد دیگر وارد شوند ودرآنجا اقامت کنند وشرائط چنین اجازه بهیچوجه نامساعدتر ازشرائطی نخواهد بود که مورد اتباع هرکشور ثالثی قائل میشوند .

Appendix A

عهـــد نامه مودت وروابط اقتصادی وحقوق کنسولی بین

دول متحده آمریکا وایران

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WHEREAS the Senate of the United States of America by their resolution of July 11, 1956, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the said treaty;

WHEREAS the said treaty was ratified by the President of the United States of America on September 14, 1956, in pursuance of the aforesaid advice and consent of the Senate, and has been duly ratified on the part of Iran;

WHEREAS the respective instruments of ratification of the said treaty were duly exchanged at Tehran on May 16, 1957;

AND WHEREAS it is provided in Article XXIII of the said treaty that the treaty shall enter into force one month after the day of exchange of ratifications;

NOW, THEREFORE, be it known that I, Dwight D. Eisenhower, President of the United States of America, do hereby proclaim and make public the said treaty to the end that the same and every article and clause thereof may be observed and fulfilled in good faith on and after June 16, 1957, one month after the day of exchange of ratifications, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington this twenty-seventh day of June in the year of our Lord one thousand nine hundred
[SEAL] fifty-seven and of the Independence of the United States of America the one hundred eighty-first.

DWIGHT D EISENHOWER

By the President:
JOHN FOSTER DULLES
Secretary of State

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