

INTERNATIONAL COURT OF JUSTICE
The Alleged Violations of Treaty of Amity

Compiled by:
Abdul Moiz Intikhab
Areen Ahmed

Contents

1. Introduction to Court of Justice	3
2. Background	5
3. The 1955 Treaty of Amity, Economic Relations, and Consular Rights.....	6
4. Use of the treaty in several US-Iranian Conflicts.....	7
5. The 2018 Lawsuit.....	8
6. Proceedings.....	9
7. Conclusion.....	12

Introduction to The International Court of Justice:

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, its administrative organ. Its official languages are English and French.

The current Members include The Russian Federation, USA, Slovakia, Australia, Germany, France, Morocco, Brazil, Somalia, China, Uganda, India, China, Jamaica, Lebanon, and Japan.

Chambers & Committees:

The Court generally discharges its duties as a full Court (a quorum of nine judges, excluding judges *ad hoc*, being sufficient). But it may also form permanent or temporary chambers.

The Court has three types of the chamber:

- the Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required by Article 29 of the Statute to form annually with a view to the speedy despatch of business;
- any chamber, comprising at least three judges, that the Court may form pursuant to Article 26, paragraph 1, of the Statute to deal with certain categories of cases, such as labor or communications;
- any chamber that the Court may form pursuant to Article 26, paragraph 2, of the Statute to deal with a particular case, after formally consulting the parties regarding the number of its members - and informally regarding their name - who will then sit in all phases of the case until its final conclusion, even if in the meantime they cease to be Members of the Court.

With respect to the formation of a Chamber pursuant to Article 26, paragraph 1, of the Statute, it should be noted that in 1993 the Court created a Chamber for Environmental Matters, which was periodically reconstituted until 2006. However, in the Chamber's 13 years of existence, no State ever requested that a case be dealt with by it. The Court consequently decided in 2006 not to hold elections for a Bench for the said Chamber.

The provisions of the Rules concerning chambers of the Court are likely to be of interest to States that are required to submit a dispute to the Court, or have special reasons for doing so, but prefer, for reasons of urgency or other reasons, to deal with a smaller body than the full Court.

Despite the advantages that chambers can offer in certain circumstances, under the terms of the Statute their use remains exceptional. Their formation requires the consent of the parties. While,

to date, no case has been heard by either of the first two types of the chamber, by contrast, six cases have been dealt with by *ad hoc* chambers.

The three committees are Budgetary and Administrative Committee, Library, and lastly The rules Committee.

Court Proceedings:

The Court may entertain two types of cases: legal disputes between States submitted to it by them (contentious cases) and requests for advisory opinions on legal questions referred to it by United Nations organs and specialized agencies (advisory proceedings).

Contentious cases

Only States (States Members of the United Nations and other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions) may be parties to contentious cases.

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

- by entering into a special agreement to submit the dispute to the Court;
- by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a dispute of a given type or disagreement over the interpretation or application of the treaty, one of them may refer the dispute to the Court;
- through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. A number of these declarations, which must be deposited with the United Nations Secretary-General, contain reservations excluding certain categories of dispute.

Advisory proceedings

Advisory proceedings before the Court are only open to five organs of the United Nations and 16 specialized agencies of the United Nations family or affiliated organizations.

The United Nations General Assembly and Security Council may request advisory opinions on “any legal question”. Other United Nations organs and specialized agencies which have been authorized to seek advisory opinions can only do so with respect to “legal questions arising within the scope of their activities”.

Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (the Islamic Republic of Iran v. the United States of America):

Background:

Long before Iran's Islamic Revolution in 1979, Iran and the United States signed the Treaty of Amity which was meant to provide "a basis for friendly diplomatic exchanges and economic relations."

In 2018, U.S. President Donald Trump withdrew from the Joint Comprehensive Plan of Action (JCPOA) between the United States, European Union, Russia, China, and Iran to address Iran's nuclear programs. Under the JCPOA, some of the sanctions against Iran were lifted in exchange for Tehran accepting some limitations on its nuclear program. Following withdrawal from the JCPOA, the United States announced "unilateral plans" to re-impose sanctions against Iran. The Iranian government believed that the United States' decision on 8 May 2018, to re-impose nuclear sanctions on Iran was a violation of the United States' international obligations, "especially articles 4,7,8,9,10" of the JCPOA and the Treaty of Amity.

Consequently, Iran filed a lawsuit with the International Court of Justice on 16 July 2018. In response, the U.S. government announced its withdrawal from the Treaty of Amity with Iran, which requires "giving one year's written notice" according to the treaty itself.

1953 Iranian coup d'état:

The 1953 Iranian coup d'état, known in Iran as the 28 Mordad coup d'état, was the overthrow of the democratically elected Prime Minister Mohammad Mosaddegh.

Mosaddegh had sought to audit the documents of the Anglo-Iranian Oil Company (AIOC), a British corporation (now part of BP), in order to verify that AIOC was paying the contracted royalties to Iran and to limit the company's control over Iranian oil reserves. Upon the AIOC's refusal to cooperate with the Iranian government, the parliament (Majlis) voted to nationalize Iran's oil industry and to expel foreign corporate representatives from the country. After this vote, Britain instigated a worldwide boycott of Iranian oil to pressure Iran economically.

Judging Mosaddegh to be unreliable and fearing a Communist takeover in Iran, UK prime minister Winston Churchill and the Eisenhower administration decided in early 1953 to overthrow Iran's government, though the preceding Truman administration had opposed a coup, fearing the precedent that Central Intelligence Agency (CIA) involvement would set. British intelligence officials' conclusions and the UK government's solicitations were instrumental in initiating and planning the coup.

Following the coup in 1953, a government under General Fazlollah Zahedi was formed which allowed Mohammad Reza Pahlavi, the last Shah of Iran to rule more firmly as monarch. He relied heavily on United States support to hold on to power. According to the CIA's declassified documents and records, some of the most feared mobsters in Tehran were hired by the CIA to stage pro-Shah riots on 19 August. Other men paid by the CIA were brought into Tehran in buses and trucks and took over the streets of the city. Between 200 and 300 people were killed because of the conflict. Mosaddegh was arrested, tried, and convicted of treason by the Shah's military court.

After the coup, the Shah continued his rule as monarch for the next 26 years until he was overthrown in the Iranian Revolution in 1979.

In August 2013 the U.S. government formally acknowledged the U.S. role in the coup by releasing a bulk of previously classified government documents that show it was in charge of both the planning and the execution of the coup, including the bribing of Iranian politicians, security, and army high-ranking officials, as well as pro-coup propaganda. The CIA is quoted acknowledging

the coup was carried out "under CIA direction" and "as an act of U.S. foreign policy, conceived and approved at the highest levels of government".

The 1955 Treaty of Amity, Economic Relations, and Consular Rights:

The United States of America and Iran, desirous of emphasizing the friendly relations which have long prevailed between their peoples, of reaffirming the high principles in the regulation of human affairs to which they are committed, of encouraging mutually beneficial trade and investments and closer economic intercourse generally between their peoples, and of regulating consular relations, have resolved to conclude, on the basis of reciprocal equality of treatment, a Treaty of Amity, Economic Relations, and Consular Rights, and have appointed as their Plenipotentiaries: Selden Chapin (U.S.) and Mostafa Samiy (Iran).

The treaty is signed in Tehran on August 15, 1955, received the consent of the U.S. Senate on July 11, 1956, and entered into force on 16 June 1957.^[2] The treaty is registered by the United States to the United Nations on 20 December 1957. It offered to be the jurisdictional basis for various international legal disputes between the United States and Iran.

Articles constituting the Treaty:

Article 1 simply states: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran." Article 2 provides for the protection and freedom of travel for citizens of either nation when visiting the other.

Article 3 provides for the recognition and access to the court systems for corporations within either territory. Article 4 establishes the protection of property for nationals and corporations of either nation. Article 5 establishes that nationals and corporations may purchase or lease property within either territory. Article 6 establishes rules for taxation, including that nationals and corporations shall pay taxes, and that a scheme will be established to avoid double taxation.

Article 7 states that neither nation will apply monetary restrictions on each other except as needed "to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people" or as approved by the International Monetary Fund. Article 8 establishes rules for the import and export of products between both nations. Article 9 continues this with further rules for the import and export of products between the nations. Article 10 establishes freedom of commerce and navigation between both nations. Article 11 states that corporations acting within either territory shall not be discriminated against during government contracts based on their country of origin.

Articles 12, 13, and 14 allow for the exchange of diplomats between the nations and the fair treatment of those diplomats. Article 15 allows each government to purchase or lease land within the other's borders as needed for any purpose other than the military. Articles 16 and 17 outline that diplomats shall not be subjected to taxation unless they are or have been a citizen of both nations. Article 18 outlines diplomatic immunity. Article 19 discusses the rights of nationals to visit their consulate. Article 20 outlines areas where the treaty does not apply.

Article 21 states that any disputes shall be subject to the rulings of the International Court of Justice. Article 22 names the previous treaties that this treaty is meant to replace. Article 23 gives a timeline for ratification of the treaty and allows for its cancellation by either party after 10 years "by giving one year's written notice".

Use of the treaty in several US-Iranian Conflicts:

Iran Hostage Crisis:

United States diplomats and citizens were held hostage after a group of militarized Iranian college students in 1979. The group took over the U.S. Embassy in Tehran and seized hostages. A diplomatic standoff ensued. The hostages were held for 444 days, being released on January 20, 1981. It was described as the crisis as an "entanglement" of "vengeance and mutual incomprehension" U.S. President Jimmy Carter called the hostage-taking an act of "blackmail" and the hostages "victims of terrorism and anarchy". In Iran, it was widely seen as an act against the U.S. and its influence in Iran, including its perceived attempts to undermine the Iranian Revolution. The Americans saw the hostage-taking as an egregious violation of the principles of international law, such as the Vienna Convention, which granted diplomats immunity from arrest and made diplomatic compounds inviolable.

In Iran, the crisis strengthened the prestige of Ayatollah Ruhollah Khomeini and the political power of theocrats who opposed any normalization of relations with the West. The United States imposed sanctions on Iran that were in violation of Article 1 of the treaty, but Iran did not invoke the treaty. The United States would eventually invoke the treaty stating that Iran violated Article 2, Clause 4 of the treaty, which provides for the protection of citizens of either country. The International Court of Justice (ICJ) ruled in the favor of the United States.

Iran Air Flight 655:

The jet was hit while flying over Iran's territorial waters in the Persian Gulf, along the flight's usual route, shortly after departing Bandar Abbas International Airport, the flight's stopover location. The incident occurred during the Iran–Iraq War, which had been continuing for nearly eight years. It was shot down on 3 July 1988 by an SM-2MR surface-to-air missile fired from USS *Vincennes*, a guided-missile cruiser of the United States Navy. According to the U.S., the *Vincennes* crew had incorrectly identified the Airbus as an attacking F-14 Tomcat, a U.S.-made jet fighter that had been part of the Iranian Air Force inventory since the 1970s as an act of self-defense. According to Iran, the cruiser negligently shot down the aircraft, which was transmitting IFF squawks in Mode III, a signal that identified it as a civilian aircraft, and not Mode II as used by Iranian military aircraft.^{[11][12]} The event generated a great deal of criticism of the United States. Iran sued the United States in the ICJ. In 1996, the governments of the U.S. and Iran reached a settlement at the ICJ which included the statement "... the United States recognized the aerial incident of 3 July 1988 as a terrible human tragedy and expressed deep regret over the loss of lives caused by the incident ..." As part of the settlement, even though the U.S. government did not admit legal liability or formally apologize to Iran, it agreed to pay US\$61.8 million on an *ex gratia* basis in compensation to the families of the Iranian victims.

Operation Nimble Chamber:

It was an attack on two Iranian oil platforms in the Persian Gulf by United States Navy forces. The attack was a response to Iran's missile attack three days earlier on MV *Sea Isle City*. The action occurred during Operation Earnest Will, the effort to protect Kuwaiti shipping amid the Iran–Iraq War.

Iran subsequently filed a lawsuit against the United States for reparations at the International Court of Justice. The Court ruled, by 14 votes to two, that the retaliatory attacks by the U.S. Navy against certain Iranian oil platforms in the Persian Gulf in 1987 and 1988 constituted an unlawful use of force but did not violate the 1955 Treaty of Amity.

Joint Comprehensive Plan of Action:

The Joint Comprehensive Plan of Action (JCPOA) is a detailed, 159-page agreement with five annexes reached by Iran and the P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States) on July 14, 2015. The nuclear deal was endorsed by UN Security Council Resolution 2231, adopted on July 20, 2015. Iran's compliance with the nuclear-related provisions of the JCPOA is verified by the International Atomic Energy Agency (IAEA) according to certain requirements set forth in the agreement. It can be called the Iran nuclear deal.

Under its terms, Iran agreed to dismantle much of its nuclear program and open its facilities to more extensive international inspections in exchange for billions of dollars worth of sanctions relief. Proponents of the deal said that it would help prevent a revival of Iran's nuclear weapons program and thereby reduce the prospects for conflict between Iran and its regional rivals, including Israel and Saudi Arabia.

Many of the JCPOA's restrictions on Iran's nuclear program have expiration dates. For example, after ten years (from January 2016), centrifuge restrictions will be lifted, and after fifteen years, so too will limit the amount of low-enriched uranium Iran can possess. Some of the deal's opponents faulted these so-called sunset provisions, saying they would only delay Iran building a bomb while sanctions relief would allow it to underwrite terrorism in the region.

Iran agreed not to produce either the highly enriched uranium or the plutonium that could be used in a nuclear weapon. It also took steps to ensure that its Fordow, Natanz, and Arak facilities pursued only civilian work, including medical and industrial research. The accord limits the numbers and types of centrifuges Iran can operate, the level of its enrichment, as well as the size of its stockpile of enriched uranium.

A body known as the Joint Commission, which includes representatives of all the negotiating parties, monitors implementation of the agreement and resolves disputes that may arise. A majority vote by its members can gain IAEA inspectors access to suspicious, undeclared sites. The body also oversees the transfer of nuclear-related or dual-use materials.

However, Iran started exceeding agreed-upon limits to its stockpile of low-enriched uranium in 2019 and began enriching uranium to higher concentrations (though still far short of the purity required for weapons). It also began developing new centrifuges to accelerate uranium enrichment; resuming heavy water production at its Arak facility; and enriching uranium at Fordow, which rendered the isotopes produced there unusable for medical purposes.

The Lawsuit of 2018:

In 2018, U.S. President Donald Trump withdrew from the Joint Comprehensive Plan of Action (JCPOA). Following withdrawal from the JCPOA, the United States announced "unilateral plans" to re-impose sanctions against Iran. The Iranian government believed that the United States' decision on 8 May 2018, to re-impose nuclear sanctions on Iran was a violation of the United States' international obligations, "especially articles 4, 7, 8, 9, 10" of the JCPOA and the Treaty of Amity. Consequently, Iran filed a lawsuit with the International Court of Justice on 16 July 2018. In response, the U.S. government announced its withdrawal from the Treaty of Amity with Iran, which requires "giving one year's written notice" according to the treaty itself. The act was criticized by Mohammad Javad Zarif.

The dispute between Iran and the USA concerns the re-imposition and announced aggravation by the USA of a comprehensive set of so-called “sanctions” and restrictive measures targeting, directly or indirectly, Iran, Iranian companies, and/or Iranian nationals, resulting from the USA’s decision of 8 May 2018 (“the 8 May sanctions”). The present Application exclusively concerns the internationally wrongful acts of the USA resulting from its decision to re-impose in full effect and enforce the 8 May sanctions that the USA previously decided to lift in connection with the Joint Comprehensive Plan of Action (the “JCPOA”), and the announcement that further sanctions will be imposed.

Proceedings:

The United Nations’ top court issued an interim order in October 2018, to the United States to lift sanctions linked to humanitarian goods and civil aviation imposed against Iran – a move welcomed by Tehran.

“On humanitarian grounds, the US must remove by means of its choosing any impediment to the free exportation to Iran of goods involving humanitarian concerns.”

Iran’s request is an attempt to misuse the court. Iran has invoked a little-known 1955 Treaty of Amity that was signed before Iran’s 1979 Islamic Revolution, which caused a sharp deterioration in bilateral ties that has endured until today.

The US move has been opposed by other major powers, the United Kingdom, Russia, France, China, Germany, and the European Union, which helped negotiate the deal.

Iran says the US sanctions, which have prompted many foreign companies to stop doing business with it and are undermining its already weak economy, violate the terms of the 1955 treaty.

According to Luciano Zaccara, a researcher specializing in Iranian politics at Qatar University, the ICJ ruling is “great news” for the nuclear deal.

Iran’s Memorial:

On May 24, 2019, Iran filed its Memorial. In that pleading, which stretched across almost 250 pages, barely ten sentences were devoted to the question of the Court’s jurisdiction, the issue being dealt with largely by way of bare assertion of the treaty. In this Memorial, Iran describes the initial impacts of the U.S. measures by reference to witness statements from Iranian officials and companies, correspondence from foreign suppliers terminating contracts or refusing to cooperate with Iranian entities as a result of the re-imposition of measures, as well as market reports by independent organizations indicating the impact of measures on Iran’s oil production and market shares.

Iran's case is straightforward: the deliberate infliction of harm upon Iran, its nationals and companies by the USA through, and in implementation of, the 8 May Decision is subject to the specific, legally-binding obligations undertaken by the USA in the Treaty of Amity; and those obligations have been, and are being, violated by the USA by the measures. Iran maintains its long-standing position that the imposition and enforcement of all unilateral sanctions by the USA against Iran over the years have been and continues to be, unlawful under international law. Iran has, through the resilience of its people, endured the hardship and survived those sanctions. But it has decided that it is necessary to take this action in respect of the measures announced in the 8 May Decision, with which this case is uniquely concerned.

USA's Preliminary Objections:

The United States advances, in accordance with Article 79(1) of the Rules of Court, two preliminary objections to jurisdiction, one preliminary objection to admissibility, and two preliminary objections warranting a decision before proceedings on the merits. Each of the objections is exclusively preliminary in character and properly amenable to decision at a preliminary stage of proceedings.

With the exception of one jurisdictional objection, each of the U.S. objections addresses Iran's case as a whole and would, if upheld, dispose of the entirety of Iran's case. The remaining objection, relating to the fact that Iran challenges measures that concern trade and transactions between Iran and third countries, covers the vast array of the measures of which Iran complains, but is not advanced with respect to one discrete category. It is, though, equally amenable to a finding by the Court at a preliminary stage.

The focus of the present Preliminary Objections is to persuade the Court that the *prima facie* analysis that may have been appropriate at the provisional measures stage is not appropriate when the Court comes to consider its jurisdiction, in this case, more fully, and such a fuller assessment leads to a different result.

The US objected to the Court's jurisdiction on four grounds, outlined below.

First, the US argued that the dispute "pertain[ed] to... decisions relating to the JCPOA" rather than the Treaty of Amity, which was outside the Court's jurisdiction *ratione materiae*. The US argued that the JCPOA was a "multilateral political arrangement" that did "not create legally binding obligations" or give the Court jurisdiction to entertain disputes between its participants. The Court held that, even though the dispute had arisen in connection with the US decision to withdraw from the JCPOA, this did "not itself preclude the dispute from relating to the interpretation or application of the Treaty of Amity". Nor was it relevant that Iran's claims, if ultimately upheld, would result in restoring the situation that had previously existed (when the US participated in the JCPOA). The Court said it was not entitled to "infer the subject-matter of a dispute from the political

context” in which proceedings had been instituted; instead, the Court had to base itself “on what the applicant has requested of it”.

Second, the US argued that most of the impugned measures were directed at restricting trade or transactions between Iran and third countries, bringing them outside the Treaty of Amity’s scope (which regulated bilateral commercial activity). On the other hand, Iran argued that the US sanctions were “specifically targeted at Iran and Iranian nationals and companies” rather than third States. The Court found that it could only determine this through a detailed review of whether the complained-of measures affected the US’ obligations under the Treaty of Amity. Because this was “properly a matter for the merits”, the Court dismissed the objection.

Third, the US argued that the proceedings were inadmissible as an abuse of process. It argued that Iran was seeking an “illegitimate advantage” by requesting relief from the reinstated sanctions from the ICJ, rather than via the political mechanisms in the JCPOA itself. Iran denied that “exceptional circumstances” existed to justify abuse of process, arguing that it was “normal that a dispute brought under a treaty has political implications” and that “asserting its rights under a treaty in force between the Parties cannot be illegitimate”. The Court found that no “exceptional circumstances” existed to render Iran’s claims inadmissible and underscored that the Court could not concern itself with Iran’s political motivations.

Fourth, and finally, the US argued that the exceptions of the Treaty of Amity—namely, measures “relating to fissionable materials” or those necessary to protect a Party’s “essential security interests”—barred Iran’s claims. The Court found that these arguments had to be presented at the merits, citing its identical approach to the same provision in *Oil Platforms*.

As a result, the Court found all of Iran’s claims admissible and within its jurisdiction.

Judgment on the preliminary objections:

On 3 February 2021, The Court rejected two of the US’ preliminary objections outright, while leaving the other two to be reassessed at the merits stage. The Court 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;

Rejects the preliminary objection to its jurisdiction raised by the United States of America relating to the measures concerning trade or transactions between the Islamic Republic of Iran (or Iranian nationals and companies) and third countries (or their nationals and companies);

By fifteen votes to one, Rejects the preliminary objection to the admissibility of the Application raised by the United States of America;

Finds, consequently, that it has jurisdiction, on the basis of Article XXI, paragraph 2, of the Treaty of Amity, Economic Relations, and Consular Rights of 1955, to entertain the Application filed by the Islamic Republic of Iran on 16 July 2018, and that the said Application is admissible.

Conclusion:

It seems that two considerations made the Court take this approach in this case. First, determining the reverberating and actual effects of the secondary sanctions in categories i to iii on the rights invoked by Iran necessarily requires a complex analysis of factual issues which go beyond legal matters. Second, and more importantly, there was no doubt for the Court that the objective of the sanctions imposed on third parties is to ultimately harm Iran's economy. It was in light of these considerations that the Court held that it is a question of merits to determine whether the provisions of the Treaty of Amity also provide a safeguard against the overall effects of the sanctions.

The provisions invoked by Iran under the Treaty of Amity, *inter alia*, contain different standards of treatment. In light of this, apart from the unclear situation surrounding the revival of the JCPOA by President Biden, the Court, by rejecting the US objections, will have a great opportunity to examine the legality of the unilateral coercive measures on the basis of the minimum standards of treatment with aliens and other norms of protection as enshrined in the customary international law.