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The International Court of Justice and its Role in Relations Between Iran and the United States

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Abstract

This article explores the role of the International Court of Justice (hereafter ICJ) in the relations between Iran and the United States (hereafter U.S.), with reference to the last disputes between the two countries over the 1955 Treaty of Amity, Economic Relations and Consular Rights. The article argues that the ICJ has both jurisdiction (*Ratione Materiae*) and substantive competence (*Merits*) to adjudicate the case, based on the trans-analytical method. The article draws on the past judgments of the ICJ in similar cases between Iran and the U.S., such as the Case Concerning US Diplomatic and Consular Staff in Tehran, the Case Concerning the Aerial Incident, and the Case Concerning Oil Platforms, to support its findings. The article also discusses the implications of the U.S. decision to terminate the Treaty of Amity and to challenge the ICJ's jurisdiction. The article predicts that the ICJ will establish its judgment based on Article 10 of the Treaty of Amity, which affirms the principle of free trade, and conclude that the U.S. sanctions violate the Treaty of Amity.

Keywords: Treaty of Amity Economic Relations and Consular Rights of 1955, International Court of Justice (ICJ), Certain Iranian Assets Case, Joint Comprehensive Plan of Action (JCPOA), Legal disputes between Iran and the United States..

A Brief Background

The Treaty of Amity was signed between Iran and the United States on August 15, 1955, and after signing and exchanging copies in Tehran, it entered into force on May 16, 1957. The treaty consists of an introduction and 23 articles. The goal of making such a treaty was to solidify amicable relations between the two nations and facilitate trade between them.

Treaties of amity are live tools, meaning particular and contractual treaties like treaties of amity and cooperation turn into customary laws. Such treaties are therefore counted among the customary law, which is one of the sources of international law. Therefore, the violation of such treaties has international consequences for the offending country.

Apart from being live tools in international law, those treaties are highly valid in domestic law as well. According to Article 6 of the US Constitution, "... and all treaties made or to be made under the authority of the United States shall be the supreme law of the land. Judges in every state shall be bound, notwithstanding anything contained in the constitution or laws of any state" (Ziai Bigdeli, 2013, pc 82). There are similar laws in Iran with respect to such international treaties. According to principles 77 and 125 of the Constitution of Iran and Article 9 of the Civil Code, "the terms of the agreements concluded between the Iranian government and other foreign governments based on the constitution are considered law." (ibid, 84). Therefore, formal treaties of this kind, both in international law and in domestic law, have a very high validity, and the violation of their provisions entails serious international responsibilities for the offending state(s).

According to the binding note provided in Article 21 (2) of the Treaty of Amity, in the event of any dispute between the parties regarding the interpretation or implementation of the treaty, the ICJ will have jurisdiction over the case, provided that those disputes cannot be solved and settled by diplomacy. According to the above article, since the signing of the treaty, five cases have been submitted to the ICJ, four of which are related to the Islamic Republic of Iran (hereafter Iran) and one of which is related to the United States. For registration at the ICJ, these five cases are:

- 1- The United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran, 1979)
- 2- Aerial Incident of July 3, 1988 (Iran v. United States of America, 1989)
- 3- Oil Platforms (Iran v. United States of America, 1992)

- 4- Certain Iranian Assets (Iran v. United States of America, 2016)
- 5- Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. United States of America, 2018)

The present article focuses on the last of the above cases referred to the ICJ, namely the alleged violation by the United States of the 1955 Treaty of Amity, Economic Relations, and Consular Rights.

Hypothesis and Research Methodology

The purpose of this article is to review and analyze the jurisdiction of the ICJ, the roots of the dispute, and the actions and arguments of the parties. The hypothesis is that US violations of international laws and the treaty of amity, which are considered live tools^λ and among the sources of international law according to Article 38 of the ICJ statute,^ν are obvious. Also, the jurisdiction of the ICJ in hearing the above case is obvious based on previous cases and trends, and eventually the United States will be required to compensate Iran for its unlawful actions.

It should be noted that studying and helping to resolve existing conflicts and tensions may be of particular importance. It should also be noted that the ICJ verdict may have a very positive and remarkable influence on the living standards and economic conditions of the Iranian people, and it may even remove serious obstacles imposed regarding the provision of sanitary supplies, food, medicine, and the maintenance of the country's aging aircraft fleet. From this point of view, the addressees of this article are Iranian legal experts and their international colleagues.

This article has a trans-analytical approach to research. The information used in the article is obtained from notes prepared from academic books and articles, as well as other first-hand sources such as ICJ reports and judgments of previous and similar cases.

^λ Judge Cancado named the treaty of amity as a live tool in his separate opinion about the verdict on security measures on October 3, 2018 (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955, 2018, P 9).

^νThe Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law (Statute of the International Court of Justice, 1946).

1. Reviewing Iran's Previous Cases at the ICJ Based on the 1995 Treaty of Amity

Since the ICJ uses jurisprudence in some of its judgments, which is quite common in common law systems,¹ it becomes very important to review previous judgments in similar cases. Now that we are relatively familiar with the Treaty of Amity of 1955, it is necessary to address the ambiguities in this treaty in this article and clarify that this treaty remains in force until October 3, 2018. We shall then proceed to review the cases handled by the ICJ in the past that were based on the 1955 Treaty of Amity and in which Iran was either a plaintiff or defendant, to get a deeper understanding, look at the last item of this article, and find a precise legal answer to the discussion questions.

All cases handled by the ICJ based on the 1955 Treaty of Amity happened after the Islamic Revolution in Iran. Since, according to Articles 62 and 63 of the 1969 Convention on the Law of Treaties,² the occurrence of fundamental changes in the conditions of signing a

¹ In common law systems, judicial records constitute one of the main sources of law. In such systems, a judge has to use the previous judicial decisions in similar situations. The use of case law as a trend has not been covered in the statute of the International Court of Justice, and it has only been used in some cases (Ramezani Ghavam Abadi, 2011, P 97).

² Article 62: Fundamental change of circumstances: (1) A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. 2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty: (a) if the treaty establishes a boundary; or (b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty. 3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty. Article 63: Severance of diplomatic or consular relations: The severance of diplomatic or consular relations between parties to a treaty does not affect the legal relations established between them by the treaty except insofar as the existence of diplomatic or consular relations is indispensable for the application of the treaty (Convention on the Law of the Treaties, 1969).

treaty, as well as fundamental changes in the objectives of a treaty, lead to the termination of that treaty, the question that remains is: how did this treaty not be terminated after the Islamic Revolution in Iran?

After the Islamic Revolution of 1979 in Iran, relations between Iran and the United States changed fundamentally. After the hostage crisis at the US Embassy in Tehran, the two nations also severed their consular relations, but considering the approach of the two governments after the Iranian revolution, it is quite clear that there was never a strong will on the part of either side to terminate that treaty. Also, based on international law, the Convention of the Law of Treaties, and the estoppel rule,¹ this type of behavior is interpreted as the withdrawal of both parties from using the fundamental changes of conditions for such a purpose (termination of the treaty until October 3, 2018).

Also, the severance of diplomatic relations based on Article 63 of the Convention on the Law of Treaties does not harm the friendship treaty because its purpose is to facilitate economic relations; thus, one cannot use this as a basis for the termination of the treaty. Moreover, it must be noted that the 1988-۱۹۸۹ □□□□ □□ the US State Department has included the Treaty of Amity in its list of valid US treaties, and this date is well beyond the Iranian revolution (Rostami Amani, 2002, p. 191).

According to Article 23 (2) of the Treaty of Amity,² a specific date has been set for the expiration of the treaty. 55 years after the date specifically mentioned in this treaty, why do Iran and the United States continue to use it as a basis for their claims? Regarding the terms of termination of the treaty, such as expiry, it must be said that according to Article 23 it was supposed to remain valid for 10 years after its signing, and after that, each of the parties could use paragraph 3 of this last article to terminate the agreement by giving a written notice of one year to the other party.

¹ Estoppel Rule: when a country has accepted something by its behavior and displayed implicit satisfaction through its actions.

² Article 23: 1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Tehran as soon as possible. 2. The present Treaty shall enter into force one month after the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein. 3. Either High Contracting Party may, by giving one year's written notice to the other High Contracting Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter (Treaty of Amity, Economic Relations and Consular Rights, 1955).

It is obvious that before Iran's recent case was filed in the ICJ, none of the parties took any action to terminate the treaty according to Article 23 (3). After the Provisional Measures of the ICJ, it was on October 3, 2018, that the US Secretary of State spoke about his country's intention to withdraw from the Treaty of Amity and then officially withdrew from it. Since the basis for ICJ's handling of the case is the date on which the petition was filed, and as Iran's petition preceded the date of the US's withdrawal from the treaty (after the Provisional Measures), that withdrawal shall have no effect on ICJ's competence and right to hear the case.

Another important point is the common opinion and approach of the ICJ in previous cases, what approach it had to the above issues, etc. We shall therefore review those cases to establish the ICJ's jurisdiction and competence:

The US Embassy Crisis Case Against Iran

US filed a lawsuit against Iran on November 29, 1979, based on the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1955 Treaty of Amity, the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomats, and the UN Charter (United States Diplomatic and Consular Staff in Tehran, 1979, p. 13).^۱

After the hostage taking of the American embassy staff in Tehran, consular and diplomatic relations between the parties were practically cut off, and Iran was faced with a series of sanctions. In this way, it was possible to sever the relations between the two nations, and this would have provided the conditions for the cancellation of the Treaty of Amity, but the parties did not do so because they did not want to cancel the treaty, so the treaty

^۱Mike Pompeo, 70th US Secretary of State, March 13, 2018 to January 2021.

^۲ Articles 27, 31, 33, 34, 36, 40 of 1961 Vienna Convention on Diplomatic Relations,
Articles 22, 24, 27, 29, 31, 37 and 47 of 1963 Vienna Convention on Consular Relations,
Articles (4)2, 8, 18, 19 of 1955 Treaty of Amity, Economic Relations and Consular Rights between Iran and USA effective as of June 16, 1957,
Articles 4 and 7 of 1973 Vienna Convention on Prevention and Punishment of Crimes Against Internationally-Protected Persons Including Diplomatic Agents, Articles 3(2), 4(2) and 33 of UN Charter.

remained.

The Court's opinion regarding the termination of diplomatic relations and the validity of the friendship treaty was since despite the termination of consular relations and the problems that have arisen during the full implementation of the agreement, the provisions of this agreement are still valid in the relations between the two countries; therefore, the agreement has legal validity. (United States Diplomatic and Consular Staff in Tehran, 1980, p.28). This was the first time the treaty of amity was used as a legal basis, and the ICJ gave itself jurisdiction to hear the case over the existing disputes.

Pursuant to Article 41 of the Statute,¹⁾ as soon as the petition was filed, the United States requested the issuance of provisional measures due to the urgency of the case, and only 16 days later, on December 15, 1979, the Provisional Measures were issued. That order consisted of two sections:

A)

- 1- The US Embassy premises be delivered to the government protecting the US interests in Iran (i.e., Switzerland),
- 2- All US citizens and diplomatic staff held hostage in Iran are protected by the Iranian government and are immediately released and allowed to leave Iran.
- 3- The laws governing diplomatic and consular relations are guaranteed by Iran, and US citizens and diplomatic employees enjoy the corresponding protections and immunities.

B)

- 1- Iran and the US refrain from any action that would further complicate the situation (United States Diplomatic and Consular Staff in Tehran, 1979, p.18).

The case followed its course up to the issuance of its final verdict on May 24, 1980. The ICJ assumed jurisdiction based on

¹⁾ Article 41: 1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. 2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 2 (4) and Article 21 (2) of the Treaty of Amity¹ and the fact that all of the US's efforts to negotiate with Iran had failed; and later it sentenced Iran based on Article 2 (4) of the Treaty of Amity (and the 1963 and 1961 Vienna Conventions) to indemnify the United States (United States Diplomatic and Consular Staff in Tehran, 1980, p. 45).

Finally, on January 19, 1981, Iran and the United States reached an agreement in Algiers regarding the payment of compensation by Iran and the release of the hostages, which became known as the Algiers Agreement. On May 12, 1981, the case was closed with statements of the parties and was excluded from the ICJ's statistics (United States Diplomatic and Consular Staff in Tehran, 1981, p. 5)².

The important point was the complete disregard of the United States for provisional measures. On April 25, 1980, the United States sent military forces to Iran to free the hostages, an operation that later became known as the Tabas incident. Are the rulings of the ICJ without enforcement? And can the parties to disputes refrain from the terms of such orders? By examining the opposing opinions of two judges in this case, the answer is negative:

1- Judge Morozov argues that despite Iran's complaint against the United States for violating the Provisional Measures and the country's military invasion of Iranian territory, there were enough reasons for the court to consider the case, and the court should have considered it because the court had clearly prohibited both parties from taking actions that would further complicate the situation. Thus, a government that freely assumes some obligations at the international level shall be liable to

¹ Article 2 (4): Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party. When any such national is in custody, he shall in every respect receive reasonable and humane treatment; and, on his demand, the diplomatic or consular representative of his country shall without unnecessary delay be notified and accorded full opportunity to safeguard his interests. He shall be promptly informed of the accusations against him, allowed all facilities reasonably necessary to his defense and given a prompt and impartial disposition of his case. Article 21 (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.

² Withdraw of Proceedings: According to Article 89 (1) of the ICJ internal codes, withdrawal of proceedings causes the case to be closed and the petition to be ruled out of the ICJ agenda (Rules of the Court, 1978).

compensate any damage in case of breaching those obligations (Dissenting opinion of Judge Morozov, 1980, p. 52). Judge Morozov also points to other US actions such as sanctions, blocking Iranian assets, etc., which he considers to be against the Treaty of Amity.

2- With a dissenting opinion, Judge Tarazi points out the actions taken before and after the filing of the lawsuit, which affected the case but were ignored by the court in favor of imposing responsibility on Iran. One of these sanctions measures is the blocking of Iran's assets in the United States, as well as the military invasion of Iran, which makes the United States responsible for Iran. Of course, due to Iran's failure to submit a petition, this issue was not addressed (Dissenting opinion of Judge Tarazi, 1980, p. 64).

According to the statements of these two judges, two points are obvious. First, after a case reaches its end and its final verdict is issued, the party or parties breaching the terms of court orders should be held responsible for damages inflicted on the other party, and the orders issued by the court are enforceable and cannot be aerial. Second, as noted earlier, the ICJ considered itself competent and assumed jurisdiction to hear the case according to the 1955 Treaty of Amity.

The Case of Iran Against the United States for the Downing of the Iranian Passenger Plane

On July 3, 1988, two USS missiles were fired from the USS Vincennes in the Persian Gulf towards the Iranian passenger plane with flight number 655, which was heading towards Dubai, and while shooting down the plane, it killed all 290 passengers and crew. Once its efforts failed at ICAO,¹ Iran took its case to the ICJ

¹ International Civil Aviation Organization is a specialized UN institution formed on December 7, 1944 after the signing of the Chicago convention. Iran joined the Chicago convention, and thus ICAO, in 1948. Iran's lawsuit was submitted to ICAO on March 17, 1989.

on May 17, 1989, based on articles 36 and 38 of the ICJ statute¹ and the disputes arising from the interpretation and execution of the 1944 Convention on International Civil Aviation, the 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, and the 1955 Treaty of Amity.

Finally, with the parties' agreement on the case and reconciliation² on February 22, 1996, the court closed the case, citing Article 48 of the statute and Article 88 of its statute³ for amicable settlement of the dispute (Aerial Incident, 1989, P 4).

Although the articles used by the ICJ and Article 21 (2) of the 1955 Treaty of Amity on dispute settlement state that, "any dispute arising from interpretation or execution of the treaty that cannot be settled by diplomacy shall be referred to the ICJ" for the purpose of the case to be presented to an end before ICJ, this must be said in view of the fact that shooting down a passenger aircraft has nothing to do with friendship and amity and is in blatant contradiction to the spirit of the treaty, and since there was no chance of settling the issue through diplomatic channels due to the closure of embassies and the termination of diplomatic relations following the seizing of US Embassy in Tehran, and also given the precedent-setting approach of the International Court of Justice in the hostage-taking

¹ Article 36-1: The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

Article 38: 1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. 2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

² US accepted to pay USD 55 million to families of the victims and USD 40 million for the aircraft to the Iranian government (Black Box of Airbus Shooting, 2017).

³ Article 48 of Statute: The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 88 of Rules of Court: If at any time before the final judgment on the merits has been delivered the parties, either jointly or separately, notify the Court in writing that they have agreed to discontinue the proceedings, the Court shall make an order recording the discontinuance and directing that the case be removed from the list.

crisis case, if the parties had not consent, the ICJ would have reconsidered its decision on jurisdiction to hear the case and would even entered the substantive phase.

The Case of Iran Against the United States for the Destruction of Oil Platforms

On October 19, 1987, the United States attacked the oil facilities of "Rashhadat" and "Resalat" with four destroyers and F-14 fighters due to the Iranian silkworm missiles hitting the oil tanker US Isle City.¹ Iran denied the attack on the oil tanker and said that the missiles were fired by Iraq. The second attack occurred on April 18, 1988. The targets were the "Nas " and "Salman" oil platforms, which were attacked by three ships of the US Navy. The platforms were destroyed by naval cannons and planted with explosives. The pretext of this attack was the claims that Iran planted mines in the international waterways inside the Persian Gulf, because of which the USS Samuel Roberts collided with a mine and several of its employees were killed or injured. Iran rejected the allegations and filed a petition at the ICJ on November 2, 1992, based on articles 4 and 10 of the 1955 Treaty of Amity.² The ICJ rejected the defense provided by the US on December 12, 1996, based on Article 21 (2) and Article 10 (1), considering itself competent and with full jurisdiction over the case, and passed its final verdict on November 6, 2003 (Oil Platforms, 1992).

The Court's opinion regarding Iran's understanding of Article 10 and freedom of trade is as follows: "Trade in this article has a general meaning and includes not only maritime trade but also unlimited trade without territorial restrictions. Also, commerce does not only mean selling and buying but also includes all previous operations required to prepare commodities. The court also pointed out that commerce did not mean only buying and selling but included a set of deals for import and export, exchange, purchase or sales, transportation, and international financial operations; and it did not just mean commerce but the freedom of commerce, and thus any action that undermines the freedom of commerce is forbidden (Rostami Amani, 2002, p. 199)."

It also implicitly stated that: "If in its final demand Iran wished

¹A Kuwaiti vessel with a US flag.

²Article 10 (1): Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.

to question the legitimacy of the executive order of the US President (Ronald Reagan)¹ imposing sanctions on the purchase of Iranian oil and asked for a ruling that it was in contradiction of Article 10 of the Treaty of Amity, the court would then approach the US military attacks against the oil platforms from another perspective (Mirfakhraei & Piri, 2016, p. 121).”

The court, however, did not find the US attacks on Iran’s oil platforms as a violation of the 1955 Treaty of Amity and freedom of commerce. This was because during the first attack, the platforms were under maintenance and hence not operational, and there was no business going on at that time. And for the second strike, the court argued that since the United States imposed sanctions on Iran's oil purchases, there has been essentially no business that Iran can claim to have violated.

The Case of Iran’s Frozen Assets in the United States

On June 14, 2016, Iran presented a case against the United States based on the 1955 Treaty of Amity for the freezing of its assets and sanctions imposed on its central bank to the ICJ.² Iran based its claims on articles 3 (1) (2), 4 (1) (2), 5 (1), 7 (1), 10 (1), and 11 (4) of the 1955 Treaty of Amity. The United States objected to the case, raising two objections to the admissibility of that case and three objections to the jurisdiction of the court to hear these cases, which will now be discussed (Certain Iranian Assets, 2016, pp. 13-14).

1- Objection to the Acceptance of the Claim (Admissibility)

A) The United States argues that Iran has unclean hands, and based on this doctrine of international law, since Iran supports international terrorists and conducts destabilizing operations contrary to the non-proliferation of nuclear weapons, including the manufacturing and testing of ballistic missiles and arms trafficking, as well as the violation of anti-terrorism obligations, it is not appropriate to present such claims and cases in the ICJ.

B) From America's point of view, Iran seeks to draw the attention of the ICJ to its claim to move the case towards its goals of continuing to support terrorism, and this is a violation of rights that ultimately leads to the abuse of legal procedures. Iran's response to US claims is that the United States accusations of

¹Executive Order No. 12613

²Based on Article 36 (1) of the Statute of International Court of Justice and Article 21 (1) (2) of the Treaty of Amity 1955.

Iran's unclean hands cannot be considered a violation of the Treaty of Amity, as the case is based on that treaty and an investigation of clean hands has not been foreseen and included in the treaty as a pretext for taking legal action before the court.

The court has also reaffirmed Iran's response and stated that the US has failed to prove that Iran's unclean hands have gone beyond just an insult and has failed to establish Iran's violation of the Treaty of Amity. Also, abuse or legal formalities can prevent formalities only in exceptional circumstances, and such exceptional circumstances do not exist in the present case. Therefore, the ICJ rejected America's objections to this case (ibid, p. 8).

2- Objection to (the Subject-Matter) Jurisdiction of the ICJ

- A) The United States does not consider its actions in freezing Iran's assets outside the scope of clauses "c" and "d" under Article 20 (1) of the Treaty of Amity,¹ in other words, the US claims that its actions fall within that article. Therefore, from a US perspective, the ICJ should not handle this case because there has been no violation by the US. The court responded to these claims by saying that, "Article 20 of the Treaty of Amity does not limit the court's jurisdiction but protects the rights of the parties". So, the court rejects the first objection to its jurisdiction.
- B) From the perspective of the United States, the articles on which Iran bases its claims are violations of sovereign immunity, not commercial violations, so the court is not competent to hear the case under Article 21 (2).

The court argues in this case, that the purpose of the Treaty of Amity is trade and mutual investment in such a way that the citizens and economic enterprises of both parties can and have the necessary motivation for investment and trade. The court therefore concludes that the goal of the treaty is not to establish sovereignty immunities. In other words, it cannot be expected that the parties will give immunity to government institutions from each other, but the main goal is to support companies and enterprises with a commercial nature and economic activity and keep them immune. The Court

¹The present Treaty shall not preclude the application of measures: (a) regulating the importation or exportation of gold or silver; (b) relating to fissionable materials, the radio-active by-products thereof, or the sources thereof; (c) regulating the production of or traffic in arms, ammunition and implements of war, or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment; and (d) necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests.

therefore sustains the United States' second objection.

C) The US argues that the central bank of Iran is not included in the interpretation of firm or company per articles 3, 4, and 5 of the Treaty of Amity but is rather a totally governmental institute affiliated with the Iranian state and governed directly by it, and its activities can by no means be described as commercial or economic. Therefore, the bank and its assets are not covered by sovereignty immunities or the Treaty of Amity.

On the other hand, the Court provides its opinion on the United States' interpretation of those cases in its objections, eventually rejecting US claims about the issue of the central bank of Iran being a firm or company, arguing that it does not see that objection to be consistent with the case (*ibid*, Pp. 5 & 6 & 7).

On February 13, 2019, the ICJ finally concluded that there was no chance of resolving the dispute through diplomacy. The US withdrawal from the Treaty of Amity has no effect on the court's jurisdiction or competence, and disputes have arisen out of Article 21. Since the ICJ already addressed the issue of its jurisdiction and the meaning of commerce in Article 10 of the treaty in the oil platforms case, the court found itself competent to hear the case and entered the substantive phase (*ibid*, Pp. 41 & 42).

3- The Case of Violating the 1955 Treaty of Amity, Economic Relations, and Consular Rights and the Establishment of the ICJ Jurisdiction in Hearing the Case

This legal dispute is rooted in the Joint Comprehensive Plan of Action (hereafter JCPOA). The US government considers its unilateral sanctions legal and the basis of its recent sanctions, put in place as of May 8, 2018 by executive order 13846 (Executive Order No. 13846, 2018), based on Iran's violations as well as Iran's actions that are against the JCPOA as well as the interests and national security of the United States. On the other hand, Iran has once again emphasized its adherence to the JCPOA based on IAEA reports (Yadegarian 2019, P. 97) and considers the sanctions and US withdrawal from the JCPOA illegal.

Therefore, Iran completed its request based on Article 21 (2) of the Treaty of Amity and demanded the cancellation of unilateral sanctions and the payment of compensation to Iran for the violation of the 1955 Treaty and the economic losses caused by the sanctions. Iran, considering the emergency situation and based on Article 41 of

the Statute^λ and Articles 73 and 75 of the Rules of the ICJ^Ϛ, issued a request to issue a provisional measure. Based on Iran's request and Article 41 of its statute, the court issued provisional measures on October 3, 2018. Iran's reasons for this request were the existence of emergency conditions caused by US sanctions, which would worsen the conditions for the Iranian people and economy. The Provisional Measures of October 3, 2018 included the following terms (Summary of the Order of October 3, 2018, 2018, p. 7):

A) The ban on the export of the following goods to Iran should be lifted:

- Drugs and medical supplies
- Food materials, and agricultural goods, and machineries
- Goods and services needed for the safety and security of civil aviation, such as spare parts, equipment and related services.

B) Not imposing financial restrictions or bans on the above activities.

C) The parties shall refrain from any actions that contribute to the complexity and escalation of disputes and make the final resolution of disputes more difficult.

The court also quotes the following two issues:

A. Provisional measures have binding effect and are considered an international obligation for both parties.

B. An order for provisional measures does not mean that the court has jurisdiction or substantive jurisdiction to hear the case.

^λ Article 41: 1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. 2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

^Ϛ Article 73: 1. A written request for the indication of provisional measures may be made by a party at any time during the course of the proceedings in the case in connection with which the request is made. 2. The request shall specify the reasons therefor, the possible consequences if it is not granted, and the measures requested. A certified copy shall forthwith be transmitted by the Registrar to the other party. Article 75: 1. The Court may at any time decide to examine proprio motu whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties. 2. When a request for provisional measures has been made, the Court may indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request. 3. The rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.

The provisional measures shall remain in force until a final verdict is passed, and afterwards the court may attach the order to the final verdict to make its binding nature more obvious.

However, on the issue of violating the terms of the provisional measures, the US claims that according to Section 2(e) of Executive Order 13846, none of the sections quoted in the provisional measures are subject to sanctions, and all of the items are among the exceptions to the executive order issued by President Donald Trump (ibid, p. 2).

But this claim is far from reality. According to the court, although food, medicine, and medical equipment are exempt from US sanctions, it is impossible for Iran to access or receive those goods due to the bans imposed by the US on the activities and international transactions of Iranian people and companies. (ibid, p. 5).

According to the International Monetary Fund (IMF) and World Bank, "Sanctions have severed Iran's relations with global trade and financial systems (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955, 2018, p. 11).

Therefore, it should not be far from expected that such a trend will cause a sharp decrease in the value of the Iranian currency, a shortage of medicine, medical equipment, and an increase in the price of vital products and food.

Since the lack of medicine in Iran threatens the lives of sick and elderly people, the worn-out air fleet of the country, which has been affected by US sanctions, continues to threaten the lives of many people. According to the executive order of the President of the United States, two contracts concluded with Iran regarding the purchase of Airbus and Boeing airplanes and their parts were canceled. The first contract with Boeing included the purchase of 140 aircraft worth \$24 billion, and the second contract with Airbus included the purchase of 171 aircraft worth \$30 billion. (ibid, p. 14).

After the executive order of May 8, 2018 and once the 90-day period expired on August 6, 2018, the sanctions were executed, and except for the few aircraft that were delivered to Iran after JCPOA and before the sanctions, all contracts were cancelled, and the companies refrained from selling any kind of necessary or vital parts related to civil aviation, transportation, or flight security. According to Iranian officials, "the risk of US sanctions against the aerial fleet of Iran has been officially recognized by independent experts in 2006" (IBID, p. 15).

Under Article 22 of the JCPOA, the United States pledged to allow the sale of passenger aircraft to the Iranian government, and

according to Section VIII (Preamble), Articles 21, 26, 28, 29, and 30 of the JCPOA, the United States and other parties to the JCPOA undertook to implement the JCPOA in good faith and refrain from reimposing the canceled sanctions or imposing new unilateral and national sanctions against Iran (JCPOA, 2015).

But due to the nature of the JCPOA and the fact that it was not legally binding on the President of the United States, Donald Trump easily walked away from it and violated all its provisions, as mentioned. The important point, however, is paragraph 2 of United Nations Security Council (hereafter UNSC) Resolution 2231,¹ related to avoiding taking measures that are not in line with the JCPOA, and paragraphs 14 and 15 of RES 2231.²

This paragraph clearly states that sanctions cannot be applied retroactively to contracts signed after and within the framework of the JCPOA.³ Thus, Iran's agreements with companies and other countries, according to the JCPOA, including the contracts for the purchase of civilian aircraft, are immune to the snapback of sanctions.

It can therefore be concluded that though the United States was

¹ paragraph 2: Calls upon all Members States, regional organizations, and international organizations to take such actions as may be appropriate to support the implementation of the JCPOA, including by taking actions commensurate with the implementation plan set out in the JCPOA and this resolution and by refraining from actions that undermine implementation of commitments under the JCPOA (Resolution 2231, 2015).

² paragraph 14 of RES2231: Affirms that the application of the provisions of previous resolutions pursuant to paragraph 12 do not apply with retroactive effect to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application, provided that the activities contemplated under and execution of such contracts are consistent with the JCPOA, this resolution and the previous resolutions; paragraph 15: Affirms that any application of the provisions of previous resolutions pursuant to paragraph 12 is not intended to harm individuals and entities that, prior to that application of those provisions, engaged in business with Iran or Iranian individuals and entities that is consistent with the JCPOA and this resolution, encourages Member States to consult with each other with regard to such harm, and to take action to mitigate such unintended harm for these individuals and entities, and decides if the provisions of previous resolutions are applied pursuant to paragraph 12 not to impose measures with retroactive effect on individuals and entities for business activities with Iran that were consistent with the JCPOA, this resolution and the previous resolutions prior to the application of these provisions (Resolution 2231, 2015), non-retroactive nature of sanctions quoted under Clause 37 of JCPOA.

³UN Security Council Resolution 2231, (2015).

allowed to exit the JCPOA, it still had to remain committed to RES 2231 of the UNSC which was issued with the purpose of protecting international peace and security, and according to Article 25 of the UN Charter, all member nations must obey the decisions of the security council. Also, obligations rising from the UN Charter (e.g., resolutions) have priority over other contractual obligations (e.g., JCPOA) according to Article 103 of the charter, and naturally, the violation of such obligations will bring heavy consequences for the violators.

Once the Provisional Measures was issued, the United States announced that it was exiting the 1955 Treaty of Amity, still insisting that the ICJ had no jurisdiction to hear the case brought forward by Iran. The United States posed three basic issues in its defense statements:

1- Objection to (Subject-Matter) Jurisdiction of the ICJ

A) Iran's petition is rooted in the JCPOA and not the 1955 Treaty of Amity. The United States considers the root of this dispute to be of a political nature and therefore does not consider the ICJ competent to deal with this case. In relation to such claims, i.e., the legal or political nature of a dispute, the ICJ argues that the political nature of a dispute does not prevent it from hearing a case. (Mirzaei Yengjeh, 1987, p.815).

On the other hand, intervening in the JCPOA in the current conflicts will somehow benefit Iran because, despite the existence of a dispute resolution mechanism in the JCPOA, i.e., Article 36,

Δ Article 25: The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter (Charter of the United Nations, 1945).

Υ Article 103: In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Ϛ If Iran believed that any or all the E3/EU+3 were not meeting their commitments under this JCPOA, Iran could refer the issue to the Joint Commission for resolution; similarly, if any of the E3/EU+3 believed that Iran was not meeting its commitments under this JCPOA, any of the E3/EU+3 could do the same. The Joint Commission would have 15 days to resolve the issue, unless the period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to Ministers of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the period was extended by consensus. After Joint Commission consideration-in parallel with (or in lieu of) review at the Ministerial level - either the complaining participant or the participant whose performance is in question

the United States ignored this mechanism and unilaterally withdrew from the JCPOA, and imposed very severe and cruel sanctions against Iran and violated UNSC 2231. As a result, parts of the Treaty of Amity related to free commerce between Iran, the United States, and other countries were ignored, which generally made the conditions for Iran's trade with other countries extremely difficult.

B) The United States argues that the 1955 Treaty of Amity only covers trade between Iran and the US, and US sanctions have only targeted some companies and third-party affiliates, so technically there is no relation between sanctions against such groups and the Treaty of Amity, and the ICJ is therefore without jurisdiction or competence to hear cases related to such matters.

In the case of Iranian oil platforms too, the ICJ's conclusion was in favor of a more general sense of the term "commerce" as quoted in Article 10 of the Treaty of Amity, and it did not recognize the freedom of commerce to be limited to surrounding territories and announced any action that would undermine such freedoms as a violation of the treaty.

Also, as the US Department of the Treasury and US Office of Foreign Assets Control (OFAC), punish and sanction any US or non-US affiliate company or individual who would do trade with Iran, and since according to official statements of US officials, the goal of sanctions is to weaken the Iranian economy, it must be said that this is completely contrary to the spirit of the Treaty of Amity, and such actions are actually a violation of the aforementioned treaty and the ICJ has full jurisdiction over it. It is because disputes have arisen between the parties that cannot be settled by diplomacy, and according to Article 21 (2) of the treaty, the ICJ is the competent legal authority to process and settle such disputes.

2- Objection to Admission of the Case (Admissibility):

The United States believes that Iran seeks to abuse the judicial

could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant non-performance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.

process, and the ICJ's decision gives Iran the winning card in its nuclear program and legitimizes Iran's countermeasures in reducing its nuclear commitments. This would represent a flagrant violation of the principles and procedures governing the judicial process, thereby engendering adverse consequences for both the court system and the global community at large. As the ICJ argues about Iran's frozen assets against the American claim of Iran's unclean hands, it is quite clear that such claims and accusations require convincing evidence and clear examples, and the lack of concepts such as good faith also requires proof of the claimant. There is no doubt that Iran's petition is rooted in the nuclear agreement, and the ICJ is totally aware and has confirmed this fact (Summary of the order of October 3, 2018, 2018, p. 2), but as ICJ said earlier, disputes cannot be left unchecked only because political and legal issues get entangled.

3- Objection based on Article 79 of the ICJ Rules of Court¹

The United States raised some fundamental objections to the jurisdiction of the ICJ in this case under the above article. This article covers some of the issues that the court must consider before entering the substantive decision stage. Based on paragraphs "b" and "d" Article 20 (1) of the Treaty of Amity, the United States argues that since the nature of Iran's petition falls within these two paragraphs, i.e., concerning nuclear material and US national security, it is therefore outside the jurisdiction of the ICJ. As the court had given its reasoning on these claims in respect of frozen assets, it considered that provision to include only the right of defense for the parties and not the limitation of jurisdiction, and as the court finally recognized itself competent to handle that case, it can be concluded that the same thing will happen for this objection as well. The ICJ also noted in its judgment in the Nicaragua case on the United States' claim of national security and interest: "Economic sanctions cannot be considered legitimate vital measures to protect national interests." (Mirzaei Yengjeh, 1987, P. 826).

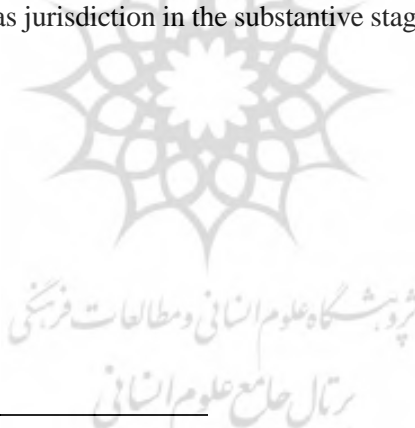
As discussed, in all the above cases, the parties objected to the jurisdiction of the ICJ to deal with cases and disputes arising from

¹ When the Court has not taken any decision under Article 79, an objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on the merits, shall be made in writing as soon as possible, and not later than three months after the delivery of the Memorial. Any such objection made by a party other than the respondent shall be filed within the time-limit fixed for the delivery of that party's first pleading.

the Treaty of Amity, and in all of the above cases, as observed, the ICJ decided in favor of its jurisdiction.

Other than the ICJ, there have been many references to the Treaty of Amity in the Iran-United States Claims Tribunal, major among which are the “Pheleps Dodge”^۲ and “SEDCO”^۳ cases, in both of which it was emphasized that the Treaty of Amity was binding on the parties. Another thing in favor of the validity of the Treaty of Amity before the US announced its exit is the going trend in the United States and its courts, particularly the District of Columbia. One can also point to the Treaty of Amity being quoted in the official journal of the US State Department (binding treaties) (Movasagh, 2005, p. 155).

In view of the court’s approach and the history of the parties, what becomes obvious and established is the court’s jurisdiction to hear cases based on violations of the 1955 Treaty of Amity. Also, considering the implied opinion of the court that Iran does not resort to sanctions in the case of oil platforms, it can be inferred that now, citing Article 10 of the Treaty of Amity and other arguments presented so far, the court has jurisdiction in the substantive stage as well.



^۱ After conclusion of Algiers Accords (January 19, 1981), the Iran United States Claims Tribunal was formed to handle disputes of the two parties and their citizens against the other party government.

^۲ In the case of “Pheleps Dodge”, Judge Bahrami while emphasizing on the legal validity of the Treaty of Amity for the legal relationships of the parties, points out that it is necessary that this document is analyzed also in relation to other mutual obligations of the parties. In this case, section 27 of ICJ’s verdict reads: “None of the parties, i.e. Iran or US, has proceeded to terminate this legal instrument based on its terms.” (Shahbazi, 2012, P. 66).

^۳ In SEDCO case of 1987: The Iran United States Claims Tribunal expressly stated: “The Treaty of Amity remains as a law applicable to the legal relationships of the parties, and its terms remain binding.” (Shahbazi, 2012, P. 67).

Conclusion

It can be concluded that in the present case and based on the following evidence, other than jurisdiction, the ICJ also has substantive competence, and its final verdict will be issued in favor of Iran:

- A) ICJ's interpretation of a general meaning under Article 10 of the Treaty of Amity in connection with free commerce and commercial freedom and the violation of that article by the US in the oil platform case, and its implicit hinting at Iran's failure to sue the US based on the economic sanctions that were in violation of the treaty.
- B) ICJ's verdict in the Nicaragua case pointing out that a country cannot be put under full sanctions based on vital actions and national interests or following a particular line in its domestic or foreign policy and the unjustified nature of such actions (object of the United States based on Article 21 of the 1956 Treaty in the Nicaragua vs. US case and Article 21 (2) of the 1955 Treaty of Amity in Iran vs. US case).
- C) Jurisdiction decision of the ICJ and its entering the substantive phase of judgement in the case of Iran's frozen assets, and rejection of all similar US objections to the case of violating the 1955 Treaty of Amity.
- D) Many articles and clauses of numerous international laws, treaties, and conventions are frequently violated by the United States by imposing unilateral and human rights sanctions against a nation, all of which were discussed in detail and for which the ICJ has jurisdiction to hear claims and petitions in view of the significance of the issues.

To get better enforcement in future agreements than joint commissions, Iran should accept the jurisdiction of the ICJ and designate it as the competent authority for dispute resolution. Also, apart from these conditions, it is better to approve the agreements of the parliament of the two parties to convert these contracts and political agreements into official treaties, so that in case of violation, they will face the highest level of sanctions. If this were the case, the US would have to act through the ICJ for any claim or issue and could not exit the agreement unilaterally.

Another suggestion regarding the acceptance of the mandatory jurisdiction of the ICJ is the approval of its declaration by the Iranian government and parliament. Iran, as its foreign minister announced in a letter to the Secretary General of the United Nations on July 9, 1951, rejected and returned the declaration of acceptance

of the mandatory jurisdiction of the ICJ (October 1, 1930). Basically, there was no such term for dealing with Iran's international disputes in the ICJ. Also, considering the announced end of the friendship treaty and the expiration of the one-year deadline, no other request from Iran based on that treaty will be heard. Therefore, Iran will do better by accepting the mandatory jurisdiction of the ICJ (Article 36 (2) of the Statute of the ICJ)¹ against countries that have ratified such declarations (the reciprocity clause) to allow themselves to be sued at the ICJ in the future.

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¹ Article 36 (2): The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: the interpretation of a treaty; A) the interpretation of a treaty; B) any question of international law; C) the existence of any fact which, if established, would constitute a breach of an international obligation; D) the nature or extent of the reparation to be made for the breach of an international obligation.

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