

**Forum:** *International Court of Justice (ICJ)*

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

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## Introduction

On July 16, 2018, the Islamic Republic of Iran filed an application to the International Court of Justice (ICJ) instituting proceedings and provisional measures against the United States of America for the latter's alleged violations of the Joint Comprehensive Plan of Action (JCPOA) and 1955 Treaty of Amity, Economic Relations, and Consular Rights. "The Present Application," Iran's ICJ submission reads, "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, and the announcement that further sanctions will be imposed."

Provisional measures, a highly prioritized interim order in the ICJ, were filed by Iran against the US specifically in response to President Donald Trump's May 8th National Security Presidential Memorandum. The Memorandum officially withdrew the US from the JCPOA, more commonly known as the Iran Nuclear Deal. Endorsed by UN Security Council Resolution 2231 and adopted by Iran, China, France, Russia, Germany, the United Kingdom, and the United States on July 20, 2015, the JCPOA is a multilateral agreement that conditionally relieves UN-sanctions per Iran's commitment to JCPOA-related restrictions on its nuclear programs. According to Iran, the International Atomic Energy Agency ("IAEA") has consistently verified Iran's full compliance with its obligations under the Safeguards Agreement since 2015. In context, the IAEA is the appointed body under the JCPOA and UN Security Council Resolution 2231 (2015) to monitor and verify Iran's obligations to the treaties. The IAEA confirmed that Iran had also met voluntary commitments, including the "non-diversion of declared nuclear material in Iran" under the JCPOA's Additional Protocol. In the Memorandum, however, Trump maintains that Iran had explicit intentions to deny the International Atomic Energy Agency (IAEA)'s access to Iranian military sites and,

in 2016, had violated the JCPOA's heavy-water stockpile limits twice. Sanctions relating to financial transactions revoked commercial licenses and terminated previously intact economic or contractual relations, to which the US believes will pressure Iran to alter its nuclear policies and support for militant groups. However, some countries believe that US intentions to withdraw from the JCPOA were misconceived.

Other members to the JCPOA remain committed to the agreement. The EU enacted a blocking statute in 2018 August to nullify the US sanctions. In a statement, the EU said that it will "remain committed to the continued full and effective implementation of the nuclear deal . . . [It] fully trust[s] the work, competence and autonomy of the International Atomic Energy Agency that has published ten reports certifying that Iran has fully complied with its commitments." As of 2019 May, the IAEA confirmed that Iran was generally complying to terms of the deal. However, it certified in July that Iran had breached limits on low-enriched uranium stockpiles.

In its Application to the Court, Iran cites the bilateral 1955 Treaty of Amity, Economic Relations, and Consular Rights against the US. Iran bases the jurisdiction of the Court on Article 36 Section 1 of the Statute of the Court and Article 21 Section 2 of the 1955 Treaty. Iran primarily derives arguments from Articles 4, 7, 8, 9, and 10 from the treaty. It requests the Court to order the US to, "by means of its own choosing, terminate the 8 May sanctions without delay" and "immediately terminate its threats with respect to the announced further sanctions." Ultimately, the point of contention lies in whether the US violated the 1955 Treaty of Amity by unilaterally withdrawing from the JCPOA and imposing sanctions on Iran. The verdict should evaluate legal commitments and contents of the 1955 Treaty and JCPOA to deliver a prudent order on just, legal bases.

## Definition of Key Terms

### Jurisdiction

Jurisdiction refers to a court's authority to adjudicate cases on particular legal matters within a certain geographic area. The court may only try cases within its granted area of jurisdiction.

### Terrorism

The United Nations has yet to give its official definition of terrorism. Meanwhile, terrorism has been defined in Security Council resolution 1566 as "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a

population or compel a government or an international organization to do or to abstain from doing any act." Generally, it is any activities against humanity that intends to spread fear often towards a targeted demographic.

### **Customary International Law**

Customary International Law (CIL) is defined by the Cornell Legal Information Institute as "international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties." CILs generally arise from state practices that are followed as a legal obligation. An example of Customary International Law would be immunity to diplomats from a visiting state.

### **National Security**

The United Nations defines national security as "the ability of a state to cater for the protection and defence of its citizenry."

## **Background Information**

### **Treatises in Question**

#### ***The Joint Comprehensive Plan of Action (JCPOA)***

JCPOA, the Joint Comprehensive Plan of Action is an agreement between Iran and P5+1 (China, France, Germany, Russia, the United Kingdom, and the United States) drafted on July 14, 2015 with the end goal of preventing Iran's pursuit of nuclear weapons.

Under the agreement, Iran agreed to eliminate its stockpile of medium-enriched uranium, cut its stockpile of low-enriched uranium by 98%, reduce two-thirds of its gas centrifuges for 13 years, not to build any new heavy-water facilities for 15 years, and limit its uranium-enrichment activities to a single facility using first-generation centrifuges for 10 years monitored by the International Atomic Energy Agency. In return, the UN Security Council will terminate all previous resolutions targeting Iran's nuclear program - 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) - and the United States and European Union would also terminate the application of economic sanctions against Iran's oil and banking sectors imposed due to its nuclear program.

On October 13, 2017, US President Donald Trump announced that the US would not provide the certification necessary to the agreement and on 8 May 2018 Trump announced United States withdrawal from JCPOA, citing that the agreement failed to address Iran's ballistic missile program and its role in regional wars. As a result, the United States reimposed its sanctions to force Iran to dramatically alter its policies including its involvement in regional conflicts and development of ballistic missiles.

### ***Treaty of Amity, Economic Relations and Consular Rights***

The Treaty of Amity, Economic Relations and Consular Rights is the peace agreement signed between the US and Iran under the leadership of President Dwight D. Eisenhower and Mohammad Reza Pahlavi.

The US has had signed numerous similar agreements with other countries from the very beginning of its history. For example, the US signed similar agreements of amity of commercial relations with France in 1778. Ever since the adoption of these agreements, it has become a norm for the US government to put these agreements in place with other countries in order to ensure and facilitate investment and commercial activities and political relations.

The treaty was signed two years after the 1953 Iranian coup where the British and American Central Intelligence Agency schemed to put the Shah back in power and collapse the nationalist government under Mohammad Mosadegh who had previously nationalized the Iranian oil industry.

The U.S.-Iranian Treaty of Amity consists an introduction and 23 articles which emphasizes friendly relations while encouraging trade and investments and regulating consular relations. Clause 2 of Article XXI of the treaty establishes that "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." The treaty came into force in June 1957; ever since, it has provided the legal framework for bilateral relations between Iran and the US.

However, in November 1979, twenty two years after the treaty came into effect, an abrupt political change in Iran drastically deteriorated the US-Iran relations. Following the Iranian Revolution that overthrew the Shah regime and the Hostage Crisis at the US embassy, the US and Iran had cut all diplomatic ties and alienated each other into mortal enemies. It was then when the first round of US sanctions against Iran was imposed and all Iranian assets in the US

were frozen. This era of tensions and hostile actions between the two countries had clearly violated the treaty's commitment for "friendly relations" which could have led to the annulment of the treaty or the departure of either party.

Yet in spite of all tensions, neither side pulled out from the treaty and there was no legal evidence the validity of the 1955 treaty. During the first years after the 1979 Revolution, while the Iranian government avoided any legal reference to the treaty to avoid any suggestion of renewal of relations between Iran and the US, the US soon took Iran to the ICJ asserting that Iran had violated Article II, Clause 4 of the treaty, which promises that "Nationals of either High Contracting Party shall receive the most constant protection and security within the territories of the other High Contracting Party." Moreover, Iran also brought the US to the ICJ for claims of violations against the Amity Treaty in 1988 and 1992 after a US warship shot down an Iranian civilian airline, killing all 290 passengers and after the US launched strikes against several Iranian oil platforms in the Persian Gulf.

## Key Issues

### Jurisdiction of the International Court of Justice

The United States claims that the International Court of Justice does not have the jurisdiction for this case as it is a matter of the US's national security, while Iran claims that any dispute between the treaty of Amity shall be addressed in the ICJ according to article XXI of the treaty. As the IAEA confirmed that Iran has met all requirement demanded by the JCPOA, the respondents would need adequate evidence of either Iran's uranium developments in order to invalidate IAEA's report and further invoke article XX of the Treaty. Meanwhile, the court should take into consideration the factfulness of each agency involved

### National Security of the United States

The UN never formally declared its definition of terrorism outside of scarce Security Council resolutions , and subsequently leaves a vague definition of state sponsored terrorism. In this case, the court should focus on the extent to which the Republic of Iran's actions have any impact on the United States and weigh it against the impact of the sanctions the United States imposed. It is worth noting that depending on the interpretation of the Treaty of Amity, the alleged threat to national security may grant the United States a certain degree of control over the case as stated in article XX. The key to resolving this issue would be to evaluate the United State's actions as a measure "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."

### **Alleged violation of JCPOA on Iran's side**

One claim made by the United State to justify its sanctions is that the state of Iran has not been complying with its part of the agreement, such that there has been adequately purified Uranium within its territory for nuclear warheads. The US deems itself justified as the alleged presence of uranium has become a threat to its national security, thereby reasonable to prioritize its security over the JCPOA as stated in article XX of the Treaty.

### **US's withdrawal of the treaty**

As neither JCPOA nor the Treaty of Amity contain provisions regarding the withdrawal of a state party, it is possible to take the Vienna Convention on the Law of Treaties, signed and ratified by both states, into consideration to complement these two agreements. An important factor for the court to consider would be whether the unilateral declaration of withdrawal from the United States provides the state any immunity towards Iran invoking the Treaty of Amity based on violation of JCPOA.

### **Applicability of the Treaty of Amity**

The Islamic Republic of Iran filed its application based on the violation of articles in the Treaty of Amity invoked by United State's withdrawal as well as sanctions they promised to change. As the application was not based on JCPOA, the court would have to interpret and apply JCPOA where it fits into the Treaty of Amity.

## **Major Parties Involved and Their Views**

### **Islamic Republic of Iran**

Iran, the Applicant of this case, holds that the United States of America violated the 1955 Treaty of Amity by re-imposing in full effect sanctions that were previously lifted with the JCPOA. Iran seeks the Court to order that the US is intentionally violating the 1955 Treaty of Amity and thus obligated to terminate the sanctions it is placing on Iran. Iran submits in its application that the May 8 sanctions deliberately violate articles of the Treaty of Amity through acts such as revoking licenses under which US-owned or US-controlled actors can financially transact with Iran and Iranian companies. The Applicants argue that these sanctions are already causing significant damage to the Iranian economy by creating uncertainty for all entities who wish to enter into economic relationships with Iran. Specifically, Iran argues that the US sanctions endanger civil health and life. "Irreparable prejudice," an Iranian lawyer

contends in Court, “would follow from the diversion or misuse of [commercial passenger aircraft and spare parts and equipment] for malign purposes.” Restrictions on the importation of goods affect the country’s access to medicines and foodstuffs, to which Iran argues will have a “serious detrimental impact on the health and lives of individuals on the territory of Iran.” Iran reports that the US is also asking countries to cut their oil imports from Iran to “zero” by November 4th, 2018. As a result of US pressure, many countries withdrew contractual relations with Iran in fear of US punishment. By July 2018, Iran believes it has exhausted all means to reconcile with the US. It invokes the Court’s jurisdiction under Article 21 of the Treaty of Amity and 36(1) of the Statute of the Court and officially submits the case to the ICJ on the 16th.

Iran primarily derives arguments from Articles IV(1), VII(1), VIII(1, 2), IX(2), and X(1) of the Treaty of Amity. Iran maintains that the US has violated each of these terms, directly and indirectly impacting the economic and political well-being of Iran. Noting that the IAEA has consistently verified Iran’s legitimate abidance to the JCPOA, Iran argues that the US is breaching Treaty of Amity provisions that ensure the non-discrimination and equal rights of Iranian nationals and companies against contractual relations. Iran also alleges that US’ recent sanctions impose extraterritorial effects, further impinging the Treaty of Amity. Ultimately, Iran seeks reparations for the “ violation of its international legal obligations” by asking the US to terminate all old and new sanctions and taking steps to ensure zero circumvention of the Court’s orders.

## United States of America

The US believes that the case does not belong in the ICJ in the first place. Citing Article XX(1) of the Treaty of Amity, the US argues that this case concerns national security and governing law, thus falling outside the Treaty of Amity’s jurisdictional scope. Further, the US justifies its actions by contending that Iran is not fully complying with the JCPOA, such as the contents of paragraph 1(b). US lawyers contend that Iran is intentionally continuing “unlawful and threatening conduct.” According to US lawyers, Iran continues to export arms and ignored the JCPOA’s call to suspend its ballistic missile programme, which would give the country the ability to deliver nuclear warheads. The US claims that Iran’s covert storage of nuclear-weapons-related documents in spite of JCPOA commitments is also ground for US sanctions and withdrawal from the JCPOA. The US aims to “deny Iran additional resources that could be used to sponsor its malign activities.”

President Trump declared in a statement that the JCPOA ineffectively deals with the nuclear situation in Iran and seeks to impose old and new sanctions to economically pressure Iran against development of its nuclear programs. Trump asserts that the JCPOA “failed to achieve the fundamental

objective of blocking all paths to an Iranian nuclear bomb.” He believes that the treaty doesn’t effectively deal with three primary issues: (1) Iran’s intercontinental ballistic missile, (2) rejection to extend a constraint on its nuclear activities, and (3) evidence that Iran could manufacture a bomb in less than 12 months. Taking steps to reimpose sanctions that were waived under the JCPOA, the US justifies its actions under the National Defense Authorization Act for Fiscal Year 2012, the Iran Sanctions Act of 1996, the Iran Threat Reduction and Syria Human Rights Act of 2012, and the Iran Freedom and Counter- Proliferation Act of 2012. The US Secretary of State also announced that new sanctions will be imposed to be “the strongest sanctions in history.” In response to Iranian arguments that the US sanctions are debilitating Iran’s commercial, social, and humanitarian well-being, the US argues that it is allowing humanitarian-related transactions in Iran. In the end, the US seeks to defend its “bona fide national security basis of the 8 May decision.” It expresses the need to “deny Iran all paths to a nuclear weapon” and aims to defend its actions in the International Court of Justice.

## Timeline of Relevant Resolutions, Treaties and Events

| Date               | Description of event  |
|--------------------|---|
| August 15th, 1955  | <p><b>1955 Treaty of Amity Signing</b></p> <p>The United States and Iran signed the Treaty of Amity, Economic Relations and Consular Rights in Tehran. Approximately two years later, it entered into force.</p>  |
| January 16th, 2016 | <p><b>Implementation of the JCPOA</b></p> <p>After its 2015 adoption by Iran, Germany, the EU, and the five permanent members of the UN Security Council, the JCPOA is implemented. Iran is bound to fulfill the deal's measures for certain UN-sanctions to be lifted.</p> |
| January 12th, 2018 | <p><b>US’ intention for JCPOA-withdrawal</b></p> <p>US President Donald Trump announced the US’ intention to withdraw from the JCPOA unless its terms were amended to stipulate additional nuclear-related commitments for Iran.</p>  |
| April 30th, 2018   | <p><b>US-Israeli Statement</b></p> <p>The US and Israel announced that Iran, as opposed to provisions of JCPOA, had been keeping a covert nuclear program from the IAEA.</p>  |
| May 8th, 2018      | <p><b>Trump’s Presidential Memorandum to re-impose sanctions</b></p>  |

US President Donald Trump announced that UN sanctions waived under JCPOA-related commitments will now "go into full effect." He conveyed that the US would withdraw from the JCPOA and reinstate nuclear-related sanctions on Iran.

#### **IAEA Verification to Iran's JCPOA Commitments**

May 9th, 2018

In a "Statement by IAEA Director General Yukiya Amano, the IAEA confirmed that nuclear provisions under the JCPOA are being implemented by Iran.

#### **JCPOA Meeting (with absence of the US and Iran)**

May 25th, 2018

The EU and other signatories to the JCPOA (held a meeting to confirm the contents of the IAEA's May 9 report. All parties present reaffirmed their commitment to continue the JCPOA despite US withdrawal.

#### **Iran's Application to the ICJ**

July 16th 2018

Iran filed an application to the ICJ instituting proceedings and provisional measures against the United States of America "concerning violations of the 1955 Treaty... [for its recent] sanctions and restrictive measures against Iran by 6 August 2018."

## **Relevant UN Treaties and Events**

- Resolution 1566 (2004), 8 October 2004 (S/RES/1566)
- Treaty of Amity, Economic Relations, and Counselor Rights, 15 August 1955
- Vienna Convention on the Law of Treaties, 27 January 1980
- Joint Comprehensive Plan of Action, 14 July 2015

## **Evaluation of Previous Attempts to Resolve the Issue**

After the United States decided to pull out of the JCPOA, there has been very limited and minimal attempts to solve the issues by Iran, the US, and other countries. Following US withdrawal, Iran presented 7 conditions to remain in nuclear deal to remain in the JCPOA. Among the seven conditions was that European powers must protect Iranian oil sales from U.S. pressure and continue buying Iranian crude, and must promise they would not seek new negotiations on Iran's ballistic missile programme and regional Middle East activities.

## Possible Solutions

### United States of America

If the Court decides to side with the US on this case, it may decide that either the International Court of Justice does not have jurisdiction to consider the case; hence, it cannot be admitted into the court, or that the alleged actions by the US do not come in breach with the Amity Treaty between the United States.

### Iran

If the Court decides to side with Iran on this case, it may find that has breached its obligations to Iran under Articles IV (1), VII (1), VIII (1), VIII (2), IX (2) and X (1) of the Treaty of Amity. Moreover, it may also request the US to a) terminate all existing sanctions against Iran; b) ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity; and c) compensate Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings.

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