



International Court of Justice

Topic A: Application of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran (Islamic Republic of Iran v. United States of America)

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Introduction to the Committee

The ICJ, standing for the International Court of Justice, is the main judicial organ within the United Nations system. The court's purpose has been to reach agreements between States regarding legal disputes; this means the ICJ proceeds to take cases in accordance with international law. In addition to its judicial role, the ICJ can also advise States regarding legal matters.

In this edition of the International Court of Justice, advocates and judges will be discussing the case: "Application of the Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran (Islamic Republic of Iran v. United States of America)". A brief explanation and introduction will be provided for advocates and judges ad hoc to take into consideration during the proceeding of the Court. Below, the Court presents information regarding the meaning, purpose, and objective of presenting the case to the jury for its decision.

Introduction to the Topic

The Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran is an agreement through which both countries cooperate to establish an enduring relation of peace among both States. Despite both parts agreeing to the same document, the treaty had different contexts prior and during its enforcement in each region. Regarding

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Iran, the Iran Revolution played an important role, providing historical context to the treaty.

The post-revolutionary social environment in the middle-eastern country was characterized by the new tolerance practices among Iranian groups, which usually did not share the same beliefs, customs or ethnicity. The liberty-seeking youth was able to unite these groups over the principle of forming a social organization system that would provide that which the regime at the time did not. Despite the violence brought along with the revolution, its outcome was notorious. Yielded results regarding Iran's international relations were formed as a result of the search for international support, with countries eager to work on constructing more enduring relations with Iran; which is why in this particular case, the Treaty of Amity surged.

The treaty was signed at Tehran on August 15, 1955, by the United States of America and the Islamic Republic of Iran. Within the treaty there are 23 (XXIII) articles, which delimit diplomatic, economic, and consular relations between the already mentioned nations. This treaty was written and signed for various common benefits, including regulating consular relations, increasing economic intercourse, and encouraging beneficial trade and investments.

Later on, on May 8, 2018, the United States announced its decision to withdraw itself from the Joint Comprehensive Plan of Action (JCPOA), an agreement between the US, Iran, Germany, the European Union, and the

Security Council of the UN that sought to regulate Iran's nuclear programme. The JCPOA dictated restrictions on the nuclear program of the Islamic nation;

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in return the other States would end up lifting bilateral international sanctions. After its withdrawal, and as petitioned by Iran, the ICJ evaluated and dictated that the provisional measures granted by the US after withdrawing itself from the JCPOA were well under the aid Iran required.

On July 16, 2018, Iran filed an Application in the Registry of the Court instituting proceedings against the US, regarding the alleged violations of the 1955 treaty. Iran presented the case to the ICJ and pointed out certain articles within the document that could be used to highlight such alleged violations. On October 3, 2018, the ICJ made an order, in which it indicated limited provisional measures against the US. Then Iran made an initiation of the case Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. United States).

For its part, the US argued that the proclamations that Iran had made should have been taken under the JCPOA, which has a different jurisdiction and resolution mechanism; beginning with the fact that the JCPOA did not grant the ICJ jurisdiction over said agreement. The US likewise argued that its withdrawal from the JCPOA was necessary for the protection of its national security and to prevent nuclear conflict.

It is important to take into consideration that the US and Iran have used the Treaty in past litigation before. However, the US declared that Iran failed to move forward with a diplomatic solution in this case, thus making the use of the Treaty invalid, taking into account the adjustment-through-diplomacy

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mentioned in a compromissory clause of the Treaty, where the diplomatic efforts of the nation planning to take legal action are required before they take on this later resolution. The purpose of the discussion of the case in the Court is to correlate the benefits and needs that both countries obtain from the Treaty; considering if there were any violations that affected them; and whether the provisional measures Iran demands are fair and needed. Advocates will evaluate the sanctions and begin to formulate ideas on the value that they represent, within the context provided.

Historical Background

The Treaty of Amity, Economic Relations and Consular Rights was signed on August 15, 1955, during the terms of president Dwight Eisenhower and prime minister Hossein Ala. The Treaty provides a legal framework for bilateral relations between the United States and Iran, strengthening the already tight relations the US had formed with the Arab nation. The treaty was signed two years after the 1953 coup d'état in Iran, organized by the British government and America's Central Intelligence Agency in order to topple the nationalist Iranian government under Mohammad Mosadegh. Additionally, Iran was trying to attract foreign investors through various means such as the Law of Attraction and Support for Foreign Investment approved by the Iranian parliament.

The treaty's negotiations considered terms that would allow a basis for reciprocal equality treatment among both parts. Reaffirming the high principles in the regulation of human affairs, its purpose was to maintain peace and diplomatic relations between the two countries. Likewise, the Treaty encouraged mutually beneficial trade, investment and closer economic

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intercourse, benefiting from each other's investments. Subsequently, for the achievement of the previous two objectives, the Treaty also regulated consular relations, promoting a relation in which both had fair regulations when developing business, investments, or trades in the other country.

To avoid future conflicts with the US, on July 1, 1968, Iran signed the Nuclear Non-Proliferation Treaty (NNT) with 191 more States, striving to ensure global safety, prevent the spread of nuclear armament, promote cooperation in peaceful uses of nuclear energy, and impulse complete or general disarmament. The treaty stated nuclear armament could not be transferred between States and that those countries with non-nuclear capacity would not develop or obtain any more nuclear armament. All signatories accepted to be monitored by the International Atomic Energy Agency and had a duration of 25 years.

In 1979, the Islamic Revolution took place and political groups of Iranian society came together to overthrow the Shah, king of Iran, after a series of political and economic changes that affected Iran's exportations. Due to the Islamic Revolution, the monarchy was overthrown and the Islamic republic was established. Moghadam, last king of Iran, entered the US for medical treatment and Iranians who supported the revolution feared a conspiracy of the US and the Shah interfering in its affairs. Following this line of thought, on November 4, 1979, Iranian students stormed the US Embassy in Tehran and took more than 60 Americans hostage, demanding the US to turn the Shah over for trial.

On November 29, 1979, the United States continued the procedures against Iran due to the hostage crisis of the United States diplomats, consular staff, and certain nationals. The US claimed that the Iranian Government needed to

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release the hostages immediately, restore the Embassy premises, and make reparations for the injuries caused against the United States Government and its citizens. The Court reaffirmed the importance of the principles of international law and noted that the militant actions can not be directly attributed to Iran; however, Iran did nothing to prevent the event or obliged the militants to withdraw or release the hostages. After a major international standoff, hostages were finally set free in January 1981.

Later, in 1983, a truck with explosives drove into the US Marine barracks in Beirut, resulting in the death of 241 US military personnel. The United States government held Hezbollah, a political party and militant group backed by Iran, responsible for the attack. Despite the Court's demands for the repayment of the losses, both Iran and Hezbollah denied their involvement in the event.

In 2003, Iran failed its obligations under the Safeguards Agreement. Through a long-term plan to continue developing Iran's capacity, the nation constructed nuclear power plants to grow their availability and knowledge on nuclear technology, safety, and waste management. Iran did not end up reporting the nuclear material, process, and use given to it, as well as the nuclear end-product's storage, constituting a major setback to the international agreements. President Khatami said on September 19: "We don't need atomic bombs, and based on our religious teaching, we will not pursue them...but at the same time, we want to be strong, and being strong means having knowledge and technology" (The Iran Primer, 2021). After its discovery by international actors, the enrichment plant was kept under the International Atomic Energy Agency (IAEA) Safeguards, preventing Iran from bringing any more nuclear material to said plant.

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On November 12 of the same year, although IAEA concluded that no evidence of secret nuclear armament was found, the agency showed concern about its production of plutonium. President Khatami answered the concern about this production by saying that its use was for manufacturing pharmaceuticals and the small amount of the product was far from the amount required to make nuclear facilities (The Iran Primer, 2021).

After the expiration date of the previous nuclear agreement, in 2004, Iran accepted the, infinitely extended, Treaty on the Non-Proliferation of Nuclear Weapons after negotiations with Germany, Great Britain, and France. Through the Treaty agreed upon, Iran promised to aim to use nuclear technologies for peaceful purposes and reaffirmed its commitment to not acquire nuclear weapons. This way, Iran agreed to a temporary suspension of all uranium enrichment activities (The Iran Primer, 2021).

Current Relevance

Economic tensions among the two nations began in 2016 when the Supreme Court ruled for the payment of nearly 2 billion dollars in frozen Iranian funds towards the families of the victims of the 1983 Marine barracks bombing in Beirut. As explained by CBS News (2016), the decision comes as controversy swirls over pending legislation in Congress that would allow families of the September 11 attacks to hold the government of Saudi Arabia liable in the US court; the importance of the decision taken by the US Supreme Court is to consider a series of economic hostilities against Iran by the American government.

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In 2015, the five permanent members of the Security Council plus Germany started making negotiations with Iran on the Iranian nuclear program to regulate and control the possession of nuclear weaponry. The Joint Comprehensive Plan of Action (JCPOA) pacted among all the signing countries to reduce and regulate their possession of radioactive materials, as well as to adhere to imposing the accorded sanctions if the agreement was to be violated (Arms Control Association, 2021).

The JCPOA represented an agreement between the nations to ensure safety when it came to the proper usage of the armaments and promoting international cooperation regarding global security. However, in May 2018, former president of the US, Donald Trump, withdrew the country from the JCPOA. Furthermore, the same administration signed for the cease of the multilateral Iran nuclear agreement and imposed the “highest level of economic sanction” towards Iran (Deutsche Welle [DW], 2018). In response, Iran brought the case to the International Court of Justice in an attempt to settle, through economic sanctions, the violation of the Treaty of Amity, the most important economic and consular rights agreement that both countries had to ensure peace (DW, 2018).

As tensions and sanctions increased, the ICJ gave an order on October 3, 2018, to the US to “remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of (...) medicines and medical devices (...)”. It also ordered the Parties to “refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve” (Klingler, Barnes & Sepehri, 2020).

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Despite the forceful reduction of goods sanctions, the US government imposed sanctions once again in November 2018, now meant to financially disrupt Iran and increasing pressure towards compliance. Iran's economy did suffer severely from these sanctions, yet, by 2019, there was still a notorious unwillingness from Iran to comply with the sanctions, as the lack of response was a statement of resistance.

All of this led to the permanent tension between both countries to reach a turning point. A series of hostile events such as the drone-attack to General Qassem Soleimani in 2020 and attacks on Iraqi bases where US military personnel were stationed may lead to escalating violent measures between both countries. These repercussions are not distant, exemplified when Iran mistakenly shot down an Ukrainian passenger plane as Iranian forces were told to be on high alert for possible US attacks; something which later on escalated with multiple attacks on US bases in Iraq, wounding dozens of US and Iraqi personnel (Robinson, 2020). This built-up tension between the nations started to affect the life of civilians, military personnel, and important leaders in the region (Kenyon, 2021).

With the entrance of president Joe Biden into the US administration, the country has stated a new approach to the sanctions. The result is weighing unfreezing 1 billion dollars in Iranian funds to be allocated to the Swiss Humanitarian Trade Arrangement, which allows humanitarian aid to be sent to Iran without violating US sanctions. Whilst the efforts of the US and Israel during the past years were to completely disarm the nuclear programme in Iran, focus has been shifting towards making Iran compliant to the JCPOA.

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International Actions

The strain on the relationship between the US and Iran began to show on the international stage. On November 15 2010, the Council of the European Union put into effect the decision to impose restrictive measures against certain persons, entities, and organizations involved in ballistic or nuclear activities and provided the Government of Iran with its support.

On October 18, 2015, the JCPOA announced that all the nuclear, economic, and financial restrictions on Iran were to be terminated due to the apparent compliance with the terms in the JCPOA by Iran. However, the importance for this later country to show transparency with the implementation of nuclear related activity, even when not related to the development of nuclear weaponry, was also highlighted.

A year later, as the United Nations's nuclear watchdog confirmed that Iran had fulfilled its nuclear programme as agreed in JCPOA, the US and European nations lifted oil and financial sanctions on Iran. Therefore, Iranian oil exports rose to an average of 2 million barrels per day in 2016, and peaked at 2.8 million bdp in the same year.

However, as the US retrieved from the JCPOA, on August 16, 2018, the Office of Foreign Assets Control (OFAC), the US office on management of economic and trade sanctions, made certain changes to the Iranian Transactions and Sanctions Regulations. Changes involved the previously mentioned increased sanctions to Iran, aiming to heavily impact its economy in an effort from the US to abate the Iranian nuclear programme.

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Adding up to the sanctions undergone, the OFAC updated the list of individuals and companies owned or controlled by Iran; blocking their assets within the United States and prohibiting US persons from dealing with them (U.S. Department of the Treasury, 2021).

By the end of the year, on November 5, 2018, the government of the US had completely re-imposed all the sanctions on Iran that had been lifted in 2015. These coveted to force Iran into maximum financial pressure. Nonetheless, Iran strongly refused to negotiate any deal with the United States, standing its ground around the supposedly broken international law and the assistance requested to the International Court of Justice.

In a more moderate approach, the Joe Biden administration made its intentions to return to the JCPOA clear and declared willingness to cooperate with Iran in order to rearrange the sanctions imposed. Per contra, as the Irani suffered from the cuts in economic productions, China increased its imports on Iranian oil by almost 800,000 bpd in January 2021. Thus, the support from other international actors such as China has led Iran to ask for all US sanctions lifted at once, not accepting a less favouring deal.

UN Actions

As the threat towards global security intensified, the United Nations Security Council was seen in a position to take action. Henceforth, the Security Council established Resolution 1737, which stated Iran should suspend all enrichment activities involving nuclear material. In response, Iran's representatives

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expressed that their peaceful nuclear program did not threaten international peace nor security, therefore dealing with this issue in the Security Council was unjustified and as such would not suspend enrichment activities.

On February 3, 2021, the International Court of Justice delivered a preliminary judgement regarding the violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights. The International Court of Justice delivered the press release 2021/5 where it was stated that the court rejected the following

1. The preliminary objection to its jurisdiction brought by the United States of America since it does not relate to the Treaty of Amity, Economic Relations, and Consular Rights.
2. The preliminary objection brought to its jurisdiction by the United States of America regarding the measures concerning trade or transactions between Iran and third countries.
3. The preliminary objection to the admissibility brought by the United States of America.
4. The preliminary objection brought by the United States of America regarding Article XX, paragraph 1(b), of the Treaty of Amity, Economic Relations, and Consular Rights.
5. The preliminary objection brought by the United States of America regarding Article XX, paragraph 1(d), of the Treaty of Amity, Economic Relations, and Consular Rights.

This summary was released regarding the topics touched in the judgement. The first preliminary objection to jurisdiction: the subject-matter of the dispute, the court states that there is no dispute between the two countries and disagrees as to this matter concerns the application of the Treaty of Amity, as

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Iran claims, or just the JCPOA, as the United States contends. The second preliminary objection to jurisdiction: “third country measures”, the court states that it lacks jurisdiction since it concerns the trade of Iran and third countries, while the Treaty of Amity is only applicable to Iran and the United States.

The third objection to admissibility of Iran’s Application, raised by the United States claims Iran’s abuse of process and has invoked the Treaty of Amity in a case that concerns the JCPOA; the Court then stated that there has to be clear evidence to this objection and found alleged breaches of obligations of the Treaty of Amity and not the JCPOA.

The fourth objection on the basis of Article XX, paragraph 1 (b) “relating to fissionable materials, the radio-active by-products thereof, or the sources thereof;” and (d) “necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests”, of the Treaty of Amity. The Court stated that this objection can only be conducted at the stage of examination of the merits, therefore these provisions were rejected at this point of the jurisdictional process.

Being breviloquent, the Order on February 3, 2021, stated that the Court found that it had jurisdiction on the basis of Article XXI, paragraph 2, of the Treaty of Amity, to consider the Application filed by Iran on July 16, 2018, and that the Application was thereafter admissible. ICJ President Judge Abdulqawi Yusuf said the Court unanimously rejects the preliminary objection to its jurisdiction raised by the United States of America according to which the subject-matter of the dispute does not relate to the interpretation or application of the Treaty of Amity, Economic Relations, and Consular Rights of 1955 (UNifedd, 2021).

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Points to discuss

1. Context

- a. Petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (“NICO”), and National Iranian Tanker Company (“NITC”)
 - i. Purchase of petroleum, petroleum products, or petrochemical products from Iran
- b. Restricted access to flight planning solutions
 - i. Flight management system databases to refuel in foreign airports
 - ii. Train pilots to international standards
 - iii. Receiving updated flight documentations from manufacturers
 - iv. Foreign airport services, which are no longer provided to Iranian companies
- c. Assessing the damages that will befall Iran and Iranian nationals and companies as a result of the full implementation of US sanctions
- d. Serious detrimental impact on the health and lives of individuals in Iran due to imposed sanctions
- e. Transposition of provisional measures of protection from comparative domestic procedural law onto international legal procedure

2. Development

- a. Direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semifinished metals and software for integrating industrial processes

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- b. Maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian Rial
- c. The licenses and necessary authorizations granted by the US
 - i. Payments and other transfers of funds are not subject to any restriction
- d. Nuclear disarmament need

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