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CR 2020/13

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2020

Public sitting

held on Monday 21 September 2020, at 3 p.m., at the Peace Palace,

President Yusuf presiding,

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)

VERBATIM RECORD

ANNÉE 2020

Audience publique

tenue le lundi 21 septembre 2020, à 15 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

en l'affaire relative à des
Violations alléguées du traité d'amitié, de commerce et de droits consulaires de 1955 (République islamique d'Iran c. Etats-Unis d'Amérique)

COMPTE RENDU

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

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

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The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear the second round of oral argument of the Islamic Republic of Iran. I would like to recall that in view of the hybrid nature of the hearing in this case, the following judges are present with me in the Great Hall of Justice: Vice-President Xue, Judges Tomka, Abraham, Bennouna, Sebutinde, Crawford, Gevorgian, Salam and Iwasawa; while Judges Cançado Trindade, Gaja, Bhandari and Robinson, as well as Judges *ad hoc* Brower and Momtaz, are present via video link. I shall now give the floor to Professor Vaughan Lowe. You have the floor.

Mr. LOWE:

INTRODUCTION: "REAL DISPUTE"

A. Introduction

1. Thank you, Sir. Mr. President, Members of the Court, you will have noted the points made by Iran on Wednesday to which the United States did not respond, such as the correction of the United States' suggestion that Iran's diplomatic exchanges in June 2018 were not concerned with the Treaty of Amity[1]. I shall not pursue those points here. I shall respond to the arguments made on Friday concerning the alleged "real dispute" principle. Mr. Wordsworth and Professor Thouvenin will respond to the arguments on third country measures, and Professor Pellet will address the "Article XX" arguments. The Agent of the Islamic Republic of Iran will close and make Iran's final submissions.

B. The "real dispute" disagreement

2. There is a fundamental disagreement over the "real dispute" objection:

— Iran, in broad terms, advocates a reading of compromissory clauses in treaties at face value.

— The United States, in broad terms, advocates a restrictive interpretation of compromissory clauses in treaties, reading into them a requirement that the dispute should not be "very largely concerned" with any other legal instrument than the treaty.

3. Iran submits that the United States' position is wrong as a matter of law, and also, as applied to Iran's case, wrong as a matter of fact. I take those points in turn.

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[1] CR 2020/10, p. 32, paras. 45-47 (Bethlehem).

4. Sir Daniel Bethlehem, taking issue with our summary of the United States' position, took particular care to set out the US view very clearly. He said: "In our contention, disputes that are 'very largely concerned with' an instrument other than the one whose jurisdictional basis is invoked, cannot properly be brought within the scope of the compromissory clause in a treaty."[2]

5. Let me set out the Iranian view clearly: in our contention, all disputes that are within the scope of the compromissory clause in a treaty are within the jurisdiction of the Court under that compromissory clause, whether or not they could also be concerned — largely or not — with another instrument.

6. Iran says that the extent to which an instrument other than the one whose jurisdictional clause is invoked may form part of the background of a claim is not relevant to the scope — the limits — of the Court's jurisdiction under the compromissory clause that is invoked.

7. Claims whose pursuit amounts to an abuse of process or abuse of right may be inadmissible; but that is a question of admissibility. If the Court has no jurisdiction, there can be no "right" or "process" to abuse. If the Court has jurisdiction, it has jurisdiction. But that question does not arise here: last week, the United States did not pursue the argument that Iran had abused its rights or the Court's process by invoking the compromissory clause; and neither shall I.

C. Consent

8. The United States says that the architecture of international dispute settlement rests on consent; and we agree. The question is, what did the United States consent to in the Treaty of Amity? Article XXI (2) reads as follows:

> "2. Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

9. *"Any dispute . . . as to the interpretation or application of the present Treaty"*. Where is the qualification? Where is the limitation? Where does the supposed "real dispute" doctrine come from?

[2] CR 2020/12, p. 13, para. 5 (Bethlehem).

D. No "real dispute" doctrine in the ICJ jurisprudence

10. Sir Daniel traced the doctrine back to the decision in the *Electricity Company of Sofia* case and to this Court's decisions in the *Right of Passage* case and the *Germany* v. *Italy* case[3].

11. In *Electricity Company of Sofia*, Belgium had accepted the Court's jurisdiction over "any disputes arising after the ratification of the present declaration with regard to situations or facts subsequent to this ratification"[4]. Bulgaria, the Respondent, argued that although the facts complained of by the Belgian Government all occurred after Belgium's ratification, the "situation" with regard to which the dispute arose predated ratification[5]. The earlier situation was the (uncontroversial) establishment in the 1920s of formulae for calculating electricity prices; the post-ratification facts, about which Belgium complained, were the applications of those formulae in the 1930s. The Court said that the dispute arose from the facts of which Belgium complained.

12. Sir Daniel draws from this the conclusion that when looking to see if a dispute is within the Court's jurisdiction one must look, not at the claims, but at the facts underlying the claim. He said: "The identification of the subject-matter of a dispute does *not* turn on the source of the rights that the Applicant claims. It turns on the source, the 'real cause', of the dispute."[6]

13. In that case it did — because the Court's jurisdiction was not over "any dispute" or "any dispute concerning the application or interpretation" of a treaty, but over disputes "with regard to situations or facts subsequent to this ratification". The Court focused on the date of the situation or facts concerned, rather than the claims, because that is what the temporal limitation in the compromissory clause required. And it found that the relevant facts were those which were the basis of Belgium's claims.

14. Similarly, the *Right of Passage* case was concerned with a temporal limitation. India, the Respondent, had accepted the Court's jurisdiction in relation to "all disputes arising after February 5th, 1930, with regard to situations or facts subsequent to the same date". The Court distinguished between the question of when the dispute arose — in 1954, when India allegedly

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[3] CR 2020/12, pp. 16-17, para. 22 (Bethlehem).

[4] *Electricity Company of Sofia and Bulgaria (Belgium* v. *Bulgaria), Preliminary Objection, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 81.

[5] *Electricity Company of Sofia and Bulgaria (Belgium* v. *Bulgaria), Preliminary Objection, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 81.

[6] CR 2020/12, p. 17, para. 23 (Bethlehem).

impeded the passage — and the date of the "situations or facts" from which it arose. But it held that the dispute arose from "the facts of 1954 which Portugal advances as showing the failure of India to comply with its obligations"[7]. As in the *Electricity Company* case, the Court said that the dispute arose from the facts of which the Applicant actually complained.

15. These are decisions on limitations *ratione temporis*. They have no bearing on the question whether a compromissory clause giving the Court jurisdiction over "any dispute" with no limitations *ratione temporis*, and no limitation *ratione materiae* other than the requirement that the dispute be "as to the interpretation or application of the present Treaty", should be read down in accordance with a supposed legal doctrine that requires the Court to discern the metaphysical essence of a case.

16. I turn more briefly to the more recent cases cited by the United States. *Jurisdictional Immunities* is another *ratione temporis* decision, on the question whether Italy's counter-claim — that Germany is responsible for having denied reparation to Italian victims of war crimes in 1943-1945 and should pay reparation — was a "dispute relating to facts or situations prior to" a 1961 Agreement that Germany said had settled reparation claims[8]. Germany said the relevant date was 1943–1945; Italy said that its counter-claim originated in the régime established by the 1961 Agreement, and Germany's subsequent handling of reparations. Unsurprisingly, the Court held that the dispute arose from the obligation to pay reparation, which itself arose at the time of the violations in the 1940s[9].

17. You'll note certain similarities with the present case. There, violations of international law occurred in the 1940s; an agreement aiming to settle them was made in 1961, and the question was, in effect, whether the violations were extinguished in 1961 and a "new situation" created. The Court said no.

18. Here, as Iran made clear in footnote 2 of its Application, it has long regarded United States measures as violations of the Treaty of Amity. In 2015, an agreement aiming to settle

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[7] *Right of Passage over Indian Territory (Portugal* v. *India), Merits, Judgment, I.C.J. Reports 1960*, p. 35.

[8] *Jurisdictional Immunities of the State (Germany* v. *Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, p. 317, para. 17 and p. 318, paras. 23-24.

[9] *Jurisdictional Immunities of the State (Germany* v. *Italy), Counter-Claim, Order of 6 July 2010, I.C.J. Reports 2010 (I)*, pp. 319-321, paras. 26–31.

aspects of the wide-ranging dispute between the United States and Iran was concluded; and the United States now says — with no basis in either fact or law — that the JCPOA created a "new situation" such that Iran's complaints that US sanctions violate the Treaty of Amity have somehow been eclipsed by the JCPOA as if it contained some sort of waiver by Iran — which of course it does not (as was noted in the JCPOA itself)[10]. Indeed, when the JCPOA was adopted, Iran stated in a letter to the United Nations Security Council that "nothing in the JCPOA shall be construed . . . as a waiver or a limitation on the exercise of any related right the Islamic Republic of Iran is entitled to under relevant . . . international instruments"[11].

19. In *Equatorial Guinea* v. *France*, the Court identified the "various claims on which the Parties have expressed differing views" and confirmed that the question was "whether *this aspect of the dispute* between the Parties . . . is *capable of falling within the provisions of the [treaties* concerned] and whether, *as a consequence, it is one which the Court has jurisdiction to entertain*"[12]. The Court adopted the same approach last November in *Ukraine* v *Russia*[13]; and, indeed, in *Oil Platforms*, where the fact that the use of force was a question very largely concerned with the United Nations Charter was not an obstacle to the Court's jurisdiction in respect of the Treaty of Amity[14].

20. Yes, the Court *has* used phrases such as "real cause" in its judgments. It has *not* used them in the way the United States suggests; and it has *never* established a principle that a compromissory clause giving jurisdiction over "any dispute . . . as to the interpretation or application of the present Treaty" must be limited to "any dispute . . . as to the interpretation or application of the present Treaty that is not very largely concerned with some other instrument".

21. As Ms Gahan said on Friday — curiously suggesting that Mr. Wordsworth and I had got it wrong — on jurisdiction, the test is "whether the violations of the Treaty . . . pleaded by Iran do

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[10] JCPOA, Ann. II, fn. 14, available at https://2009-2017.state.gov/documents/organization/245320.pdf.

[11] Statement of the Islamic Republic of Iran following the adoption of United Nations Security Council resolution 2231 (2015) endorsing the Joint Comprehensive Plan of Action, UN doc. S/2015/550 (20 July 2015), para. 13.

[12] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 315-316, paras. 67-70; emphasis added.

[13] *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Preliminary Objections, Judgment of 8 November 2019*, paras. 57 and 95.

[14] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 180-183, paras. 37-42.

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"[15].

E. The Treaty of Amity is in fact the real dispute

22. That is the position on the Court's jurisprudence. The further point is that as a matter of fact Iran's case is based entirely on the Treaty of Amity and the claim that the United States measures have violated that Treaty. That is apparent from its Application, Request for provisional measures and Memorial. The requests for relief[16] refer to the 8 May 2018 Presidential Memorandum[17] and subsequent measures, in order to identify the measures in question. How else should they be defined? There is a constantly evolving body of measures; and it would have been absurd to say that Iran's complaint that United States measures have violated the Treaty refers to all measures that violate the Treaty.

23. Sir Daniel suggested that Iran's case is all about the JCPOA because the relief requested in Iran's Application, if ordered, would require the United States to "reinstate the JCPOA sanctions relief"[18]. But Iran does not ask for the reinstatement of sanctions lifted under the JCPOA.

24. Iran asks the Court to order the United States to "terminate the measures that were implemented pursuant to or in connection with the U.S. Presidential Memorandum of 8 May 2018 and announced further measures". This now includes 125 rounds of sanctions imposed after 8 May 2018. The JCPOA relief related only to the sanctions listed in its Annex II. The United States Treasury Department itself stated that Executive Order 13846 "broadens the scope of the sanctions that were in effect prior to" the implementation of the JCPOA[19].

25. Iran's request for relief is based on the losses and damage it has suffered as a result of the United States' breaches of the Treaty of Amity; it is not asking simply for the reinstatement of the JCPOA relief.

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[15] CR 2020/12, p. 23, para. 10 (Gahan).

[16] AI, para. 50; MI, Submissions (following paragraph 10.34).

[17] MI, Ann. 31.

[18] CR 2020/12, p. 18, para. 28 (Bethlehem).

[19] Available at https://home.treasury.gov/policy-issues/financial-sanctions/faqs/601.

F. The implications

26. The United States referred to the "wider systemic implications for resort to compromissory clauses in treaties and for the judicial function in the face of the limitations of the instrumental dimension of the case before you".

27. The United States does not argue that Iran's claims are not based on "the interpretation or application" of the Treaty of Amity: it says that they should be dismissed because the Treaty disputes are "very largely concerned with" an instrument other than the Treaty[20].

28. "Largely concerned" — how does that differ from the obvious fact that the JCPOA is an important part of the factual background to Iran's Application?

29. Is the fact that it is an "instrument" crucial? Would the position be different if Iran's claim of breaches of the Treaty of Amity were "largely concerned" with a matter extensively discussed with the United States but not recorded in a published agreement — if it were an oral agreement or understanding?

30. It plainly does not matter to the United States whether the JCPOA is binding or not. The United States does not refer to "another instrument to which Iran and the USA are parties". The United States says the JCPOA is not binding. Indeed, whatever sense of obligation the United States may once have had in relation to the JCPOA, the United States *withdrew* from it[21], before this case was filed with the Court. It is arguing that Iran's rights under the Treaty of Amity are constrained as a matter of law by what it says is a non-binding instrument which it has itself repudiated. This makes no sense.

31. In short, the United States asks you to dismiss this case on the basis of a limitation on its jurisdiction that is not set out in the relevant compromissory clause, and does not appear in the Court's Statute or Rules, and for which you will search in vain in the digests of the Court's jurisprudence and the textbooks on international law.

32. It asks that you assert a discretion to deem disputes that are on their face quite plainly within the compromissory clause of a treaty, to be outside your jurisdiction. It asks you to do so on

[20] CR 2020/12, p. 13, para. 5 (Bethlehem).

[21] CR 2020/10, p. 20, para. 2 (Bethlehem).

the basis of vague, subjective notions of what is a "large concern" of the applicant State, overriding the plain terms of the Application.

33. Iran submits that it is not the role of the Court to filter out cases brought before it on the basis of political considerations, which is very obviously what the United States wishes the Court to do.

34. Mr. President, Members of the Court, I thank you for your patient attention and unless I can be of any further assistance, I ask that you call Mr. Wordsworth to the microphone.

The PRESIDENT: I thank Professor Lowe for his statement. I will now give the floor to Mr. Wordsworth. You have the floor.

Mr. WORDSWORTH: Thank you, Sir.

THE COURT HAS JURISDICTION *RATIONE MATERIAE* WITH RESPECT TO THE SECONDARY SANCTIONS TARGETED AT IRAN, AND IRANIAN COMPANIES AND NATIONALS, INCLUDING WITH RESPECT TO BREACH OF ARTICLES IV (1) AND (2), V (1) AND X (1)

A. Introduction

1. Mr. President, Members of the Court, I will respond to the United States' case that its secondary sanctions fall outside the scope of the Treaty, focusing in particular on Articles IV (1) and (2), V (1) and X (1) of the Treaty. I make three introductory points.

2. First, this case concerns a Treaty of Amity and Economic Relations. It does not concern a bilateral investment treaty, restricted by a requirement that an investor have a defined investment in the territory of the host State; and nor does it concern a bilateral trade agreement, concerned solely with trade between the two Parties. For sure, US investment and free trade agreements of today have evolved to contain multiple new and different restrictions on the protections they accord; but the Court is concerned only with the 1955 Treaty of Amity. And, the reference to the broad concept of "economic relations" in its title is one demonstration that it encompasses a scope broader than trade and commerce directly between the two States, which is how the United States of America now presents the Treaty.

3. And it is of course the Treaty provisions that are key. More than a dozen times on Friday, you heard from US counsel that the Treaty is concerned only with trade and transactions between

the two Treaty Parties[22], but that is to ignore one critical aspect of the Treaty, which contains provisions concerned not just with trade but also with the *treatment* accorded by one State to the nationals and companies of the other State, and their property. The Treaty certainly does protect trade, for example in Article X (1) but, in separate provisions, it expressly protects nationals and companies; their rights and their property too. Sanctions targeted at harming the economic activity of Iranian nationals and companies are a form of "treatment" accorded to those nationals and companies, whether they are primary or secondary sanctions; for example, they impair the legally acquired rights and interests of Iranian nationals and companies by unreasonable or discriminatory measures. Such treatment is expressly prohibited. I made this point on Wednesday but there was no reply[23].

4. Second, the honourable Agent for the United States of America adopted, as no doubt he must, the US line that "the focus of sanctions pressure is directed at the Iranian régime, and not the Iranian people"[24]. That line is of the greatest offence to Iranian nationals and companies, which benefit from the express protections of the Treaty and yet, day by day, see their businesses being destroyed. On the US case, it is apparently open to it publicly and repeatedly to celebrate the severe economic harm that its measures cause to Iranian companies and nationals, boasting for example in April 2019, that "[t]he Trump Administration has designated over *970 Iranian entities and individuals* in more than *26 rounds of sanctions* — more than any other Administration in U.S. history"[25]; and yet, before you, it can somehow say that the real target is elsewhere or, in the speeches of Ms Gahan and Ms Grosh, that it somehow does not matter that the US secondary sanctions are targeted so as to cause severe economic harm precisely to Iranian nationals and companies[26].

5. But of course it matters — including because the Treaty is concerned with treatment as well as trade. We made the point on Wednesday that the United States was wrong to assimilate the

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[22] CR 2020/12, p. 19, para. 34 and p. 20, para. 37 (Bethlehem); pp. 48-59 (Gahan).

[23] CR 2020/11, p. 33, para. 20 *(a)* (Wordsworth).

[24] CR 2020/12, p. 40, para. 10 (String).

[25] Available at ge.usembassy.gov/maximum-pressure-campaign-on-the-regime-in-iran-april-4/; emphasis (boldfaced) in the original. See also www.state.gov/press-briefing-with-brian-hook-special-representative-for-iran.

[26] CR 2020/12, p. 21, para. 4 (Gahan).

entire Treaty to its Article X (1), which does concern commerce between the States' territories, and also that the Court had expressly interpreted Article IV (1) in the *Oil Platforms* case by reference to the important absence of any equivalent territorial restriction[27], and the United States on Friday had no answer to either point. And one reason that the US measures fall within the Treaty is because they target *all* Iranian companies and nationals on the basis of alleged acts of the Government of Iran, and therefore they constitute a form of collective punishment of the Iranian people and their businesses, that is, the US measures are arbitrary contrary to Article IV (1)[28]. Again, the US counsel on Friday had no answer to that point, and hence the deliberate misunderstanding of the relevance of our example on Total[29] and the various other attempts to deflect your attention away from the indisputable point that the so-called third country measures are targeted at, intended to cause and do cause severe economic harm to, Iranian nationals and companies.

6. Third, both Sir Daniel and Ms Gahan were wilfully missing our point on Article IV (1) and the *Oil Platforms* case which was, of course, that that case concerned use of force, not targeted economic sanctions[30]. Both counsel went back to Iran's pleadings in *Oil Platforms*, but Iran made its point on Wednesday expressly by reference to the Court's Judgment, and in particular the Court's rejection of Iran's then Article IV (1) case that economic harm arising from use of force could fall within the fair and equitable treatment provision of the Treaty[31]. The current case is very different, of course, because the Treaty provisions are *overtly* concerned with protection against economic harm by economic measures such as sanctions.

7. And, on *Certain Iranian Assets*, whereas the United States again seeks to go back to Iran's then pleadings[32], Iran now is simply taking note of what the Court decided, that an exterior rule of international law could not be imported into the Treaty of Amity[33]. There is no equivalent in our

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[27] CR 2020/11, p. 28, para. 5 (Wordsworth).

[28] CR 2020/11, p. 32, para. 18 (Wordsworth); cf. CR 2020/12, p. 29, para. 10 (Grosh).

[29] See e.g. CR 2020/12, pp. 21-22, paras. 4 and 8 (Gahan).

[30] CR 2020/12, p. 19, para. 34 and p. 20, para. 37 (Bethlehem); p. 26, para. 21 (Gahan); cf. CR 2020/11, p. 30, para. 10 (Wordsworth).

[31] CR 2020/11, p. 30, para. 10 (Wordsworth).

[32] CR 2020/12, p. 20, para. 36 (Bethlehem).

[33] CR 2020/11, p. 30, para. 10 (Wordsworth).

Iran's current claims. There is no attempt by Iran to "enlarge the scope of the Treaty"[34], as the United States alleges, but merely it reads its provisions — quite correctly — as concerned with the protection of nationals and companies against (for example) unfair treatment and impairment, and not — quite incorrectly — as just concerned with bilateral trade.

B. The concept of third country measures and the US categorization of its measures

8. I turn to the details, starting with Ms Gahan's recitation of the US concept of third country measures, which again ignored the point that, whatever label might be put on the US measures, they plainly target Iranian nationals and companies, and Iran, and there is no reason to suppose that measures with the intended effect of causing severe economic harm should be outside the scope of the Treaty merely because they are framed so as to cut off *all* the economic lifelines for Iran's businesses and people.

9. Ms Gahan's first point simply repeated the US description of its invented "concept", culminating in the self-serving assertion that "[t]here is nothing about aims, or targets, in the concept; the relevant question is: *what are the commercial relations that are the subject of the measure?*"[35]. But this is not the relevant question. The only question, as per the Court's Judgment in *Oil Platforms*, is whether Iran's claims with respect to the US measures, including the co-called third country measures, fall within the scope of the Treaty. The Court is not assisted by the United States assuming in its own favour that this — the actual question — is to be determined by reference to the US assertion about the importance of the existence or otherwise of bilateral commercial relations[36]. It is as if the United States believes that it has already pointed the Court to some provision of the Treaty which states that its entire scope of application is limited to trade between Iran and the United States or their nationals and companies. Yet no such provision exists.

10. Ms Gahan's subsequent points, and her speech last Monday, focused on the United States' decision for the purpose of this case to divide its measures into four categories, the US argument being that categories (1)-(3), the supposed "vast majority", concern the third country

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[34] CR 2020/12, p. 20, para. 37 (Bethlehem).

[35] CR 2020/12, p. 21, para. 4 (Gahan).

[36] CR 2020/12, p. 22, para. 6 (Gahan).

measures and are hence excluded from jurisdiction[37], while a fourth "discrete category"[38], involving the licensing of bilateral trade, does potentially fall within the Treaty, subject to whatever objections the United States may later come up with[39]. You were told by the United States that if a measure falls within any of categories (1)-(3), the Court can and should eliminate it at this stage[40]. Yet, in addition to the absence of any Treaty basis for exclusion of the so-called third country measures, the US categorization breaks down on closer inspection.

11. Two points. First, it is now common ground that a measure that targets Iran or an Iranian company may fall within both category 4 *and* categories 1, 2 and/or 3. This is one aspect of the US concession made last Monday on Article X (1)[41], that is, the United States now accepts that commerce between the territories of the two States can equally be impeded by a US measure banning the sale of a US product as by a US measure on a foreign bank preventing the Iranian company paying for the product. On the United States' case as now developed, the Court has jurisdiction over both types of measure. So, on a closer inspection, the United States' objection is not that *all* measures falling within categories (1)–(3) are outside the scope of the Treaty of Amity, but that some are, although the Court has no way of knowing at this stage exactly where even the United States says the line is supposed to be drawn.

12. Take for example a foreign subsidiary of a US company that has terminated a contract to sell a drilling rig to the National Iranian Oil Company (NIOC) as a result of the US measures. The transaction would be prohibited by, at least, US categories (4) and (2): category (4) because of revocation of General License H[42]; category (2) because Executive Order 13846 separately prohibits a foreign subsidiary of a US company from "provid[ing] financial, material, or technological support" to NIOC[43]. It would also be prohibited under categories (1) and (3) if NIOC

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[37] POUS, paras. 7.7, 7.11, 7.13, 7.17; CR 2020/10, p. 19, para. 17 (String); pp. 48-59 (Gahan); CR 2020/12, p. 21, para. 5 and pp. 24–25, paras. 13–16 and 19 (Gahan).

[38] CR 2020/12, pp. 21–22, para. 5 (Gahan).

[39] CR 2020/12, p. 21, para. 5, pp. 24–25, paras. 13–16 and 19 (Gahan).

[40] See e.g. CR 2020/10, p. 49, para. 3 (Gahan).

[41] See CR 2020/11, p. 41, para. 46 (Wordsworth); CR 2020/10, p. 44, para. 38 (Grosh).

[42] See 31 C.F.R. Sec. 560.215.

[43] See Executive Order (EO) 13846, Sec. 8 *(a)* (referencing Sec. 1 *(a)* (ii)). See also EO 13846, Sec. 3 *(a)* (v).

had been paying for the oil rig via a foreign bank[44]. Thus, even if the third country measures objection were somehow to be accepted, the Court would still have jurisdiction with respect to claims concerning each category of the US measures. It would still be necessary to consider the impact of each of categories (1) through to (4), and not just the category (4) measures as the United States would have you believe.

13. Second, it is plain from the face of the US measures — including their use of the generic term "persons" — that they apply to US as well as non-US persons[45]. The United States accepts this but asserts that the measures were nonetheless *directed at* non-US persons[46]. That is a question of the application and impacts of the measures and, moreover, of contested fact. It is not a question suitable for the preliminary objections stage. As I noted on Wednesday, the US description of categories (1) ***to*** (3) as being concerned with US persons was repeatedly qualified by words such as "generally" and "primarily"[47]. Although an explanation was invited, none was given on Friday.

C. Jurisdiction in respect of Article IV (1)

14. I turn to Article IV (1), and it was notable that Ms Grosh started with the *travaux* and sought to work backwards, which suggested an obvious lack of comfort with the express wording of the three protections that Article IV (1) contains[48]. Indeed, there was no response at all to the submissions that Iran made on Wednesday on the comprehensive and unqualified nature of the wording used in Article IV (1), nor on the important point that the Court made in *Oil Platforms* on the absence of any territorial restriction in Article IV (1)[49].

15. On object and purpose, there was no challenge to any of the four points that Iran made on Wednesday, including as to the importance to be accorded to the objective stated in Article I, which was of course highlighted by the Court at the jurisdictional phase of the *Oil Platforms* case[50]. The

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[44] See EO 13846, Sec. 2 *(a)* (iii).

[45] See e.g. EO 13846 of 6 Aug. 2018 "Reimposing Certain Sanctions With Respect to Iran", Sec. 16 *(l)*.

[46] CR 2020/12, pp. 21–22, para. 5 (Gahan); CR 2020/10, p. 50, para. 6 (Gahan).

[47] CR 2020/11, p. 21, para. 8 (Wordsworth) referring to e.g. CR 2020/10, p. 50, para. 6; p. 52; para. 11; p. 54, paras. 16 and 18; p. 55, paras. 22-23; p. 56, para. 24 (Gahan).

[48] CR 2020/12, pp. 28-29, paras. 5-8 (Grosh).

[49] See CR 2020/11, pp. 32-34, paras. 20-23 (Wordsworth).

[50] See CR 2020/11, pp. 34-36, paras. 26-32 (Wordsworth); cf. CR 2020/12, pp. 29-30, paras. 9-11 (Grosh).

only response on object and purpose was by reference to an argument made by Iran at the merits phase of *Oil Platforms* — to the effect that interference with commerce through use of force was inconsistent with the objective of peace and friendship in Article I and a breach of Article X (1), an argument that the Court rejected[51]. Two points.

(a) First, as we have been saying again and again[52], the case in *Oil Platforms* concerned use of force, not targeted economic sanctions which, by contrast, fit directly and naturally into the ordinary meaning of the protections established by Article IV (1), and all the more so when interpreted in light of the Article I objective of peace and friendship.

(b) Second, the passage from the 2003 Judgment relied on by the United States last Friday concerned Article X (1), not Article IV (1)[53]; and the Article X (I) claim in *Oil Platforms* was rejected solely on the basis that the commerce involved an unknown series of commercial transactions[54]. Article I did not feature.

16. Iran was also taken to task for not identifying "any precedent for applying the 'fair and equitable treatment' standard — that is, the language of investment protection treaties — to measures taken by one State in respect of transactions exclusively between nationals of two different countries"[55]. Three short points:

(a) First, other States do not unilaterally impose "secondary sanctions" like the United States of America; hence, there could be no precedent. It is not because the United States of America chooses to inflict economic harm on Iranian nationals and companies in a particularly egregious way that Article IV (1) should somehow not apply.

(b) Second, as Ms Grosh will well know, the first bilateral investment treaty was concluded in 1959[56]. The inclusion of a classic term of the FCN treaty in the subsequently devised bilateral investment treaty régime, which includes the requirement of a territorially located

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[51] CR 2020/12, pp. 29-30, paras. 9-11 (Grosh).

[52] See e.g. CR 2020/11, p. 30, para. 10 (Wordsworth).

[53] CR 2020/12, p. 26, para. 20 (Gahan), referring to *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 207, para. 97.

[54] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 207, para. 97.

[55] CR 2020/12, p. 29, para. 8 (Grosh).

[56] See e.g. UNCTAD, "Bilateral Investment Treaties 1959-1999" (2000), available at unctad.org/en/Docs/poiteiiad2.en.pdf.

investment, in the way that the FCN treaty does not, is of no assistance in deciding the current issue of jurisdiction *ratione materiae*.

(c) Third, the real point on absence of precedent is the US inability to point to any ICJ or other international case where, although the express treaty wording interpreted by reference to the usual rules would include a certain type of conduct, that conduct is somehow excluded from jurisdiction because of one side's unsupported and impressionistic account of what it now says the treaty was intended by it to cover.

17. As to the case made on Friday on the *travaux*, this was just a reiteration of the same point on the establishment of companies made on Monday[57]. To be clear, Iran did not on Wednesday — and would not — accept that a screening mechanism for companies wishing to establish themselves in the United States of America could be a form of targeting permitted by the Treaty[58]. If US screening was arbitrary or discriminatory, for example, it would fall within Article IV (1).

18. We invite the Court to focus on the three-line description of the US Secretary of State said to be so important, although it is only an internal statement of the official of one Treaty Party on a small point — which, moreover, is qualified by his saying this is what he sees the stipulations on business enterprises as "largely" relating to[59]. But the obvious point, which I made on Wednesday, is that if the official was saying that the Treaty is largely concerned with protecting companies against discrimination once established, that is both incorrect and inconsistent with the US current case[60]: Ms Grosh did not contest our point that the United States accepts that it owes obligations under Article IV (1) to Iranian companies, regardless of whether they are established in the United States of America or not[61]. Of course it does. And the current US position — the alleged requirement that an Iranian company be engaged in bilateral trade — is simply not touched on in this official's comment.

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[57] CR 2020/12, pp. 28-29, paras. 6-7 (Grosh).

[58] See CR 2020/11, pp. 36-37, para. 33 (Wordsworth); cf. CR 2020/12, p. 28, para. 7 (Grosh).

[59] "Message from the Secretary of State Transmitting a Treaty of Amity, Economic Relations, and Consular Rights between the United States of America and Iran, signed at Tehran on Aug. 15, 1955", (23 Dec. 1955), POUS, Ann. 90, US judges' folder, tab 9.

[60] See CR 2020/11, pp. 36-37, para. 33 (Wordsworth); cf. CR 2020/12, p. 28, para. 7 (Grosh).

[61] CR 2020/11, pp. 36-37, para. 33 (Wordsworth).

19. Finally, Iran was accused of seeking to transform Article IV (1) "into an empty vessel to be filled with any obligation Iran would like to have applied" and engaging in "an act of invention and expansion"[62]. Well, that is scarcely a fair reflection of paragraphs 4.10-4.30 of Iran's Memorial, to which we invite the Court to turn for Iran's detailed interpretation of Article IV (1), supported by multiple cases, including this Court's frequently applied dicta in the *ELSI* case on the definition of arbitrariness[63]. For convenience, this passage from the Memorial is in your judges' folder at tab 15.

D. Jurisdiction in respect of Article IV (2)

20. I move to Article IV (2). The United States of America on Friday had nothing to say in response to our point that it was seeking to rewrite the expropriation provision by introducing a territorial restriction, the Court will recall the point; but now it is said for the very first time that the territorial restriction is "inherent in the power that [the expropriation] seeks to [re]strain"[64]. It is thus said, with notably no supporting reference, that "[a] State . . . has no power to expropriate property located in territories over which another State is sovereign"[65].

21. It is as if the United States had suddenly woken up to the long-standing and widespread criticism of its assertion of extraterritorial jurisdiction such as through "secondary sanctions"[66], and had agreed to turn over a new leaf. But it has not, as the US measures in this case amply demonstrate. A State can — and in the case of the United States it does — assert its jurisdiction abroad in a way that may potentially be expropriatory, including through steps to seize property abroad. For example, the US courts have routinely asserted the authority to order seizure and repatriation of funds held in foreign countries and foreign bank accounts to pay US taxes[67]. That

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[62] CR 2020/12, p. 30, para. 13 (Grosh).

[63] *Elettronica Sicula S.p.A. (ELSI) (United States of America* v. *Italy), Judgment, I.C.J. Reports 1989*, p. 76, para. 128.

[64] CR 2020/12, p. 30, para. 15 (Grosh). Cf. CR 2020/10, p. 44, para. 37 (Grosh), and POUS, para. 7.32.

[65] CR 2020/12, p. 30, para. 15 (Grosh).

[66] See e.g. EU, "Guidance Note — Questions and Answers: adoption of update of the Blocking Statute", Official Journal of the EU, 2018/C 277 I/03 (7 Aug. 2018), available at eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2018.277.01.0004.01.ENG&toc=OJ:C:2018:277I:TOC; OHCHR, "US sanctions violate human rights and international code of conduct, UN expert says", 6 May 2019 (MI, Ann. 97).

[67] See e.g. *United States* v. *L & L International, Inc.*, No. CV H-17-923, 2020 WL 168852 (S.D. Tex., 13 Jan. 2020); *United States* v. *Grant*, No. 00-8986, 2005 WL 2671479 (S.D. Fla., 2 Sept. 2005), adopted, 2005 WL 3747779 (S.D. Fla., 22 Dec. 2005).

assertion of jurisdiction may or may not be recognized in a third State, but that does not somehow mean that the United States of America does not or would not exercise its jurisdiction extraterritorially and that such could not amount to a taking.

E. Jurisdiction in respect of Article V (1)

22. I move briefly to Article V (1), as to which one short point, and here we all agree that this provision contains a territorial limitation. Notwithstanding this limitation, a US measure interfering with the acquisition of US personal property will generally be both by way of withdrawal of a licence under the so-called category (4) and by way of a "secondary sanction" under category (1), (2) and/or (3) such as in preventing payment for the US product via a foreign bank. Hence, Iran's Article V (1) claim also brings in US category (1) to (3) measures, although you were told by the United States, quite wrongly, that categories (1) to (3) concern the so-called third country measures only[68].

F. Jurisdiction in respect of Article X (1)

23. Precisely the same point applies with respect to commerce between the territories of the two States within Article X (1) which, as the Court will recall, contains the type of express wording that the United States wishes inappropriately to introduce into Article IV (1) and the expropriation provision of Article IV (2). I make three further points on Article X (1).

24. First, the United States did not deal with our point that it is seeking to rewrite the provision, adding a new term into Article X (1) — the word "direct". There was likewise no attempt to engage with our point that the *Oil Platforms* Judgment does not support any such addition[69].

25. Second, Iran was criticized for using hypothetical examples, although it was said that both examples given would anyway concern commerce between the two States and hence would be category (4) cases[70]. The criticism makes no sense. The examples given by Iran were simply to demonstrate that what is commerce between the territories of the two States is a matter for the

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[68] See e.g. CR 2020/10, pp. 48-49, paras. 2-3 (Gahan).

[69] CR 2020/11, pp. 39-40, paras. 43-44 (Wordsworth).

[70] CR 2020/12, pp. 25-26, paras. 19-20 (Gahan).

merits and, following on from the US concession in the first round, it must now be accepted that measures within the US categories (1) to (3) may fall within Article X (1) as well as the category (4) measures. There was no attempt by the United States of America to argue why this would not be so.

26. Third, on the extent of the US concession on Article X (1), the point that Iran was making on Wednesday was completely blanked, as if that could be an answer to an inconvenient point[71]. A measure under categories (1) to (3) may — it follows from the US concession — be a breach of Article X (1) if they constitute a form of the prohibited conduct. So on what basis is it said that measures under categories (1) to (3) cannot similarly be a breach of, say, Article IV (1) if they are a form of conduct expressly prohibited by that provision?[72] The answer is that there is no sound basis. The simple point is that there is no provision, no sound basis in the usual rules on treaty interpretation, nor even some exterior statement that points to a determination that the so-called third country measures are somehow excluded.

27. Mr. President, Members of the Court, I thank you for your kind attention, and I ask you, Mr. President, to call on Professor Thouvenin.

The PRESIDENT: I thank Mr. Wordsworth for his statement. Je donne à présent la parole au professeur Thouvenin.

M. THOUVENIN :

ARTICLES VII, VIII ET IX

1. Monsieur le président, Mesdames et Messieurs les juges, la tâche m'incombe ce lundi de clore le débat préliminaire à propos des articles VII, paragraphe 1, VIII, paragraphes 1 et 2, et IX, paragraphes 2 et 3, du traité d'amitié, de commerce et de navigation.

[71] Cf. CR 2020/12, p. 26, para. 21 (Gahan).

[72] CR 2020/11, p. 41, paras. 45–46 (Wordsworth).

2. Avant d'y ***parvenir***, qu'il me soit permis d'attirer votre attention sur une observation faite à l'instant par M^e^ Wordsworth, qui est que nos contradicteurs peinent à réconcilier leurs positions avec l'objet et le but du traité[73].

3. J'ajouterai qu'elles sont intenables à sa lumière. Supposons que le traité de 1955 soit signé mais pas encore ratifié par les deux Parties ; et que les Etats-Unis, après la signature, mais avant la ratification, mettent en place le siège économique que l'Iran dénonce dans la présente affaire, dans l'objectif annoncé de réduire à néant la totalité de la capacité exportatrice, importatrice, productrice, industrielle, commerciale, financière, et bancaire de l'Iran. Dira-t-on que les Etats-Unis ont privé le traité de son objet et de son but, au sens de l'article 18 de la convention de Vienne sur le droit des traités ? Je laisse cette question à votre appréciation.

A. Articles VIII et IX du traité d'amitié

4. Monsieur le président, je me tourne à présent, là encore brièvement, vers les articles VIII et IX.

5. Concernant l'article VIII, Mme Grosh s'est à nouveau évertuée vendredi à vous proposer d'y lire les termes «between the two Parties», que les Etats-Unis voient surgir partout, comme des mots-fantômes, alors qui n'y figurent ni explicitement, ni implicitement[74].

6. Un nouvel argument a toutefois éclos, selon lequel il serait dénué de sens ou de plausibilité de considérer que, du point de vue des Etats-Unis, des produits vendus à l'Iran à partir d'un territoire tiers, disons de l'Etat X, sont des «exportations» de X vers l'Iran[75].

7. C'est curieux. Comment faudrait-il appeler ces opérations ? Bien sûr que ce sont des exportations, et qu'on doit les appeler ainsi. Les ventes de l'Etat X à destination de l'Iran doivent et ne peuvent s'appeler que des exportations de l'Etat X vers l'Iran, que ce soit vu de Washington, de La Haye, ou de tout autre endroit.

8. Concernant l'article IX, ma contradictrice revient sur l'argument de «contexte» déjà débattu au premier tour de plaidoiries[76], selon lequel la première phrase du premier paragraphe, qui

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[73] CR 2010/10, p. 38, par. 18 (Grosh). EPEU, p. 39, par. 3.6 ; p. 45-46, par. 4.10 ; p. 77, par. 6.21 ; p. 96, par. 7.6 ; p. 104, par. 7.20-7.21.

[74] CR 2020/12, p. 33, par. 28 et 29 (Grosh) ; voir également CR 2020/10, p. 45, par. 40 et p. 46, par. 43 (Grosh) ; CR 2020/11, p. 43-44, par. 7-10 (Thouvenin) ; voir aussi EPEU, p. 38, par. 3.5.

[75] CR 2020/12, p. 33, par. 27 (Grosh).

n'est pas en cause dans la présente instance, éclairerait le sens, et limiterait la portée, des paragraphes 2 et 3 invoqués par l'Iran[77]. Il a beau être répété, l'argument laisse toujours aussi perplexe. Le premier paragraphe de l'article IX indique son champ d'application par la mention : «dans le cadre de ses règlements douaniers et de ses procédures douanières». Le troisième paragraphe porte sur des mesures affectant la possibilité pour les importateurs et exportateurs d'obtenir des assurances maritimes, ce qui n'a aucun rapport. Quant au deuxième paragraphe, il porte sur «toutes les questions qui ont trait aux importations et aux exportations». Son domaine d'application est vaste et sort manifestement du seul cadre douanier. La première phrase du premier paragraphe n'est donc aucunement de nature à éclairer le sens et la portée des paragraphes suivants.

B. Article VII, paragraphe 1, du traité d'amitié

9. Monsieur le président, Mesdames et Messieurs les juges, je continuerai ma présentation en faisant maintenant trois observations plus substantielles à propos de l'article VII, paragraphe 1.

10. *En premier lieu*, l'affirmation de Mme Gahan selon laquelle le système financier des Etats-Unis est fermé aux Iraniens depuis longtemps, sans que les mesures du 8 mai 2018 aient changé quoi que ce soit à cet égard[78], est inexacte. Il s'agit d'une allégation quant aux faits en cause au fond, au demeurant imprécise[79]. Elle ne correspond pas à la réalité, en particulier parce que les mesures du 8 mai 2018 ont mis fin à des exceptions[80]. Mais ce n'est pas le moment de détailler ce point, pour l'évidente raison que l'établissement des faits relève du fond. La Cour observera en outre que la Partie adverse prétend exclure du débat les mesures relatives aux transferts de fonds sans même avoir défini ce qui, de son point de vue, est un «transfert de fonds». Or, la question pourrait mériter discussion, comme la Cour a pu le mesurer récemment dans l'affaire pendante opposant l'Ukraine à la Russie[81]. Enfin, on voit mal en quoi le fait que des restrictions concernant

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[76] CR 2020/10, p. 46, par. 44 (Grosh) ; et CR 2020/11, p. 53-54, par. 44-46 (Thouvenin).

[77] CR 2020/12, p. 33-34, par. 30 (Grosh).

[78] CR 2020/10, p. 51, par. 8, et p. 52-53, par. 13-14 (Gahan) ; et CR 2020/12, p. 21-22, par. 5 (Gahan).

[79] Voir, par exemple, CR 2020/10, p. 50, par. 6 et 7, et p. 52, par. 11 (Gahan), CR 2020/12, p. 21, par. 5, p. 22, par. 6, et p. 25, par. 16 (Gahan).

[80] EPEU, p. 110, par. 7.39.

[81] *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie), exceptions préliminaires, arrêt du 8 novembre 2019*, par. 62.

les transferts de fonds étaient déjà en place avant le 8 mai 2018 pourrait empêcher d'évaluer la licéité des mesures du 8 mai 2018 au regard de l'article VII, paragraphe 1, du traité. Il peut y avoir plusieurs réglementations restrictives des paiements et transferts de fonds, qui se superposent les unes aux autres, sans que celles issues des mesures du 8 mai 2018 perdent leur caractère illicite au regard du traité. Autrement dit, le fait qu'une restriction dénoncée par l'Iran comme contraire au traité se surajoute à une restriction que l'Iran ne dénonce pas dans le cadre de la présente instance est sans conséquence sur la question de savoir si la restriction dénoncée par l'Iran entre ou n'entre pas dans le champ opératoire du traité.

11. *En deuxième lieu,* il est erroné de postuler, comme les Etats-Unis ont tenté de le suggérer lundi dernier, que parce que le traité de 1955 est un traité d'amitié, de commerce et de navigation, il existerait une présomption qu'il ne porte que sur des relations économiques entre les territoires des Etats parties[82].

12. Je l'ai montré mercredi en soulignant notamment qu'il n'était pas rare que des traités d'amitié, de commerce et de navigation créent des obligations opérant dans les relations avec les pays tiers[83]. «These are different treaties», m'a-t-on répondu[84]. Certainement, sans que cela empêche Mme Grosh de faire de nombreuses références à des traités FCN lors de son propre exercice d'interprétation du traité lundi dernier[85].

13. En l'occurrence, le fait est simplement que les autres traités d'amitié, de navigation et de commerce peuvent informer la Cour sur le sens qu'il convient d'accorder aux termes «à destination ou en provenance du territoire de l'autre Haute Partie contractante».

14. *En troisième et dernier lieu*, avec l'article VII, paragraphe 1, la Cour est, pour reprendre une formule de la Cour permanente de Justice internationale :

> «placée en présence d'un texte dont la clarté ne laisse rien à désirer, elle est tenue de l'appliquer tel qu'il est, sans qu'elle ait à se demander si d'autres dispositions auraient pu lui être ajoutées ou substituées avec avantage»[86].

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[82] CR 2020/10, p. 36-37, par. 11-12 (Grosh).

[83] CR 2020/11, p. 44-47, par. 12-18 (Thouvenin).

[84] CR 2020/12, p. 31, par. 20 (Grosh).

[85] CR 2020/10, p. 36, par. 10-12 ; p. 41, par. 28 et note de bas de page 47 ; p. 47, par. 46 (Grosh).

[86] *Acquisition de la nationalité polonaise, avis consultatif, 1923, C.P.J.I. série B n° 7*, p. 20.

15. La Cour a repris ce principe à son compte notamment dans l'affaire du *Différend territorial* qui a opposé le Tchad à la Libye, dans laquelle la Cour a procédé à l'interprétation du traité en commençant par le texte, en vérifiant la cohérence de son sens ordinaire avec l'objet et le but du traité, puis en confirmant le résultat interprétatif par un regard sur le contexte[87]. Comme je l'ai montré mercredi[88], l'application de la même méthode à l'article VII, paragraphe 1, conduit sans ambiguïté à faire prévaloir l'interprétation que l'Iran avance.

16. Par contraste, les plaidoiries des Etats-Unis s'illustrent par le fait qu'elles n'ont pas grand-chose à dire sur le texte, comme l'a déjà bien montré M[e] Wordsworth. Il n'est pas le point de départ de leur raisonnement. Les Etats-Unis préfèrent affirmer, d'autorité, que l'article VII, paragraphe 1, ne vise pas les *third country measures*, puis avancent un argument de contexte qui attesterait que les paiements, remises et transferts à propos desquels aucune restriction n'est permise par l'article VII, paragraphe 1, se rapporteraient uniquement aux *transfers of currency into and out of a Party's territory*[89], pour la raison que les autres paragraphes de l'article VII portent, pour leur part, sur les restrictions de change.

17. Cette thèse ne résiste pas davantage à l'analyse aujourd'hui que mercredi[90]. Si elle était fondée, l'article VII, paragraphe 1, n'interdirait pas toutes «restrictions» en matière de paiements, de remises et transferts de fonds, mais viserait évidemment les «restrictions de change», et donnerait la définition de cette notion.

18. Cela n'aurait pas été bien compliqué puisque les restrictions de change — *exchange restriction* — sont souvent définies dans les traités d'amitié, de commerce et de navigation conclus par les Etats-Unis, notamment dans le traité américano-japonais de 1953, comme visant :

> «all restrictions, regulations, charges, taxes, or other requirements imposed by either Party which burden or interfere with payments, remittances, or transfers of funds or of financial instruments between the territories of the two Parties»[91].

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[87] *Différend territorial (Jamahiriya arabe libyenne/Tchad), arrêt, C.I.J. Recueil 1994*, p. 22-28, par. 41-56 ; en particulier p. 25-26, par. 51-53.

[88] CR 2020/11, p. 43-44, par. 9-11 et p. 47-48, par. 19-21 (Thouvenin).

[89] CR 2020/12, p. 31, par. 16 (Grosh).

[90] CR 2020/11, p. 47-48, par. 19-21 (Thouvenin).

[91] Article XII, paragraphe 5, du traité d'amitié, de commerce et de navigation entre les Etats-Unis et le Japon du 9 avril 1953, disponible à l'adresse : tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005539.asp.

19. Or, il suffit de mettre cette définition en regard de l'article VII, paragraphe 1, pour comprendre que si ce dernier devait ne concerner que les restrictions «de change», et pas toutes les restrictions sur les paiements et transferts de fonds, c'est bien le terme «restrictions de change» — «exchange restrictions »— qui aurait convenu.

20. Autrement dit, le fait même que le terme «restrictions» soit préféré aux termes «restrictions de change» démontre précisément que l'article VII, paragraphe 1, ne vise pas seulement les restrictions de change, qui concernent les «changes», donc essentiellement les entrées et sorties de devises du territoire, mais a une portée beaucoup plus large et concerne toutes les restrictions concernant les transferts de fonds, qu'il s'agisse de restrictions de change ou non. C'est ce que d'ailleurs Mme Grosh a à moitié concédé en affirmant à juste titre : *This is a broad restriction*.[92] Nous sommes d'accord : la restriction interdite par l'article VII, paragraphe 1, est une *broad restriction*, qui ne se borne pas aux entrées et sorties de devises du territoire.

21. Il est dommage que Mme Grosh n'ait pas conduit jusqu'à son terme sa comparaison entre l'article XII, paragraphe 1, du traité américano-japonais de 1953 et l'article VII, paragraphe 1, du traité de 1955, apparemment faute de temps. J'y consacrerai les minutes qui lui ont manqué.

22. Ce qui est comparable entre les deux dispositions, mais en «***shorter and simpler***»[93] pour ce qui concerne l'article VII, paragraphe 1, du traité de 1955, se rapporte aux deux membres de phrase suivants :

— «entre les territoires des Hautes Parties contractantes et entre celui de cette Partie contractante et tout autre pays», pour l'article XII, paragraphe 1, du traité américano-japonais ;

— «à destination ou en provenance des territoires de l'autre Haute Partie contractante», pour l'article VII, paragraphe 1, du traité de 1955.

23. Je maintiens que la portée territoriale de ces deux membres de phrase est comparable. Cela ne veut pas dire que les deux articles disent la même chose, mais les formules donnent l'une et l'autre aux obligations auxquelles elles se rapportent une portée dépassant le seul territoire des parties au traité. La formule de l'article XII, paragraphe 1, du traité de 1953 conserverait d'ailleurs le même sens si elle se lisait : «à destination ou en provenance des territoires de cette Partie

[92] CR 2020/12, p. 31, par. 21 (Grosh).

[93] CR 2020/11, p. 47-48, par. 18 (Thouvenin).

contractante». De même, la formule de l'article VII, paragraphe 1, du traité de 1955 conserverait le même sens si elle se lisait — et c'est d'ailleurs ainsi qu'il faut la lire : «entre les territoires des Hautes Parties contractantes et entre celui de l'autre Haute Partie contractante et tout autre pays».

24. Bien sûr, en dépit de ces convergences, les dispositions sont différentes.

25. La première, l'article XII, paragraphe 1, du traité américano-japonais, pose un droit à un certain traitement que chaque partie doit accorder aux ressortissants et sociétés de l'autre partie. Son champ territorial exact est tributaire de la formulation du texte. Comme l'a indiqué Mme Grosh, il en découle que l'obligation porte sur les paiements et transferts de fonds qui ont un lien avec le territoire de l'Etat soumis à l'obligation[94].

26. La seconde, la seule qui nous importe, est bien plus vaste en interdisant aux Parties d'adopter des restrictions, quelle qu'en soit la forme, sur les paiements et transferts de fonds à destination ou en provenance de l'autre Partie. Son champ d'application *ratione personae* et *ratione loci* se comprend sans difficulté.

27. Quant au champ d'application *ratione personae* des restrictions interdites par l'article VII, paragraphe 1, il n'est pas limité à certaines personnes seulement. Sont concernés les ressortissants et sociétés iraniens, mais aussi ce que la Partie adverse appelle les *US persons* et les *non-US persons*. L'argument clé de nos contradicteurs selon lequel les mesures contestées par l'Iran s'appliquent pour l'essentiel à des *non-US persons* est donc dénué de pertinence s'agissant de l'article VII, paragraphe 1[95].

28. Quant au champ d'application *ratione loci* des restrictions interdites par l'article VII, paragraphe 1, il est également déterminé par le texte. L'interprétation proposée par les Etats-Unis voudrait que les transferts de fonds visés soient non pas ceux «à destination ou en provenance de l'autre Haute Partie contractante», c'est-à-dire l'Iran, mais «à destination ou en provenance des Etats-Unis»[96]. Ce n'est évidemment pas conforme au texte, lequel, sobre et précis, concerne les paiements et transferts «à destination ou en provenance du territoire» de l'autre Partie, c'est-à-dire

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[94] CR 2020/12, p. 32, par. 22 (Grosh).

[95] EPEU, p. 110, par. 7.39.

[96] *Ibid.*

de la partie bénéficiaire de l'obligation, ici l'Iran. Ces termes se suffisent à eux-mêmes. Il en découle que l'origine ou la destination des paiements ou transferts de fonds sont ***indifférentes***.

29. Monsieur le président, Mesdames et Messieurs les juges, c'est *cette* lecture de l'article VII, paragraphe 1, du traité, que son objet et son but éclairent ; et elle est parfaitement confirmée par le contexte. Comme je l'ai par ailleurs indiqué mercredi en faisant référence aux Statuts du Fonds monétaire international, c'est également une interprétation cohérente avec les «règles pertinentes» du Fonds monétaire international «applicables entre les Parties», selon les termes de l'article 31, paragraphe 3, alinéa *c)*, de la convention de Vienne sur le droit des traités[97].

30. Monsieur le président, Mesdames et Messieurs les juges, en conclusion, l'Iran maintient intégralement ses vues quant à l'interprétation des articles du traité qu'il vous demande d'appliquer au fond, et maintient que toutes les mesures qu'il a dénoncées entrent dans le champ de compétence *ratione materiae* de votre Cour.

31. Monsieur le président, Mesdames et Messieurs les juges, je vous remercie vivement de votre attention, vous prie de m'excuser pour l'incident technique du début et vous prie de bien vouloir donner la parole au professeur Pellet.

Le PRESIDENT : Je remercie le professeur Thouvenin pour sa présentation et j'espère que vous m'entendez cette fois-ci. Très bien. Je donne à présent la parole au professeur Alain Pellet. Vous avez la parole.

M. PELLET :

L'ARTICLE XX DU TRAITE D'AMITIE ET L'ARTICLE 79*BIS* DU REGLEMENT DE LA COUR

1. Monsieur le président, Mesdames et Messieurs les juges, il m'appartient de répondre brièvement à la partie de la plaidoirie de Mme Grosh consacrée aux exceptions américaines fondées sur l'article XX du traité de 1955. Je le fais en priant de nouveau les mauvais génies de l'informatique de ne pas me jouer les tours pendables qu'ils m'ont infligés la semaine dernière. Deux points très brefs : premièrement, ces prétendues exceptions préliminaires ne relèvent pas de

[97] CR 2020/11, p. 47, par. 19-20 (Thouvenin).

la «troisième catégorie» envisagée par l'article 79*bis*, paragraphe 1, du Règlement de la Cour ; deuxièmement, de toute manière et à titre subsidiaire, les conditions de mise en œuvre de l'article XX ne sont pas remplies, qu'il s'agisse de l'alinéa *b)* ou de l'alinéa *d)* — mais ceci est sans importance à ce stade.

2. En premier lieu, s'appuyant sur l'affaire des *Essais nucléaires*, ma contradictrice affirme que «certain objections are «of such a nature as to require examination in priority to» the merits of the Applicant's claims». Comme le montre le tableau inséré sous l'onglet n° 16 du dossier de plaidoiries, la citation qu'elle a faite des arrêts de 1974 est incomplète ; la Cour y visait des «questions qui, *sans qu'on puisse les classer peut-être à strictement parler parmi les problèmes de compétence ou de recevabilité*, appellent par leur nature une étude préalable ***à celle de ces problèmes***»[98].

3. Mais Mme Grosh n'a pas cité ce passage dans son intégralité. Elle en a oublié le début et la fin. Dans sa perspective, je la comprends : d'une part, dire qu'il s'agit de «questions qui, sans qu'on puisse les classer peut-être à strictement parler parmi les problèmes de compétence ou de recevabilité» ne revient pas à affirmer que cette «catégorie du troisième type» soit déconnectée des deux autres ; et le «peut-être» de la Cour appelle particulièrement à la prudence dans l'exégèse de cette citation. D'autre part, la fin de la citation omise par l'avocate des Etats-Unis donne priorité à l'examen de ce type d'objection non pas sur l'examen du fond mais sur celui des problèmes de compétence et de recevabilité. Prise à la lettre, cette remarque de la Cour voudrait dire qu'il vous faudrait examiner les troisième et quatrième exceptions américaines avant les autres. Ceci pourrait peut-être faire sens lorsque, pour une raison ou une autre, la Cour estime qu'elle ne peut se prononcer sur une requête — comme c'était le cas dans les affaires des *Essais nucléaires*. Ceci ne fait aucun sens ici.

4. Et cela a d'autant moins de sens que, comme je l'ai rappelé la semaine dernière, la Cour, à cinq reprises, a clairement pris position sur la *nature* justement des objections fondées sur l'article XX et elle a considéré qu'il s'agit de *défenses au fond*. Mais une même prétention ne peut pas être à la fois une défense au fond *et* une exception préliminaire ; c'est l'un ou c'est l'autre.

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[98] *Essais nucléaires (Australie c. France), arrêt, C.I.J. Recueil 1974*, p. 259, par. 22 ; Règlement de la Cour, art. 79*bis*, par. 1 (les italiques sont de nous).

Expressio unius est exclusio alterius. C'est lors de l'examen de l'affaire au fond qu'il vous appartiendra, Mesdames et Messieurs les juges, de vous prononcer sur cette défense ; et non durant cette phase *préliminaire*, comme Sir Daniel Bethlehem vous le demande avec insistance au nom des Etats-Unis : «What the United States is asking in this case is that you address the issues in a preliminary proceedings»[99]. Et c'est toute la différence avec l'affaire des *Plates-formes pétrolières* dont se prévaut notre contradicteur[100] et dans laquelle vous avez, en effet, examiné les arguments des Etats-Unis fondés sur ce même article avant leurs autres moyens — mais il s'agissait du *fond* et la Cour disposait alors de tous les éléments factuels et juridiques utiles à sa décision, présentés par les deux Parties à la suite de deux tours de procédure écrite.

5. En revanche, si vous estimiez, à l'issue de cette procédure préliminaire, que ces mesures sont conformes à l'article XX du traité, vous vous prononceriez assurément sur la substance même de la requête de l'Iran dont l'objet est de vous prier de déclarer l'incompatibilité des mesures du 8 mai 2018 avec toutes conséquences de droit. En d'autres termes, vous rejetteriez les conclusions de l'Iran, sans même les avoir examinées, en décidant, prématurément, que les mesures qu'il conteste ne violent pas le traité. Et c'est pour cette raison qu'à très juste titre, votre jurisprudence constante considère que ces objections portent sur le fond de l'affaire — ce qui exclut qu'elles soient accueillies à titre préliminaire.

6. Dès lors, il importe peu que vous deviez vous fonder sur des faits identiques ou différents de ceux qui pourraient justifier votre raisonnement sur d'autres aspects de l'affaire. Contrairement à ce qu'a affirmé Mme Grosh, il n'est tout simplement pas exact que «Article XX inquiry is severable from the merits of Iran's claims»[101]. And, still contrary to what she alleged, «[t]hese facts are [not] distinct from those going to whether the United States has breached the Treaty provisions that Iran invokes»[102]. Mais, que ces faits soient ou non différents de ceux qui sont nécessaires pour justifier certaines *autres* prétentions de l'Etat défendeur, ils concernent tout autant la question de savoir si les Etats-Unis ont violé les dispositions du traité invoquées par l'Iran, y compris

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[99] CR 2020/12, p. 19, par. 33 (Bethlehem) (les italiques sont dans l'original).

[100] *Ibid.*

[101] CR 2020/12, p. 35, par. 35 (Grosh).

[102] Cf. *ibid.*

l'article XX lui-même. La vérité est que ni la Cour ni nous-mêmes n'en savons rien : les Etats-Unis ont proféré de graves allégations sans en établir le bien-fondé en fait.

7. Il n'est en revanche pas douteux que, pour vous prononcer sur ces deux objections, vous devriez aller dans le détail des faits qui sont censés les justifier. Les Etats-Unis prétendent que tous les éléments pour cela sont à votre disposition. Selon Sir Daniel, «Iran has fully pleaded its merits case. We have its Memorial and its evidence. We know what it alleges about the operation of the U.S. measures. We know what it says about the interpretation and application of Article XX(1)*(b)* and *(d)*.»[103] Mais ceci non plus n'est pas exact, Monsieur le président. Notre mémoire présente l'affaire telle que nous l'envisagions alors et ne répond évidemment pas à des objections que les Etats-Unis n'avaient pas encore formulées. Quant aux phases ultérieures, nous fondant sur la position constante de la Cour et sur l'article 79*bis*, paragraphe 3, du Règlement, qui prévoit que «la procédure sur le fond est suspendue», nous n'avons pas poursuivi les échanges au fond auxquels les Etats-Unis voulaient nous pousser pour tenter de vous convaincre de vous départir de votre jurisprudence constante. Vous ne sauriez, Mesdames et Messieurs de la Cour, vous prononcer au mépris du principe du contradictoire comme le demandent les Etats-Unis.

8. Deux mots, pour surplus de droit et pour ne rien laisser dans l'ombre, sur les quelques éléments que ma contradictrice a cru pouvoir avancer à l'appui de l'invocation des alinéas *b)* et *d)* du premier paragraphe de l'article XX. Mais c'était sur le fond. Elle l'a d'ailleurs fait de manière extrêmement succincte — à juste titre.

9. Très peu de choses sur l'alinéa *d)* sinon les accusations habituelles proférées par les Etats-Unis contre la République islamique, qui n'appellent pas, à ce stade, de réfutation supplémentaire. Je relève tout de même que les Etats-Unis se sont, durant toute cette procédure, bien gardés de tenter d'établir la nécessité des mesures contestées — de chacune de ces mesures — et de leur proportionnalité aux causes qui sont censées les avoir suscitées. On ne voit pas comment vous pourriez vous prononcer sur leur justification en l'absence de tout débat entre les Parties sur ces aspects cruciaux — un débat que les Etats-Unis n'ont pas même amorcé.

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[103] *Ibid.*, p. 18-19, par. 32 (Bethlehem).

10. Mme Grosh en a dit un tout petit peu plus sur l'alinéa *b)* relatif, je le rappelle, aux mesures «concernant les substances fissiles». Comme nous l'avons expliqué dans notre mémoire[104], les sanctions qui ont été prises (ou reprises) le 8 mai 2018, et qui font l'objet de la requête iranienne, ne les concernent pas, à la différence d'autres mesures imposées à l'Iran qui, elles, portent effectivement sur les substances fissiles. C'est le cas, par exemple, de la réimposition des sanctions concernant le réacteur d'Arak, la fourniture de combustible enrichi pour le réacteur de recherche de Téhéran, ou l'exportation du combustible irradié de l'Iran[105]. Mais, je le répète, ces mesures ne sont *pas* visées par la requête de l'Iran ; il n'est d'ailleurs pas sans intérêt de noter que ces sanctions furent réimposées non pas dans la foulée de celles du 8 mai 2018 mais deux ans plus tard, le 27 mai de cette année-ci, 2020. En réalité, Monsieur le président, les Etats-Unis se battent contre la chimère qu'ils ont formée : la requête imaginaire de l'Iran contre leur dénonciation du JCPOA qui, lui, contient des dispositions portant sur les matières fissiles ; mais ces questions sont, ici, hors de cause.

11. Quant à prétendre que «Iran is wrong to suggest that the Court would need to additionally assess whether the United States' assessment of Iranian nuclear activity is well founded»[106], cela revient très exactement à dire que les Etats-Unis peuvent décider n'importe quelle mesure en invoquant n'importe quel lien, aussi vague et artificiel soit-il, avec des «matières fissiles». Difficile alors pour les Etats-Unis de maintenir qu'ils n'interprètent pas les deux dispositions concernées comme étant «self-judging»[107]. Ceci, Mesdames et Messieurs de la Cour, promet d'intéressants débats lorsque vous aurez rejeté les exceptions prétendument préliminaires des Etats-Unis d'Amérique.

12. Quelques très brèves remarques un peu plus générales pour conclure, Monsieur le président :

1) Comme je viens de le dire, les Etats-Unis se trompent d'affaire. Ils réfutent un cas fictif (plus exactement un cas qui n'est pas devant la Cour) inventé par eux, pour les besoins de leur cause

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[104] Voir MI, par. 9.18-9.21.

[105] Voir, par exemple, https://www.state.gov/keeping-the-world-safe-from-irans-nuclear-program/.

[106] *Ibid.*, p. 37, par. 41 (Grosh).

[107] *Ibid.*, par. 42.

qui aurait pour objet leur retrait du JCPOA. Ceci ne vaut pas seulement pour les matières fissiles : toute leur défense est largement orientée en ce sens. Aussi illicite que soit cette dénonciation, ce n'est pas l'objet de l'affaire que l'Iran vous a soumise.

2) *Toutes* ces mesures sont dirigées contre l'Iran, ses ressortissants et ses sociétés ; le fait qu'elles menacent et atteignent également les intérêts de personnes et de sociétés ayant la nationalité d'Etats tiers est sans importance en l'espèce et ne les rend pas moins contraires aux dispositions du traité protégeant les intérêts réciproques des parties et de leurs ressortissants. Elles sont d'ailleurs toutes qualifiées de «Iran Sanctions» dans les publications officielles américaines[108].

3) Et enfin, l'essentiel des éléments factuels ou prétendus tels avancés par les Etats-Unis à l'appui de leur thèse concernent *le fond de l'affaire* et devront être discutés *lors de la procédure au fond*.

13. Je vous remercie, Mesdames et Messieurs les juges pour votre écoute, et je vous prie, Monsieur le président, de bien vouloir donner la parole à l'agent de l'Iran, pour quelques propos conclusifs et la lecture des conclusions finales.

The PRESIDENT: I thank Professor Pellet and I shall now give the floor to the Agent of Iran, Mr. Hamidreza Oloumiyazdi. Sir, you have the floor.

Mr. OLOUMIYAZDI:

AGENT'S CONCLUDING SPEECH

1. Thank you, Mr. President. In the name of God, the compassionate, the merciful. Mr. President, Madam Vice-President, honourable Members of the Court, I shall now present the Court with Iran's concluding remarks and final submissions.

2. In a sense, I take the floor today with a degree of disappointment that the United States' Agent saw its closing speech as an opportunity to repeat the United States' baseless and political accusations against Iran whilst, at the same time, unsuccessfully attempting to conceal the real target of the US measures and its inhumane impact on the Iranian people. I must endeavour to set the record straight.

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[108] Voir home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/iran-sanctions.

3. The second round of pleadings of the United States was yet another last-ditch effort to change the subject-matter of this case. As if relentlessly hammering its erroneous message will somehow make it true. Yet, it is certainly not a prerogative of the Respondent to modify the subject-matter of the dispute.

4. Consistent with Iran's Application, Request for provisional measures and Memorial, this case is indeed about "***A***lleged violations of the 1955 Treaty of Amity". As further demonstrated by Iran's ***C***ounsel during the course of these hearings, Iran's claims of US breaches do "fall within the provisions"[109] of Articles IV (1), IV (2), V (1), VII (1), VIII (1), VIII (2), IX (2), IX (3) and X (1) of this international instrument. The inescapable conclusion is that the Court has jurisdiction to assess and adjudge these claims, pursuant to Article XXI (2) of this Treaty.

5. Iran has provided all necessary information and arguments relevant for this specific stage of the proceedings, both in its written submissions and oral pleadings. On the other "issues"[110] raised by the United States' Agent in his opening and concluding speeches, our "silence"[111] — as the United States calls it — is plainly appropriate. Iran sees these so-called issues as irrelevant to its claims because they were raised by the United States for purely prejudicial purposes, and, in any case, they do not go to the determination of preliminary objections. It is also rather ironic for the United States to criticize Iran for not discussing these allegations, when these would be matters for the merits; a stage where it is the Respondent that is unwilling for the Court to go.

6. There is, however, one "issue" I ought to address now. I am referring to the US Agent's assertion that the United States "have no desire to cause suffering for the Iranian people"[112]. These words, spoken in an effort to appease the Court, are simply not true. Through its policy of "maximum pressure", the United States has designed its sanctions régime to harm the Iranian people, in the hope that economic strangulation and humanitarian catastrophe will bring about the submissiveness it demands from my Government. Or, as expressed in substance by the

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[109] *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (I),* p. 810, para. 16.

[110] CR 2020/12, p. 40, para. 10 (String).

[111] CR 2020/12, p. 36, para. 40 (Grosh) and p. 40, para. 9 (String).

[112] CR 2020/12, p. 40, para. 10 (String).

US Administration: Iran must abide by the United States' demands if they want their people to eat[113] and avoid economic collapse[114].

7. The United States' actions speak louder than its words. Iran has demonstrated at length during the provisional measures phase and in its Memorial how the design and implementation of the US measures have targeted the everyday life of Iranians. This is not an unwanted nor unexpected consequence. Creating severe difficulties with importing foods, medicines or basic commodities and blocking efforts to pay for such imports out of Iran's assets abroad is the necessary consequence of US measures against Iran and the Iranian banking system. The deterioration in the living conditions for millions of Iranians caused by the plummeting of the value of the rial, rising inflation and the severe budget deficit is the necessary consequence of the closure of foreign markets for Iran's main export products. The impossibility of purchasing new aircraft or spare parts to properly maintain those in which countless Iranians are flying every day is the necessary consequence of the blocking of transactions with domestic airline companies and their listing as "SDN". These are all desired consequences of the US policy of maximum pressure. And these consequences, in breach of the Treaty of Amity, are the reasons for Iran's decision to bring this case to the Court.

8. Mr. President, I am near the end of my closing remarks and shall now only answer the closing observation of the US Agent regarding the United States' respect for international law in these proceedings[115]. Despite the words of its Agent, the United States' conduct in foreign relations has shown that it now only abides by its *own* rules — a selective and self-serving interpretation and application of international law. One could cite the United States' termination of the Treaty of Amity in response to the Court's indication of provisional measures in this very case, its non-compliance with those measures, its threat to impose sanctions on any nation that respects the United Nations Security Council resolution 2231, and, despite all logic, its most recent use of some of its provisions to dictate its brutal policy to the international community under the guise of

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[113] US Department of State, "Interview With Hadi Nili of BBC Persian", 7 Nov. 2018, available at www.state.gov/interview-with-hadi-nili-of-bbc-persian/, last consulted on 20 Sept. 2020.

[114] US Department of State, "Special Representative Brian Hook's Economic Speech at Council on Foreign Relations", 12 Dec. 2019, available at www.state.gov/special-representative-brian-hooks-economic-speech-at-council-on-foreign-relations/, last consulted on 20 Sep. 2020.

[115] CR 2020/12, p. 41, para. 15 (String).

maintaining peace and security. On another level, more directly related to the questions the Court will now have to address, I would like to underline its self-serving interpretation of various provisions of the Treaty of Amity and the US counsel's senseless interpretation of Article 79*bis* of the Rules of this Court. All of these are clear examples of the Respondent's unilateral approach to international instruments and obligations.

9. But Iran is confident that the Court will not be persuaded by this selective and fundamentally wrongful approach to the law of nations and, as the principal judicial organ of the United Nations, it will decide this case according to applicable rules of international law.

10. I shall now read out Iran's final submissions. The Islamic Republic of Iran respectfully requests that the Court:

(a) reject and dismiss the Preliminary Objections of the United States of America; and

(b) adjudge and declare:

(i) that the Court has jurisdiction over the entirety of the claims presented by Iran; and

(ii) that Iran's claims are admissible.

11. Mr. President, allow me to express Iran's gratitude to the Registrar and the different departments of the Court, who have successfully enabled these proceedings to be held despite these unprecedented challenges. We are also grateful to the interpreters and technical consultants for their hard and excellent work even under these difficult circumstances. And, of course, our most sincere gratitude to you, Mr. President, Madam Vice-President and to the honourable Members of the Court, for the attention paid to these pleadings. Thank you very much indeed again.

The PRESIDENT: I thank the Agent of Iran. The Court takes note of the final submissions of the Islamic Republic of Iran which you have just read out on behalf of your Government. This brings the hearing to an end. I would like to thank the Agents, counsel and advocates of the two Parties for their statements. In accordance with the usual practice, I shall request both Agents to remain at the Court's disposal to provide any additional information the Court may require. With this proviso, I declare closed the oral proceedings 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)* on the preliminary objections raised by the United States of America.

The Court will now retire for deliberation. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its judgment. Since the Court has no other business before it today, the sitting is closed.

The Court rose at 4.40 p.m.

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