INTERNATIONAL COURT OF JUSTICE

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Certain Iranian Assets (Islamic Republic of Iran v. United States of America)

The Court finds that it has jurisdiction to entertain part of the Application of the Islamic Republic of Iran and that the Application is admissible

THE HAGUE, 13 February 2019. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today delivered its Judgment 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), in which it finds that it has jurisdiction to entertain part of the Application of the Islamic Republic of Iran and that the Application is admissible.

History of the proceedings

The Court begins by recalling that, on 14 June 2016, the Islamic Republic of Iran (hereinafter "Iran") instituted proceedings against the United States of America (hereinafter the "United States") with regard to a dispute concerning alleged violations by the United States of the Treaty of Amity, Economic Relations, and Consular Rights, which was signed by the two States in Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter the "Treaty"). The Court further recalls that, on 1 May 2017, the United States raised preliminary objections to the admissibility of the Application and the jurisdiction of the Court.

I. FACTUAL BACKGROUND

The Court notes that Iran and the United States ceased diplomatic relations in 1980, following the Iranian revolution in early 1979 and the seizure of the United States Embassy in Tehran on 4 November 1979. In October 1983, United States Marine Corps barracks in Beirut, Lebanon, were bombed, killing 241 United States servicemen who were part of a multinational peacekeeping force. The United States claims that Iran is responsible for this bombing and for subsequent acts of terrorism and violations of international law; Iran rejects these allegations. In 1984, the United States designated Iran as a "State sponsor of terrorism", a designation which has been maintained ever since.

In 1996, the United States amended its law so as to remove the immunity from suit before its courts of States designated as "State sponsors of terrorism" in certain cases involving allegations of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support for such acts; it also provided exceptions to immunity from execution applicable in such cases.

Plaintiffs then began to bring actions against Iran before United States courts for damages arising from deaths and injuries caused by acts allegedly supported, including financially, by Iran. These actions gave rise in particular to the Peterson case, concerning the above-mentioned bombing of the United States barracks in Beirut. Iran declined to appear in these lawsuits on the ground that the United States legislation was in violation of the international law on State immunities.

In 2002, 2008 and 2012, the United States adopted further measures to facilitate the execution of judgments against the assets of Iran or its State entities. In particular, in 2012, the President of the United States issued Executive Order 13599, which blocked all assets ("property and interests in property") of the Government of Iran, including those of the Central Bank of Iran (Bank Markazi) and of financial institutions owned or controlled by Iran, where such assets are within United States territory or "within the possession or control of any United States person, including any foreign branch". Also in 2012, the United States adopted the Iran Threat Reduction and Syria Human Rights Act, Section 502 of which, inter alia, made the assets of Bank Markazi subject to execution in order to satisfy default judgments against Iran in the Peterson case. Bank Markazi challenged the validity of this provision before United States courts; the Supreme Court of the United States ultimately upheld its constitutionality.

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

II. JURISDICTION

The Court recalls that Iran invokes as a basis of jurisdiction Article XXI (2) of the Treaty, which provides:

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

The Court observes that it is not contested that the Treaty was in force on the date of the filing of Iran's Application and that several of the conditions laid down by Article XXI (2) are met. However, the Parties disagree on the question whether their dispute, in whole or in part, concerns "the interpretation or application" of the Treaty.

A. The first objection to jurisdiction: Iran's claims arising from measures taken by the United States to block Iranian assets

In its first objection to jurisdiction, the United States contends that measures blocking the assets of the Iranian Government and of Iranian financial institutions (as defined in Executive Order 13599 and related regulatory provisions) fall outside the scope of the Treaty by virtue of Article XX (1) (c), which states that the Treaty shall not preclude measures regulating production or traffic in arms, ammunition and implements of war, or by virtue of Article XX (1) (d), which states that the Treaty shall not preclude measures necessary to fulfil the obligations of a Contracting Party for the maintenance or restoration of international peace and security or necessary to protect essential security interests.

The Court recalls that it has previously considered that Article XX (1) (d) did not restrict its jurisdiction but was confined to affording a possible defence on the merits. The Court sees no reason in the present case to depart from its earlier findings. Moreover, it considers that this same interpretation also applies to Article XX (1) (c). The Court therefore rejects the first objection to jurisdiction raised by the United States.

B. The second objection to jurisdiction: Iran's claims concerning sovereign immunities

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

The Court proceeds to examine the five provisions of the Treaty on which Iran relies to assert that sovereign immunities fall within the scope of the Treaty, namely Article IV (2), Article XI (4), Article III (2), Article IV (1) and Article X (1). The Court concludes that the question of the United States' respect for the immunities to which certain Iranian State entities are said to be entitled cannot be considered as falling within the scope of any of these provisions. Consequently, the Court finds that Iran's claims based on the alleged violation of the sovereign immunities guaranteed by customary international law do not relate to the interpretation or application of the Treaty and, as a result, do not come within the scope of the compromissory clause in Article XXI (2). Thus, in so far as Iran's claims concern the alleged violation of rules of international law on sovereign immunities, the Court does not have jurisdiction to consider them. The Court therefore upholds the second objection to jurisdiction raised by the United States.

C. The third objection to jurisdiction: Iran's claims alleging violations of Articles III, IV or V of the Treaty in relation to Bank Markazi

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

The Court notes that Articles III, IV and V of the Treaty guarantee certain rights and protections to, inter alia, "companies" of a Contracting Party, and the question is thus whether Bank Markazi is a "company" under the Treaty. Article III (1) of the Treaty defines "companies" as "corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit", and makes no distinction between private and public enterprises. According to the Court, however, that definition must be read in its context and in light of the object and purpose of the Treaty, which show that this instrument is aimed at affording protections to companies engaging in activities of a commercial nature. Thus, the Court finds that an entity carrying out exclusively sovereign activities cannot be characterized as a "company" within the meaning of the Treaty. But the Court adds that an entity engaging in both commercial and sovereign activities should be regarded as a "company" within the meaning of the Treaty to the extent it is engaged in commercial activities, even if they do not constitute its principal activities.

Therefore, the Court considers that it must examine Bank Markazi's activities within the territory of the United States at the time of the measures which Iran claims violated Bank Markazi's alleged rights under Articles III, IV and V of the Treaty. It observes that Iran's Monetary and Banking Act, defining types of activities in which Bank Markazi is entitled to engage, was included in the case file but was not discussed in detail by the Parties. The Court considers that it does not have before it all facts necessary to determine whether Bank Markazi's

activities at the relevant time would lead to its characterization as a "company" within the meaning of the Treaty. It states that those elements are largely of a factual nature and closely linked to the merits of the case. Therefore, it will be able to rule on the third objection to jurisdiction only after the Parties have presented their arguments on the merits. The Court thus concludes that the third objection to jurisdiction does not possess, in the circumstances of the case, an exclusively preliminary character.

III. OBJECTIONS TO ADMISSIBILITY: ABUSE OF PROCESS AND "UNCLEAN HANDS"

A. Abuse of process

The United States contends that Iran's attempt to found the jurisdiction of the Court on the Treaty constitutes an abuse of process in particular because the fundamental conditions underlying the Treaty no longer exist between the Parties, and because Iran does not seek to vindicate interests protected by the Treaty but rather to embroil the Court in a broader strategic dispute.

The Court recalls that it has stated in a previous case that only in exceptional circumstances should it reject a claim based on a valid title of jurisdiction on the ground of abuse of process. In this regard, there has to be clear evidence that the applicant's conduct amounts to an abuse of process. The Court observes that the Treaty was in force between the Parties on the date of the filing of Iran's Application, i.e. 14 June 2016, and that the Treaty includes a compromissory clause in Article XXI providing for its jurisdiction. Moreover, it does not consider that there are exceptional circumstances which would warrant rejecting Iran's claim on the ground of abuse of process. The Court therefore rejects the first objection to admissibility.

B. "Unclean hands"

According to the second objection to admissibility raised by the United States, the Court should not proceed with the case because Iran has come before it with "unclean hands", in particular "Iran has sponsored and supported international terrorism, as well as taken destabilizing actions in contravention of nuclear non-proliferation, ballistic missile, arms trafficking, and counter-terrorism obligations".

The Court notes that the United States has not argued that Iran, through its alleged conduct, has violated the provisions of the Treaty upon which its Application is based. Without having to take a position on the "clean hands" doctrine, the Court considers that, even if it were shown that the Applicant's conduct was not beyond reproach, this would not be sufficient per se to uphold the objection to admissibility raised by the Respondent on the basis of the "clean hands" doctrine. The Court states that such a conclusion is however without prejudice to the question whether the allegations made by the United States, concerning notably Iran's alleged sponsoring and support of international terrorism and its presumed actions in respect of nuclear non-proliferation and arms trafficking, could, eventually, provide a defence on the merits. The Court therefore rejects the second objection to admissibility.

IV. OPERATIVE CLAUSE

In its Judgment, which is final, without appeal and binding on the Parties, the Court

(1) rejects, unanimously, the first preliminary objection to jurisdiction raised by the United States of America;

(2) upholds, by eleven votes to four, the second preliminary objection to jurisdiction raised by the United States of America;

(3) declares, by eleven votes to four, that the third preliminary objection to jurisdiction raised by the United States of America does not possess, in the circumstances of the case, an exclusively preliminary character;

(4) rejects, unanimously, the preliminary objections to admissibility raised by the United States of America;

(5) finds, unanimously, that it has jurisdiction, subject to points (2) and (3) above, to rule on the Application filed by the Islamic Republic of Iran on 14 June 2016, and that the said Application is admissible.

Composition of the Court

The Court was composed as follows: 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.

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

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A summary of the Judgment appears in the document entitled "Summary No. 2019/1". This press release, the summary and the full text of the Judgment are available on the Court's website (www.icj-cij.org), under the heading "Cases".

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Note: The Court's press releases are prepared by its Registry for information purposes only and do not constitute official documents.

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international

secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the International Residual Mechanism for Criminal Tribunals (IRMCT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor's Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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