

A Short Review of the Judgment of The International Court of Justice in Certain Iranian Assets Case (Islamic Republic of Iran v. United States of America)

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Abstract:

This article aims at giving a short review of the Judgment of the 30 March 2023 of the International Court of Justice in Certain Iranian Assets (Islamic Republic of Iran v. United States of America). After a legal analysis of the objections to jurisdiction and admissibility raised by the US in a Judgment on Preliminary Objections rendered on 13 February 2019, the article expounds upon the arguments of the parties including those concerning breach of the Treaty of Amity as a result of legislative, executive, and judicial measures and entering default judgments against Iran since 1996 by the US, as well as the commercial activity and noncommercial tort exceptions to the Foreign Sovereign Immunities Act (FSIA) adopted in 1976 as invoked by the latter. It thus sheds some light on the judgment's analysis of state immunity and description of commercial activities of the Central Bank of Iran which, in the author's view, contribute, along with the long list of cases involving Iran and US, to development of international law.

1. Introduction

The Islamic Republic of Iran initiated a case on 14 June 2016 against the United States of America before the International Court of Justice (the "ICJ") to claim full reparation for certain alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights, signed by the two States on 15 August 1955 (the "Treaty of Amity").¹ The Court considered and

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1 The Treaty of Amity was signed two years after the overthrow of the Government of the democratically elected Prime Minister of Iran, Dr. Mohammad Mossaddeq, by a *coup d'état* organized by the United Kingdom and the United States (see in particular Gasiorowski, Mark J. U.S. Foreign Policy and the Shah: Building a Client State in Iran (Cornell University Press: 1991), Gasiorowski, Mark J.; Malcolm Byrne, eds. (2004). Mohammad Mosaddeq and the 1953 Coup in Iran. Syracuse University Press; Abrahamian, Ervand (2013), The Coup: 1953, the CIA, and the roots of modern U.S.-Iranian relations. New York: The New Press; 1953 Iran Coup: New U.S. Documents Confirm British Approached U.S. in Late 1952 About Ousting Mosaddeq, <https://nsarchive.gwu.edu/briefing-book/iran/2017-08-08/1953-iran-coup-new-us-documents-confirm-british-approached-us-late>).

dismissed several objections to jurisdiction and admissibility raised by the United States in a Judgment on Preliminary Objections rendered on 13 February 2019. The Court then rendered a judgment on 30 March 2023 where it decided on two other objections: the scope of its jurisdiction, admissibility, and the merits of the dispute.

The violations complained of by Iran stem out of a number of legislative, executive and judicial measures taken by the United States, and a great number of default judgments having been entered by the United States courts against the State of Iran since 1996 and, in some cases, against Iranian State-owned entities. Indeed, in the early 1990s, a number of former United States citizens taken hostage in Lebanon by militia groups initiated legal actions against the Islamic Republic of Iran before the United States courts to claim damages. In particular in *Joseph J. Cicippio, Elham Cicippio, David Jacobson v. Islamic Republic of Iran*,² the plaintiffs sought damages for a number of alleged intentional torts and violations of international law. They invoked, as the basis for US courts' jurisdiction, the "commercial activity" and the "noncommercial tort" exceptions to the Foreign Sovereign Immunities Act (the "FSIA") adopted in 1976 by the United States' legislative bodies. In defense, Iran argued that the facts relied on by the plaintiffs were simply not the sorts of proprietary enterprises within the contemplation of Congress when it enacted the "commercial activity" exception to the FSIA. The United States courts admitted that defense and

The most important purpose of the conclusion of the Treaty was to pave the way for the expansion of the economic relations with the United States and to allow an increasing presence of American businesses in Iran.

The Treaty of Amity has been relied on in multiple instances by the United States nationals before the Iran-US Claims Tribunal and the Tribunal found it applicable amongst others to the determination of the standards of compensation for expropriation (see in particular, *Phelps Dodge Corp., et al v. the Islamic Republic of Iran*, Award No. 217-99-2 (19 Mar. 1986) reprinted in 10 IRAN-U.S. C.T.R. 121, 131-32; *Thomas Earl Payne v. The Government of the Islamic Republic of Iran*, Award No. 245-335-2 (8 Aug 1986) reprinted in 12 IRAN-U.S. C.T.R. 3,12; *Sedco I*, 10 IRAN-U.S. C.T.R. at 184-85; *Amoco*, 15 IRAN-U.S. C.T.R. at 214-22; *Starrett Housing Corporation, et al. v. The Government of the Islamic Republic of Iran, et al.*, Award No. 314-24-1 (14 Aug. 1987), reprinted in 16 IRAN-U.S. C.T.R. at 112, 195; *Ebrahimi v. The Government of the Islamic Republic of Iran*, Award No. 56044/46/47-3 (12 Oct. 1994), Separate Opinion of Mohsen Aghahosseini, reprinted in 31 IRAN-U.S. C.T.R. at 1, 7.

The Treaty of Amity has also been relied on by the Islamic Republic of Iran before the ICJ, in addition to the Case under review, in the *Oil Platforms Case (Islamic Republic of Iran v. United States of America)* and in *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*.

The United States of America denounced the Treaty of Amity on 3 October 2018 following the indication of Order on Provisional Measures 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).

² *Joseph J. CICIPPIO, Elham Cicippio, David Jacobson v. Islamic Republic of Iran*, No. 93-7047, United States Court of Appeals, District of Columbia Circuit, decided 29 July 1994.