Comments on the International Court of Justice's Jurisdiction: Judgment of 3 February 2021 (Islamic Republic of Iran v. United States)

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Abstract

On 3 February 2021, The International Court of Justice [hereafter, I.C.J or Court], issued significant judgment on jurisdiction (Islamic Republic of Iran v. United States) [hereafter, Iran v. U.S Judgment], on preliminary objections, where the Court declared the admissibility of Iran's application, and held that the Court has jurisdiction on the basis of Article XXI, paragraph 2 of the Treaty of Amity, Economic Relations, and Consular Rights of 1955 [hereafter, Treaty of Amity]. The Court voted overwhelmingly to reject the U.S's preliminary objections. We will examine through the separate and dissenting opinions of the Court judges and jurisprudence, to why the Court hewed closely to Iran's characterization of the dispute as one pertaining to the Treaty of Amity rather than one really involving the Joint Comprehensive Plan of Action [hereafter, JCPOA], as the U.S argue, and why the Court rejected the other objections?

Keywords: International Court of Justice; Jurisdiction; 3 February 2021; United States; Iran

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Introduction

In July 2015, Iran and the U.S, as well as other States, entered into a JCPOA, which lifted UN Security Council, EU and U.S sanctions on Iran, in return for Iran accepting constraints on its nuclear programme. On May 8, 2018, the U.S announced its intention to withdraw from the

JCPOA, under which Iran agreed to submit to restrictions on its nuclear program in exchange for sanctions relief[i], and subsequently the U.S re-imposed a range of unilateral sanctions on Iran[ii]. In July 2018, Iran initiated ICJ proceedings, arguing that the U.S sanctions had violated the 1955 Treaty of Amity, including the prohibition on fund transfer restrictions; the requirement of "freedom of commerce and navigation" between the Parties' territories; the obligation to "accord fair and equitable treatment to nationals and companies of the other [Party]"; and obligations of non-discrimination vis-à-vis nationals and third States in respect of exports and imports. On October 3, 2018, the Court issued a unanimous order indicating limited provisional measures against the U.S. Where the ICJ found that it had prima facie jurisdiction to hear the case—contrary to the U.S. position—the provisional measures it granted fell significantly short of the relief Iran sought. The Court also hinted that it might accept a significant element of the U.S. jurisdictional objection at the merits stage of the case[iii].

On February 3, 2021, the Court delivered its judgment on preliminary objections in Alleged Violations of the 1955 Treaty of Amity. The judgment rejected all of the U.S's preliminary objections, declared the admissibility of Iran's Application, and held that the Court has jurisdiction "on the basis of Article XXI, paragraph 2 of the Treaty of Amity"[iv].

In its Judgment, the Court classified the U.S's five preliminary objections into three broad categories[v]:

1) those that relate to the jurisdiction ratione materiae of the Court under Article XXI paragraph 2 of the 1955 Treaty of Amity;

2) those that pertain to the alleged inadmissibility of Iran's Application, on the grounds of abuse of process and judicial propriety; and

3) those that pertain to subparagraphs (b) and (d) of Article XX, paragraph 1 of the 1955 Treaty of Amity, for which the U.S sought a decision before any merit's proceedings.

I. Jurisdiction of the Court Ratione Materiae under Article XXI of the Treaty of Amity

The U.S contests the Court's jurisdiction to entertain the Application of Iran. It submits that the dispute before the Court falls outside the scope ratione materiae of Article XXI, paragraph 2, of the Treaty of Amity, the basis of jurisdiction invoked by Iran.

According to the U.S, the dispute which Iran seeks to bring before the Court falls outside the scope of the mentioned compromissory clause for two reasons which, in its view, are alternative in nature[vi].

First, the U.S contends that "the true subject matter of this case is a dispute as to the application of the JCPOA, an instrument entirely distinct from the Treaty of Amity, with no relationship thereto". Therefore, the subject-matter of the dispute which Iran seeks to have settled by the Court is not "the interpretation or application of the . . . Treaty" within the meaning of the second paragraph of Article XXI[vii]. The U.S argued that the JCPOA was a "multilateral political arrangement" that did "not create legally binding obligations" or give the Court jurisdiction to entertain disputes between its participants.

Secondly, the U.S argues that the vast majority of the measures challenged by Iran fall outside the scope ratione materiae of the Treaty of Amity, because they principally concern trade and transactions between Iran and third countries, or their companies and nationals, and not between Iran and the U.S, or their companies and nationals[viii].

1. First preliminary objection to jurisdiction: the subject-matter of the dispute

The Court held, as it held in the U.S Diplomatic and Consular Staff in Tehran (United States of America v. Iran), judgment, (I.C.J. Reports 1980, para 37) [ix], that the legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and longstanding political dispute between the States concerned. Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them[x].

In fact, this is not the first case that the U.S has argued that the dispute has political contexts. As in the Judgment on Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), where the court recalling its well-established jurisprudence on this point, saying: "It must also be remembered that, as the Corfu Channel case (I.C.J. Reports 1949, p. 4) shows, the Court has never shied away from a case brought before it merely because it had political implications"[xi].

Moreover, In the Advisory Opinion on the Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Advisory Opinion, 2010, I.C.J. Reports 2010, para 27), the Court has repeatedly stated that the fact that a question has political aspects does not suffice to deprive it of its character as a legal question (Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973, p. 172, para. 14). Whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task. The Court has also made clear that, in determining the jurisdictional issue of whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have (Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948, p. 61, and Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I), p. 234, para. 13)[xii].

Sir Hersch Lauterpacht argues that it is not difficult to prove that all disputes between states are disputes of a political nature, because they involve important interests of states, albeit to varying degrees, and any attempt to exclude political disputes from the jurisdiction of the judiciary, will inevitably lead to a radical destruction of the court's activity[xiii].

As for the fact that the dispute between the Parties has arisen in connection with and in the context of the decision of the U.S to withdraw from the JCPOA, the Court found that this does not in itself preclude the dispute from relating to the interpretation or application of the Treaty

of Amity (cf. Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), pp. 811-812, para. 21). Certain acts may fall within the ambit of more than one instrument and a dispute relating to those acts may relate to the "interpretation or application" of more than one treaty or other instrument. To the extent that the measures adopted by the U.S following its decision to withdraw from the JCPOA might constitute breaches of certain obligations under the Treaty of Amity, those measures relate to the interpretation or application of that Treaty[xiv].

Moreover, the Court found that even if it were true, as the U.S contends, that a judgment of the Court upholding Iran's claims under the Treaty of Amity would result in the restoration of the situation which existed when the U.S was still participating in the JCPOA, it nonetheless would not follow that the dispute brought before the Court by Iran concerns the JCPOA and not the Treaty of Amity[xv].

The authors have opined that in the present case the I.C.J has not digressed from its earlier jurisprudence developed in past years regarding ascertainment of existence of dispute[xvi]. In this regard, the authors "A. Alexander & S. Sarkar" believes that the court has rightly pointed out that the subject matter of dispute may be covered by more than one international document[xvii].

It is perplexing that the U.S has not benefited from similar judicial experiences, and has and has persisted on the same old preliminary objections which had previously been rejected by the court in the case of Oil Platforms (Islamic Republic of Iran v. United States of America), judgment, (I.C.J. Reports 1996 (II), para. 21)[xviii], which concerns the interpretation or application of the same treaty. while the U.S has neglected other, more effective objections, such as the "scope of the compromissory clause", raised by Judge Oda in his dissenting opinion enclosed to the same judgment.

Judge Oda considers that it is most unlikely that a good-faith dispute could arise between the two States with regard to the scope of the bilateral treaty even though it could happen that an interpretation of the substantive provisions in their application to some concrete events might be called for[xix]. because the bilateral treaty must, without a doubt, be a product of complete accord of the two States parties not only with regard to the substantive text but concerning the scope - the object and purpose - of the treaty. It follows that, even if the parties to a bilateral treaty are ready to defer to the jurisdiction of the Court by including a compromissory clause, the subject of any dispute cannot relate to the question of whether essential issues fall within the comprehensive scope - the object and purpose - of the treaty but only to the "interpretation or application" of a provision of the agreed text of the treaty. This power to adjudicate would have been limited to the technical interpretation or application of any individual provisions in the treaty, the whole scope of which the States themselves had agreed to accept. The range of the "interpretation or application" of a treaty as covered by the compromissory clause in a bilateral treaty is strictly limited, and not given any kind of loose interpretation. Neither party may be presumed to entrust the evaluation of the scope - the object and purpose - of the treaty to a third

party without its consent, even where a dispute as to the interpretation or application of the individual provisions of the treaty is specified in the compromissory clause[xx].

According to the most senior ICJ judge[xxi], the failure to dismiss Iran's Application in the present case invites a situation in which a State could, under the pretext of the violation of any trivial provision of any treaty containing a compromissory clause, unilaterally bring the other State party to the treaty before the Court on the sole ground that one of the parties contends that a dispute within the scope of the treaty exists while the other denies it. This would be no more than the application of a form of false logic far removed from the real context of such a treaty, and constituting nothing short of an abuse of treaty interpretation, so that "the Court might seem in danger of inviting a case "through the back door"[xxii].

In my opinion, the U.S missed a valuable opportunity to test the court in answering a crucial question, as if the staff of lawyers were thinking prematurely at the merit stage, not of the jurisdiction stage.

2. Second preliminary objection to jurisdiction: "third country measures"

The U.S's second preliminary objection is premised on the concept of 'third country measures'. Alternative to the first objection, the U.S argued that the I.C.J lacked jurisdiction as most of Iran's claims were principally directed at the trade or transitions between Iran and third countries or their companies or nationals. The US observed that the most of the measures taken under the Memorandum of 8 May 2018 were third-country measures and did not affect the trade or transactions between Iran and the U.S. Consequently, the U.S contended, those measures do not fall within the ambit of the Treaty of 1955 as claimed by Iran[xxiii].

It seems that the U.S was really focusing on the merit stage. This conclusion may be confirmed by the Court's decision on the U.S's Second Preliminary Objection relating to "Third Country Measures", in which it held that the second preliminary objection of the U.S relates to the scope of certain obligations relied upon by the Applicant in the present case and raises legal and factual questions which are properly a matter for the merits. If the case were to proceed to the merits, such matters would be decided by the Court at that stage, on the basis of the arguments advanced by the Parties[xxiv].

The Court also observed that all the measures of which Iran complains are intended to weaken Iran's economy. Indeed, on the basis of the official statements of the U.S's authorities themselves, Iran, its nationals and its companies are the target of what the Respondent describes as "Third Country Measure", as well as of the measures aimed directly against Iranian entities and of those against "U.S. persons" which are intended to prohibit them from engaging in transactions with Iran, its nationals or its companies[xxv].

Conversely, the fact that some of the measures challenged - whether or not they are "the vast majority", as the U.S maintains - directly target third States or the nationals or companies of third States does not suffice for them to be automatically excluded from the ambit of the Treaty of Amity. Only through a detailed examination of each of the measures in question, of their

reach and actual effects, can the Court determine whether they affect the performance of the U.S's obligations arising out of the provisions of the Treaty of Amity invoked by Iran, taking account of the meaning and scope of those various provisions[xxvi].

In his Declaration, the Judge Tomka was discontented seeing the court departed from its earlier rulings while deciding the same treaty and between the same parties[xxvii]. He believes that the legal question which the Court should have determined at the present stage of the proceedings is whether the U.S have obligations under the provisions invoked by Iran not to interfere with these trade, commercial or financial relations. In order to answer this question, the Court should have analyzed the text of the provisions of the Treaty, relied on by Iran, in light of the Treaty's object and purpose[xxviii].

In its 1996 Judgment, the Court devoted no less than 27 paragraphs to a detailed analysis of Article I, Article IV, paragraph 1, and Article X, paragraph 1, of the Treaty, inquiring whether the acts complained of were capable of falling within the scope of the provisions invoked by the Applicant[xxix].

The Court recently followed the same approach to the analysis of various provisions of the Treaty of Amity, invoked by Iran in support of its claims, in the 2019 Judgment on preliminary objections in the Certain Iranian Assets case. When it turned to the consideration of the second preliminary objection raised by the U.S, the Court analysed Article IV, paragraph 2, Article XI, paragraph 4, Article III, paragraph 2, Article IV, paragraph 1, and Article X, paragraph 1, of the Treaty of Amity.

In the present case, by contrast, the Court avoids analysing the articles relied on by Iran when it alleges that the U.S's measures, which target third countries (and their nationals or companies) because they maintain trade, commercial or financial relations with Iran (and its nationals or companies), are in breach of the U.S's obligations under the Treaty of Amity[xxx].

Judge Tomaka thinks he can't share the approach adopted by the Court in this case, which is inconsistent with the approach it took in 1996 and 2019 in cases concerning the same Treaty. based on the legal principle that: "Consistency is the essence of judicial reasoning. This is especially true . . . with regard to closely related cases"[xxxi].

It is true that the court partially departed from two of its earlier judgments in 1996 and 2019[xxxii], but, in my view, the new approach taken by the Court in the present case is closest to the right. I agree with Judge Oda's dissenting opinion appended to the Oil Platform judgment (I.C.J. Reports 1996 (II), para. 25). He considered that the way in which the Court responds to the Iranian Application in this Judgment derives from a misconception. The Court was requested by Iran to adjudge at this stage that it has jurisdiction under the Treaty to entertain the dispute occasioned by the destruction of the platforms by the U.S force, but not to entertain any claims made by Iran under any specific article - in this case Article X (1). In his view the conclusion reached by the Court is unjustified because the Court should not have interpreted each provision of Articles 1, IV (1) and X (1) as providing a basis for the jurisdiction of the Court but should

rather have determined that a dispute - if any such exists - between Iran and the U.S falls within the purview of the 1955 Treaty of Amity[xxxiii].

I believe that the strength of Judge Oda's reasoning and arguments and his long experience have had the effect of changing the Court's approach to the present case. This is not the first case in which the Court has followed Judge Oda's opinion, as in the Land, Island and Maritime Frontier Dispute case (El Salvador/Honduras: Nicaragua intervening), Judgment of 13 September 1990, where the Court was guided by his separate opinion attached to the Continental Shelf case (Tunisia/Libyan Arab Jamahiriya), Application by Malta for Permission to Intervene (Judgment of 14 April 1981)[xxxiv], where the Court held, as Judge Oda found six years earlier, that the Court with the authority to decide upon a request for permission to intervene[xxxv].

In sum, we can say that the objections of the U.S on the basis of Article XXI, paragraph 2, of the Treaty of Amity, were classic. For these reasons, the Court decided that the preliminary objections to jurisdiction brought by the U.S, cannot be upheld[xxxvi].

II. Admissibility of Iran's Application

The objection to admissibility raised by the U.S is based on the contention that "Iran's claims amount to an abuse of process and would work an injustice that would raise serious questions of judicial propriety". This is because "Iran has invoked the Treaty of Amity in a case involving a dispute that solely concerns the application of the JCPOA"[xxxvii]. The U.S contends that through this case Iran is seeking to obtain "an illegitimate advantage" in respect of its nuclear activities and aims to bring "political and psychological pressure on the U.S"[xxxviii].

The U.S contends that the Court has the inherent power to decline to exercise its jurisdiction in order to protect the integrity of its judicial function. In the U.S's view, it would be "reasonable, necessary and appropriate" for that purpose for the Court to declare the present case inadmissible. By hearing a case that raises questions deeply entangled with the JCPOA, the Court could compromise its judicial integrity. The U.S contends that, if the Court were to grant Iran relief from nuclear-related sanctions, it would be placed "at odds with its inherently judicial function"[xxxix].

In the present case, the Court has already ascertained that the dispute submitted by the Applicant concerns alleged breaches of obligations under the Treaty of Amity and not the application of the JCPOA. If the Court eventually found on the merits that certain obligations under the Treaty of Amity have indeed been breached, this would not imply giving Iran any "illegitimate advantage" with regard to its nuclear programme, as contended by the U.S Such a finding would rest on an examination by the Court of the treaty provisions that are encompassed within its jurisdiction[xl]. In the view of the Court, there are no exceptional circumstances that would justify considering Iran's Application inadmissible on the ground of abuse of process[xli]. In any event, the fact that most of Iran's claims concern measures that had been lifted in conjunction with the JCPOA and were later reinstated does not indicate that the submission of these claims constitutes an abuse of process[xlii].

Again, the court cited a case in which the U.S and Iran were parties, where the Court has specified that there has to be "clear evidence" that the Applicant's conduct amounts to an abuse of process (for analogous statements, see Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I), para. 113)[xliii]. Indeed, the decision is objectively based on Iran's precisely formulated submissions[xliv].

Ad-hoc Judge Brower, in his separate partly concurring, partly dissenting opinion, in particular, discussed the I.C.J's attitude in rejecting U.S's preliminary objection pertaining to "abuse of process", as he considered it is troubling that the Court did not see itself compelled to do more in dismissing U.S's abuse of process objection than intone the by now ritual but opaque catch-phrases "clear evidence" and "exceptional circumstances", neither of which standards has ever been defined by the Court[xlv]. Indeed, neither the Court nor the Permanent Court of International Justice ever has come to grips with the concept of abuse of process[xlvi]. A review of the nonagenarian judicial history of the concept of abuse of process illustrates why its life has remained, like that of an abandoned infant who never has been adopted, fostered or taken in hand by anyone, utterly devoid of substantive development[xlvii]. It is as though the Court is determined to continue 95 years of enshrouding the principle of abuse of process in mystery, leaving consequently unedified litigants wondering whether the Court itself knows its substance, let alone the threshold for its application. The Court thus would do well to clarify both the principle and the evidentiary condition for its acceptance[xlviii].

Despite the merit of the arguments argued by Ad-hoc Judge Brower, it is well established that the I.C.J has full discretion and unfettered freedom to weigh any Application bearing in mind the circumstances of each particular case[xlix]. Indeed, the trend for the I.C.J remains to favour admitting any Application rather than declaring it inadmissible on the ground of abuse of process, except in exceptional circumstances that would justify considering any Application inadmissible. In this regard, the interpretation of the exception should not be expanded or deviated from.

III. Objections on the Basis of Article XX, Paragraph 1 (b) and (d), of the Treaty of Amity

The U.S maintains that Article 79 (now Article 79bis) of the Rules of Court sets out three types of preliminary objections, namely objections to the jurisdiction of the Court, objections to the admissibility of the Application, and any "other objection the decision upon which is requested before any further proceedings on the merits". The Respondent contends that the Court has recognized in the past that an objection may fall into this last category and may have an exclusively preliminary character even if it touches on certain aspects of the merits[l].

The U.S submits that in the present case its objections based on Article XX, paragraph 1 (b) and (d) — which provide that the Treaty of Amity does not preclude the application of measures "relating to fissionable materials" or that are necessary to protect a State's "essential security interests" — fall into this third category of objections under Article 79 of the Rules of Court and are of an exclusively preliminary character. The Respondent argues that a

determination on these objections can be made on the basis of the facts already before the Court, without deciding on the merits of the case and without prejudging Iran's claims[li]. In the U.S's view, all measures at issue in this case can be categorized as "nuclear-related"; therefore, they are all covered by Article XX, paragraph 1 (b), of the Treaty of Amity[lii].

The U.S argues that the notion of essential security interests referred to in Article XX, paragraph 1 (d) is broad; to reach the required threshold, measures do not need to be taken in relation to an armed attack, or with regard to matters considered by the Security Council as a threat to international peace and security[liii].

Again, the Court recalling its well-established jurisprudence on this point, while deciding the same treaty and between the same parties, as the Court recalls that in the Oil Platforms case (Islamic Republic of Iran v. United States of America), it found that "Article XX, paragraph 1 (d), of the Treaty of Amity does not restrict its jurisdiction in the present case, but is confined to affording the Parties a possible defence on the merits" (Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), para. 20)[liv]. A similar view was expressed in the case concerning Certain Iranian Assets (Islamic Republic of Iran v. United States of America) (Preliminary Objections, Judgment, I.C.J. Reports 2019 (I), para. 45)[lv], where the Court noted that the interpretation given to Article XX, paragraph 1, with regard to subparagraph (d) also applies to subparagraph (c), which concerns measures "regulating the production of or traffic in arms, ammunition and implements of war". The Court observed that in this respect "there are no relevant grounds on which to distinguish [subparagraph (c)] from Article XX, paragraph 1, subparagraph (d)" (ibid., para. 46)[lvi]. The Court finds that there are equally no relevant grounds for a distinction with regard to subparagraph (b), which may only afford a possible defence on the merits. For the following reasons, the two objections raised by the U.S on the basis of Article XX, paragraph 1 (b) and (d), cannot be considered as preliminary. A decision concerning these matters requires an analysis of issues of law and fact that should be left to the stage of the examination of the merits[lvii].

In my opinion, the court's decision, confirms once again that the staff of U.S lawyers were thinking prematurely at the merit stage, not of the jurisdiction stage, or that the U.S was hoping to change the court's approach, an issue that is difficult to achieve. The U.S itself admits that the court's jurisprudence does not support its view on this point. According to the U.S, even though in its jurisprudence the Court has decided that objections based on Article XX, paragraph 1, of the Treaty of Amity were defences on the merits to be considered at a subsequent phase, in the present case the Court should examine them as a preliminary matter, in particular because they are "severable from the merits of Iran's claims"[lviii].

I agree with Ad-hoc Judge Brower and other authors that the Court's deviation from its approach in the present case, can potentially lead to 'legal uncertainty in the decisions of the I.C.J[lix]. But I find it a partial deviation, not a fundamental deviation, as the Court decided that the preliminary objections to jurisdiction brought by the U.S on the basis of Article XX, Paragraph 1 (b) and (d), cannot be upheld. In an overall analysis, it can be deciphered that the

I.C.J narrowed the objections that a State could raise in the preliminary objection and thereby prefer to clarify the content of preliminary objections in the merits[lx].

Ultimately, I find that the swing in the Court's approach explains what "Martti Koskenniemi" describes about international law as an "argumentative practice"[lxi], which does not always allow for the predictability of cases.

Conclusion

As a conclusion, Iran and the U.S have confronted each other five times in the I.C.J, of which the last three cases relate to the interpretation or application of the same treaty, but with different facts. Regardless of the court's a partial deviation from its earlier approach in 1996 and 2019, which was not in the U.S's interest, it is perplexing that the U.S has not changed its approach at the jurisdiction stage in 2021, remaining adamant on the same preliminary objections. Thus, the court's decisions were the same.

It seems that the U.S was really focusing on the merit stage. It would be interesting to witness whether if there is a change in the court's approach at the merit stage. Indeed, the Court is unlikely to change its previous approach at the merit stage, especially with the majority of Court members continuing until the final decision of the Court.

Reference:

[1] See Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, (2015), 109 AJIL 644, 649.
[2] Jean Galbraith, Contemporary Practice of the United States, (2018), 112 AJIL 487, 517, 521; Exec. Order No. 13, (2018), 846, 83 Fed. Reg. 38,939.
[3] Elena Chachko, Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America): Request for the Indication of Provisional Measures (I.C.J.), (February, 2019) 58 (1), International Legal Materials, 71, 71.
[4] Diane A. Desierto, Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Iran v. U.S.) (Judgment on Preliminary Objections) (I.C.J.), (February, 2022) 61 (1), International Legal Materials, 1, 1.
[5] Diane Desierto, A Study in Contrasting Jurisdictional Methodologies: The International Court of Justice's February 2021 Judgments in Iran v. USA and Qatar v. UAE, (February 15, 2021), EJIL : Talk!, 1, 2, *available at* https://www.ejiltalk.org/a-study-in-contrasting-jurisdictional-methodologies-the-international-court-of-justices-february-2021-judgments-in-iran-v-usa-and-qatar-v-uae/ , Accessed 14 July 2022.
[6] Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, 2021, ICJ Rep. 9, at 23 (February 3) [hereafter, Alleged Violations of the 1955 Treaty of Amity, Judgment].
[7] Id. at 23, 24.
[8] Id. at 24.

[9] See; United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, 1980, ICJ Rep. 3, at 20 (May, 24).
[10] Alleged Violations of the 1955 Treaty of Amity, Judgment, supra note 6, at 27.
[11] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment, 1984, ICJ Rep. 392, at 435 (November, 26).
[12] Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion), Advisory Opinion, 2010, ICJ Rep. 403, at 415 (July, 22).
[13] Lauterpacht Hersch, La théorie des différends non justiciables en droit international, (1930) 34, R.C.A.D.I, 564-566.
[14] Alleged Violations of the 1955 Treaty of Amity, Judgment, supra note 6, at 27.
[15] Id.
A. Alexander, S. Sarkar, Shifting Interpretation in International Court of Justice's Decision in the Islamic Republic of Iran v. United States of America: A Deliberate Step? (April, 2022) 43(1), Liverpool Law Review, 1, 4.
[16] Id.
[17] Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, judgment, 1996, ICJ Rep. 803, at 811, 812 (December, 12). [hereafter, Oil Platforms, Judgment].
[18] Oil Platforms, judgment, (DISS. OP. ODA), at 896.
[19] Id, at 896, 897.
[20] See: Bernard H. Oxman, International decisions, (1997), 91 (3) AJIL 518, 523.
[21] Oil Platforms, Judgment, supra note 17, at 900. See also: Bernard H. Oxman, supra note 19, at 523.
A. Alexander, S. Sarkar, supra note 16, at 5.
[22] Alleged Violations of the 1955 Treaty of Amity, Judgment, supra note 6, at 29.
[23] Id, at 28.
[24] Id.
A. Alexander, S. Sarkar, supra note 16, at 6.
[25] Alleged Violations of the 1955 Treaty of Amity, Judgment, (DECL. Tomka), at 41.
[26] Id.
[27] Id.
[28] Id, at 42.
A. Alexander, S. Sarkar, supra note 16, at 6.
[29] Oil Platforms, judgment, (DISS. OP. ODA), at 900.
[30] Continental Shelf case (Tunisia/Libyan Arab Jamahiriya), Application by Malta for Permission to Intervene, judgment, (SEP. OP. ODA), 1981, ICJ Rep. 3, at 24, (April, 14).
[31] Land, Island and Maritime Frontier Dispute case (El Salvador/Honduras: Nicaragua intervening), Judgment, 1990, ICJ Rep. 92, at 137, (September, 13).
[32] Alleged Violations of the 1955 Treaty of Amity, Judgment, supra note 6, at 29.
[33] Id, at 31.
[34] Id, at 29.
[35] Id, at 30.
[36] Id, at 31.

[37] Id, at 32.
[38] Id.
[39] Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, 2019 (I), ICJ Rep. 7, at 42, 43, (February, 13).
A. Alexander, S. Sarkar, supra note 16, at 4.
[40] Alleged Violations of the 1955 Treaty of Amity, Judgment, (SEP. OP. Brower), at 52.
[41] Id, at 46.
[42] Id.
[43] Id, at 51.
[44] See: Cherie Blair, Ema Vidak Gojkovic, WikiLeaks and Beyond: Discerning an International Standard for the Admissibility of Illegally Obtained Evidence, (February 3, 2018), 33 (1) ICSID Review, 235, 239.
[45] Alleged Violations of the 1955 Treaty of Amity, Judgment, supra note 6, at 32.
[46] Id.
[47] Id, at 33.
[48] Id.
[49] Oil Platforms, Judgment, supra note 17, at 811.
[50] Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, 2019, ICJ Rep. 7, at 25 (February, 13).
[51] Id.
[52] Alleged Violations of the 1955 Treaty of Amity, Judgment, supra note 6, at 35.
[53] Id, at 32.
A. Alexander, S. Sarkar, supra note 16, at 8.
[54] Id.
[55] Martti Koskenniemi, Law, Teleology and International Relations: An Essay in Counterdisciplinarity, (March 19, 2012), 26(1) International Relations, 3, 3.