



INTERNATIONAL COURT OF JUSTICE

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Press Release

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

The Court indicates provisional measures in order to preserve certain rights claimed by Iran and asks the Parties to refrain from any action which might aggravate or extend the dispute

THE HAGUE, 3 October 2018. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Order on the Request for the indication of provisional measures submitted by Iran 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).

The Court begins by recalling that, on 16 July 2018, Iran instituted proceedings against the United States with regard to alleged violations of the Treaty of Amity, Economic Relations and Consular Rights concluded between the two States in 1955. The same day, Iran also submitted a Request for the indication of provisional measures, seeking to preserve its rights under the 1955 Treaty pending the Court's final decision in the case.

The Court then sets out the factual background to the case. It notes in this regard that, on 8 May 2018, the President of the United States issued a National Security Presidential Memorandum announcing the end of the participation of the United States in the Joint Comprehensive Plan of Action (JCPOA) — an agreement on the nuclear programme of Iran reached on 14 July 2015 by Iran, the five permanent members of the United Nations Security Council, plus Germany and the European Union — and directing the reimposition on Iran of “sanctions lifted or waived in connection with the JCPOA”. In the Memorandum, the President observed, *inter alia*, that Iran had publicly declared that it would deny the International Atomic Energy Agency access to military sites, and that, in 2016, Iran had twice violated the JCPOA's heavy-water stockpile limits. It was announced that “sanctions” would be reimposed in two steps. Upon expiry of a first wind-down period of 90 days, ending on 6 August 2018, the United States would reimpose a certain number of “sanctions” concerning, in particular, financial transactions, trade in metals, the importation of Iranian-origin carpets and foodstuffs, and the export of commercial passenger aircraft and related parts. Following a second wind-down period of 180 days, ending on 4 November 2018, the United States would reimpose additional “sanctions”.

Reasoning of the Court

It is to be recalled that the Court may indicate provisional measures only if the provisions relied on by the applicant appear, *prima facie*, to afford a basis on which its jurisdiction could be founded. It must also be satisfied that the rights asserted by the applicant are at least plausible and that there is a link between the said rights and the measures being requested. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights at issue before the Court gives its final decision.

I. PRIMA FACIE JURISDICTION

The Court notes that Iran seeks to found its jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the 1955 Treaty. It observes in this regard that Article XXI of the 1955 Treaty makes the jurisdiction of the Court conditional on the existence of a dispute as to the interpretation or application of the Treaty. In order to determine whether that is the case, the Court examines whether the acts complained of by the Applicant are *prima facie* capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court could have jurisdiction ratione materiae to entertain.

The Court considers that the 1955 Treaty contains rules providing for freedom of trade and commerce between the United States and Iran, including specific rules prohibiting restrictions on the import and export of products originating from the two countries, as well as rules relating to the payment and transfer of funds between them. In the Court's view, measures adopted by the United States, for example, the revocation of licences and authorizations granted for certain commercial transactions between Iran and the United States, the ban on trade of certain items, and limitations to financial activities, might be regarded as relating to certain rights and obligations of the Parties to that Treaty. The Court is therefore satisfied that at least the aforementioned measures which were complained of by Iran are indeed *prima facie* capable of falling within the material scope of the 1955 Treaty.

The Court also observes that Article XX, paragraph 1, which is invoked by the United States to defeat the Court's jurisdiction with regard to Iran's claims, defines a limited number of instances in which, notwithstanding the provisions of the Treaty, the Parties may apply certain measures. These include measures relating to "fissionable materials, the radio-active by-products thereof, or the sources thereof" (subparagraph (b)) or measures which are "necessary to protect . . . essential security interests" (subparagraph (d)), categories in which the United States places nuclear-related economic "sanctions". However, the Court is of the view that whether and to what extent those exceptions have lawfully been relied on by the Respondent in the present case is a matter which is subject to judicial examination and, hence, forms an integral part of the material scope of the Court's jurisdiction as to the "interpretation or application" of the Treaty under Article XXI, paragraph 2.

The Court finds that the above-mentioned elements are sufficient at this stage to establish that the dispute between the Parties relates to the interpretation or application of the Treaty of Amity.

The Court further recalls that under the terms of Article XXI, paragraph 2, of the 1955 Treaty, the dispute submitted to it must not have been "satisfactorily adjusted by diplomacy". It concludes from the wording of this provision that there is no need for it to examine whether formal negotiations have been engaged in or whether the lack of diplomatic adjustment is due to the conduct of one party or the other. It is sufficient for the Court to satisfy itself that the dispute was not satisfactorily adjusted by diplomacy before being submitted to it. The Court is of the opinion that, based on the evidence made available to it, the dispute had not been satisfactorily

adjusted by diplomacy, within the meaning of Article XXI, paragraph 2, of the 1955 Treaty, prior to the filing of the Application.

In light of the foregoing, the Court concludes that, *prima facie*, it has jurisdiction pursuant to Article XXI, paragraph 2, of the 1955 Treaty to deal with the case, to the extent that the dispute between the Parties relates to the “interpretation or application” of the said Treaty.

II. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE MEASURES REQUESTED

The Court begins by addressing the question whether the rights that Iran is claiming, and for which it is seeking protection, are plausible.

The Court notes that under the provisions of the 1955 Treaty, both contracting Parties enjoy a number of rights with regard to financial transactions, the import and export of products to and from each other’s territory, the treatment of nationals and companies of the Parties and, more generally, freedom of commerce and navigation. The Court further notes that the United States does not, as such, contest that Iran holds these rights under the 1955 Treaty or that the measures adopted are capable of affecting these rights. Instead, the United States claims that Article XX, paragraph 1, of the 1955 Treaty, entitles it to apply certain measures, *inter alia*, to protect its essential security interests, and argues that the plausibility of the alleged rights of Iran must be assessed in light of the plausibility of the rights of the United States.

In the opinion of the Court, it need not carry out at this stage of the proceedings a full assessment of the respective rights of the Parties under the 1955 Treaty. However, it considers that, in so far as the measures complained of by Iran could relate “to fissionable materials, the radio-active by-products thereof, or the sources thereof” or could be “necessary to protect . . . essential security interests” of the United States, the application of Article XX, paragraph 1, subparagraphs (b) or (d), might affect at least some of the rights invoked by Iran under the Treaty of Amity. Nonetheless, the Court is of the view that other rights asserted by Iran under the 1955 Treaty would not be so affected, such as those relating to the importation and purchase of goods required for humanitarian needs, and to the safety of civil aviation.

In light of the foregoing, the Court concludes that, at the present stage of the proceedings, some of the rights asserted by Iran under the 1955 Treaty are plausible in so far as they relate to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft.

The Court then turns to the question of the link between the rights asserted and the provisional measures requested (see Press Release No. 2018/34). Having already found that at least some of the rights asserted by Iran under the 1955 Treaty were plausible, it is of the view that certain aspects of the measures requested by Iran aimed at ensuring freedom of trade and commerce, particularly in goods and services required for humanitarian needs and for the safety of civil aviation may be considered to be linked to those plausible rights whose protection is being sought. The Court concludes, therefore, that a link exists between some of the rights whose protection is being sought and certain aspects of the provisional measures being requested by Iran.

III. RISK OF IRREPARABLE PREJUDICE AND URGENCY

The Court considers that certain rights of Iran under the 1955 Treaty invoked in these proceedings that it has found plausible are of such a nature that disregard of them may entail irreparable consequences.

The Court is of the view that a prejudice can be considered as irreparable when the persons concerned are exposed to danger to health and life. In its opinion, the measures adopted by the United States have the potential to endanger civil aviation safety in Iran and the lives of its users to the extent that they prevent Iranian airlines from acquiring spare parts and other necessary equipment, as well as from accessing associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. The Court further considers that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment, may have a serious detrimental impact on the health and lives of individuals on the territory of Iran.

The Court further notes that the situation resulting from the measures adopted by the United States, following the announcement of 8 May 2018, is ongoing, and that there is, at present, little prospect of improvement. Moreover, the Court considers that there is urgency, taking into account the imminent implementation by the United States of an additional set of measures scheduled for after 4 November 2018.

The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. Having examined the terms of the provisional measures requested by Iran and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

Moreover, the Court reaffirms that its orders on provisional measures have binding effect and create international legal obligations for any party to whom the provisional measures are addressed. It further notes that the decision given in the present proceedings in no way prejudices the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves.

OPERATIVE CLAUSE

At the end of its Order, the Court indicates

(1) unanimously, that the United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of (i) medicines and medical devices; (ii) foodstuffs and agricultural commodities; and (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation;

(2) unanimously, that the United States of America must ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (1);

(3) unanimously, that both Parties must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Composition of the Court

The Court was composed as follows: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Bhandari, Robinson, Crawford, Gevorgian, Salam, Iwasawa; Judges ad hoc Brower, Momtaz; Registrar Couvreur.

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Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judge ad hoc MOMTAZ appends a declaration to the Order of the Court.

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A summary of the Order appears in the document entitled “Summary No. 2018/6”, to which summaries of the separate opinions and declarations are annexed. This press release, the summary and the full text of the Order are available on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities 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. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the International Residual Mechanism for Criminal

Tribunals (IRMCT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor's Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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