Corrigé
Corrected

CR 2018/28

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2018

Public sitting

held on Monday 8 October 2018, at 10 a.m., at the Peace Palace,

President Yusuf presiding,

***in the case concerning* Certain Iranian Assets**
(Islamic Republic of Iran *v.* United States of America)

VERBATIM RECORD

ANNÉE 2018

Audience publique

tenue le lundi 8 octobre 2018, à 10 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

***en l'affaire relative à* Certains actifs iraniens**
(République islamique d'Iran c. Etats-Unis d'Amérique)

COMPTE RENDU

Present:	President	Yusuf
	Vice-President	Xue
	Judges	Tomka
		Abraham
		Bennouna
		Cançado Trindade
		Gaja
		Bhandari
		Robinson
		Crawford
		Gevorgian
		Salam
		Iwasawa
	Judges *ad hoc*	Brower
		Momtaz
	Registrar	Couvreur

Présents : M. Yusuf, président
Mme Xue, vice-présidente
MM. Tomka
Abraham
Bennouna
Cançado Trindade
M. Gaja
MM. Bhandari
Robinson
Crawford
Gevorgian
Salam
Iwasawa, juges
MM. Brower
Momtaz, juges *ad hoc*

M. Couvreur, greffier

The Government of the Islamic Republic of Iran is represented by:

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

as Agent, Counsel and Advocate;

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

as Co-Agent and Counsel;

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

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

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

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

as Counsel and Advocates;

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

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

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

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

as Counsel;

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

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

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

Le Gouvernement de la République islamique d'Iran est représenté par :

M. Mohsen Mohebi, conseiller en droit international auprès du président de la République islamique d'Iran et président du centre des affaires juridiques internationales, professeur associé en droit international public et arbitrage à l'Université Azad de Téhéran (département de la science et de la recherche),

comme agent, conseil et avocat ;

M. Mohammad H. Zahedin Labbaf, agent de la République islamique d'Iran près le Tribunal des réclamations irano-américaines, directeur du centre des affaires juridiques internationales de la République islamique d'Iran, La Haye.

comme coagent et conseil ;

M. Vaughan Lowe, QC, membre du barreau d'Angleterre, Essex Court Chambers, professeur émérite de droit international à l'Université d'Oxford, membre de l'Institut de droit international,

M. Alain Pellet, professeur émérite à l'Université Paris Nanterre, ancien membre et ancien président de la Commission du droit international, membre de l'Institut de droit international,

M. Jean-Marc Thouvenin, professeur à l'Université Paris Nanterre, secrétaire général de l'Académie de droit international de La Haye, membre du barreau de Paris, Sygna Partners,

M. Samuel Wordsworth, QC, membre des barreaux d'Angleterre et de Paris, Essex Court Chambers,

comme conseils et avocats ;

M. Sean Aughey, membre du barreau d'Angleterre, 11KBW,

M. Jean-Rémi de Maistre, doctorant, Centre de droit international de Nanterre,

M. Luke Vidal, membre du barreau de Paris, Sygna Partners,

Mme Philippa Webb, professeure associée au King's College (Londres), membre des barreaux d'Angleterre et de New York, 20 Essex Street Chambers,

comme conseils ;

M. Hadi Azari, conseiller juridique auprès du centre des affaires juridiques internationales de la République islamique d'Iran, professeur adjoint de droit international public à l'Université Kharazmi,

M. Ebrahim Beigzadeh, conseiller juridique principal auprès du centre des affaires juridiques internationales de la République islamique d'Iran, professeur de droit international public à l'Université Shahid Beheshti,

M. Mahdad Fallah Assadi, conseiller juridique auprès du centre des affaires juridiques internationales de la République islamique d'Iran,

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

as Legal Advisers.

The Government of the United States of America is represented by:

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

as Agent, Counsel and Advocate;

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

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

as Deputy Agents and Counsel;

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

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

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

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

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

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

as Counsel and Advocates;

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

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

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

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

as Counsel;

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

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

M. Mohammad Jafar Ghanbari Jahromi, vice-président du centre des affaires juridiques internationales de la République islamique d'Iran, professeur associé de droit international public à l'Université Shahid Beheshti,

comme conseillers juridiques.

Le Gouvernement des Etats-Unis d'Amérique est représenté par :

M. Richard C. Visek, premier conseiller juridique adjoint, département d'Etat des Etats-Unis d'Amérique,

comme agent, conseil et avocat ;

M. Paul B. Dean, conseiller juridique, ambassade des Etats-Unis d'Amérique au Royaume des Pays-Bas,

M. David M. Bigge, conseiller juridique adjoint, ambassade des Etats-Unis d'Amérique au Royaume des Pays-Bas,

comme agents adjoints et conseils ;

sir Daniel Bethlehem, QC, membre du barreau d'Angleterre, 20 Essex Street Chambers,

Mme Laurence Boisson de Chazournes, professeure de droit international, Université de Genève ; membre associé de l'Institut de droit international,

M. Donald Earl Childress III, conseiller en droit international, département d'Etat des Etats-Unis d'Amérique,

Mme Lisa J. Grosh, conseillère juridique adjointe, département d'Etat des Etats-Unis d'Amérique,

M. John D. Daley, conseiller juridique adjoint de deuxième classe, département d'Etat des Etats-Unis d'Amérique,

Mme Emily J. Kimball, avocate conseil, département d'Etat des Etats-Unis d'Amérique,

comme conseils et avocats ;

Mme Terra L. Gearhart-Serna, avocate conseil, département d'Etat des Etats-Unis d'Amérique,

Mme Catherine L. Peters, avocate conseil, département d'Etat des Etats-Unis d'Amérique,

Mme Shubha Sastry, avocate conseil, département d'Etat des Etats-Unis d'Amérique,

M. Niels A. Von Deuten, avocat conseil, département d'Etat des Etats-Unis d'Amérique,

comme conseils ;

M. Guillaume Guez, assistant, faculté de droit de l'Université de Genève,

M. John R. Calopietro, coordinateur de l'assistance juridique, département d'Etat des Etats-Unis d'Amérique,

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

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

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

as Assistants.

Mme Mariama N. Yilla, assistante juridique, département d'Etat des Etats-Unis d'Amérique,

Mme Abby L. Lounsberry, assistante juridique, département d'Etat des Etats-Unis d'Amérique,

Mme Catherine I. Gardner, assistante, ambassade des Etats-Unis d'Amérique au Royaume des Pays-Bas,

comme assistants.

The PRESIDENT: Please be seated. The sitting is open. The Court meets today to hear the Parties' oral arguments on the preliminary objections raised by the United States of America in the case concerning *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America)*.

For reasons duly made known to me, Judge Sebutinde is unable to sit with us during this hearing.

Before recalling the principal phases of the present proceedings, it is necessary to complete the composition of the Court for the purposes of this case. I would like to recall that, pursuant to Article 37, paragraph 1, of the Rules of Court, the United States of America chose on 12 August 2016 Mr. David Caron to sit as judge *ad hoc* in the case. Sadly, Judge Caron passed away on 20 February 2018. The United States of America subsequently chose Mr. Charles Brower to sit as judge *ad hoc* for the case.

Since the Court does not include upon the Bench a judge of Iranian nationality, the Islamic Republic of Iran exercised its right under Article 31 of the Statute to choose a judge *ad hoc* to sit in the case: it chose Mr. Djamchid Momtaz.

Article 20 of the Statute provides that "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*. Notwithstanding the fact that, in other cases, Messrs. Brower and Momtaz are serving as judges *ad hoc* and have made a solemn declaration, Article 8, paragraph 3, of the Rules of Court requires that they make a further solemn declaration in the present case.

In accordance with custom, I will now say a few words about the career and qualifications of each of the two judges *ad hoc* before inviting them to make their solemn declaration.

Mr. Brower is a United States national and a graduate of the University of Harvard. His career has combined extensive practice at the Bar with distinguished public service, at both national and international level. As counsel and arbitrator, Mr. Brower has dealt with cases before tribunals operating under the rules of the United Nations Commission on International Trade Law (UNCITRAL), cases before the United Nations Compensation Commission and the International Centre for Settlement of Investment Disputes (ICSID). Mr. Brower has represented various governments in proceedings before the International Court of Justice and is a member of the panels

of arbitrators of a number of arbitral institutions around the world. He is currently sitting as judge *ad hoc* at the Court in the case concerning the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua* v. *Colombia)* and in the case concerning *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America)*. He has also served as judge *ad hoc* of the Inter-American Court of Human Rights and as a member of the Register of Experts of the United Nations Compensation Commission in Geneva. Mr. Brower served in the United States Department of State in Washington DC, where, as acting legal adviser, he was the chief lawyer of the Department. He has also acted as Deputy Special Counsellor to the President of the United States. He has been President of the American Society of International Law and, since 1983, he has been a judge at the Iran-United States Claims Tribunal here in The Hague.

I will now switch to French to introduce judge *ad hoc* Djamchid Momtaz.

M. Momtaz, de nationalité iranienne, est docteur d'Etat en droit public. Professeur de droit international à l'Université de Téhéran, il a également enseigné dans de nombreuses universités françaises et dans plusieurs instituts de recherche, tels que l'Institut de droit international public et de relations internationales de Thessalonique et l'Institut international des droits de l'homme de Strasbourg. Il a en outre donné le cours général à l'Académie de droit international de La Haye en 2014 après y avoir donné un cours spécial en 2000.

M. Momtaz a été membre de la délégation de l'Iran à la troisième conférence des Nations Unies sur le droit de la mer et à la conférence diplomatique de plénipotentiaires des Nations Unies sur le Statut de Rome pour la Cour pénale internationale. Il a également représenté l'Iran à de nombreuses sessions de l'Assemblée générale des Nations Unies. Il est par ailleurs membre de la Cour permanente d'arbitrage, de l'Institut de droit international et du *Curatorium* de l'Académie de droit international de La Haye. Il a été membre et président de la Commission du droit international des Nations Unies. Il siège actuellement en tant que juge *ad hoc* en l'affaire relative à des *Violations alléguées du traité d'amitié, de commerce et de droits consulaires conclu en 1955 (République islamique d'Iran c. Etats-Unis d'Amérique).*

M. Momtaz a publié de nombreux ouvrages et articles sur le droit de la mer, le droit des cours d'eau internationaux, le droit international des droits de l'homme, le droit international humanitaire et le recours à la force. Il est aussi membre du comité éditorial de l'*Asian Journal of International Law* et du comité scientifique de l'*Annuaire colombien de droit international*.

In accordance with the order of procedure fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Mr. Brower to make the solemn declaration prescribed by the Statute, and I would request all those present to rise. Mr. Brower, you have the floor.

Mr. BROWER:

> "I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously."

Le PRÉSIDENT : J'invite maintenant M. Momtaz à prendre l'engagement solennel prescrit par le Statut.

M. MOMTAZ:

> «Je déclare solennellement que je remplirai mes devoirs et exercerai mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: Please be seated. I take note of the solemn declaration made by Mr. Brower and Mr. Momtaz and declare them duly installed as judges *ad hoc* in the case concerning *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America)*.

I will now recall the principal procedural steps in the case.

The proceedings in the present case were instituted on 14 June 2016 by the filing in the Registry of the Court of an Application by the Islamic Republic of Iran against the United States of America with regard to a dispute concerning alleged violations by the United States of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States which was signed in Tehran on 15 August 1955 and entered into force on 16 June 1957 (I will refer to this treaty as the "Treaty of Amity"). These alleged violations concern actions taken by the United States against Iranian assets within its territory.

To found the jurisdiction of the Court, the Islamic Republic of Iran invokes Article 36, paragraph 1, of the Statute of the Court and Article XXI of the Treaty of Amity.

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

On 1 May 2017, within the time-limit prescribed by Article 79, paragraph 1, of the Rules of Court, the United States presented preliminary objections to the admissibility of the Application and to the jurisdiction of the Court. Consequently, by an Order of 2 May 2017, the President of the Court, noting that, by virtue of Article 79, paragraph 5, of the Rules, the proceedings on the merits were suspended, fixed 1 September 2017 as the time-limit within which Iran could present a written statement of its observations and submissions on the preliminary objections raised by the United States. Iran filed such a statement within the time-limit so prescribed, and the case thus became ready for hearing in respect of the preliminary objections.

Pursuant to Article 53, paragraph 2, of its Rules, the Court decided today, after ascertaining the views of the Parties, that copies of the written proceedings and the documents annexed would be made accessible to the public on the opening of the oral proceedings. Further, in accordance with the Court's practice, all of these documents will be placed on the Court's website from today.

I note the presence at the hearings of the Agents, counsel and advocates of the two Parties. In accordance with the arrangements on the organization of the procedure decided by the Court, the hearings will comprise a first and second round of oral argument. The first round of oral argument which opens this morning and will close on Wednesday, 10 October. Each Party will have one session of three hours and one session of two hours. The second round of oral argument will begin on Thursday, 11 October and conclude on Friday, 12 October. Each Party will have one session of three hours.

The United States, which will be heard first, may, if so required, continue for a few minutes beyond 1 p.m. today, in view of the time taken up by the opening part of these oral proceedings.

I now give the floor to Mr. Richard Visek, Agent of the United States of America. You have the floor, Sir.

Mr. VISEK:

OVERVIEW

I. Introduction

1. Mr. President and Members of the Court, I am honoured to appear today as Agent of the United States in these proceedings. Four of my colleagues from the US Department of State — Professor Donald Childress, Ms Lisa Grosh, Ms Emily Kimball, and Mr. John Daley — will join me in presenting the position of the United States. You will also hear from Sir Daniel Bethlehem, QC, and Professor Laurence Boisson de Chazournes, who are well known to this Court.

2. Mr. President and Members of the Court, the United States is here today to present our serious objections to the application filed by Iran. At the outset, we should be clear as to what this case is about. The actions at the root of this case centre on Iran's support for international terrorism and its complaints about the US legal framework that allows victims of that terrorism to hold Iran accountable through judicial proceedings and receive compensation for their tragic losses.

3. Iran's effort to secure relief from the Court in this case — to in effect deny terrorism victims justice — is wholly unfounded, and its application should be rejected in its entirety as inadmissible. First, Iran's invocation of the Treaty of Amity as a basis for challenging the US measures here is an abuse of process. Iran's overarching complaint that it should not be subjected to litigation in US courts relating to its sponsorship of terrorism is not something to be resolved under the Treaty of Amity. Second, the integrity of the judicial process would not be served were the Court to order relief in favour of a litigant with such unclean hands. Beyond that, Iran's case suffers from significant jurisdictional defects. Nothing in Iran's written pleading overcomes the obstacles to admissibility or cures the jurisdictional defects that the United States has identified.

4. In this introductory presentation, I will place the US preliminary objections in the context of the overall case before you. *First*, I will provide an overview of what this case concerns and place it in its appropriate historical, legal, and factual context. *Second*, I will summarize the US objections to admissibility and jurisdiction. *Third*, I will address the fact that all of the US objections are exclusively preliminary in nature.

A. Iran's case must be understood in its appropriate context

5. Mr. President, Members of the Court, this case concerns measures taken by the United States progressively over a period of years to enable victims of terrorism to hold Iran accountable for acts of terrorism directed at or affecting US persons. This accountability takes the form of litigation in US courts pursuant to legislation that allows for States that sponsor terrorist acts to be held accountable for such acts and for victims to obtain compensation. Throughout its submissions, Iran references in particular the *Peterson* proceeding, which arose from the Iran-sponsored bombing of the US marine barracks in Beirut, Lebanon in 1983, which killed 241 US peacekeepers. Because Iran has made the *Peterson* proceeding the cornerstone of its case before this Court, it is fitting to begin there and consider the facts underlying that litigation.

6. As Mr. Bethlehem will explain in greater detail, military personnel of the United States had been present in Beirut since August 1982, as part of a multinational peacekeeping force to help the Lebanese armed forces restore order. An agreement between the United States and Lebanese Governments specifically provided that the US forces would not engage in combat and would be equipped only with weapons consistent with that non-combat role[1]. On the morning of 23 October 1983, a member of Hezbollah who was an Iranian citizen drove a 19-ton truck loaded with high explosives through the barriers at the US Marine barracks. He crashed through a wire fence and wall of sandbags, entered the barracks, and detonated the device, destroying the four-story barracks, and killing 241 US servicemen and gravely wounding many more[2]. Shortly afterward, a similar attack on the French barracks killed 58 French peacekeepers and five Lebanese civilians[3].

7. Iran's most senior leaders took responsibility for this deadly attack, and even boasted about it. Here is what the Minister of the Islamic Revolutionary Guard Corps had to say: the United States "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"[4].

---

[1] 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 *UNTS 4*, 21 *ILM 1196* (1982) (POUS, Ann. 22).

[2] See Preliminary Objections of the United States of America (POUS), para. 3.5 and accompanying footnotes.

[3] See POUS, para. 3.5 and accompanying footnotes.

[4] "Speech of Our Brother Rafiqdoust at One of the Country's Factories for Defense," Ressalat (20 July 1987) (POUS, para. 3.7 and Ann. 27).

Mr. President and Members of the Court, there is nothing equivocal about that statement. Iran took responsibility for the attack, and did so shamelessly.

8. Following this attack and other malign acts during this period, the United States designated Iran as a State sponsor of terrorism and enacted legislation allowing US victims of terrorism to sue States that provide support for such acts — this is the legislation that Iran challenges in this case. The families of the deceased and surviving victims of the Beirut bombing sued Iran in federal court in the District of Columbia to seek recovery for their losses. The opinion of the US District Court paints a picture of the gravity and intensity of the attack and its impact on its victims. In addition to the immediate suffering of those who experienced the attack, the opinion describes the anguish of the victims' family members who learned of the explosion, waited to learn whether their family members had survived the attack, and for those least fortunate, brought their relatives home to bury them, honour them, and grieve their loss[5].

9. Relying on legislation that Iran challenges in this case, the family members and surviving victims holding judgments against Iran for the bombing sought to satisfy their judgments through attachment and enforcement proceedings. The specific proceeding that Iran makes the centrepiece of its case here is a judgment enforcement proceeding against assets in which Iran's central bank, Bank Markazi, had an interest[6]. Iran — having provided support for the deadly attack against the peacekeepers and having boasted about it — now asks this Court to find that the US court-ordered turnover of Bank Markazi's assets to the victims of that attack somehow violates the Treaty of Amity. Mr. President, Members of the Court, Iran's case must be understood in this context.

10. In setting out its case, Iran ignores the Beirut barracks bombing and other terrorist acts for which Iran provided material support despite the fact that these incidents are *the reason* why the United States adopted the measures Iran challenges. Iran's narrative is therefore wholly incomplete and misleading. Iran would have the Court focus selectively only on two sets of facts. One, that the Parties concluded the Treaty of Amity in 1955 with the expectation of a rich and mutually

---

[5] Judges' folders, tab 21, *Peterson* v. *Iran*, 264 F.Supp. 46, 58-59 (D.D.C. 2003) (2002).

[6] Judges' folders, tab 4, Second Amended Complaint, *Peterson* v. *Iran*, Case No. 10 CIV 4518 (S.D.N.Y., 7 Dec. 2010) (POUS, Ann. A12).

beneficial commercial and consular relationship based on enduring peace and sincere friendship. And two, that in 1996, the United States began enacting measures that, by virtue of Iran's designation as a State that repeatedly sponsored acts of international terrorism, restricted Iran's sovereign immunity in US courts and enabled the turnover of its assets. Iran's narrative conveniently leaves out critical pieces of the picture.

11. To place Iran's case in its appropriate historical, factual and legal context, it is necessary for the Court to consider what Iran has so conveniently omitted. The friendly bilateral relationship between Iran and the United States, on which the 1955 Treaty of Amity was based, was fundamentally ruptured on 4 November 1979, with the seizure of the US embassy in Tehran and the taking of hostages, which was the subject of this Court's decision in case concerning *United States Diplomatic and Consular Staff in Tehran*[7]. While the hostage crisis was ultimately resolved with the signing of the Algiers Accords on 19 January 1981, and the hostages' release, the relationship between the United States and Iran could not be salvaged, as Iran has continued to engage in violent and destabilizing acts targeted at the United States, its nationals and its interests up to the present day. Iran's bad acts include support for terrorist bombings, assassinations, kidnappings and airline hijackings, the encouragement and promotion of terrorism and other violent acts by Iran's most senior leaders, and violation of nuclear non-proliferation, ballistic missiles and arms trafficking obligations[8]. Iran's malicious conduct cannot be set to one side. It is the lens through which both the Treaty of Amity and US measures must be viewed.

B. The US measures were designed to counter Iran's sponsorship of terrorism

12. Mr. President and Members of the Court, the measures Iran challenges in this case encompass a range of legislative, executive and judicial actions that respond to Iran's misconduct. The US measures seek to hold State sponsors of terrorism like Iran accountable and make State sponsorship of terrorism costly in order to deter such acts in the future. Rather than repeat all of the measures, which are detailed in our written submission, I will provide an overview of the types of measures challenged by Iran and their purpose.

---

[7] *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 12, para. 17.

[8] POUS, Chap. 3.

13. In 1996, Congress enacted an amendment to the Foreign Sovereign Immunities Act, or "FSIA", to provide for lawsuits against State sponsors of terrorism. As one Member of Congress stated in connection with this amendment: "We must make a clear statement that support for terrorism is unacceptable in the international community. Allowing lawsuits against nations which aid terrorists will allow us to increase the pressure against these outlaw states."[9] This and other congressional statements to which I will refer are at tab 5 of your judges' folders.

14. Subsequently, as part of the Terrorism Risk Insurance Act of 2002, or "TRIA", following the September 11, 2001 terrorist attacks, the United States adopted enforcement measures for judgments entered under the 1996 amendment. The sponsoring Senator stated that "deterrence" was a central principle motivating the legislation[10]. The FSIA was further amended as part of the 2008 National Defense Authorization Act to provide for a terrorism exception to the jurisdictional immunity of a foreign State. A Senator sponsoring this amendment to the FSIA stated that his proposed legislation was "an important tool designed to deter future state-sponsored terrorism"[11]. Finally, in 2012, Congress enacted the Iran Threat Reduction and Syria Human Rights Act, which specifically addressed issues related to the *Peterson* enforcement proceeding. The sponsor of that legislation cited the need to hold Iran accountable for its actions[12]. The United States has taken these measures progressively over a period of years to enable victims of Iranian-sponsored terrorism to pursue some measure of accountability and redress in US courts.

15. Similarly, US Executive Order 13599, which was issued by President Obama and implements the National Defense Authorization Act of 2012, responds to serious concerns about Iranian behaviour and seeks to address Iran's use of its financial resources for troubling ends. That Order blocks the property of Iran and Iranian financial institutions in the United States, and was imposed to protect US essential security interests by addressing Iran's illicit activities relating to

---

[9] Judges' folders, tab 5, 142 Cong. Rec. H2141, Daily Ed. 13 Mar. 1996, Statement of Representative Fox: https://www.congress.gov/crec/1996/03/13/CREC-1996-03-13-pt1-PgH2129-5.pdf.

[10] Judges' folders, tab 5, 148 Cong. Rec. S5509, Daily Ed. 13 June 2002, Statement of Senator Allen: https://www.congress.gov/crec/2002/06/13/CREC-2002-06-13-pt1-PgS5503.pdf.

[11] Judges' folders, tab 5, 154 Cong. Rec. S54, Daily Ed. 22 Jan. 2008, Statement of Senator Lautenberg: https://www.congress.gov/congressional-record/2008/01/22/senate-section/article/S54-1?q=%7B%22search%22%3A%5B%22terrorism%22%5D%7D).

[12] Judges' folders, tab 5, 158 Cong. Rec. H5569, Daily Ed. 1 Aug. 2012, Statement of Representative Turner: https://www.congress.gov/crec/2012/08/01/CREC-2012-08-01-pt1-PgH5552-6.pdf.

the development of ballistic missiles and its provision of arms and other support to militant and terrorist groups.

16. Iran's characterization of this case seeks to discount this critical context. Iran makes cursory efforts — both in its Application and Memorial and in its response to the United States' preliminary objections — to cast this case as an anodyne legal dispute about the interpretation and application of a commercial and consular treaty. But these efforts do not withstand scrutiny. To the contrary, Iran's grievance goes to its long-standing disapproval of the US domestic legal framework for allowing victims of terrorism to seek compensation in US courts from Iran and Iranian State entities for their calculated cruelties.

17. The Treaty of Amity does not address the issues Iran seeks to litigate here. This case is not about the treatment of each country's companies and individuals doing business with the other in the context of a normal commercial and economic relationship. And, how could it be? The United States and Iran have not enjoyed the type of commercial and consular relations that the Treaty was intended to govern in decades. In an attempt to overcome this fundamental flaw in its case, Iran has approached this litigation by contorting the meaning, object and purpose of the Treaty to fit otherwise unrelated claims. It has invented novel and overly expansive theories of treaty interpretation, and dodged any direct engagement with the issue of its own sponsorship of terrorism and the relationship between that support and the US measures at issue. These objections advanced by the United States warrant the Court's attention and resolution at this preliminary stage and provide a clear basis for ruling that this case should not proceed to the merits.

II. Overview of US objections to jurisdiction and admissibility

18. Turning now to the specific US objections, I will take the opportunity to summarize those objections in brief and highlight a few key points.

A. Objections to admissibility

19. As Mr. Bethlehem will address, the United States raises two objections to admissibility of Iran's Application and urges the Court to decline to adjudicate this case on the basis of these objections.

1. Abuse of process

20. *First*, the United States objects to the admissibility of Iran's case on the grounds that it constitutes an abuse of process. This is because Iran's case does not come within the scope of the Treaty of Amity, and the friendly relationship on which the Treaty was predicated no longer exists. Iran's invocation of the compromissory clause in the Treaty is accordingly a misuse of the Court's judicial function.

21. Before proceeding to the next objection, I will make one additional point regarding Iran's cynical litigation tactics. Iran's unwillingness to be forthcoming with respect to the pleadings filed in the US court proceedings in *Peterson* serves as yet another example of Iran's misuse of this Court's judicial function.

22. As the United States has explained in prior communications to the Court[13], the *Peterson* documents were filed in the US judicial proceeding that concerned assets in which Iran's Central Bank, Bank Markazi, had an interest. Those assets were sought by plaintiffs holding judgments against Iran related to the 1983 bombing of the US Marine barracks in Lebanon. In the present case, Iran claims that the turnover of those assets violated various provisions of the Treaty of Amity. The *Peterson* documents are, therefore, highly relevant to the United States ability to fully appreciate the factual and legal aspects of Iran's claims in this case and to properly defend itself before the Court[14]. Despite the fact that certain of Iran's claims are based on the treatment of Bank Markazi in that litigation, Iran attempted to deny the United States and the Court access to the complete record of that proceeding, including Bank Markazi's filings. Those filings address a range of arguments relevant to Iran's claims in this case, including representations pertaining to matters such as Bank Markazi's structure and operations, the nature of its investment and dealings in the assets in question, and its articulation of how principles of sovereign immunity and certain provisions of the Treaty of Amity applied in relation to the disputed turnover of assets. At tab 4 of your judges' folders is the plaintiffs' Second Amended Complaint, which is representative of the types of issues that were raised over the course of the proceeding.

---

[13] Judges' folders, tab 6, Letter from the United States submitting to the Court certain pleadings and related documents from *Peterson et al.* v. *Islamic Republic of Iran et al.*, case no. 10-CV-4518 (19 Sept. 2017).

[14] Judges' folders, tab 6, Letter from the United States submitting to the Court certain pleadings and related documents from *Peterson et al.* v. *Islamic Republic of Iran et al.*, case no. 10-CV-4518 (19 Sept. 2017).

23. Bank Markazi's filings in the *Peterson* case contain arguments that undermine the very arguments Iran has presented to this Court. Because of Iran's efforts to prevent access to the documents, the United States did not have these highly probative documents during preparation and submission of our preliminary objections filing, and was forced to submit the documents to this Court on 19 September 2017. Despite the direct relevance of these documents to this case, Iran continued to object to the US submission[15]. This lack of transparency calls into question Iran's credibility as a litigant, and further highlights the abusive nature of Iran's case.

2. Unclean hands

24. The *second* objection to the admissibility of Iran's application is that Iran comes to the Court with unclean hands. Indeed, it is a remarkable show of bad faith that Iran now seeks relief from this Court because of the outcome of the *Peterson* proceeding, which arose from Iran's support for a brutal and deadly terrorist attack, an act about which the Iranian leadership boasted.

25. Iran has no response to this. This is telling, and we would urge the Court to draw from this the only appropriate inference — there is no rebuttal to the facts and evidence adduced by the United States demonstrating Iran's long-standing support for international terrorism.

B. Objections to jurisdiction

26. Mr. President, Members of the Court, I will now turn to summarizing briefly the US jurisdictional objections.

27. Ms Kimball will start off with submissions addressing the Court's jurisdiction and questions of applicable law. As she will explain, the Court should dismiss for lack of jurisdiction *ratione materiae*, Iran's claims that concern matters that are plainly not encompassed by the Treaty. The exclusive basis asserted for the Court's jurisdiction in this case is the compromissory clause of the Treaty which limits the Court's jurisdiction to "any dispute . . . as to the interpretation or application of" the Treaty of Amity. However, Iran grounds important aspects of its claims in customary international law, or seeks redress for measures that either are not governed by the

[15] Judges' folders, tab 7, Letter from Iran concerning filing by the United States of documents related to *Peterson et al. v. Islamic Republic of Iran et al.*, case no. 10-CV-4518 (16 Oct. 2017).

Treaty articles that Iran invokes or fall within explicit exclusions set out in the text of the Treaty. These claims therefore should be dismissed for lack of jurisdiction.

28. This brings me to the three specific US objections to jurisdiction.

1. Article XX (1) *(c)* and *(d)*

29. First, Mr. Daley will present on the US objection to Iran's challenge to US Executive Order 13599. This measure blocks the property and interests in property of the Government of Iran and Iranian financial institutions in the United States. It is excluded from the Treaty's coverage by the exceptions in Article XX, paragraph 1 *(c)*, which applies to measures regulating production and trafficking in arms, and paragraph 1 *(d)*, which applies to measures necessary to protect a party's essential security interests. Measures covered by these exceptions are excluded from the Court's jurisdiction as reflected in the Treaty's compromissory clause.

2. Sovereign immunity

30. Second, Professor Boisson de Chazournes will explain that there is no jurisdiction under the Treaty to adjudicate one of Iran's core grievances, namely the claim that the US measures at issue offend customary international law principles of sovereign immunity. Iran's contention that the Treaty of Amity was intended to incorporate broad rules of sovereign immunity is unsupported. The application of well-established treaty interpretation rules clearly demonstrates that the Treaty of Amity, a commercial and consular treaty designed to facilitate trade and private investment, is not an instrument that establishes any rights to sovereign immunity protections for the Government of Iran or other Iranian State entities. Thus, all of Iran's claims that are predicated on the US purported failure to accord sovereign immunity to the Government of Iran, Bank Markazi or other Iranian State-owned entities are ripe for dismissal at this stage because these claims are not grounded in the Treaty.

3. Bank Markazi

31. Third, Professor Childress will address the US objection to Iran's claims regarding the treatment of Bank Markazi. At the same time that Iran complains that the US measures do not afford sovereign immunity to Iran and Iranian government entities, including Bank Markazi, Iran

also complains that its central bank was not afforded the protections owed to "companies" under certain provisions of the Treaty. These two complaints cannot be reconciled.

32. Iran's argument that Bank Markazi is owed the protections afforded to "companies" under the Treaty is plainly wrong and runs counter to the requirements of Article 31 (1) of the Vienna Convention on the Law of Treaties to read the ordinary meaning of a treaty's terms "in their context" and "in light of [the treaty's] object and purpose". A proper analysis of the relevant Treaty provisions illustrates that the Parties never intended for the Treaty to govern the treatment of a State entity exercising sovereign functions. Accordingly, the Court should dismiss Iran's claims regarding the treatment of Bank Markazi.

III. US objections are exclusively preliminary

33. Mr. President, Members of the Court, Article 79 of the Rules of the Court provides for preliminary decision with respect to "[a]ny objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits". As my colleagues will explain, all of the US objections to admissibility and jurisdiction are exclusively preliminary in nature and can — and should — be decided at this preliminary stage. The Court need not venture into the merits to find in favour of the United States.

34. Iran devotes a section of its written submission to enumerating elements of its claims that the United States allegedly does not contest[16]. I wish to comment briefly on this to ensure our position is clear. The United States has addressed only those elements of Iran's claims that are relevant to the five US preliminary objections raised at this stage. The United States has certainly not consented to Iran's interpretation of the various articles of the Treaty or other aspects of its case simply because the United States has chosen not to address those issues at this preliminary stage. To the extent that the Court were to decide that certain of Iran's claims should move forward, the United States reserves the right to pursue all other arguments or objections opposing Iran's claims, as appropriate[17].

---

[16] Written Statement of the Islamic Republic of Iran on the Preliminary Objections of the United States of America (WSI), paras. 3.6-3.10.

[17] POUS, para. 1.6.

35. Mr. President, Members of the Court, before concluding, I would like to address a recent development. Last week, Secretary of State Pompeo announced the US decision to terminate the Treaty of Amity with Iran[18]. For the reasons I have discussed and Ms Grosh will elaborate upon, Iran and the United States have not enjoyed the normal commercial and consular relationship that was originally envisioned. Iran's malign acts in the preceding decades and up to the present day have led to a prolonged breakdown in friendly relations. As recently as last month, the United States evacuated and temporarily relocated the personnel of its consulate in Basra, Iraq because of attacks by militias supported by the Iranian government[19]. Mindful of the absurdity of continuing to enable Iran to use a treaty predicated on friendship to bring illegitimate cases, the United States decided to terminate the Treaty of Amity with Iran.

IV. Conclusion

Mr. President, Members of the Court, my colleagues will proceed with the US presentation from here, providing an overview of the Treaty of Amity and setting out in detail the US preliminary objections. I now ask that you call on Ms Grosh to continue the United States' submissions.

The PRESIDENT: I thank the Agent of the United States and I now invite Ms Grosh to take the floor. You have the floor.

Ms GROSH: Thank you, Mr. President.

OVERVIEW OF THE TREATY OF AMITY

I. Introduction

1. Mr. President, Members of the Court, it is an honour to appear again on behalf of the United States. By now the Court is familiar with the Treaty of Amity, and many of its provisions, as it has had occasion to consider the Treaty in *Oil Platforms*, and most recently in *Alleged*

[18] Judges' folders, tab 8, Remarks of Secretary of State Pompeo (3 Oct. 2018), available at https://www.state.gov/secretary/remarks/2018/10/286417.htm.

[19] Edward Wong, Blaming Iran, U.S. Evacuates Consulate in Southern Iraq, *New York Times*, 28 Sept. 2018, available at https://www.nytimes.com/2018/09/28/world/middleeast/iraq-iran-consulate-basra-closed.html. See also, Statement of Secretary of State Michael Pompeo, 28 Sept. 2018, available at https://www.state.gov/secretary/remarks/2018/09/286317.htm; judges' folders, tab 8, Remarks of Secretary of State Pompeo, 3 Oct. 2018, available at https://www.state.gov/secretary/remarks/2018/10/286417.htm.

Violations of the Treaty of Amity, to which I will refer as the *Alleged Violations*, and in which the Court last week rendered its Order on provisional measures. Our discussion of the Treaty's provisions in *Alleged Violations* was necessarily tailored to the distinct claims raised by Iran in that case and the summary review undertaken at the provisional measures phase. My presentation today will focus on providing an orientation of the Treaty and its specific provisions as they relate to this case, and will consist of four parts.

2. *First*, I will discuss the scope of the Treaty as construed in good faith by reference to its object and purpose. *Second*, I will place the Treaty in the context of the wider US programme of concluding friendship, commerce, and navigation treaties following World War II. *Third*, I will provide a summary of the key types of Treaty provisions relevant to this case. *Fourth*, I will explain why Iran's claims are not congruent with the Treaty's object and purpose.

II. The Treaty of Amity's object and purpose

3. I turn now to the first of my points on the scope of the Treaty of Amity as construed in good faith by reference to its object and purpose. I begin with a discussion of the Treaty's object and purpose in order to highlight certain overarching points about the Treaty that frame my later discussion of the Treaty's specific provisions.

4. The scope is to be found in the Preamble and in Article I of the Treaty. The Preamble sets forth in plain terms the Parties' understanding of the conditions prevailing at the time of entry into the Treaty and their shared goals. The Preamble states:

> "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 . . ."

5. Similarly, in Article I, the Parties made clear their understanding that the Treaty was predicated on friendly relations. That provision states: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran." The conclusions to be drawn from the Preamble and Article I are: first, that the two countries entered into the Treaty with a

reciprocal commitment to engage in mutually beneficial trade and investment; and second, that they did so in furtherance of their friendly relationship.

6. This Court in *Oil Platforms* elaborated further on the object and purpose of the Treaty reflecting on its Preamble and on Article I. The Court stated:

> "Article 1 is in fact inserted not into a treaty of that type [that is, broader friendship treaties], but 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."

7. Therefore, the Court stated: "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."[20]

8. The Court went on to explain, citing its decision in the *Nicaragua* case, which also concerned a friendship, commerce and navigation treaty, that in discerning the object and purpose of such a treaty: "there must be a distinction . . . between the broad category of unfriendly acts, and the narrower category of acts tending to defeat the object and purpose of the Treaty". Moreover, the object and purpose of a friendship treaty such as this one, is "the effective implementation of friendship *in the specific fields provided for in the Treaty*, not friendship in a vague and general sense"[21].

9. So, at the time they entered into the Treaty, both the United States and Iran understood that they had enjoyed long-standing "friendly relations", and that the Treaty would further those friendly relations through the encouragement of commercial and consular activities and closer economic ties generally, as provided for in the specific articles of the Treaty. And the Court's prior decisions related to the Treaty have reaffirmed this understanding.

III. US Friendship, Commerce, and Navigation Treaties

10. This view of the Treaty is supported by the wider US practice concerning FCN treaties. The Treaty of Amity with Iran was one in a series of 21 post-World War II treaties of "Friendship, Commerce, and Navigation". The United States entered into these treaties with treaty partners with

---

[20] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, pp. 813-814, paras. 27-28.

[21] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 137, para. 273. *Oil Platforms*, p. 814, para. 28; emphasis added.

which the United States enjoyed friendly relations and expected to continue having friendly relations[22]. In addition to the FCN with Iran, the United States entered into treaties with Germany, the Netherlands, Italy and Japan, just to name a few. These treaties have endured in furthering their object and purpose by promoting trade and investment through a friendly and peaceful relationship.

11. Mr. Herman Walker, a State Department official who served as a principal architect of US FCN treaties during this period, described such treaties as being concerned with "the right of citizens of each country to establish and carry on business activities within the other and to receive due protection there for their persons and property".

12. Similarly, 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 investment"[23]. Since they were obligations assumed by both sides, the same provisions would of course protect the nationals and companies of US treaty partners investing in the United States. Reflecting again on the FCNs that the United States has, for example, with Germany, the Netherlands, Italy and Japan, there is no question that nationals and companies of those countries continue to actively conduct business in and invest in the United States, while US nationals and companies continue to actively conduct business in and invest in those countries, with all of the protections afforded by the treaties.

13. In this vein, FCN treaties were not intended to regulate every aspect of the parties' bilateral relationship. Rather, in addition to consular relations, the FCNs established a set of specific rules to govern the treatment afforded to nationals and companies of one Treaty party in their engagement in ordinary business activities with the other Treaty party.

---

[22] See generally Herman Walker, Jr., *The Post-War Commercial Treaty Program of the United States*, 73 Pol. Sci. Q. 57, 57-58 (1958) (POUS, Ann. 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) (POUS, Ann. 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", *The New York Times*, (13 May 1994) (POUS, Ann. 4); *Spiess* v. *C. Itoh & Co. (America), Inc.*, 643 F.2d 353, 357 (5th Cir. 1981), vacated, 457 U.S. 1128 (1982) (POUS, Ann. 5).

[23] Memorandum from Willard Thorp, Assistant Secretary for Economic Affairs, to Jack K. McFall, Assistant Secretary for Legislative Affairs (29 Dec. 1951) (POUS, Ann. 6); see also *Commercial Treaties with Iran, Nicaragua, and the Netherlands: Hearing Before the S. Comm. On Foreign Relations*, 844th Cong. (1956) (statement of Thorsten V. Kalijarvi (Dep't of State) (POUS, Ann. 7) (explaining that the Treaty of Amity, as well as FNC 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").

14. Thus, a key aim of the treaties was to try to level the playing field for American nationals and companies operating overseas so they could engage in commercial and business activities on terms as favourable as their local counterparts, or at least on terms as favourable as nationals of third States. The stated goals of the FCN programme confirm the US view that these treaties were primarily designed to provide protections that would facilitate US private investment and commercial activity in foreign countries.

IV. Key provisions of the Treaty of Amity

15. Mr. President, Members of the Court, against this backdrop, in the next section of my presentation, I will summarize three key sets of provisions of the Treaty of Amity. I am walking you through these provisions because it provides critical background for understanding the US objections to jurisdiction. As you will hear from my colleague, Ms Kimball, in connection with her discussion of the *Equatorial Guinea* and *Oil Platforms* cases, a careful analysis of the Treaty is required at this stage of the case, in order to determine whether the Court has jurisdiction over Iran's claims. As my colleagues will further elaborate, when considering these Treaty provisions in connection with Iran's claims, there can be no conclusion that the claims are properly within the Court's jurisdiction.

16. Turning to the Treaty articles, *first*, I will discuss the compromissory clause of the Treaty, Article XXI, paragraph 2. *Second*, I will address in general terms the provisions containing substantive obligations, on which Iran seeks to rely as a basis for its claims. *Third*, I will discuss, again in general terms, the Treaty's exceptions article, Article XX.

17. To begin, Article XXI, paragraph 2, is the compromissory clause of the Treaty, under which all of Iran's clams must fit in order to be considered by the Court. Article XXI, paragraph 2, of the Treaty states: "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." Thus, a basic requirement for a cognizable claim under the Treaty is that there be a "dispute as to the interpretation or application" of the Treaty. The US objections to jurisdiction, which will be elaborated upon in greater detail by my colleagues, go to Iran's claims

that fail to meet the basic requirement and fall outside the Treaty altogether, either because the Treaty's articles simply do not provide the rights Iran claims, or because an express exception to the Treaty applies.

18. Turning to the substantive provisions on which Iran seeks to rely for its claims, Articles III, IV, V of the Treaty are standard FCN treaty provisions that are generally concerned with protections for investors and their property when doing business with the other Party. This is consistent with the object and purpose of the Treaty, which I outlined at the outset, and the goals of the FCN programme of which the Treaty of Amity was part. By contrast, Iran's reliance on these provisions for claims regarding denial of sovereign immunity or the treatment of its Central Bank finds no support in the Treaty, construed in good faith in light of its object and purpose.

19. Article III (1) provides a definition of the term "companies". This definition is relevant to many of the remaining Treaty provisions, which set forth obligations in respect of each Party's treatment of "companies" of the other Party, a subject that Professor Childress will elaborate upon in greater detail.

20. Article III (2) is a standard provision in US commercial treaties guaranteeing freedom of access to the courts for investors of the other party[24]. Articles IV and V also embody standard FCN treaty provisions for protection of investors and their property[25]. They include provisions governing the treatment to be afforded to the property of investors in the other party's territory, guarantees against unlawful expropriation, and non-discriminatory treatment of investors of the other party with respect to the purchase, lease, or disposition of property. As the Court in *Oil Platforms* recognized in respect of Article IV (1), these provisions 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"[26].

21. Article VII of the Treaty provides rules concerning foreign exchange regulations — in other words, on restrictions relating to the transfer of funds out of the State hosting an investment.

---

[24] See Wilson, Robert, *United States Commercial Treaties and International Law*, pp. 106, 194-197.

[25] Wilson, Robert, *United States Commercial Treaties and International Law*, pp. 95-125.

[26] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 816, para. 36.

22. Article X (1) of the Treaty is a general provision which states: "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation." The remainder of Article X concerns issues related to the treatment of vessels, their cargoes, and their products. As evidenced by the focus of Article X as a whole on shipping, paragraph 1 is not a broad, unqualified commitment disconnected from the detailed substantive protections provided elsewhere in the Treaty.

23. Iran also asserts a claim under Article XI, paragraph 4. This is the only provision of the Treaty that addresses sovereign immunity. Specifically, Article XI (4) is concerned with the activities that State-owned enterprises undertake in the private sphere and ensuring that they compete on a level playing field with private entities that would not enjoy sovereign immunity protections[27]. It does this by limiting the ability of such enterprises to claim immunity, but it does *not* include a grant of such immunity.

24. Finally, Article XX, paragraph 1, of the Treaty of Amity sets out exceptions to the Treaty's obligations for certain types of measures. Mr. Daley will address our objections with respect to Article XX, paragraph 1, in greater detail. But of particular relevance to this case, Article XX (1) *(c)*, excludes from the scope of the Treaty's obligations those 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". And, Article XX, paragraph 1 *(d)*, provides for an exception for measures "necessary to protect [a Party's] essential security interests". Identical or very similar exceptions were provided for in other FCN treaties negotiated during the same period and reflect an agreement by the parties that such measures would not be subject to the treaties' obligations.

V. Iran's case falls outside the scope of the Treaty

25. Mr. President, Members of the Court, having in mind this overview of the Treaty of Amity, I will briefly address now, how Iran's claims are untethered from the Treaty.

---

[27] Vernon G. Setser, "*The Immunity Waiver for State-Controlled Business Enterprises in United States Commercial Treaties*," 55 Am. Soc'y Int'l L. Proc. 89, 91 (1961) (POUS, Ann. 229).

A. The Treaty was not intended to govern the types of claims *asserted by Iran*.

26. Let me make a few general points to explain why the Treaty's object and purpose are not engaged by Iran's claims. My colleagues will later address in detail why Iran's claims are not covered by the Treaty provisions.

27. Article 31 of the Vienna Convention on the Law of Treaties requires that a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". As I stated at the outset, the plain text of the Preamble and Article I of the Treaty and this Court's precedent make clear this object and purpose. The Treaty was understood by the Parties to be based on enduring friendship and was intended to further that friendship through the facilitation of investment and closer economic ties, not friendship "in a vague and general sense".

28. Despite this clear direction, Iran's case seeks to use the Treaty as a blank canvas on which any grievance Iran has with the United States can be projected and then asserted as a treaty violation. Iran brings claims related to the denial of sovereign immunity to Iran and its Central Bank where the Treaty does not provide for any sovereign immunity protections. As I just discussed, it provides rules governing the private and professional — not the sovereign — sphere of activities. Iran also seeks to challenge measures related to national security where the Parties expressly excluded such measures from the scope of the Treaty. Thus, as the United States set forth in its Preliminary Objections, the Treaty is an inappropriate vehicle for Iran's claims.

29. In its written pleading, Iran takes issue with the US analysis of the Treaty's object and purpose, and tries to argue that its case indeed does comport with the Treaty's object and purpose. But, in its attempt to do so, Iran appears to invent out of whole cloth ideas regarding the scope of the Treaty of Amity. None of Iran's arguments withstand scrutiny. *First*, Iran contends that the United States erroneously describes the Treaty's scope in terms of commercial and consular relations, rather than an apparently broader field of "economic and consular relations"[28].

30. This discussion is entirely beside the point. One could use either term "economic" or "commercial" to describe the scope of the Treaty, as long as its scope is understood in the Treaty's specific context, rather than in abstract terms. The Treaty was intended to govern "economic" or

[28] WSI, paras. 2.12-2.14.

"commercial" and "consular" relations as they relate to the specific activities that the Treaty concerns, such as the status and treatment of nationals and companies of the other Party, the protection of their property, and conditions for the sale or purchase of property.

31. Indeed, it is entirely unclear what distinction Iran is drawing, as Iran provides no explanation for what is captured by "economic relations" beyond "commerce" and cites to no authority that would illuminate how this supposed distinction supports its claims. Presumably, Iran is asking the Court to draw from this that somewhere in the delta between "economic relations" and "commerce" one may find Iran's claims related to sovereign immunity or the treatment of Iran's Central Bank or measures related to national security. But Iran's approach finds no support in the text of the Treaty, its relevant negotiating history, or this Court's precedent, and must not be sustained.

32. *Second*, Iran contends that the United States advocates an improperly narrow scope of the term "commerce"[29]. Iran relies on an extensive excerpt from *Oil Platforms.* But that excerpt is of no help to Iran, because it concerns consideration of the meaning of "commerce" in Article X of the Treaty, not the Treaty's object and purpose. Moreover, contrary to Iran's suggestion, the United States does not contend that the Treaty as a whole is limited to the mere purchase and sale of goods[30]. The crux of the US argument is that the Treaty is concerned with specific activities in the commercial and consular realms, and claims challenging measures outside of those specific areas are simply not cognizable under the Treaty.

33. Iran relies on vague arguments that the Treaty is broad in scope without ever explaining how its specific claims are consistent with the Treaty's object and purpose. As a result, Iran's discussion of the Treaty's object and purpose does not help to ground its claims more firmly within the Treaty.

[29] WSI, paras. 2.15-2.17.

[30] WSI, para. 2.17.

B. The conditions in which the Treaty was intended *to operate no longer arise*

34. In addition to the fact that the Treaty was not intended to govern the types of claims asserted by Iran, the fundamental breakdown in US-Iran relations over the last four decades also highlights that Iran's claims do not have a proper basis in the Treaty.

35. The Court recognized in *Oil Platforms* that by entering into the Treaty of Amity, Iran and the United States "intended to stress that peace and friendship constituted the precondition for a harmonious development of their commercial, financial and consular relations"[31].

36. As Mr. Visek just explained, the conditions that prevail today — and have prevailed for the past four decades — are far removed from the situation at the time the Parties entered into the Treaty. Friendly relations between the ***two*** States — the precondition of the Treaty — were fundamentally ruptured on 4 November 1979, when Iran seized and held hostage US diplomats in Tehran for over a year. This rupture has only widened with Iran's continued support for terrorist acts targeting the United States, its nationals and its interests in the ensuing decades. We outlined in our written pleading the long history of malign acts perpetrated and supported by Iran, including hostage takings, bombings and assassinations, for which Iran provided support and active encouragement.

37. There have also been no normal economic or consular relations between Iran and the United States since the hostage taking in 1979. Both sides have taken measures aimed at curtailing, and eliminating altogether, such relations. The conditions on which the Parties understood the Treaty to be based and that the Treaty would govern simply have not existed for a long time. Prior to last week's formal termination, therefore, the Treaty was not operating between the Parties in any meaningful sense. To put it plainly, the only role the Treaty played in recent years was to provide a compromissory clause for Iran to assail the United States, now on three separate occasions. Iran, in other words, has seen the Treaty only in terms of its compromissory clause, nothing else, and has treated that clause as an empty vessel into which it can pour any grievance whatsoever.

---

[31] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 814, para. 28.

38. Indeed, as Mr. Visek explained, it is for this reason and because of Iran's recent escalation of violent attacks against the United States, that the United States announced its decision to terminate the Treaty of Amity with Iran in an effort to prevent future misuses by Iran of the Treaty and the Court.

39. In its Written Observations, Iran attempts to lend its claims greater legitimacy by arguing that there is commerce with the United States. Iran points out that this level is greater than zero, though it makes no attempt to compare the current state of commerce between the Parties to that which existed before 1979. Moreover, this claim appears to concede that in a situation where little commerce exists between the Parties, the Treaty is not engaged. But, in any event, Iran's argument is beside the point. Iran focuses on whether there is *any* commerce or economic engagement between our two nations[32]. However, the relevant question, as the United States has stated, is whether there are meaningful commercial or consular relations between the United States and Iran *as was envisaged by the Treaty*[33].

40. For the past few decades, the economic relationship between the United States and Iran has in no way resembled the relations that were envisaged by the Treaty. The Parties have taken affirmative steps to discourage, rather than encourage, bilateral trade and investment. Indeed, in the face of the numerous measures enacted not only by the United States, but by Iran itself to discourage such economic engagement[34], it is striking that Iran now seeks to paint a picture of ongoing economic relations governed by the Treaty.

41. Iran's attempt to do so falls on its own weight. Because the conditions the Treaty was intended to govern have not existed for some time, the Treaty has not been operating in any meaningful sense. Iran and the United States were in no way relying on the Treaty to contribute to a climate favourable to private investment or to facilitate mutually beneficial commercial and consular activities, as the Treaty was designed to do. Instead, Iran was using the Treaty as a vehicle — however ill-suited — to wage a wider political dispute that goes to the heart of the US-Iran relationship, but bears no relationship to the Treaty's intended purpose. Mr. President,

---

[32] WSI, paras. 2.18-2.19.

[33] POUS, para. 6.8, emphasis added.

[34] POUS, paras. 4.15-16.

Members of the Court, this is not a proper invocation of the Treaty. Mr. Bethlehem will elaborate on this further and I would ask that you now call him to the podium.

The PRESIDENT: I thank Ms Grosh and I now call upon Mr. Bethlehem. You have the floor, Sir.

Sir Daniel BETHLEHEM:

THE US ADMISSIBILITY OBJECTIONS

1. Mr. President, Members of the Court, it is an honour to appear before you representing the United States in these proceedings. My task is to address the United States' objections to admissibility. These have been fully developed in our written pleadings[35]. I will attempt to shine a light on what we see as the critical issues.

2. Mr. President, Members of the Court, I'll be on my feet for about 65 minutes. Ms Emily Kimball will follow me for about 20 minutes. And Mr. President, I think that that will take us just shortly after the 1 o'clock deadline of the latitude that you've allowed us, given the opening formalities. So we will have two presentations before that break. Mr. President, I have a natural break in about 10 minutes, which may be the appropriate point to have the mid-morning break. After that, I would like to take Members of the Court to some of the documents in the bundle, and I mention that just in case any Members of the Court don't have the bundle with them. Mr. President, Members of the Court, you will no doubt recall our objections to admissibility but let me describe them in headline terms. There are two. The *first* is an objection that Iran's invocation of the Treaty of Amity is an abuse that goes to the admissibility of its claim with the consequence that its case should be dismissed on admissibility grounds at this preliminary stage. I will address this more fully in due course but, with the Court's recent analysis in *Equatorial Guinea* v. *France* in mind, let me emphasize that this is an abuse of process objection; it is not an abuse of right objection. Iran's case does not come properly within the scope of the Treaty of Amity. Accordingly, Iran's invocation of Article XXI (2) of the Treaty, that is, the compromissory clause, in order to found the jurisdiction of the Court is an abuse of process.

[35] POUS, paras. 3.1–4.16 and 6.1–6.38.

3. The *second* admissibility objection is that Iran comes to the Court with unclean hands.

4. Mr. President, Members of the Court, the heart of this case is Iran's attempt to evade accountability for acts of terrorism directed at or affecting US persons that Iran has sponsored, that Iran has instigated, that Iran has procured, that Iran has financed, and in which Iran has conspired. The accountability that Iran seeks to evade is accountability established through US court proceedings pursuant to legislation that enables States to be held accountable for supporting terrorist acts. That is what this case is all about.

5. More directly, as you heard from the US Agent this morning, while there have been a number of cases in US courts brought by plaintiffs seeking compensation from Iran, the driving imperative behind Iran's case before this Court is the *Peterson* proceedings before the US courts in which Iran was held liable for the most deadly act of terrorism committed against US persons since the Second World War, with the sole exception of the September 11 attacks in 2001.

6. Mr. President, Members of the Court, as you heard from Mr. Visek, the act of terrorism in issue in the *Peterson* proceedings was the bombing of the barracks of US peacekeepers in Lebanon in 1983 with the loss of life of 241 US service personnel. The plaintiffs in the *Peterson* case are injured survivors and the family members of the peacekeepers that were killed in the attack. Through the *Peterson* litigation and its related cases, the victims and families of that and other terrorist atrocities secured judgments against Iran and, in some cases, attachment of Iranian assets in satisfaction of those judgments.

7. Iran now comes to the Court to seek assistance in evading those judgments. Iran comes to the Court with unclean hands. We contend that its case is inadmissible on those grounds.

8. The principle of unclean hands goes to the integrity of the judicial process. An applicant who comes with unclean hands is abusing that process. I will have more to say about this later in my submissions. For the moment, let me say simply that we adopt the appreciation of this principle stated more than 60 years ago by Sir Gerald Fitzmaurice in the following terms:

> "'He who comes to equity for relief must come with clean hands.' Thus 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 or were embarked upon in order to counter its own illegality — in short were provoked by it."[36]

9. We reject any suggestion that the measures adopted by the United States were, to use Fitzmaurice's words, "corresponding illegalities". But the principle that a would-be litigant with unclean hands is properly to be denied standing is the essence of this objection. This is what is required in respect of Iran in these proceedings.

10. Iran's response to these admissibility objections is simply to make a cursory denial of the allegations of bad conduct. It says, beyond this, that there is no foundation in the Court's jurisprudence to hold inadmissible on such grounds an inter-State claim, and that principles derived from non-inter-State proceedings are irrelevant. Iran says also that, in any event, the United States cannot satisfy the burden of showing that the requirements of such principles have been met. Iran says, further, that there is no basis on which the Court could make an assessment of these allegations at this preliminary phase.

11. We contest all of this. I will shortly take you to evidence in support of our case, and I will come thereafter to the legal framework that is applicable to these issues. I would like to begin, though, with three preliminary observations.

I. Preliminary observations

12. The *first* observation goes to the headline character of our admissibility objections, preceding our objections to jurisdiction. There are two reasons for this. The first is that these objections to admissibility go to the whole of Iran's case. It is therefore appropriate that you have a sense of these objections at the outset. If you are with us on these points, there is no need to get to our jurisdictional objections.

13. The second reason for leading with these objections is that they shine a light on Iran's egregious conduct and go also to systemic considerations of the administration of international justice of which the Court is guardian. I will return to this later in my submissions.

14. In this regard, Iran notes that the Court has not before upheld an unclean hands objection. This is accurate. But nor has the Court rejected the principle and, indeed, we say, that the Court in

---

[36] Fitzmaurice, G., "The General Principles of International Law Considered From the Standpoint of the Rule of Law", (1957) 92 RdC 2, p. 119.

Equatorial Guinea v. *France* accepted the existence of the closely related principle of abuse of process, subject to the appreciation that it only operates in "exceptional circumstances" and requires "clear evidence" that the conduct in question "could amount to an abuse of process"[37]. The United States' objection falls squarely within the scope of these requirements.

15. The *second* preliminary observation flows from the first. Iran contends that it follows from the reach of our jurisdictional objections that the Court must have jurisdiction over some part of Iran's claim. This is not the complete picture, for two reasons. The first is that, what is in issue in these proceedings are US *preliminary* objections, which we say are enough to dispose of the case at this stage of the proceedings. That is not to say, however, that there are no other highly pertinent jurisdictional and admissibility objections that would arise for consideration in any proceedings on the merits.

16. The second reason is that our Treaty of Amity abuse of process contention goes to the good faith interpretation of Article XXI (2) of the Treaty. In other words, it goes to an abuse of process in Iran's invocation of jurisdiction. This admissibility objection cannot therefore be neatly separated from our objections to jurisdiction.

17. My *third* preliminary observation is that allegations of bad faith and of abuse of process are not lightly made. Before such allegations can be advanced, it must be clear that there is a reasonable foundation to do so. Iran has suggested that the United States advances these allegations simply, to quote Iran, "to denigrate an opponent" and "to turn the opportunity offered by the Court's legal procedures into a propaganda exercise"[38]. This is inaccurate. We are here, making submissions in measured terms, respectful of the decorum of the Court. But we are also here to put before you egregious conduct of Iran over decades; conduct that is and has been widely recognized in the chambers and corridors of the United Nations and other multilateral bodies; conduct that has been subjected to intense scrutiny by prosecutors and judges not only in the United States but in Argentina, in Germany, in Bahrain, and elsewhere, leading to findings that Iran has sponsored and supported terrorism against not only US persons but against others as well.

---

[37] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections*, Judgment of 6 June 2018, para. 150.

[38] WSI, paras. 8.2 and 8.3.

18. Iran's response to these allegations is simply denial. There has been no change in Iran's behaviour. The action taken by the United States reflects a consensus in the United States that Iran is a bad actor and must be held to account. The US measures of which Iran complains in these proceedings are measures that have the object of holding Iran to account, through exacting judicial scrutiny, and of changing Iran's behaviour.

II. Roadmap of submissions

19. Mr. President, Members of the Court, let me give you a roadmap of my submissions to come. I will turn, first, perhaps after the short break, to address Iran's bad acts. In doing so, I will take you to a number of documents in our judges' folders. This is the evidence. Where I can, I will use slides for ease of reference.

20. Following this, I will turn to the clean hands objection and place the evidence to which I have taken you in its legal context. Thereafter, I will turn to address the scope of the Treaty of Amity, building on what Ms Grosh has just said, and developing the point that Iran's invocation of the Treaty to found the Court's jurisdiction is an abuse of process. I will thereafter conclude my submissions with some final observations.

Mr. President that is probably a natural break in these proceedings if this would be a convenient moment for the Court to adjourn.

The PRESIDENT: Thank you, Mr. Bethlehem. I think it does and the Court will now observe a coffee break of 15 minutes. The hearing is suspended.

The Court adjourned from 11.25 a.m. to 11.40 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I will now give the floor to Mr. Bethlehem to continue his presentation, but I would like to ask him to speak a bit slower for the interpreters so that they can follow him. Thank you. Go ahead.

Sir Daniel BETHLEHEM:

III. Iran's bad acts

21. Thank you, Mr. President. I will speak a little slower and that may be aided by the fact that I will take you to the bundle of documents, which will slow me down. Mr. President, Members of the Court, I come to Iran's bad acts. Three observations are warranted at the outset. The *first* is to emphasize that we are not stepping away from any of the allegations made in our written submissions and we urge you to look carefully not only at those submissions but also at the annexes thereto. I will take you to some of those annexes, but not to all of them, and there are many that warrant scrutiny.

22. The *second* observation is that there is evidence of Iran's continuing bad acts since the filing of our Preliminary Objections on 1 May 2017. Where I can illustrate this by reference to documents that are part of "a publication readily available", I will do so.

23. The *third* observation is that my submissions on Iran's bad acts will focus on Iran's sponsorship and support of terrorism, as this goes directly to the matters in issue in these proceedings. I do not propose to address Iran's conduct in respect of nuclear non-proliferation, ballistic missiles and arms trafficking obligations. We addressed these aspects in our written observations in the context of our arguments relating to essential security and Mr. Daley will have more to say about this aspect in his submissions. As, however, the heart of this case is Iran's attempt to secure relief from measures that seek to hold Iran to account for its conduct in support of terrorism, it is on this aspect that I will focus.

24. Mr. President, Members of the Court, following the release of the US diplomatic hostages in Tehran in 1981, the first major terrorist attack procured by Iran against the United States and against US personnel was an attack by Hezbollah on the US Embassy in Beirut on 18 April 1983. This killed 63 people, 17 of whom were American diplomats and military personnel, with many others wounded[39]. There is a contemporaneous *New York Times* report by Thomas Friedman which is at tab 9 of your folder[40], and as you will see as you glance through that

[39] POUS, para. 3.8 and footnote 29; Anns. 19, 23 and 28.

[40] POUS, Ann. 28.

report, it paints a graphic picture of the scale of the carnage, which destroyed the entire US Embassy.

25. And you will see from that report that a pro-Iranian group called the Islamic Jihad Organization claimed responsibility for the attack. I do not propose to take you to another document just at this stage, but, if you look in due course at US Annex 19, which sets out the US intelligence understanding on terrorist ***group*** profiles, you will see that Hezbollah operated at the time under the code name of Islamic Jihad. You will also see from that Annex 19 that Hezbollah was created by Iran, with some of its operatives being directly tied to the Iranian Revolutionary Guard contingent in Lebanon, and that Hezbollah cadres received orders directly from the Iranian Revolutionary Guard Corps[41].

26. To reinforce this point, I would like to jump forward to a 25 June 2016 speech by Sheikh Hassan Nasrallah, the leader of Hezbollah, and you will see this at tab 10 of your judges' folders. And this report is a report in Al Arabiya; it is the report of a speech by Hassan Nasrallah affirming publicly that Hezbollah receives full financial and arms support from Iran[42]. And as you will see from the Al Arabiya report, Sheikh Nasrallah was saying as follows — and this is at the bottom of the first page, where it says "Nasrallah added that '[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'".

27. And then if you go lower down the page, just below the picture — there is a slide on the screen — the report continues as follows:

> "It has long been known to political observers that the Islamic Republic of Iran played a key role in giving birth to the Lebanese Shiite militant group in 1982. For over three decades, Iran's financial, military, intelligence, logistical, and advisory assistance to Hezbollah have been well known. The Islamic Revolutionary Guard Corps (IRGC) and its elite force, the Quds force, transformed Hezbollah to be one of Iran's most important and powerful regional and international proxies.
>
> Nevertheless, what highlights the significance of Nasrallah's speech is the fact that this is the first time in which he is announcing and publicly confirming that his group is receiving full monetary and arms support from the Iranian government.

[41] POUS, Ann. 19, pp. 15-16.

[42] POUS, Ann. 87.

> The United States has long listed Hezbollah as a global terrorist group (since 1995) and accused it in several attacks such as the 1983 Beirut barracks bombing, that killed 241 US marines, the April 1983 US embassy bombing and the 1984 US embassy annex bombing."

28. Now, against that background, I would like to turn to the US peacekeeping contingent in Beirut. Mr. Visek has referenced this in his opening remarks, and I note that the US peacekeeping contingent was deployed by President Reagan at the express request of the Lebanese Government. President Reagan wrote to the United Nations Secretary-General at the time, Javier Perez de Cuellar, in September 1982, addressing this request and deployment[43]. There is a slide on the screen and, as you will see from President Reagan's letter to the United Nations Secretary-General, it reads as follows:

> "[The Lebanese Government] has urgently requested the deployment of a multinational force in Beirut. The mandate of the multinational force will be to provide an interposition force at agreed locations and thereby provide the multinational presence requested by the Lebanese Government to assist it and the Lebanese armed forces in the Beirut area. The Lebanese Government has asked for the participation of United States military personnel in this force, together with military personnel from France and Italy."

29. And the letter goes on to state that US peacekeepers "will not be involved in hostilities during the course of this operation" and that it is intended that the force will serve the purposes of Security Council resolution 521 (1982) "pending consultation between you [i.e. the United Nations Secretary-General] and the Government of Lebanon".

30. Mr. President, Members of the Court, Mr. Visek has already given you some details of the attack. Let me fill this out a little bit more.

31. On 23 October 1983, a suicide bomber drove a truck filled with high explosives into the barracks of the US peacekeepers in Beirut[44]. Two hundred and forty-one US personnel were killed and many more were wounded. There is a contemporaneous *New York Times* report, again filed by Thomas Friedman, which is at tab 2 of your folders[45]. I do not propose to take you to that, but would invite you to look at that in slower time. As you will see from that report — and as Mr. Visek noted this morning — there was an almost simultaneous attack on the barracks of the

[43] POUS, Ann. 21.

[44] POUS, para. 3.5.

[45] POUS, Ann. 24.

French peacekeeping contingent in Beirut. This killed 58 French peacekeepers and 5 Lebanese civilians[46].

32. The attack on the US contingent was carried out by Hezbollah, but there is direct evidence of Iran's involvement as Iran's Minister for the Islamic Revolutionary Guard Corps, Mohsen Rafiqdoust, spoke publicly about the attack in July 1987, when he spoke in terms that boasted about Iran's success in perpetrating the attack. A report of the speech is at tab 3 of the judges' folders[47]. Mr. Visek put an extract on the screen this morning, but let me take you to that and recall what the IRGC Minister said, and it is in the middle of that first page. He said:

> "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 [America] 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."

33. The claim of responsibility by Iran is plain and that is incontestable. This assertion of responsibility also puts into context statements by the Iranian leadership, such as that by the Speaker of the Majlis, the Iranian Parliament, and later the President of Iran, Akbar Hashemi Rafsanjani, which is set out in our written pleadings, in which Rafsanjani acknowledged that the attack "was part of the influence of the Islamic Revolution"[48].

34. Mr. President, Members of the Court, I will take you back to this atrocity in greater detail a little later. Before I do so, let me describe Iran's wider policy of procuring and supporting terrorist acts.

35. Following the bombing of the US embassy in West Beirut in April 1983, which I took you to a little bit earlier, the US embassy — which had been completely destroyed in that attack — relocated to East Beirut, which was thought to be a little safer. On 20 September 1984, a suicide bomber crashed a stolen van with what appeared to be Dutch diplomatic number plates through the security checkpoint at the embassy. The ensuing explosion killed 24 people, both Americans and

---

[46] POUS, Ann. 23.

[47] POUS, Ann. 27.

[48] POUS, para. 3.6 and POUS, Ann. 26, p. 12, column 2, para. 3.

locals, with many others wounded[49]. There is a contemporaneous *New York Times* report of this bombing filed by John Kifner at tab 11 of your folders[50].

36. Mr. President, Members of the Court, as our written pleadings describe, following these three attacks — the US embassy in April 1983, the Marine barracks bombing and then the US embassy again — there were a range of other attacks on US and other persons, as well as aircraft hijackings, both in Lebanon and elsewhere. I will not recount all of these events, as they are documented in our written pleadings[51]. By way of illustration of Iran's ongoing terrorist conduct, there are five events that I would like to describe briefly, and I would also like to take you to a UK parliamentary report that describes Iran's conduct at length. My purpose in taking you to these other events and other documents is to show that Iran's conduct was, first of all, not limited to strife-torn Lebanon and, second, that the attacks in question were the subject of investigation by law enforcement agencies, of prosecutorial indictment, and, in a number of cases, by court judgments both in the United States and elsewhere. The evidence of Iran's unclean hands is compelling.

37. The first of the further events to which I draw to your attention is the assassination, on 17 September 1992, of four members of the Democratic Party of Kurdistan–Iran, the DPK-I, at the Mykonos restaurant in Berlin[52]. In this attack, two armed assailants entered the restaurant and killed Dr. Sadegh Sharafkandi, Fathol Abdouli, Hamayoun Ardalan and Nuri Dekhurdi, all of the DPK-I.

38. What is material about this incident is that the German authorities arrested a number of suspects shortly afterwards, at least two of whom were members of Hezbollah, and four were subsequently convicted by the Berlin Superior Court of Justice on charges of murder and conspiracy to murder. Significantly, an arrest warrant was also issued for the arrest of Iran's Minister of Information and Security, Ali Fallahijan, for his involvement in the assassinations.

---

[49] POUS, para. 3.8 and footnotes 30 and 31.

[50] POUS, Ann. 29.

[51] POUS, paras. 3.9–3.30.

[52] POUS, paras. 3.12–3.14.

39. A summary of the judgment of the Berlin superior court, produced by the court itself, was annexed to our written pleadings. It is now at tab 12[53] and I would like to take you to that. The full judgment is over 200 pages long. Given its length, we did not annex the full judgment to our pleadings but, of course, we would be happy to provide an English translation copy to the Registry, if this would be appropriate. Mr. President, Members of the Court, the summary — the Berlin court's own summary of its judgment — bears reading. I would like to highlight a number of points.

40. To start with, you will see towards the middle of the first page, a statement that the Court's oral findings included the following passages. What follows thereafter is in quotation marks. So what you have in this summary is the language of the judgment itself.

41. If you turn over the page, to page 2, there are two paragraphs under the II numerals, of some importance. I would like to read the essential elements of these paragraphs:

> "The crime had its roots in Iran's historical development since the Islamic Revolution. The aspiration to autonomy of the Kurds living in Iran brought this section of the population and the political organisations representing them, including DPK-I, into opposition with the regime. As a result, their leaders were persecuted. . . . In order to silence it, Iran's political leadership decided not to fight the DPK-I's leaders with political means but to liquidate them. [This is the judgment of the German court.] The killing of the DPK-I's chairman, Dr. Abdul Rahman Ghassemlou, and two of his confidants in Vienna on 13 July 1989, as well as the crime which has been tried by this Court, are the outcomes of that decision. . . .
>
> [Then we move to the paragraph below]
>
> The evidence has revealed [once again I interpolate, this is the Berlin superior court] 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 Service VEVAK, the foreign policy chief, representatives of the security forces and other organisations . . ."

42. The paragraphs that follow in the judgment describe the decision to assassinate the DPK-I members in Berlin and the execution of that plot. You will see, in the last paragraph at the bottom of page 3, a reference to Hezbollah, being a "group financed, equipped and trained by Iran which uses military means to remove opponents of the Islamic regime and has claimed responsibility for terrorist acts of violence".

---

[53] POUS, Ann. 33.

43. Mr. President, Members of the Court, the last extract of the judgment that I would like to draw to your attention, although I do urge you to read the whole of this summary, that the last extract that I would like to draw to your attention is the first sentence at the top of page 7, which says simply: "The fact that the true originators of the crime and wirepullers were holders of political office in Iran does not negate the conclusion that the crime was committed from base motives."

44. Mr. President, Members of the Court, we have in this case an example of meticulous forensic German criminal investigation and court judgment placing Iran in the dock for terrorist killings abroad.

45. Let me turn, next, to the terrorist bombing of the Asociación Mutual Israelita Argentina, "AMIA" for short, in Buenos Aires on 18 July 1994[54]. The AMIA is the Argentine Jewish Centre. The AMIA attack followed an attack two years earlier, in 1992, on the Israeli embassy in Buenos Aires by Hezbollah.

46. On 18 July 1994, a member of Hezbollah drove a van loaded with high explosives into the AMIA headquarters. The resulting explosion killed 85 people and wounded at least 151 more.

47. On 25 October 2006, in other words 12 years later, following a detailed investigation, two Argentine prosecutors, Alberto Nisman and Marcelo Martínez Burgos, published a *Report and Request for Arrests* in respect of this attack. In its English translation, it runs to 675 pages. Given its length, we did not file it together with our written pleadings. It is, however, publicly available on the open-access AlbertoNisman.org website[55], which was established in honour of the work of Mr. Nisman, the AMIA prosecutor, following his murder in January 2015.

48. Tab 13 contains a *La Nación* press article describing the AMIA prosecutor's *Report and Request for Arrests*[56]. It is on a slide in front of you. As you will see from the second paragraph of the article, in direct quotations, the prosecutors concluded that the AMIA attack was executed by Hezbollah "at the instigation of the highest authorities of the then government of the Republic of

[54] POUS, para. 3.9.

[55] http://albertonisman.org/documents/.

[56] POUS, Ann. 30.

Iran". The report goes on, two paragraphs later, to identify eight individuals for whom arrest warrants were sought, as follows:

> "The persons who have been charged by the prosecutors are the former president of Iran from 1989 to 1997, Ali Akbar Hashemi Rafsanjani; the former minister of intelligence and security until 1997, Ali Fallahjan; the former minister of foreign affairs of Iran, Ali Akbar Velayati; the former commander of the Revolutionary Guard, Mohsen Rezal; the head of Hizballah's External Security Service; Imad Fayez Moughnieh (who is also wanted by the United States for the attack on the Embassy of Israel); the former cultural attaché of the Iranian Embassy in Buenos Aires, Mohsen Rabbani; the former third secretary of the Iranian Embassy, Ahmad Reza Asghari; and the former commander of the Iranian Quds forces, Ahmad Vahidi."

49. Interpol subsequently issued Red Notices seeking the international arrest of six of the eight persons charged[57]. And Red Notices remain operative in respect of five of those individuals.

50. Mr. President, Members of the Court, we have included in your folders, at tabs 14, 15, and 16[58], and I do not propose to take you to those, but we would urge you to look at those, at tabs 14, 15, and 16 are the speeches given by the then Presidents of Argentina to the United Nations General Assembly in September 2007, in September 2008 and again in September 2009 which note Iran's failure to co-operate with the Argentine justice system in respect of the extradition of the indicted Iranian officials. We do urge you to have a look at those.

51. I turn now to more recent events, this time in Bahrain in the period 2011 to 2015[59]. You have at tab 17 a letter from the Permanent Representative of Bahrain to the United Nations addressed to the United Nations Secretary-General dated 16 October 2015[60]. This recalls prior communications to the United Nations Secretary-General from the Bahraini Foreign Minister and attaches an annex detailing Iranian conduct. I would like to take you, if I may, to this tab and to a

---

[57] POUS, Ann. 32. Red Notices remain operative today for:

Mohsen Rezai: https://www.interpol.int/notice/search/wanted/2007-49958.

Ahmad Vahidi: https://www.interpol.int/notice/search/wanted/2007-49957.

Mohsen Rabbani: https://www.interpol.int/notice/search/wanted/2007-49960.

Ali Fallahijan: https://www.interpol.int/notice/search/wanted/2006-34754 and

Ahmad Reza Asghari: https://www.interpol.int/notice/search/wanted/2007-49959.

[58] POUS, Anns. 36, 37 and 38.

[59] POUS, para. 3.10. See also para. 3.20.

[60] POUS, Ann. 42.

number of paragraphs of the document, starting on the middle of the second page, where you see the following:

> "Specifically, as detailed in the present letter, Iran has allowed its territory and state resources to be used by terrorist groups to carry out armed attacks in Bahrain. The Government of the Islamic Republic of Iran is actively engaged in spreading weapons, such as assault rifles, grenades, improvised explosive devices (IEDs), explosively formed projectiles (EFPs) and associated technologies, to terrorist groups, including those operating in Bahrain."

52. The letter from the Permanent Representative goes on to indicate that, in the face of these actions, Bahrain considered that it was left with no recourse but to withdraw its Ambassador from Tehran. The letter then continues, in the last paragraph on page 2, as follows:

> "This step [namely the withdrawal of the Bahraini Ambassador] has become necessary because the Islamic Republic of Iran has provided IED- and EFP-related training, information, financing, components and technology, in addition to large caches of weapons, to certain terrorists committed to the destruction of the Kingdom of Bahrain. Since mid-2011, the Kingdom of Bahrain has uncovered several warehouse-scale facilities containing complex IED-making materials supplied by Iran, intercepted a number of ships originating in Iran laden with weapons, including large numbers of IEDs and EFPs, and discovered technologies, such as chemical recipes, circuit boards, compressors, wireless modules and detonators, traceable to the technique, tactics and procedures developed by the Qods Force of the Army of the Guardians of the Islamic Revolution (IRGC) and its Lebanese Hizbullah proxy. These IEDs overwhelmingly resemble the IEDs used by terrorists and insurgents in Iraq and Afghanistan during the 2000s."

53. In the paragraphs that follow, from this communication, Bahrain notes a series of actions traced back to Iran that constitute terrorist and other unlawful action against Bahrain. Incidents similar to those recounted in this letter have continued to occur since then. In March 2018, just a few months ago, for example, Bahraini security forces reportedly arrested 116 people on charges of terrorism, accusing them of being part of a network formed and supported by Iran's Revolutionary Guard. According to Bahrain's Interior Ministry, "The network was planning to target Bahraini officials, members of the security authorities and vital oil installations, with the objective of disturbing public security and harming the national economy."[61]

[61] *Bahrain Arrests 116 on Charges of Terrorism, Iran Collusion*, DW, 3 Mar. 2018, available at: https://www.dw.com/en/bahrain-arrests-116-on-charges-of-terrorism-iran-collusion/a-42814332.

54. Mr. President, Members of the Court, the last of the events that I would like to draw to your attention is Iran's involvement in the 2011 plot to assassinate the Saudi Arabian Ambassador in the United States while he was in Washington[62]. There are two documents that go to this plot in your folders, the first is at tab 18, it is a United Nations document attaching a letter dated 12 October 2011 from the then US Permanent Representative to the United Nations, Susan Rice, to the United Nations Secretary-General[63]. The second document, at tab 19, is a press release from the US Department of Justice dated 17 October 2012, that is a year later, noting the plea of guilty by Manssor Arbabsiar to the plot to assassinate the Saudi Ambassador[64].

55. So I would like to turn, first, to tab 18, that is the letter to the United Nations Secretary-General, you will see on page 3 of the opening paragraphs, which read as follows:

> "I would like to bring to your attention an attempted plot that constitutes a serious threat to international peace and security. The United States has recently disrupted a conspiracy to assassinate in Washington, D.C., the Ambassador of the Kingdom of Saudi Arabia to the United States and to carry out additional follow-on attacks inside the United States and against other countries. We have confirmed information that this conspiracy was conceived, sponsored and directed by elements of the Government of Iran. Had this terrorist plot not been disrupted, it would likely have resulted in the injury or death of the Saudi Ambassador and others.
>
> According to our information, the Islamic Revolutionary Guard Corps-Quds Force and several of its high-ranking officers, including Hamed Abdollahi, Abdul Reza Shahlai and Ali Gholam Shakuri, directed and funded the conspiracy."

56. Mr. President, Members of the Court, if you turn over the page, you will see the complaint of the Federal Bureau of Investigation which details five criminal counts against Manssor Arbabsiar and Gholam Shakuri. Let me highlight a number of elements of this document, it is quite lengthy and dense, but I will just highlight a few points.

57. *First*, the headline charge, Count 1, is conspiracy to murder a foreign official in the United States[65]. *Second*, Count 4, if you turn over the page, it is page number 6, Count 4 is the charge of conspiracy to use a weapon of mass destruction, in this case a "destructive device"[66]. This is material as it goes to the potential of mass casualties. *Third*, the complaint provides

---

[62] POUS, para. 3.19.

[63] POUS, Ann. 66.

[64] POUS, Ann. 61.

[65] POUS, Ann. 66, Attachment, at paragraphs 1–3.

[66] POUS, Ann. 66, Attachment, paras. 8–10.

background detail on the Islamic Revolutionary Guard Corps and the Qods Force, and this is on page 9 under the heading II, the Qods Force, which is the arm of the IRGC, "conducts sensitive covert operations abroad, including terrorist attacks, assassinations and kidnappings"[67], and that is at paragraph 17. *Fourth*, following a detailed description of the plot, the complaint describes Arbabsiar's arrest, his FBI interviews and his confession[68]. If you have a look at this, at paragraphs 33 and 34 and 35. *Fifth*, in his confession, Arbabsiar described his involvement with the Qods Force, initially through his cousin, who was a high-ranking member of the Qods Force[69]. *Sixth*, and this is at paragraphs 41 to 43, the complaint describes Arbabsiar's co-operation with the FBI, including, and this is what is material and drives home the point, including a number of recorded telephone conversations that the FBI recorded, with Arbabsiar's absent co-indictee, Gholam Shakuri, in Iran[70].

58. Mr. President, Members of the Court, let me complete the picture of this case, by taking you to tab 19, which is the US Department of Justice press release of 17 October 2012 which records Manssor Arbabsiar's plea of guilty. It's again a dense document and I do not propose to take you through it at any length, but I would like to direct your attention to the fourth and fifth paragraphs on the first page, and specifically to the opening sentence of the fourth paragraph, which reads as follows:

> "In connection with his guilty plea, Arbabsiar admitted that, from the spring of 2011 to the fall of 2011, he conspired with officials in the Iranian military who were based in Iran, to cause the assassination of the Saudi Arabian Ambassador while the Ambassador was in the United States."

59. Mr. President, Members of the Court, moving on from this incident, there is one more document to which I would like to draw your attention at this point. And this is a 1996 report by the British Parliamentary Human Rights Group, which was a cross-party group of Members of Parliament; it is at tab 20, it is entitled *Iran: State of Terror — An account of terrorist assassinations by Iranian agents*[71]. And I underline again, this is a British parliamentary report.

---

[67] POUS, Ann. 66, Attachment, para. 17.

[68] POUS, Ann. 66, Attachment, paras. 33–34 (arrest and search) and 35 *et seq*. (confession).

[69] POUS, Ann. 66, Attachment, paras. 35 *et seq*., re: his cousin, at para. 36.

[70] POUS, Ann. 66, Attachment, paras. 41–43.

[71] POUS, Ann. 47.

~~Excerpts at tab 20:~~ I would like to take you briefly to this exhibit to draw your attention to elements that you might like to look at further, in due course.

60. If you turn to numbered page 3 — the number is in the top right-hand corner— towards the bottom of the page, there is the Parliamentary Group's assessment that, over the 17 years from 1979 to the date of the Report in 1996, over 150 assassination attempts had been made on the lives of Iranian dissidents living abroad, and other terrorist acts had been committed in 21 countries, resulting in the deaths or injury of nearly 350 people. And the document—the Report— goes on to detail some of those attacks.

61. And if I may invite you to turn two pages further on, to page 7 — this is the start of the chapter which is headed "How the Murder Machine Works" — we find the following on that page:

> "The planning and execution of terrorist crimes is not, as sometimes suggested, an activity of separate groups within the hierarchy of the Iranian régime. It is co-ordinated within the Intelligence Section of the President's Office, a section established by Rafsanjani when he became President, and directed by him. It is run by Ahmad Behbahani, a relative of the President, and it designates the targets for assassination, as well as deciding which organ is to carry out the plot.
>
> Rafsanjani himself approves initial proposals, which then go to the Ministry of Intelligence to be checked for their feasibility. The plan is then submitted to the Supreme Security Council (SSC) for final approval. Permanent members [of this Supreme Security Council] are . . . [and then there follows a list of 15 senior Iranian political and military leaders]".

You see it on the screen.

62. And I pause here, Mr. President, Members of the Court, to highlight a number of the names on the list — including, after President Rafsanjani, Ali Fallahijan, Ali Akbar Velayati and Mohsen Rezaie. And these four, you will recall, were indicted by the Argentine prosecutors for the AMIA bombing in Buenos Aires in 1996. Ali Fallahijan was also indicted in Germany for the Berlin Mykonos restaurant assassinations of the four DPK-I members[72].

63. And towards the bottom of that list, you will also see the name of "Hassan Roohani", the current President of Iran, who was at the time a member of the Supreme Security Council as a representative of Iran's Supreme Leader Ayatollah Khamenei. In other words, Mr. President, Members of the Court, there is continuity at the most senior levels between then and now. And over the page, on page 8, you will see some further description of the decision-making process.

---

[72] This is addressed at pp. 33 *et seq.* of the Report.

64. Mr. President, Members of the Court, we filed our written pleadings on 1 May 2017. In the intervening 18 months, there are multiple additional examples of continuing Iranian conduct of the kind that I have just highlighted and of concern, not just to the United States, but to other States as well. I have already noted recent events in Bahrain. Let me identify two additional illustrative examples.

65. The first concerns a foiled plot to bomb an Iranian opposition rally in Paris, just a few months ago, in June of this year. German prosecutors brought charges against a Vienna-based Iranian diplomat, Assadollah Assadi, who had been arrested in the German town of Aschaffenburg in early July, after Belgian police issued a European Arrest Warrant. According to German prosecutors, Mr. Assadi was suspected of hiring a Belgian-Iranian couple to carry out a bomb attack at a meeting of the National Council of Resistance of Iran in Paris[73]. On 1 October 2018 — just a few days ago — a German court approved the extradition of Mr. Assadi to Belgium[74].

66. And there is a related Reuters article of 19 September 2018 which reports on France's refusal to name a new ambassador to Tehran before getting more information from Iran following this foiled bomb plot on the rally in Paris[75]. More recently, France has decided to seize assets belonging to Iranian intelligence services in connection with the foiled attack, stating that it had acted against "instigators, authorities, and accomplices" of the attack[76].

67. The second, more recent, example that I highlight just briefly, is from just a few days ago — and Mr. Visek has referred to it in opening — on 28 September 2018, the US Department of State decided to evacuate the American consulate in Basra, following attacks in recent weeks by militias supported by the Iranian Government[77].

---

[73] *Germany Charges Iranian Diplomat with Spying Conspiracy to Murder Opposition Group in France*, DW (11 Jul. 2018) available at: https://www.dw.com/en/germany-charges-iranian-diplomat-with-spying-conspiracy-to-murder-opposition-group-in-france/a-44630682.

[74] David Rising, *German Court Approves Extradition of Iranian Diplomat*, Washington Post (1 Oct. 2018) available at: https://www.washingtonpost.com/world/europe/german-court-approves-extradition-of-iranian-diplomat/2018/10/01/71e3ff00-c550-11e8-9c0f-2ffaf6d422aa_story.html?utm_term=.26f1f6da4835.

[75] John Irish and Marine Pennetier, *France Holds off on Iran Envoy Nomination after Paris Bomb Plot*, Reuters (19 Sept. 2018) available at: https://www.reuters.com/article/us-france-iran/france-holds-off-on-iran-envoy-nomination-after-paris-bomb-plot-idUSKCN1LZ25B.

[76] *France Freezes Iranian Intelligence Assets over Suspected Bomb Plot in June*, Radio Free Europe/Radio Liberty (2 Oct. 2018) available at: https://www.rferl.org/a/france-freezes-iranian-intelligence-assets-over-suspected-bomb-plot-in-june/29520990.html.

[77] Edward Wong, *Blaming Iran, U.S. Evacuates Consulate in Southern Iraq*, New York Times (28 Sept. 2018) available at: https://www.nytimes.com/2018/09/28/world/middleeast/iraq-iran-consulate-basra-closed.html.

68. Mr. President, Members of the Court, the events that I have recounted, and the others described in our written pleadings, highlight a consistent thread of egregious conduct by Iran. The acts in question include support for the targeting and murder and wounding of US persons, the targeting of persons in the United States, the targeting and murder and wounding of other persons elsewhere, outside Iran, and wider related conduct. This conduct is all well documented. The formal indictment of senior Iranian personnel, as well as their Hezbollah proxies, in a number of jurisdictions, and their subsequent conviction, in a number of cases, put Iran's involvement in these acts beyond dispute.

IV. Unclean hands[78]

69. Mr. President, Members of the Court, having set out evidence of Iran's conduct, albeit in summary form — and I appreciate the discomfort of my taking you through these documents, but it is necessary to do so — I turn now to address our clean hands objection to admissibility, connecting the evidence to the law.

70. The starting point for this is that, following the Beirut barracks bombing in 1983, the United States began to take steps to combat Iran's support for terrorism. This is addressed in our written pleadings[79] and you have heard also from Mr. Visek this morning about the measures enacted by the United States to allow suit against Iran and its State agencies before US courts in respect of such conduct. I do not repeat what Mr. Visek has said and note simply that the US measures of which Iran complains were in direct response to Iran's egregious conduct. And I recall Sir Gerald Fitzmaurice's definition of the *clean hands principle* in this regard.

71. So I would like to take you back to the *Peterson* case. And this will be the last document to which I will refer you.

72. There are a number of *Peterson* judgments. The key one is the judgment on liability of 30 May 2003, by the US District Court for the District of Columbia. You will find this at tab 21 of your folders. And I would invite you to turn that up, please. It is also at Annex 32 to Iran's Memorial. But interestingly, Mr. President, Members of the Court, Iran only annexed an extract of

---

Also: https://www.state.gov/r/pa/prs/ps/2018/09/286312.htm.

[78] POUS, paras. 6.25–6.38.

[79] POUS, paras. 4.1–4.16.

the judgment, excising from the extract the court's findings of fact and its description of the attack on the barracks. This is the part of the judgment that goes most directly to Iran's conduct. Iran evidently preferred that the Court not dwell on this part of the case. But it is to the full, publicly available text of the judgment that I would like to take you[80].

73. Mr. President, Members of the Court, this judgment *requires* reading as it is here that the evidence of Iran's unclean hands is most clearly visible, unclean hands that go directly to the claims that Iran has brought to this Court in these proceedings. I would like briefly to draw to your attention a number of elements of the judgment.

74. *First*, as you will see from its opening paragraphs, the court conducted a "bench trial" to determine the defendant's liability; that is, Iran's liability. And a bench trial is a trial by judge rather than by jury. And as you will see at paragraph [2] of the judgment, it makes clear that this trial reviewed extensive expert and lay evidence. The burden of proof was on the plaintiffs and the standard to which they were held was one of clear and convincing evidence. This emerges from paragraph [5] of the judgment. The plaintiffs in the case were family members of the 241 deceased servicemen and the injured survivors of the attack.

75. *Second*, after laying out some historical background, the court addresses the Rules of Engagement of the US peacekeeping contingent. This was relevant for purposes of deciding whether the peacekeeping contingent were combatants. But it noted that they were ordered not to carry weapons with live ammunition in their chambers. This is at paragraph [9] of the judgment.

76. *Third*, the court addressed the role and the involvement of Iran in the attack in a lengthy piece beginning at paragraph [15] running through to paragraph [53] of the judgment, setting out a summary of some of the evidence that had been presented to it. And in addition to the expert evidence, including going to links between Iran and Hezbollah, the judgment references intercept evidence that, in the court's words, establishes the "complicity of Iran … conclusively". And this is

[80] The printed version of the judgment included in the judges' folder has had paragraph and page numbers inserted in square brackets for ease of reference. The judgment is readily available online from multiple sites, for example:
https://scholar.google.com/scholar_case?case=5626948655542537488&hl=en&as_sdt=6&as_vis=1&oi=scholarr

at paragraphs [48] and [49], and that the intercept evidence referred to in paragraphs [48] and [49] merit the attention of the Court.

77. *Fourth*, the attack itself, and the forensic investigation in the aftermath, is described by the court at paragraphs [54] to [78] of the judgment. At paragraph [56], the court notes that the explosion that killed the 241 peacekeepers was "the largest non-nuclear explosion that had ever been detonated on the face of the Earth".

78. *Fifth*, based on the evidence presented to it, the court concluded that it was "beyond question" —this is at paragraph [71] — that it was "beyond question that Hezbollah and its agents received massive material and technical support from the Iranian government"; paragraph [71].

79. And then, Mr. President, Members of the Court — and this is the last extract of the judgment to which I will take you — at paragraph [92], which is paragraph 12 of the court's conclusions of law, the court observed as follows, and let me read this paragraph:

> "The Court finds that MOIS [the Iranian Ministry of Information and Security], acting as an agent of the Islamic Republic of Iran, performed acts on or about October 23, 1983, within the scope of its agency . . ., which acts caused the deaths of over 241 peacekeeping servicemen at the Marine barracks in Beirut, Lebanon. Specifically, the deaths of these servicemen were the direct result of an explosion of material that was transported into the headquarters of the 24th [Marine Amphibious Unit] and intentionally detonated at approximately 6:25 a.m., Beirut time by an Iranian MOIS operative. The Court therefore concludes that MOIS actively participated in the attack on October 23, 1983, which was carried out by MOIS agents with the assistance of Hezbollah."

80. Mr. President, Members of the Court, in its Application instituting these proceedings, Iran put this case, the *Peterson* case, front and centre, addressing it at length in paragraph 8 of its Application. It is addressed further at paragraphs 26, 27 and 30 of the Application as well as in the discussion of individual articles of the Treaty of Amity. There are 63 references to the *Peterson* case in Iran's Memorial. There are other cases as well, but the *Peterson* case is the driving imperative behind Iran's claims in these proceedings.

81. Mr. President, Members of the Court, let me turn to the law. Iran contends that there is no unclean hands principle that operates in inter-State proceedings and that other jurisprudence is inapposite. It contends further that, even were such a principle to apply, the United States could not bring its objection within its scope. It contends further that there is no basis on which the Court

could properly make an assessment of the US unclean hands objection and Iran's alleged conduct. We reject each of these contentions.

82. We acknowledge, of course, that the law on unclean hands is not well developed in the jurisprudence of the Court. However, a careful review of State practice before the Court, of academic commentary and of individual opinions by Members of the Court, ~~***it was***~~ undertaken by Professor John Dugard, in his capacity as Special Rapporteur of the International Law Commission on diplomatic protection, reached the conclusion that, and I quote Professor Dugard, it is "difficult to sustain the argument that the clean hands doctrine does not apply to disputes involving direct inter-State relations. States have frequently raised the clean hands doctrine in direct inter-State claims and in no case has the ICJ stated that the doctrine is irrelevant to inter-State claims"[81]. A more recent commentary by Judge Schwebel in the Max Planck Encyclopedia of Public International Law similarly reached the conclusion that a number of States have maintained the vitality and applicability of the principle of clean hands in inter-State disputes and that the Court has not rejected the principle[82].

83. But beyond this, Mr. President, Members of the Court, whatever debate there might have been about the existence of the unclean hands principle and its availability in inter-State proceedings, the Preliminary Objections Judgment of the Court in *Equatorial Guinea* v. *France* has laid this to rest. The pertinent issue before the Court in that case was of course cast in terms of abuse of process, rather than unclean hands, but unclean hands is a subpart of abuse of process, or perhaps it is its common law equivalent. The reason why an applicant should be precluded, on admissibility grounds, from pursuing a claim on grounds of unclean hands is that to permit the case to proceed would be an abuse of process. While, in *Equatorial Guinea* v. *France*, the Court rejected France's abuse of process argument, it nonetheless accepted that such a principle could operate in exceptional circumstances. And this is at paragraph 150 of the Court's Judgment.

---

[81] Dugard, J., *Sixth report on diplomatic protection*, A/CN.4/546, 11 Aug. 2004, p. 3, para. 6; http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_546.pdf&lang=EFSX

[82] Schwebel, Stephen M., "Cleans Hands, Principle", Max Planck Encyclopedia of Public International Law (March 2013);

http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e18?prd=EPIL

84. And it follows, in our submission, from the Judgment in *Equatorial Guinea* v. *France* that, if it is established on the basis of clear evidence that the conduct of an applicant amounts to an abuse of process, the Court will, as an exceptional matter, reject the claim on that ground. And Mr. President, Members of the Court, we consider that just such exceptional circumstances are manifest in this case and that Iran's abuse is demonstrated by clear evidence. Our unclean hands objection thus comes readily within the scope of the abuse of process principle defined by *Equatorial Guinea* v. *France*. But if, however, for any reason, the Court considers that unclean hands and abuse of process are distinct, the unclean hands principle has a sufficient independent basis in international law — in judicial opinion, in State practice, in the writings of publicists — to form a sound basis for a compelling admissibility objection in this case.

85. I add that the Court faces no impediment, whether of evidence, of principle, or of practicality, in reaching a sound assessment of Iran's conduct at this preliminary stage. Beyond the judgments of the US courts in the various proceedings, there is cogent corroborating evidence from elsewhere supporting an unclean hands assessment, including, and I would like to emphasize this, including in admissions against interests by both Iran and Hezbollah, and I took you earlier to the statement by the Iranian Minister for the IRGC.

86. Mr. President, Members of the Court, the time is ripe for the Court to acknowledge and apply the principle of unclean hands. There is no stronger case for such a principle than the one before you, the case brought by Iran in these proceedings is calling for such an assessment.

V. Iran's claims fall outside the scope of the Treaty of Amity[83]

87. Mr. President, Members of the Court, I turn to the contention that Iran's case does not properly come within the scope of the Treaty of Amity and that Iran's invocation of Article XXI (2) of the Treaty to found the jurisdiction of the Court is accordingly an abuse of process. Ms Grosh has already laid the groundwork for this submission and I can therefore be brief.

88. The point is straightforward. It is that the Treaty was a treaty of amity, a treaty of commerce. It was predicated on a firm and enduring peace and sincere friendship between the

[83] POUS, paras. 6.2–6.24.

Parties[84]. It had as its basis reciprocal equality of treatment between the Parties[85]. As Ms Grosh has already recalled, the Court in *Oil Platforms* held that "the object and purpose of the Treaty . . . was not to regulate peaceful and friendly relations between the two States in a general sense". The Treaty was, rather, intended to be the oil in the machine of normal commercial relations between the Parties and engagement between their nationals and companies. It was explicitly not intended to regulate matters of essential security.

89. I add that it follows necessarily from what the Court said in *Oil Platforms*, that the object and purpose of the Treaty was *not* to provide a jurisdictional basis to enable one party to assail the other in respect of a dispute distant from the declared scope of the Treaty. This is the abuse of process to which we object and to recall what Ms Grosh has said, for the last approaching 40 years the sole purpose of the Treaty from Iran's perspective has been to use the compromissory clause as an empty vessel in which to pour complaints to this Court, in *Oil Platforms*, in the *Alleged Violations* case just a few weeks ago, and in this case.

90. Mr. President, Members of the Court, as I noted in opening, we cast this objection in terms of abuse of right in our written submissions. But the Court in *Equatorial Guinea* v. *France* clarified the nature of abuse of right and abuse of process and it made it clear that really our objection in this case is more properly characterized as one of abuse of process, as it goes to the threshold issue of whether Iran can properly invoke the Treaty for purposes of founding the jurisdiction of the Court in respect of a dispute that has no proper roots in the Treaty.

91. Mr. President, Members of the Court, for almost 40 years, the normal commercial relations between the Parties and the engagement between their nationals and companies that the Treaty was intended to facilitate was absent. The rupture in relations between the Parties was not isolated. It was not sectoral. It was not temporary. As Ms Grosh pointed out, there was no normal commercial engagement between the Parties for nearly four decades, nor normal commercial engagement between their nationals and companies.

---

[84] Treaty of Amity, Art. I.

[85] Treaty of Amity, Preamble.

92. Iran has attempted to characterize this objection to admissibility as a variant of the old political question of objection. Iran also conjures the spectre of undermining of the wider edifice of treaty law. Neither response has any foundation. The United States is not saying that the dispute between the Parties is a political dispute, which for that reason, is not amenable to the jurisdiction of the Court. The United States is saying, rather, that, in its endeavour to shoehorn a strategic dispute into a treaty that, to quote the Court, does not regulate relations between the Parties in a general sense, Iran is perpetrating an abuse of process. The dispute between the Parties does not come within the scope of the Treaty. We do not here address individual provisions of the Treaty. We say that the dispute does not come within the scope of the Treaty as a general matter, as a matter of principle, as a matter of the proper construction of the Treaty by reference to its object and purpose. Iran's invocation of the compromissory clause of the Treaty in such circumstances is an abuse of process of the processes of this Court. In other words, Iran is a bad faith litigant.

93. As to the spectre of a slippery slope, there is none. The analysis that we are advancing to the interpretation and application of the Treaty of Amity has a self-limiting quality, a safety mechanism. It turns on the object and purpose of the Treaty. It turns on an evidential showing that the object and purpose do not comport with long-settled circumstances. The Treaty of Amity, by its expressly stated predicate conditions, is intended to address conditions of engagement. It does not address engagement between the Parties per se.

94. Mr. President, Members of the Court, this argument does not advance a wider theory of the application of treaties. On the contrary, it rests on the narrowest of grounds, based squarely on traditional rules of treaty interpretation. The scope of application of a treaty is to be determined by reference to the terms of the treaty interpreted in good faith and in the light of the treaty's object and purpose and the conditions in which the Parties intended that the Treaty would apply. It is our contention that the dispute that Iran brings to the Court is a dispute that falls outside the intended scope of the compromissory clause of the Treaty. Iran's endeavour to invoke the compromissory clause to afford the Court jurisdiction to address the dispute is thus an abuse of process. Iran's case should accordingly be dismissed at this preliminary stage on grounds of inadmissibility.

VI. Concluding observations

95. Mr. President, Members of the Court, I come to some very brief concluding observations.

96. There is a thread that runs between these two objections to admissibility. It is the thread of the Court's *Northern Cameroons* principle. The Court is the guardian of its judicial integrity. There are inherent limitations on the exercise of the judicial function that the Court, as a court of justice, can never ignore. An application that endeavours to seise the Court of a dispute in respect of which the applicant manifestly has unclean hands, is an endeavour to tempt the Court down a precarious and improper path. Such an application calls out to be held inadmissible, in the interests of the integrity of the Court and its judicial function. An application that endeavours to seise the Court of a dispute in respect of which the applicant wilfully contorts the treaty and its jurisdictional clause to bring its case before the Court is similarly an abuse of the processes of the Court that should not need to wait to a hearing on the merits to be addressed. This, again, goes to the integrity of the Court and its judicial function.

97. Mr. President, Members of the Court, let me conclude with the simple thought that Iran has come to the Court to seek relief from measures taken by the United States in response to, and to address, some of the most heinous conduct that the world has witnessed in the past 40 years. That conduct has been well documented. It has been investigated by prosecutors in a number of jurisdictions across the world. It has been the subject of judicial findings of guilt and of liability. It would be an affront to justice for Iran to be permitted to advance its claim in these proceedings. We urge the Court to look beyond the rhetoric and look beyond the spin and to see this case for what it is. We urge the Court to dismiss Iran's case on admissibility grounds at this preliminary stage of the proceedings.

98. Mr. President, Members of the Court, that concludes my submissions. I thank you for your patience in what have been uncomfortable submissions, but submissions that need to be made. Mr. President, may I ask you to call on Ms Kimball to continue the submissions of the United States.

The PRESIDENT: I thank Mr. Bethlehem, and I now give the floor to Ms Kimball. You have the floor.

Ms KIMBALL:

THE COURT'S JURISDICTION AND QUESTIONS OF APPLICABLE LAW

1. Mr. President, Members of the Court, it is an honour to appear before you on behalf of the United States. The balance of the United States' submissions today will focus on the reasons why the Court lacks jurisdiction over Iran's principal claims in this case. Iran argues it need only show that its claims are "*at least* capable of" falling within the Court's jurisdiction. At every turn, Iran tries to lower the jurisdictional bar to get its claims through the courthouse door. But this is not a provisional measures proceeding and Iran cannot import that lower standard into these proceedings. These proceedings require a definitive assessment of our jurisdictional objections.

2. Iran invokes only one potential basis for the Court's jurisdiction — the compromissory clause in Article XXI, paragraph 2, of the Treaty of Amity. That clause, which is now up on the screen, only applies by its terms to "[a]ny dispute between the High Contracting Parties as to *the interpretation or application of the present Treaty*". Together with my colleagues, we will explain why the core claims Iran advances in this case are either not governed by the Treaty or fall within explicit exceptions set out in the text of the Treaty itself.

3. The United States has three distinct jurisdictional objections, each relating to different and highly significant aspects of Iran's case. In short, the Treaty does not provide a basis for jurisdiction over Iran's sovereign immunity-related claims[86]; it does not provide jurisdiction over Iran's challenges to the treatment of its Central Bank, Bank Markazi, under articles of the Treaty that provide protections to "nationals and companies"[87]; and it does not provide jurisdiction to adjudicate Iran's challenge to Executive Order 13599[88]. The applicable law for all of these claims is not the Treaty of Amity, and these claims do not constitute disputes as to the interpretation or application of the Treaty.

4. My presentation will focus on the overarching legal framework for the Court's consideration of our jurisdictional objections. *First*, I will discuss the proper standard for the Court's jurisdictional inquiry. *Second*, I will explain why the approach laid out in Iran's pleadings

[86] Memorial of the Islamic Republic of Iran (MI), paras. 5.13, 5.17-5.18, 5.44-5.48, 5.57-5.60, 6.19.

[87] MI, paras. 4.27-29, 4.35, 5.14-5.16, 5.44-5.49, 5.60, 5.69, 5.75.

[88] MI, paras. 4.29, 5.12-5.14, 6.5-6.9, 6.19.

sets the bar far too low. And *third*, I will address the Treaty of Amity's compromissory clause and situate it within its historical context.

I. The appropriate jurisdictional inquiry

5. Mr. President, Members of the Court, the starting-point for the jurisdictional inquiry is the principle set out by the Court in its recent Preliminary Objections Judgment in *Equatorial Guinea* v. *France*, which is that the Court's jurisdiction is *"confined to the extent accepted by"* the States before it[89]. Where an applicant relies on a compromissory clause in a treaty as the basis for bringing a dispute to the Court, that clause defines the boundaries of the parties' consent. The subject-matter of the dispute must fit within those boundaries.

6. The Court set out the test for the proper inquiry into jurisdiction *ratione materiae* two decades ago in its Preliminary Objections Judgment in *Oil Platforms*. The Court recently quoted that test in *Equatorial Guinea* in the passage that appears on the screen: "The Court recalls that, in order for it to determine whether a dispute is one concerning the interpretation or application of a given treaty it

> 'cannot limit itself to noting that one of the Parties maintains that such a dispute exists, and the other denies it. It must ascertain whether the violations [alleged] . . . *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.'"[90]

7. The Court further explained that, to undertake this inquiry, it must *interpret* the provisions of the Treaty invoked by the applicant to determine whether the subject-matter of the dispute *does indeed fall* within the Treaty[91]. To quote the Court's language from *Equatorial Guinea*:

---

[89] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections*, Judgment of 6 June 2018, para. 42; see also *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 32, para. 65:

> "[T]he 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."

[90] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections*, Judgment of 6 June 2018, para. 46, quoting *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 810, para. 16; emphasis added.

[91] See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 615, para. 30: "[t]o found its jurisdiction, the Court must, however, still ensure that the dispute in question *does indeed fall* within the provisions of Article IX of the Genocide Convention"; emphasis added.

> "Pursuant to customary international law, as reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the provisions of the [treaty invoked] *must be interpreted in good faith in accordance with the ordinary meaning to be given to their terms in their context and in light of the object and purpose of the Convention.* To confirm the meaning resulting from that process, or to remove ambiguity or obscurity, or to avoid a manifestly absurd or unreasonable result, recourse may be had to the supplementary means of interpretation which include the preparatory work of [the treaty invoked] and the circumstances of its conclusion."[92]

8. Because Judge Higgins's separate opinion in *Oil Platforms* addressed the proper framework for the Court's jurisdictional inquiry so directly, it is also worth highlighting here. As she explained,

> "[i]t is true, of course, that the Court must found its jurisdiction on the compromissory clause, Article XXI of the 1955 Treaty. *But that cannot be done on an impressionistic basis.* The Court can only determine whether there is a dispute regarding the interpretation and application of the 1955 Treaty, falling within Article XXI (2), *by interpreting the articles which are said by Iran to have been violated by the United States' destruction of the oil platforms. It must bring a detailed analysis to bear*.
>
> . . . . . .
>
> Where the Court has to decide, on the basis of a treaty whose application and interpretation is contested, whether it has jurisdiction, that decision must be definitive."[93]

9. So, the task is clear — to determine whether the substance of an applicant's claims falls within the provisions of the treaty invoked. If the claims relate to matters that lie outside the scope of the treaty, the Court has no jurisdiction to hear them. And this requires a traditional treaty interpretation analysis — including considering all of the well-established sources that bear on the meaning of the provisions invoked to discern the intent of the parties[94]. To be clear, this is not an inquiry into the *merits* of the claims; it is properly addressed at a preliminary phase of the case.

10. What does this inquiry look like in practice? That is again well illustrated by the Court's Preliminary Objections Judgment in *Equatorial Guinea*. As the Court is well aware, France raised a preliminary objection to Equatorial Guinea's effort to rely on the compromissory clause in the

---

[92] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections*, Judgment of 6 June 2018, para. 91.

[93] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 855, sep. op. of Judge Higgins, paras. 29 and 31.

[94] See also *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 116, para. 33: "That question [i.e. of whether the Court lacks jurisdiction *ratione temporis*] has to be answered by the application to the relevant provisions of the Pact of Bogotá of the rules on treaty interpretation enshrined in Articles 31 to 33 of the Vienna Convention."

Palermo Convention to bring claims under Article 4 of that Convention about alleged violations of customary international law rules on State and official immunity. To evaluate this objection, the Court undertook to assess whether France had consented to the Court's jurisdiction to adjudicate such claims by virtue of the compromissory clause. It engaged in a careful analysis of Article 4 to see whether it established a treaty obligation to respect customary international law immunity rules. The Court applied the well-established tools of treaty interpretation to reach its conclusion. It read Article 4 in its context, considered the provision in light of what it assessed to be the object and purpose of the Convention, and also looked to the Convention's *travaux*, as well as materials relating to another convention with similar language[95].

II. Iran's jurisdictional approach is fundamentally flawed

11. This brings me to the second part of my presentation. The contrast between the approach to jurisdiction set out by the Court in the jurisprudence I just discussed and what Iran has sought to do in this case is striking. Iran purports to embrace the Court's jurisdictional test from *Oil Platforms*[96], even going so far as to suggest that this is a "key point of agreement" between the Parties[97]. But Iran's pleadings betray the fact that it actually views the standard as a far lower and less exacting inquiry.

12. Iran often does not even bother to assert affirmatively that its claims *do* fall within the provisions of the Treaty of Amity. Instead, Iran says, for example, that its immunity claims are *"at the very least capable of"* falling within the Treaty[98]. Or, that the US treatment of Bank Markazi is "*at least capable of* constituting a breach" of certain Treaty provisions[99]. Elsewhere, Iran says that "the question *(for now)* is whether the terms of Article IV (1) *may be engaged*"[100]. And with respect to the US objection under Article XX, paragraph 1, Iran does not even bother to *take* a *position* — of any kind — on whether the measure in question falls within the relevant exceptions set out in the

---

[95] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections*, Judgment of 6 June 2018, paras. 74-102.

[96] WSI, para. 3.1.

[97] WSI, paras. 1.1 and 1.6

[98] WSI, para. 5.38.

[99] WSI, para. 4.30

[100] WSI, para. 5.26.

Treaty. Iran says not a word on the substance of that objection. Mr. President, Members of the Court, the generous formulation of the standard that Iran adopts for itself — which essentially is that it can make no more than a facial showing of jurisdiction — is simply wrong. Again, this is not a provisional measures proceeding[101].

13. And it is not just the words that Iran uses. Iran's actual analysis of the Treaty's provisions also departs from the approach the Court laid out in *Equatorial Guinea*. For example, Iran simply asserts that the ordinary meaning of the Treaty's provisions *could* be read to encompass its claims, and appeals to Article 31 (3) *(c)* of the Vienna Convention on the Law of Treaties. Yet Iran ignores a number of specific points that the United States advanced relating to the Treaty's text, its object and purpose, and negotiating history. Article 31 (3) *(c)* cannot sustain the weight that Iran places on it. As we discussed in our written pleadings, the purpose of Article 31, including subparagraph 3 *(c)*, is to establish a methodology for ascertaining what the parties to the treaty intended it to mean[102]. It does not provide a basis for *amending* a treaty's text by importing unrelated rules of international law into the treaty. And it does not provide a basis for concluding that matters the parties intentionally excluded from a Treaty can be swept in through the back door without their consent.

14. As the Court's jurisprudence clearly establishes, the Court must decide whether Iran's claims "do or do not" fall within the Treaty. In this case, that requires assessing whether Iran's claims fall within the substantive articles of the Treaty that Iran invokes or are excluded from the scope of the Treaty by Article XX. Iran's claims with respect to sovereign immunity and the treatment of Bank Markazi fail for the first reason, as they are not encompassed by the substantive articles of the Treaty. A straightforward treaty interpretation analysis demonstrates that these are matters the Parties never intended the Treaty to govern. Iran's claims challenging Executive Order 13599 fail for the second reason. Those claims do not fall within the substantive articles of the Treaty because Article XX, paragraph 1, expressly excluded measures regulating traffic in arms or necessary to protect its essential security interests. As a result, there is no need to evaluate Iran's

---

[101] See e.g. *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15, and p. 245, para. 60.

[102] POUS, paras. 5.12-5.15 and accompanying footnotes.

claims about the Order against the Treaty's substantive articles. Again, these are matters the Parties never intended for the Treaty to cover. Iran's case here is a sprawling one, spanning decades of actions taken by three different branches of the US Government. But these objections do not require a complex factual enquiry or a prejudgment of the merits. Each of our objections relates to core categories of Iran's claims as Iran itself has presented them. My colleagues will develop all of these objections in greater detail after the break and Mr. Daley, in particular, will address the Court's recent decision in the *Alleged Violations of the Treaty of Amity* case.

III. The basis of jurisdiction invoked: Article XXI (2) of the Treaty of Amity

15. I will now turn to the third part of my presentation, in which I will provide several comments about the Treaty of Amity's compromissory clause, which lends important and additional background relevant to each of the jurisdictional objections the United States is raising. The key point here is that the historical context for this compromissory clause further confirms that the rights Iran seeks to vindicate in this case are not rights that the Treaty of Amity protects. The compromissory clause was understood by the United States to provide the Court with jurisdiction over a narrow category of disputes that bear no relationship to the types of claims Iran advances in this case.

16. Article XXI, paragraph 2, is up on the screen again. To recall, that provision permits the submission of disputes "as to the interpretation or application of the present Treaty" to the Court. This type of compromissory clause was included in many of the friendship, commerce and navigation (FCN) treaties negotiated during this time period by the United States. It first appeared in the ***1948*** FCN treaty between the United States and ***the Republic of China*** ~~***in 1948***~~. The United States Senate agreed to accept the inclusion of the ICJ clause based on its understanding of its limited scope. These limitations were outlined to the Senate by the State Department in connection with a ratification debate held in April 1948 in the following terms:

> "The compromissory clause . . . is limited to questions of the interpretation or application of this treaty; i.e., it is a special not a general compromissory clause. It applies to a treaty on the negotiation of which there is voluminous documentation indicating the intent of the parties. This treaty deals with subjects which are common to a large number of treaties, concluded over a long period of time by nearly all nations. Much of the general subject matter — and in some cases almost identical language — has been adjudicated in the courts of this and other countries. The

> authorities for the interpretation of this treaty are, therefore, to a considerable extent established and well known. Furthermore, certain important subjects, notably immigration, traffic in military supplies, and the 'essential interests of the country in time of national emergency' are specifically excepted from the purview of the Treaty."[103]

17. Two important points emerge from this history. *First*, the Senate understood the United States to be accepting the Court's jurisdiction in respect of a defined category of disputes, where the specific treaty protections were already the subject of a substantial body of interpretation. *Second*, this consent was also based on the understanding that "certain important subjects", including essential security, were "specifically excepted from the purview of the treaty".

18. This history is also reflected in Charles Sullivan's study of FCN treaties, a study Iran has also referred to in its submissions, which was a project originally commissioned by the State Department in the 1960s to provide commentary and analysis on the provisions of US FCN treaties[104]. The Sullivan study's section of commentary on the compromissory clause appropriately describes that clause as representing a "much narrower commitment than acceptance of the compulsory jurisdiction under Article 36 of the Statute of the Court"[105]. This is, of course, consistent with the object and purpose of the Treaty, which the Court recognized in *Oil Platforms* was not to "regulate peaceful and friendly relations between the two States in a general sense"[106].

19. In its Preliminary Objections Judgment in *Oil Platforms*, the Court also acknowledged the relevance of the history of FCN compromissory clauses. The Court rejected Iran's argument 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"[107]. The Court specifically recognized that the compromissory clauses in FCN treaties were "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

---

[103] *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*, 80th Cong. 2d Sess., p. 30 (26 Apr. 1948) (statement of Charles Bohlen, Dep't of State) (POUS, Ann. 217).

[104] MI, 1 Feb. 2017, para. 4.6, n.198 (describing the Sullivan Study as "the commentary" to the US Standard Draft FCN and quoting discussion in the Study on the "companies" definition).

[105] Charles H. Sullivan, US Dep't of State, Standard Draft Treaty of Friendship, Commerce and Navigation: Analysis and Background (1981) (POUS, Ann. 246), at 327-330; see also Robert Wilson, United States Commercial Treaties and International Law 23-25 (1960).

[106] *Oil Platforms (Islamic Republic of Iran* v. *United States), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 814, para. 28.

[107] *Ibid.*, para 28.

'familiar subject matter' in relation to which 'an established body of interpretation already exists'"[108].

20. Mr. President, Members of the Court, the claims Iran brings in this case relating to sovereign immunity, the treatment of its Central Bank and Executive Order 13599 are entirely at odds with this historical context. There was no "established body of interpretation" arising from similar commercial treaties relating to these types of claims when the Treaty of Amity was negotiated. Nor does it exist today. States do not use bilateral commercial treaties to address disputes involving the application of customary international law rules on sovereign immunity, disputes relating to the treatment of their central banks, or disputes relating to economic sanctions enacted to regulate traffic in arms or for reasons of national security. Accepting jurisdiction over these types of claims would turn the Treaty into an instrument providing general consent to the Court's jurisdiction, which it was expressly intended *not* to be. This would expand the scope of the Parties' consent well beyond its limits.

IV. Conclusion

21. To conclude, the Court should be guided by its clear rulings on the standard for finding jurisdiction and apply those precedents here. Because the sole basis of jurisdiction invoked in this case is the compromissory clause in the Treaty of Amity, the Court must determine, as a matter of law, whether the claims Iran has pleaded relating to sovereign immunity, the treatment of Bank Markazi and Executive Order 13599 "do or do not" fall within the provisions of that Treaty. The questions to be answered are straightforward. Do the commercial treaty provisions Iran has invoked somehow incorporate sovereign immunity protections? Do the provisions addressed to "nationals and companies" also regulate the treatment of central banks operating in a sovereign capacity? And do the express exceptions for measures adopted to regulate traffic in arms or to protect essential security interests in Article XX apply to Executive Order 13599?

22. My colleagues will explain why all of these claims lack a foundation in the Treaty of Amity and are outside the jurisdiction of the Court. Mr. Daley will first address why Iran's claims about the US blocking of Iranian property in Executive Order 13599 are expressly excluded from

[108] *Ibid.*, para. 29 (quoting the 1948 State Department statement from POUS, Ann. 217).

the scope of the Treaty by Article XX, paragraph 1. Professor Boisson de Chazournes will explain why the Court lacks jurisdiction to adjudicate Iran's claims relating to sovereign immunity. And Professor Childress will discuss why the protections for "companies" in Articles III, IV and V of the Treaty do not provide a basis for adjudicating Iran's claims relating to the treatment of its central bank.

23. This concludes our presentation for the morning. After the lunch break, Mr. Daley will continue our submissions. Thank you, Mr. President, Members of the Court, for your kind attention.

The PRESIDENT: I thank Ms Kimball. Her statement brings to an end this morning's session. The Court will meet again this afternoon at 3 p.m. to hear the remainder of the first round of oral argument of the United States. The sitting is adjourned.

The Court rose at 1 p.m.