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**International Court
of Justice**

**Cour internationale
de Justice**

THE HAGUE

LA HAYE

YEAR 2018

Public sitting

held on Monday 27 August 2018, at 10 a.m., at the Peace Palace,

President Yusuf presiding,

*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)*

VERBATIM RECORD

ANNÉE 2018

Audience publique

tenue le lundi 27 août 2018, à 10 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

*en l'affaire relative à des Violations alléguées du traité d'amitié, de commerce
et de droits consulaires de 1955
(République islamique d'Iran c. Etats-Unis d'Amérique)*

COMPTE RENDU

Present: President Yusuf
Vice-President Xue
Judges Tomka
Abraham
Bennouna
Cañado Trindade
Gaja
Crawford
Gevorgian
Salam
Iwasawa
Judges *ad hoc* Brower
Momtaz
Registrar Couvreur

Présents : M. Yusuf, président
Mme Xue, vice-présidente
MM. Tomka
Abraham
Bennouna
Caçado Trindade
Gaja
Crawford
Gevorgian
Salam
Iwasawa, juges
MM. Brower
Momtaz, juges *ad hoc*
M. Couvreur, greffier

The Government of the Islamic Republic of Iran is represented by:

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as Agent, Counsel and Advocate;

Mr. Mohammad H. Zahedin Labbaf, Director of the Center for International Legal Affairs of the Islamic Republic of Iran, The Hague,

as Co-Agent and Counsel;

Dr. Seyed Hossein Sadat Meidani, Legal Adviser of the Ministry of Foreign Affairs of the Islamic Republic of Iran,

as Deputy Agent;

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Mr. Alain Pellet, Emeritus Professor at the University Paris Nanterre, former member and former Chairman of the International Law Commission, member of the Institut de droit international,

Mr. Jean-Marc Thouvenin, Professor at the University of Paris Nanterre, Secretary General of The Hague Academy of International Law, member of the Paris Bar, Sygna Partners,

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Mr. Luke Vidal, member of the Paris Bar, Sygna Partners,

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comme assistantes.

The PRESIDENT: Please be seated. The sitting is open.

For reasons duly made known to me, Judges Sebutinde, Bhandari and Robinson are unable to sit with us today.

I should first of all like to pay solemn tribute, on behalf of the Court, to the memory of the former Secretary-General of the United Nations, Kofi Annan, an eminent diplomat and steward of peace, human rights and social progress.

Born in Kumasi, Ghana, on 8 April 1938, Kofi Annan studied at the University of Science and Technology in Kumasi and completed his undergraduate studies in economics at Macalester College in the United States in 1961. From 1961 to 1962, he undertook graduate studies in economics at the *Institut universitaire de hautes études internationales* in Geneva and received a Master of Science degree in management from the Massachusetts Institute of Technology in 1972.

Mr. Annan's distinguished career with the United Nations system began in 1962, when he was appointed as an administrative and budget officer with the World Health Organization in Geneva. He later served with the Economic Commission for Africa in Addis Ababa, the United Nations High Commissioner for Refugees in Geneva, and in various senior posts in New York dealing with human resources, budget, finance, and staff security. From 1992 to 1996, he served as Under-Secretary-General for Peacekeeping, during which period he was also appointed briefly as the Special Representative of the Secretary-General to the former Yugoslavia.

It is in January 1997 that Kofi Annan was elected the seventh Secretary-General of the United Nations and the first Secretary-General to be elected from among the ranks of the United Nations staff. In this post, which he held until December 2006, Mr. Annan worked tirelessly to revitalize the institution and make the international system more effective. At Mr. Annan's initiative, the United Nations peacekeeping was strengthened in ways that enabled the United Nations to cope with a rapid rise in the number of operations and personnel. It was also at Mr. Annan's urging that, in 2005, Member States established two new intergovernmental bodies: the Peacebuilding Commission and the Human Rights Council. Mr. Annan played a central role in the promotion and defence of the concept of the responsibility to protect, or the legal obligation, of States to protect their population and the responsibility of the international community to assist such States in meeting those obligations.

As Secretary-General, Mr. Annan undertook wide-ranging diplomatic initiatives and used his good offices in numerous delicate political situations. As a result of these efforts, Mr. Annan and the United Nations were jointly awarded the Nobel Peace Prize in 2001. At the Court, Mr. Annan is remembered in particular for the important role he played, as Secretary-General, in facilitating the implementation of the Judgment of the Court issued in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*. Secretary-General Annan visited the Court on several occasions, including in 1999 when he inaugurated the Court's Museum, in 2002 when he came on another official visit to the Court, and in 2003 when he paid a courtesy visit to the President of the Court.

Even after completing his mandate as Secretary-General, Mr. Annan continued to work actively in international diplomacy, notably through the establishment of the Kofi Annan Foundation in 2007, and, of course, in participation of various missions entrusted to him by the international community, including as Special Representative of the United Nations and of the Arab League to Syria.

Kofi Annan's soft-spoken yet confident demeanour, careful judgment and strong moral convictions set an example for us all. He will be remembered as a great leader not only by those working at the United Nations, but by all who champion the causes of international diplomacy, peace, human rights and global poverty reduction. On behalf of the Members of the Court and myself, and on behalf of the Registrar and all the staff of the Registry, I offer our sincere condolences to the Ghanaian Government, to the people of Ghana and to Kofi Annan's family and friends. Our thoughts and prayers are with them at this difficult time.

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I invite you now to stand and observe one minute of silence in memory of Mr. Kofi Annan.

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The PRESIDENT: Please be seated.

Before turning to judicial business for this morning, it is necessary for me to say a few words about the composition of the Court.

I wish to recall that former President, Judge Hisashi Owada, resigned with effect from 7 June 2018 and that, following this resignation, the General Assembly and the Security Council of the United Nations, elected on 22 June 2018, Mr. Yuji Iwasawa to serve for the remainder of Judge Owada's term of office, which would have expired on 5 February 2021. We offer our sincere congratulations to our new colleague and take this opportunity to welcome him to the Court.

Article 20 of the Statute of the Court provides that, "[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously". I shall first introduce Judge Iwasawa, who is here with us today, and I shall then invite him to make his declaration.

Judge Yuji Iwasawa, who is of Japanese nationality, graduated in law from the University of Tokyo. He obtained an LL.M. at Harvard Law School and an S.J.D. from the University of Virginia Law School in the United States.

Judge Iwasawa was, until his election, Professor of International Law at the Faculty of Law of the University of Tokyo. He has enjoyed a distinguished academic career in the field of international law. He has been a Visiting Fellow at the Lauterpacht Centre for International Law and the *Centre de recherche sur les droits de l'homme et le droit humanitaire* of the Université Panthéon Assas in Paris. He has also lectured at the Hague Academy of International Law.

Judge Iwasawa was formerly Judge and Vice-President of the Asian Development Bank's Administrative Tribunal, a member of the Permanent Group of Experts of the WTO Agreement on Subsidies and Countervailing Duties and a member of the United Nations Permanent Forum on Indigenous Issues. He served as the Chairperson of the Human Rights Committee twice, from 2009 to 2011 and again from 2017 to 2018. He has also been a Vice-Chair of the International Law Association.

Judge Iwasawa has published widely on a range of international law issues. He is an *associé* of the Institut de droit international and the General Editor of the *International Law in Japanese Perspective* Series.

I shall now invite Judge Iwasawa to make the solemn declaration prescribed by the Statute, and I request all those present to rise. Judge Iwasawa.

Judge IWASAWA: “I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

The PRESIDENT: Thank you. Please be seated. The Court takes note of the solemn declaration made by Judge Iwasawa and I declare him duly installed as a Member of the Court.

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The Court meets today under Article 74, paragraph 3, of the Rules of Court, to hear the observations of the Parties on the Request for the indication of provisional measures submitted by the Islamic Republic of 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)*.

Before recalling the principal phases of the present proceedings, I would like to indicate that Judge Donoghue deemed that she should not take part in the case, taking into account Article 24, paragraph 1, of the Statute of the Court. The United States of America accordingly chose Mr. Charles Brower to sit as judge *ad hoc* for the case.

Since the Court does not include upon the Bench a judge of Iranian nationality, the Islamic Republic of Iran exercised its right under Article 31 of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Djamchid Momtaz.

As noted earlier, Article 20 of the Statute provides that “[e]very Member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously”. Pursuant to Article 31, paragraph 6, of the Statute, that same provision applies to judges *ad hoc*. Notwithstanding the fact that, in another case, Mr. Brower is serving as judge *ad hoc* and has made a solemn declaration, Article 8, paragraph 3, of the Rules of Court requires that he make a further solemn declaration in the present case.

In accordance with custom, I shall first say a few words about the career and qualifications of each of the two judges *ad hoc* before inviting them to make their solemn declaration.

Mr. Brower is a United States national and a graduate of the University of Harvard. His career has combined extensive practice at the Bar with distinguished public service, at both national and international level. As counsel and arbitrator, he has handled cases before tribunals operating under the rules of the United Nations Commission on International Trade Law (UNCITRAL), the United Nations Compensation Commission and the International Centre for Settlement of Investment Disputes (ICSID). Mr. Brower has represented various governments in proceedings before the International Court of Justice, and is a member of the panels of arbitrators of a number of arbitral institutions around the world. Since 2014, he has been sitting as judge *ad hoc* at the Court in the case concerning the *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicaragua v. Colombia)*. He has also served as judge *ad hoc* of the Inter-American Court of Human Rights and as a member of the Register of Experts of the United Nations Compensation Commission in Geneva. Mr. Brower served in the United States Department of State in Washington DC, where, as acting legal adviser, he was the chief lawyer of the Department. He has also acted as Deputy Special Counsellor to the President of the United States. He has been President of the American Society of International Law and, since 1983, he has been a judge at the Iran-United States Claims Tribunal here in The Hague.

I will now switch to French to introduce judge *ad hoc* Djamchid Momtaz.

De nationalité iranienne, M. Momtaz est docteur d'Etat en droit public. Professeur de droit international à l'Université de Téhéran, il a également enseigné dans de nombreuses universités françaises et dans plusieurs instituts de recherche, tels que l'Institut de droit international public et de relations internationales de Thessalonique et l'Institut international des droits de l'homme de Strasbourg. Il a en outre donné le cours général à l'Académie de droit international de La Haye en 2014 après y avoir donné un cours spécial en 2000.

M. Momtaz a été membre de la délégation de l'Iran à la troisième conférence des Nations Unies sur le droit de la mer et à la conférence diplomatique de plénipotentiaires des Nations Unies sur le Statut de Rome pour la Cour pénale internationale. Il a également représenté l'Iran à de nombreuses sessions de l'Assemblée générale des Nations Unies. Il est par ailleurs membre de la Cour permanente d'arbitrage, de l'Institut de droit international et du *Curatorium* de

l'Académie de droit international de La Haye. Il a été membre et président de la Commission des Nations Unies du droit international.

M. Momtaz a publié de nombreux ouvrages et articles sur le droit de la mer, le droit des cours d'eau internationaux, le droit international des droits de l'homme, le droit international humanitaire et le recours à la force. Il est aussi membre du comité éditorial de l'*Asian Journal of International Law* et du comité scientifique de l'*Annuaire colombien de droit international*.

In accordance with the order of precedence fixed by Article 7, paragraph 3, of the Rules of Court, I shall first invite Mr. Brower to make the solemn declaration prescribed by the Statute, and I would request all those present to rise. Mr. Brower, you have the floor.

Mr. BROWER:

“I solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously.”

Le PRESIDENT : Je vais maintenant inviter M. Momtaz à prendre l'engagement solennel prescrit par le Statut.

M. MOMTAZ :

«Je déclare solennellement que je remplirai mes devoirs et exercerais mes attributions de juge en tout honneur et dévouement, en pleine et parfaite impartialité et en toute conscience.»

The PRESIDENT: Thank you very much. Please be seated. I take note of the solemn declaration made by Mr. Brower and Mr. Momtaz and declare them duly installed as judges *ad hoc* 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)*.

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I shall now recall the principal phases of the present proceedings.

The proceedings in the present case were instituted on 16 July 2018 by the filing in the Registry of the Court of an Application by the Islamic Republic of Iran against the United States of America concerning alleged violations of the Treaty of Amity, Economic Relations and Consular

Rights between Iran and the United States of 15 August 1955 (I will refer to this Treaty as the “Treaty of Amity”). To found the jurisdiction of the Court, the Islamic Republic of Iran invokes Article 36, paragraph 1, of the Statute of the Court and Article XXI of the Treaty of Amity.

In its Application, the Islamic Republic of Iran contends that the case concerns the decision of the United States of America of 8 May 2018, to reimpose sanctions and restrictive measures targeting, directly or indirectly, Iran and Iranian companies and/or nationals, which the United States had previously decided to lift in connection with the Joint Comprehensive Plan of Action — an agreement on the nuclear programme of the Islamic Republic of Iran reached on 14 July 2015 by the latter and the five permanent members of the United Nations Security Council, plus Germany and the European Union. The Applicant claims that, through the 8 May sanctions and the announced further sanctions, the United States has violated and continues to violate various provisions of the Treaty of Amity.

On 16 July 2018, the Islamic Republic of Iran also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court. In its Request, the Islamic Republic of Iran asserts that the United States of America has already started to enforce some elements of the “8 May sanctions”, while announcing that others would be implemented between 90 and 180 days from 8 May 2018. The Applicant maintains that there is a real and imminent risk that irreparable prejudice will be caused to its rights which form the subject-matter of the dispute before the Court gives its final decision.

I shall now ask the Registrar to read out the passage from the Request of Iran specifying the provisional measures which the Government of Iran is asking the Court to indicate. Monsieur le greffier.

The REGISTRAR: Merci, Monsieur le président.

“[T]he Islamic Republic of Iran in its own right and as *parens patriae* of its nationals respectfully requests that, pending final judgment in this case, the Court indicate:

- (a) That the USA shall immediately take all measures at its disposal to ensure the suspension of the implementation and enforcement of all of the 8 May sanctions, including the extraterritorial sanctions, and refrain from imposing or threatening announced further sanctions and measures which might aggravate or extend the dispute submitted to the Court;

- (b) That the USA shall immediately allow the full implementation of transactions already licensed, generally or specifically, particularly for the sale or leasing of passenger aircraft, aircraft spare parts and equipment;
- (c) That the USA shall, within 3 months, report to the Court the action it has taken in pursuance of sub-paragraphs (a) and (b);
- (d) That the USA shall assure Iranian, US and non-US nationals and companies that it will comply with the Order of the Court, and shall cease any and all statements or actions that would dissuade US and non-US persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies;
- (e) That the United States of America shall refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals and companies under the Treaty of Amity with respect to any decision this Court might render on the merits.”

The PRESIDENT: Thank you. Immediately after the Application and the Request for the indication of provisional measures were filed, the Registrar, in accordance with Article 38, paragraph 4, and Article 73, paragraph 2, of the Rules of Court, transmitted original copies thereof to the Government of the United States of America. He also notified the Secretary-General of the United Nations.

By a letter dated 23 July 2018, in accordance with Article 74, paragraph 4, of the Rules of Court, I called the attention of the United States of America to the need to act in such a way as will enable any order of the Court may make on the request for provisional measures to have its appropriate effects.

According to Article 74 of the Rules of Court, a request for the indication of provisional measures shall have priority over all other cases. Paragraph 2 of the same provision states that the Court shall proceed to a decision on the request as a matter of urgency. This imperative must also be balanced with the need to fix the date of the hearing in such a way as to afford the parties an opportunity of being represented at such hearings. Consequently, the Parties were informed that the date for the opening of the oral proceedings contemplated in Article 74, paragraph 3, of the Rules of Court, during which they could present their observations on the Request for the indication of provisional measures, had been set at 27 August 2018, at 10 a.m.

I note the presence before the Court of the Agents and counsel of the Parties. For the purposes of this first round of oral argument, each of the Parties will have available to it a three-hour sitting. The Court will hear the Islamic Republic of Iran, which has submitted the

Request, this morning until 1 p.m. It will hear the United States of America tomorrow between 10 a.m. and 1 p.m. The Parties will then have the possibility to reply. The Islamic Republic of Iran will have the floor again on Wednesday 29 August at 10 a.m., and the United States of America will take the floor in turn on Thursday 30 August at 10 a.m. Each of the Parties will have a maximum time of one and a half hours in which to present its reply.

The Islamic Republic of Iran may, if required, avail itself of a short extension beyond 1 p.m. today, in view of the time taken up by the opening part of these oral proceedings. The Parties are of course not required to use the full amount of time allotted to them.

Before giving the floor to Mr. Mohebi, Agent of the Islamic Republic of Iran, I wish to draw the attention of the Parties to Practice Direction XI, which reads as follows:

“In the oral pleadings on requests for the indication of provisional measures parties should limit themselves to what is relevant to the criteria for the indication of provisional measures as stipulated in the Statute, Rules and jurisprudence of the Court. They should not enter into the merits of the case beyond what is strictly necessary for that purpose.”

I now call upon Mr. Mohebi, Agent of the Islamic Republic of Iran. You have the floor, Sir.

Mr. MOHEBI:

INTRODUCTION

1. Good morning Mr. President, honourable Judges of the Court. Before going to my speech as Agent of the Islamic Republic of Iran, I would like to use this opportunity to submit my Government's respect to the memory of Kofi Annan, a previous Secretary-General of the United Nations for his marvellous contribution to the development of international law. Mr. President, honourable Members of the Court, it is an honour and a privilege for me to appear today before you as Agent of the Islamic Republic of Iran at the oral hearing on the request that my country made for the indication of provisional measures in the proceedings instituted by Iran against the United States on 16 July 2018.

2. This case concerns the reimposition and aggravation by the United States of an extensive set of sanctions and restrictive measures targeting Iran, its nationals, its companies, in egregious violation of the provisions of the Treaty of Amity, Economic Relations, and Consular Rights,

signed by our two countries in Tehran, on 15 August 1955 — which I shall now refer to as the “1955 Treaty of Amity”.

3. Mr. President, the facts giving rise to the dispute have been widely publicized, and I am sure that the Court is well aware of them. Let me nevertheless recall that, on 8 May 2018, the United States issued a “National Security Presidential Memorandum” directing immediate preparations for the reimposition of all United States sanctions lifted by that country since 2015¹, with the aim of— I quote the US President — “reinstating U.S. nuclear sanctions on the Iranian regime [at] the highest level”². This decision by the United States was made effective immediately, with the sanctions scheduled to be reinstated at the expiry of two wind-down periods of 90 and 180 days, respectively on 6 August, and 4 November 2018. I should add that the United States announced, through its Secretary of State, that it also intended to impose new sanctions on Iran, in order to achieve a result described by the Secretary of State as “the strongest sanctions in history”³. These are the basic facts of the dispute before the Court for which my country requested provisional measures.

4. I will come back to the subject-matter of the dispute in a moment. Before doing so, however, it is necessary to place Iran’s request for provisional measures in context. Mr. President, Members of the Court, when my country filed its Request on 16 July 2018, it was because at that very date the actions of the United States called for the urgent indication of the provisional measures. Immediately following the US actions implemented on 8 May 2018, and before instituting these proceedings, Mr. President, Iran had sought the diplomatic solution to the present dispute, with no result however. After communicating to the United Nations Secretary-General, my Government formally called twice on the United States, on 11 and 19 June 2018⁴, to immediately cease these breaches of its international obligations under the Treaty and to revoke its decision to reinstate the sanctions. But this call went unanswered and the United States continued to escalate

¹ US President, National Security Presidential Memorandum, 8 May 2018 (judges’ folder, tab 22-1)

² US President, Remarks by President Trump on the Joint Comprehensive Plan of Action (JCPOA), 8 May 2018 (Judges’ folder, tab 2-2).

³ US Department of State, “After the Deal: A New Iran Strategy”, 21 May 2018, available at www.state.gov/secretary/remarks/2018/05/282301.htm.

⁴ Note Verbale No. 381/289/4870056 sent on 11 June 2018 (judges’ folder, tab 1-2) and Note Verbale No. 281/210/4875065 sent on 19 June 2018 (judges’ folder, tab 1-3).

its aggressive rhetoric in the lead-up to the first deadline of 6 August 2018. Faced with mounting economic pressure and since attempts to settle the dispute through diplomatic means did not succeed, Iran had no other choice but to seize the International Court of Justice with the present request, on 16 July 2018.

5. Today, Mr. President, is 27 August, i.e. 42 days after the filing of Iran's Request. One should say that this is an unusual delay in dealing with a clearly urgent issue. But I strongly believe that this delay in the scheduling of the hearings can cast no doubt on the fact that the matter was and still is very urgent and should be dealt with as such by the Court. My colleagues and counsel will develop on the issue of urgency and irreparable harm in due time.

6. In this regard, Iran has taken due notice that the President of the Court, acting in conformity with Article 74, paragraph 4, of the Rules of Court, addressed, on 23 July 2018, an urgent communication to the Secretary of State of the United States of America, calling upon that country to act in such a way as will enable any order the Court may make on this request for provisional measures to have its appropriate effect.

7. The United States, however, did not even acknowledge this call. Instead, through its Agent, it sent a letter claiming that the Court lacks jurisdiction and then went on to disregard the President of the Court's call, notably by issuing, on 6 August 2018, an "Executive Order 13846" whose effect is precisely to frustrate the very object of Iran's request for provisional measures. Again in full disregard of the President's call.

8. As stated in the Application instituting these proceedings, the jurisdiction of the Court in this case is founded on the 1955 Treaty of Amity. This Treaty, with which the Court is well familiar, imposes on the parties various obligations on a variety of economic and consular matters. These include — but are not limited to — the guarantee of fair and equitable treatment to the other party's nationals and companies and no less favourable treatment with respect to products they import and finally the prohibition on restrictions on transfers of funds; and, of course, the protection of freedom of commerce between the two countries as stipulated in Article XXI (2) of the Treaty. But the reimposition of the sanctions and their further aggravation, let me repeat, the reimposition of the sanctions and their aggravation, announced on 8 May 2018 by the United States constitute severe and direct breaches by the United States of its treaty obligations. As titled by the

Court, this dispute is therefore about “violations of the Treaty”, and the Court’s jurisdiction to rule on such claims rests firmly on Article XXI (2) of that Treaty.

9. Mr. President, the case at hand is in fact very simple, because the United States is publicly propagating a policy intended to damage as severely as possible Iran’s economy and Iranian nationals and companies — and therefore inevitably, Iranian nationals of course; this policy is plainly in violation of the 1955 Treaty of Amity.

10. Let me recall the factual background of the decision of the United States to reimpose and to aggravate nuclear-related sanctions and restrictive measures. These “nuclear-related” sanctions, Mr. President, which Iran has always considered as unlawful, had been built up by the United States, first back in 1996 and then in 2006 and afterwards, through a series of legislative and executive acts targeting entire economic sectors as well as several Iranian individuals. Following years of diplomatic exchanges, held at the highest level, a “fundamental shift” — a “fundamental shift”, to use the phrase of both the United Nations Secretary-General and the US President — occurred in 2015 with the unanimous adoption by the United Nations Security Council resolution 2231 in 2015, which endorsed the Joint Comprehensive Plan of Action, as it is called, the JCPOA. Iran agreed to the JCPOA because it was a workable compromise between, on the one hand, the lifting of the “nuclear-related” sanctions that were negatively affecting the Iranian economy and society and, on the other hand, stronger commitments and oversight requested by some States, notably the United States, over Iran’s civilian nuclear programme. On 16 January 2016, the International Atomic Energy Agency, entrusted by this task by the United Nations Security Council, confirmed that Iran had in fact implemented the nuclear-related measures to which it had committed in 2015. Accordingly, the US “nuclear-related” sanctions were lifted along with similar measures taken by the United Nations and the European Union through the document known to you as the JCPOA.

11. Since the lifting of these sanctions and restrictive measures, in January 2016, Iran’s economic exchanges have grown significantly, slowly but surely, starting to expand the nation’s economy. In February 2016, Iran began shipping oil to Europe for the first time in three years and exported 4 million barrels to France, Spain and Russia. Many aggregate economic indicators, including Iran’s ranking in the Global Innovation Index, show that there has been an overall

improvement in the macroeconomic situation of the country since the JCPOA. In those days, Iran was witnessing so many commercial missions of different countries coming to Tehran, about 120 missions, commercial missions of different countries, searching and seeking for business in Iran, and also to 14 countries, according to the report of the President of the Chamber of Commerce of Iran, travel to 14 countries in order to implement the fruit of the JCPOA. Even a number of the law firms came to Tehran in order to establish their law office in Tehran to help the foreign companies who are interested to develop business in Iran after 2016.

12. Iranian economic intercourse with the United States, Mr. President, also reached heights unseen for years. Iranian airline companies committed billions of dollars to Boeing, in order to acquire aircraft and services to renew their critically aging civilian fleet. Major American industrial groups even, such as General Electric, Honeywell and Dover, entered into agreements to assist the Iranian energy sector to develop its capacities. In those days even there was discussion within the Iranian commercial community that an Iran and United States common chamber of commerce should be established.

13. The revival of commercial and economic relationships with Iran were directly fuelled by the lifting of the so-called “nuclear-related sanctions”. The unanimous adherence of the United Nations Security Council to the resolution 2231 in 2015 and the ongoing and consistent confirmation by the International Atomic Energy Agency that Iran was — and still is — abiding by its nuclear-related commitments was deemed ample guarantee that the lifting of the sanctions would continue.

14. Yet, despite the positive conclusions in the International Atomic Energy Agency’s report, the new United States administration that came into office in January 2017 departed drastically from the position that has been followed by that State, and by the rest of the world, up until that time. The new administration of the United States immediately launched an aggressive wave of false accusations against Iran, claiming that it was engaged in secret military nuclear activity. Absolutely wrong. On 13 October 2017, the US President decided not to certify the appropriateness and the proportionality of the lifting of sanctions, declaring that Iran had “committed multiple violations of the agreement” and that the United States was not going to “continue down a path whose predictable conclusion is more violence, more chaos, the very real threat of Iran’s nuclear

breakout”⁵. On 12 January 2018, the US President stated that the United States would waive the application of the nuclear sanctions against Iran for the last time unless Iran was placed under multiple additional and significant commitments.

15. The animosity climaxed on 8 May 2018 with the United States decision to re-impose nuclear-related sanctions and to aggravate them. The US President stated that he possessed “definitive proof that [the] Iranian promise was a lie”. He then declared that to keep the nuclear sanctions lifted was against the national interest of the United States and that he was going to institute “the highest level of economic sanctions” against Iran.

16. Mr. President, honourable Members of the Court, these declarations are in complete contradiction with the numerous reports of the International Atomic Energy Agency, i.e., the international organization that was in fact entrusted by the United Nations Security Council to verify the abidance by Iran with its nuclear commitments, under the Non-Proliferation Treaty and the Safeguard Agreement and also under the JCPOA. One day after the announcement of the United States decision, the Director General of the IAEA issued a statement affirming that “Iran is subject to the world’s most robust nuclear verification regime . . .” and that “as of today, the IAEA can confirm that the nuclear-related commitments are being implemented by Iran”. The fact that Iran’s activity in the nuclear field is exclusively civilian and poses no threat is attested by the United Nations, of which the Court, your Court, is also the principal judicial organ. The international community has reaffirmed its complete trust in IAEA’s work, and in its competence and reports, and has welcomed the fact that these reports confirmed “the continued adherence by Iran to its nuclear-related commitments”⁶.

17. Despite all these conclusive *facts*, Mr. President, the United States stood before the international community in May 2018, making false claims, using fabricated evidence, evading or ignoring contrary reports, in order to justify its conduct that is viewed by almost all other countries as groundless. To satisfy a purely domestic agenda, and in an attempt to justify the reimposition

⁵ Remarks by President Trump on Iran Strategy, 13 Oct. 2017, available at: www.whitehouse.gov/briefings-statements/remarks-president-trump-iran-strategy/.

⁶ “Chair’s statement following the 25 May 2018 meeting of the Joint Commission of the Joint Comprehensive Plan of Action”, European Union, 25 May 2018, available at: eeas.europa.eu/headquarters/headquarters-homepage/45227/chairs-statement-following-25-may-2018-meeting-joint-commission-joint-comprehensive-plan_it.

and further aggravation of sanctions, the United States made unsubstantiated claims of “multiple violations” by Iran of its nuclear-related commitments, as well as ludicrous assertions concerning an imaginary military nuclear programme that Iran is supposed to have been pursuing despite the continuous and extensive control exerted by IAEA experts.

18. Mr. President, this policy is nothing but naked economic aggression against my country. The term “aggression” is not exaggerated, Mr President. The United States has claimed that the very objective of these measures is to cause maximum damage to Iran. The US Secretary of State unashamedly asserted: “[a]fter [the U.S.] sanctions come into full force, [Iran] will be battling to keep its economy alive”⁷.

19. Since October 2017, the refusal by the US administration to certify Iran’s “nuclear deal” already dramatically affected the confidence that the foreign and domestic investors had in the soundness of the Iranian economic recovery, initiating a drop in the value of the rial (the Iranian currency) — which is still ongoing as of today, and has further worsened since 8 May. The drop in the rial has led to a general inflation that is extremely harmful to the whole Iranian economy and people.

20. As a matter of fact, Mr. President, the mere prospect of the reimposition of the nuclear-related sanctions has had immediate damaging consequences for Iran and the Iranian people. This harm has been compounded since the sanctions were expected as having an extraterritorial scope, threatening not only US persons but also any foreign company that might endeavour to buy from, or sell to, Iranian companies or nationals, or to provide them with services such as basic international banking services, or to invest in Iran.

21. Once the decision to reimpose and aggravate sanctions was announced, the sweeping impact of the United States’ aggressive actions against Iran became even clearer. First, the Presidential Memorandum of 8 May 2018 closed all proposals for investing in and trading with Iran, for all companies that have any link, however remote, with the United States. Secondly, it brought to an end nearly all of the economic and industrial agreements that had been concluded since 2016 by foreign companies and entities with Iranian partners, some representing

⁷ US Department of State, “After the Deal: A New Iran Strategy”, 21 May 2018, available at: www.state.gov/secretary/remarks/2018/05/282301.htm.

multi-billion-dollar trade deals. Thirdly, Iranian products and — most of all — its oil production, are being barred from exportation, both because of inaccessibility to Iran of the international payment and financing system, and because foreign buyers are being threatened with severe sanctions by the United States. Key industrial sectors of Iran — energy, banking and finance, civil aviation, and transport — are all already severely impacted and at risk of total disarray.

22. Mr. President, the measures reinstated by the United States, which will be further implemented and aggravated in the coming weeks and months, will have far reaching consequences. They not only jeopardize Iran's capacity to recover a fully functional economy, Mr. President, they will be an impediment to its ability to guarantee basic health and safety for its people, not to mention basic social and educational services. I should add ~~to its people~~, that the foreigners living in Iran may be at risk in terms of safety and health.

23. The Iranian people has already come under great duress as a result of the US decision to reimpose sanctions. Iranian society is put under high pressure by the stark rise in basic commodity prices and the disappearance of tens of thousands of jobs that the renewed foreign investments and commerce had created over the last years of the JCPOA. As highlighted by the United Nations special rapporteur on the negative impact of the unilateral coercive measures on 22 August 2018, Mr. Idriss Jazairy, the US sanctions are — I quote his exact words — “unjust and harmful”: they are “destroying the economy and currency of Iran, driving millions of people into poverty and making imported goods unaffordable”, including “urgently needed humanitarian goods”⁸.

24. Mr. President, Iran has ancient roots and a long history of resilience — I should say a culture of resilience, even — against external aggression, during the whole 3,000 years of the written history of my country; it will certainly face adversity and the US sanctions, whatever it takes. Iranian officials, up to the highest levels, are already taking strong and courageous public stances, urging unity of the people, determination and, of course, injecting hope to overcome the economic and social woes resulting from US measures against the people of my country. There should be no doubt that Iran will put up the strongest resistance to the US economic strangulation by all peaceful means, including by seeking all available support.

⁸ “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, UN Office of the High Commissioner on Human Rights, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23469&LangID=E

25. But as the situation is evolving since 8 May, this will be at the cost of unjust massive suffering and economic damages inflicted to the Iranian economy and thus to Iranian people, impairing the basic right to live normally, that is to say, to exploit, to benefit from, its natural resources and its working efforts, to trade, to have employment, to have access to social services, to enjoy the protection offered by the best medicine available, to develop its agriculture and economic sectors — all of these damages rising out of direct and clear violation of the Treaty of Amity's obligations, by the United States.

26. The facts I have just outlined clearly indicate that the United States has breached and continues to breach multiple provisions of the 1955 Treaty of Amity. Those provisions, as the Court has already held, regulate safeguards for the nationals and companies of each of the contracting parties, as well as their property and enterprises, the system of transfers, custom duties and other import restrictions, and freedom of commerce and navigation, of course⁹.

27. By requesting the indication of provisional measures, Mr. President, Iran aims to preserve its rights under the Treaty until a final decision of this Court. Indeed, if the United States were to maintain and aggravate their sanctions against Iran, as they have promised, its economy and society would certainly suffer irreparable harm.

28. Mr. President, honourable Members of the Court, the United States' conduct challenges the very foundation of international law and of the rules of law in international relationships. This certainly does not serve the interests of international peace and security, of course. To the contrary, it exacerbates tensions in the region. Beyond Iran, it is in fact the stability of the entire region that the United States puts at risk.

29. Iran is today urging the Court to indicate measures of protection for its claimed rights from an irreparable prejudice and is confident that in the same way as it has protected the claimed rights of other States, including the United States, in other proceedings, the Court will provide such protection in this proceeding as well.

30. Iran's distinguished counsel will now further detail the factual and legal reasons justifying Iran's request for provisional measures:

⁹ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 813, para. 27.

- *First*, Professor Alain Pellet will give a general presentation of Iran's case and will demonstrate that your Court has undoubtedly *prima facie* jurisdiction to indicate the provisional measures as requested;
- *Secondly*, Mr. Aughey will then address the matter of Iran's relevant rights under the 1955 Treaty of Amity, the issue of plausibility, and the issue of the links between the measures presented by Iran and its treaty rights. I should add here that this matter was originally intended to be presented by Professor Vaughan Lowe, but, regrettably, he has been unwell and, although on the mend, he has been advised not to travel for the next few weeks. So, we cannot have him here, and my Government could not benefit from his presence here, presenting his presentation on ~~the~~ plausibility, and then Mr. Aughey, who is his adviser, who has contributed in large extent in preparation of the plausibility presentation, has worked very closely with Professor Lowe on this matter, and will therefore be appearing before you, Mr. President;
- *Thirdly*, Mr. Samuel Wordsworth, Q.C., will expose the irreparable prejudice that will be caused to Iran if the United States sanctions were to be maintained and be aggravated during the time of these proceedings;
- *Fourthly and finally*, Professor Jean-Marc Thouvenin will show that the provisional measures requested by Iran are urgently required to prevent that irreparable prejudice is done to the rights protected under the 1955 Treaty.

I would like, Mr. President and honourable Members of the Court, to thank you very much for your kind and careful attention and would ask you to invite Professor Pellet to take the floor for his presentation. Mr. President, thank you very much.

The PRESIDENT: I thank the Agent of the Islamic Republic of Iran. I now invite Professor Pellet to take the floor. You have the floor.

Mr. PELLET: Thank you, Mr. President, ~~but~~ this pleading will be in French.

PREMIÈRE PARTIE

OBJET DU DIFFÉREND ET COMPÉTENCE DE LA COUR

1. Monsieur le président, *Madame* et Messieurs les juges, comme il l'a indiqué dans sa requête, l'Iran fonde la compétence de la Cour dans la présente affaire sur l'article 36, paragraphe 1, du Statut et sur l'article XXI, paragraphe 2, du traité d'amitié, de commerce et de droits consulaires qu'il a conclu avec les Etats-Unis d'Amérique le 15 août 1955. Aux termes de cette disposition :

[Projection n° 1 : Le fondement de la compétence de la Cour (art. XXI, par. 2, du traité d'amitié de 1955) (dossier des juges, onglet n° 1-1)]

«2. Tout différend qui pourrait s'élever entre les Hautes Parties contractantes quant à l'interprétation ou à l'application du présent Traité et qui ne pourrait pas être réglé d'une manière satisfaisante par la voie diplomatique sera porté devant la Cour internationale de Justice, à moins que les Hautes Parties contractantes ne conviennent de le régler par d'autres moyens pacifiques.»

2. Ce traité est toujours en vigueur ; il lie les Parties ; celles-ci ne sont pas convenues de régler leur différend quant à son application par d'autres moyens pacifiques que le recours à votre haute juridiction. Et il est assez évident que, dans les circonstances de cette affaire, il ne peut être réglé par la voie diplomatique.

3. Malgré la brutalité avec laquelle les mesures qui font l'objet du litige ont été prises et les agressions verbales ou par tweets interposés dont il a été l'objet de la part des plus hautes autorités américaines, l'Iran ne s'en est pas moins employé à ouvrir la voie à un règlement diplomatique. Comme l'agent de l'Iran vient de le rappeler, son pays a, en particulier, alerté sans ambiguïté les Etats-Unis sur l'existence d'un différend au titre du traité :

[Fin de la projection n° 1 – projection n° 2 : Note verbale de l'Iran, 11 juin 2018 (dossier des juges, onglet n° 1-2)]

— Par une première note verbale en date du 11 juin 2018, adressée aux Etats-Unis par le canal de l'ambassade de Suisse à Téhéran, le ministère des affaires étrangères iranien a fermement protesté contre les mesures annoncées le 8 mai, et indiqué qu'il entendait préserver tous ses droits en la matière et régler le différend conformément aux traités liant les Parties si celui-ci ne pouvait être résolu par la voie diplomatique — vous avez ce texte sur vos écrans ainsi que dans le dossier des juges :

«the Government of the Islamic Republic of Iran calls upon the United States, in compliance with its international obligations, to immediately take the necessary measures in order to cease this unlawful act and make full reparation for its consequences. It is obvious that the Government of the Islamic Republic of Iran preserves all its rights to legally and appropriately pursue this matter, including in accordance with legally-binding treaties between [the] two parties [would the matter] not be resolved through diplomacy.»¹⁰

[Fin de la projection n° 2 – projection n° 3 : Note verbale de l’Iran, 19 juin 2019 (dossier des juges, onglet n° 1-3)]

— Puis, par une nouvelle note verbale, du 19 juin, l’Iran a formellement notifié au Gouvernement des Etats-Unis

«that its decision of 8 May 2018 and the re-imposition of sanctions constitute a breach of international obligations of the United States and in particular those contained in the 1955 Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States of America»¹¹.

Ces deux notes verbales sont restées sans réponse. Voilà qui confirme, si besoin est, que le différend opposant les deux Etats, qui n’a pas été réglé par la voie diplomatique, n’est pas susceptible de l’être.

[Fin de la projection n° 3]

4. Les conditions sont donc réunies pour que vous puissiez, **Madame** et Messieurs les juges, régler le litige que l’Iran vous a soumis. L’**agente** des Etats-Unis le conteste dans la lettre qu’elle a adressée au greffier le 27 juillet dernier. Pour ce faire, elle déforme totalement la portée du différend dont l’Iran a saisi la Cour le 16 juillet et elle en déduit, à tort, que vous n’auriez pas compétence, fût-ce *prima facie*, pour vous prononcer sur la requête iranienne. Ce sont les deux points que je me propose d’aborder successivement.

I. La portée du différend soumis à la Cour

[Projection n° 4 : Lettre de l’**agente** des Etats-Unis au greffier de la Cour en date du 27 juillet 2018 (dossier des juges, onglet n° 1-4)]

¹⁰ Note verbale n° 381/289/4870056 envoyée le 11 juin 2018 à l’ambassade de Suisse (section des intérêts américains) pour transmission au Gouvernement américain, joint en annexe 5 à la requête, 16 juillet 2018 (dossier des juges, onglet n° 1-2).

¹¹ Note verbale n° 381/210/4875065 envoyée le 19 juin 2018 à l’ambassade de Suisse (section des intérêts américains) pour transmission au Gouvernement américain, joint en annexe 6 à la requête (dossier des juges, onglet n° 1-3).

5. Monsieur le président, dans la lettre du 27 juillet que je viens de mentionner, Mme Newstead affirme que «All the elements of Iran's Application and Request for Provisional Measures arise from the Joint Comprehensive Plan of Action («JCPOA»)». Ce n'est aucunement le cas : l'affaire qui vous est soumise concerne — et concerne *uniquement* — la licéité, au regard du traité d'amitié de 1955, des sanctions annoncées par le président Trump le 8 mai 2018 et la responsabilité des Etats-Unis en découlant vis-à-vis de l'Iran.

6. Ce n'est pas à dire que le plan d'action global commun (le PAGC), plus connu sous son nom et son sigle anglais Joint Comprehensive Plan of Action (JCPOA) que j'utiliserai sans vergogne... On ne peut pas dire que ce JCPOA soit dépourvu de pertinence en la présente espèce. Mais cette pertinence n'est pas ce que prétendent les Etats-Unis : le JCPOA ne constitue que *le contexte* dans lequel les sanctions contestées ont été prises ; le retrait des Etats-Unis, aussi contestable qu'il soit, n'est en aucune manière l'objet du différend que l'Iran vous a soumis.

[Fin de la projection n° 4]

7. Conformément à la jurisprudence constante de la Cour, c'est la requête — et elle seule — qui définit l'objet et la portée du différend. Comme vous l'avez dit : «Il ne fait pas de doute qu'il revient au demandeur, dans sa requête, de présenter à la Cour le différend dont il entend la saisir et d'exposer les demandes qu'il lui soumet»¹² car «aux termes de l'article 40 du Statut, c'est la requête qui indique l'objet du différend.»¹³ Et la haute juridiction de souligner :

«Le paragraphe 1 de l'article 40 du Statut de la Cour exige d'ailleurs que l'«objet du différend» soit indiqué dans la requête ; et le paragraphe 2 de l'article 38 de son Règlement requiert pour sa part que la «nature précise de la demande» y figure. La Cour a eu l'occasion, par le passé, de se référer à ces dispositions. Elle les a qualifiées d'«essentielles au regard de la sécurité juridique et de la bonne administration de la justice.»¹⁴

¹² *Compétence en matière de pêcheries (Espagne c. Canada), compétence de la Cour, arrêt, C.I.J. Recueil 1998, p. 447-448, par. 29.*

¹³ *Administration du prince von Pless, ordonnance du 4 février 1933, C.P.J.I. série A/B n° 52, p. 14 ; voir aussi Certaines terres à phosphates à Nauru (Nauru c. Australie), exceptions préliminaires, arrêt, C.I.J. Recueil 1992, p. 266-267, par. 69.*

¹⁴ *Compétence en matière de pêcheries (Espagne c. Canada), compétence de la Cour, arrêt, C.I.J. Recueil 1998, p. 447-448, par. 29, citant Certaines terres à phosphates à Nauru (Nauru c. Australie), exceptions préliminaires, arrêt, C.I.J. Recueil 1992, p. 266-267. Voir aussi Administration du prince von Pless, ordonnance du 4 février 1933, C.P.J.I. série A/B n° 52, p. 14, et Société commerciale de Belgique, arrêt, 1939, C.P.J.I. série A/B n° 78, p. 173.*

8. Je n'ignore bien sûr pas que la Cour se réserve la possibilité de déterminer l'objet exact d'un différend lorsque son interprétation peut prêter à contestation. Mais tel n'est assurément pas le cas en la présente espèce.

9. Je relève au demeurant que, dans tous les cas dans lesquels la Cour a proclamé qu'il lui appartient — je cite une formule que vous utilisez souvent — «de circonscrire le véritable problème en cause et de préciser l'objet de la demande»¹⁵, elle l'a fait «en consacrant une attention particulière à la formulation du différend utilisée par le demandeur»¹⁶. La Cour «commence [toujours] par examiner la requête»¹⁷ (~~requête~~ qui se trouve, en l'espèce, être la seule pièce de procédure à avoir été soumise à la Cour). Et le pays que je représente souhaite dire très clairement que, quand bien même d'autres litiges l'opposent à l'Etat défendeur, il n'entend pas les soumettre à la Cour et souhaite fermement limiter la présente instance à ce qui est énoncé dans sa requête. Etant entendu, au demeurant, d'une part qu'il convient d'établir «une distinction entre le différend lui-même et les arguments utilisés par les parties à l'appui de leurs conclusions respectives sur ce différend»¹⁸ et, d'autre part, qu'il n'y a pas lieu, pour la Cour, de préciser l'objet du litige lorsque celui-ci ressort clairement de la requête.

[Projection n° 5 : L'objet du différend énoncé dans la requête]

10. Or, en la présente espèce, l'objet du différend est exposé avec précision dans la requête :

«The dispute between Iran and the USA concerns the re-imposition and announced aggravation by the USA of a comprehensive set of so-called «sanctions» and restrictive measures targeting, directly or indirectly, Iran, Iranian companies and/or Iranian nationals, resulting from the USA's Decision of 8 May 2018 («the 8 May sanctions»), which constitute breaches of the Treaty of Amity.

¹⁵ *Essais nucléaires (Nouvelle-Zélande c. France)*, arrêt, C.I.J. Recueil 1974, p. 466, par. 30 ; voir aussi *Demande d'examen de la situation au titre du paragraphe 63 de l'arrêt rendu par la Cour le 20 décembre 1974 dans l'affaire des Essais nucléaires (Nouvelle-Zélande c. France) (Nouvelle-Zélande c. France)*, ordonnance du 22 septembre 1995, C.I.J. Recueil 1995, p. 304, par. 55 ; *Compétence en matière de pêcheries (Espagne c. Canada)*, compétence de la Cour, arrêt, C.I.J. Recueil 1998, p. 448-449, par. 30.

¹⁶ *Compétence en matière de pêcheries (Espagne c. Canada)*, compétence de la Cour, arrêt, C.I.J. Recueil 1998, p. 448-449, par. 30.

¹⁷ *Ibid.*, par. 29, citant *Interhandel (Suisse c. Etats-Unis d'Amérique)*, exceptions préliminaires, arrêt, C.I.J. Recueil 1959, p. 21 ; *Droit de passage sur territoire indien (Portugal c. Inde)*, fond, arrêt, C.I.J. Recueil 1960, p. 27 ; et *Essais nucléaires (Australie c. France)*, arrêt, C.I.J. Recueil 1974, p. 260, par. 24.

¹⁸ *Compétence en matière de pêcheries (Espagne c. Canada)*, compétence de la Cour, arrêt, C.I.J. Recueil 1998, p. 449, par. 32, citant *Essais nucléaires (Australie c. France)*, arrêt, C.I.J. Recueil 1974, p. 262, par. 29 ; voir aussi *Pêcheries (Royaume-Uni c. Norvège)*, arrêt, C.I.J. Recueil 1951, p. 126 ; *Minquiers et Ecréhous (France/Royaume-Uni)*, arrêt, C.I.J. Recueil 1953, p. 52 ; et *Nottebohm (Liechtenstein c. Guatemala)*, deuxième phase, arrêt, C.I.J. Recueil 1955, p. 16.

The present Application exclusively concerns the internationally wrongful acts of the USA resulting from its decision to re-impose in full effect and enforce the 8 May sanctions that the USA previously decided to lift in connection with the Joint Comprehensive Plan of Action (the «JCPOA»), and the announcement that further sanctions will be imposed.»¹⁹

[Fin de la projection n° 5 — projection n° 6 : Lettre de l'*agente* des Etats-Unis au greffier de la Cour en date du 27 juillet 2018 (dossier des juges, onglet n° 1-4)]

11. Dès lors, il n'importe pas que, comme l'a relevé l'*agente* des Etats-Unis, «[t]he JCPOA does not have an International Court of Justice compromissory clause». Même si l'Iran a plus que des doutes quant à la licéité du retrait des Etats-Unis du JCPOA et sur la conformité de leur conduite à cet instrument, telles *ne sont pas* les questions dont la Cour est saisie en la présente instance. Certes, le retrait américain a été concomitant à la réimposition des sanctions qui avaient été infligées à l'Iran au prétexte de la lutte contre la prolifération des armes nucléaires ; mais, je le répète avec la plus grande fermeté, ce retrait *n'est pas* l'objet de la présente instance et l'Iran ne prétend pas que, bien qu'il s'agisse, pour le moins, d'un geste inamical, il soit contraire à une ou plusieurs dispositions particulières du traité d'amitié de 1955 — ce qui ne veut pas dire qu'il soit conforme au droit ; simplement, ce n'est pas l'objet du présent différend.

[Fin de la projection n° 6 — projection n° 7 : Lettre de l'*agente* des Etats-Unis au greffier de la Cour en date du 27 juillet 2018 (dossier des juges, onglet n° 1-4)]

12. Permettez-moi d'insister, Monsieur le président. La requête que l'Iran a déposée devant la Cour ne concerne *que* la décision des Etats-Unis du 8 mai dernier de réimposer et d'aggraver, unilatéralement et en leur conférant une portée extraterritoriale, les sanctions dites «nucléaires» qui avaient été levées dans le cadre du JCPOA, ainsi que l'annonce de mesures supplémentaires. Pas davantage qu'elle ne porte sur le retrait du JCPOA, la requête iranienne ne concerne l'imposition initiale de ces sanctions, même si l'Iran conteste fermement le bien-fondé et la licéité de l'ensemble des sanctions unilatérales que les Etats-Unis lui ont imposées, continuent de lui imposer et, bien sûr, de celles qu'ils lui réimposent, qui sont, je le redis, l'unique objet du présent différend.

[Fin de la projection n° 7 — projection n° 8 : Executive Order n° 13848 des Etats-Unis du 6 août 2018 (préambule) (dossier des juges, onglet n° 2-1)].

¹⁹ Requête, p. 1, deuxième paragraphe ; les italiques et le soulignement sont de nous.

13. Celui-ci trouve son origine dans la décision du président des Etats-Unis du 8 mai 2018 par laquelle, comme le rappelle l'Executive Order n° 13846 du 6 août 2018²⁰, il a décidé :

«to cease the participation of the United States in the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA), and to re-impose all sanctions lifted or waived in connection with the JCPOA as expeditiously as possible and in no case later than 180 days from May 8, 2018, as outlined in the National Security Presidential Memorandum — 11 of May 8, 2018 (Ceasing United States Participation in the Joint Comprehensive Plan of Action and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon)».

[Fin de la projection n° 8]

14. Pour ce qui est de la réimposition des sanctions décidées le 8 mai, j'attire votre attention, **Madame** et Messieurs les juges, sur le fait que les Etats-Unis ont décidé de la mettre en œuvre par le biais de diverses mesures législatives et administratives, dont certaines sont déjà en vigueur tandis que d'autres le seront avant le 4 novembre — tout ceci en violation flagrante du traité de 1955. Parmi ces mesures, les plus importantes sont probablement les suivantes :

- 1) la réimposition de plusieurs sanctions d'origine législative (initialement adoptées par le Congrès en lien avec le programme nucléaire iranien), sanctions que le Gouvernement américain s'abstenait auparavant d'appliquer en édictant des documents appelés «waivers» ;
- 2) la révocation de licences et d'autorisations dont il résulte que l'importation aux Etats-Unis de tapis et de denrées alimentaires d'origine iranienne, et l'exportation vers l'Iran d'aéronefs et de pièces et de services connexes ainsi que le recours à des sociétés étrangères détenues ou contrôlées par les Etats-Unis sont de nouveau interdits ;
- 3) la réimposition de sanctions administratives par le biais de l'Executive Order n° 13846, publié par le président des Etats-Unis le 6 août, sans, comme notre agent l'a rappelé il y a quelques instants, tenir le moindre compte de la lettre que le président de la Cour a adressée le 23 juillet au secrétaire d'Etat américain, en application de l'article 74, paragraphe 4, du Règlement de la Cour ; et
- 4) la redésignation de plusieurs sociétés et ressortissants iraniens ainsi que de navires et d'aéronefs sur la liste de sanctions, à compter, au plus tard, du 5 novembre 2018, si bien que les droits et

²⁰ U.S. Executive Order n° 13846 des Etats-Unis, 6 août 2018, 83 FR 152, disponible sur www.hsdll.org/?view&did=813842 (dossier des juges, onglet n° 2-1).

intérêts de ces personnes vont se trouver considérablement affectés à l'intérieur comme à l'extérieur du territoire des Etats-Unis.

15. Ces mesures sont d'ores et déjà largement effectives même si les sanctions ont été conçues pour déployer leur «plein effet»²¹ à l'issue des deux échéances cruciales (à savoir le 6 août et le 4 novembre 2018). Pour assurer leur application au «niveau le plus élevé»²², les Etats-Unis ont adopté plusieurs mesures, notamment le 8 mai, le 27 juin et donc le 6 août 2018. Etant donné que nous avons déjà présenté à la Cour un tableau complet des sanctions qui font l'objet de la présente affaire et de leurs effets dans les paragraphes 21 à 38 de la requête, je m'abstiendrai de les répéter de manière exhaustive et m'en tiendrai aux principales, telles que l'Executive Order n° 13846 les expose.

16. Ce texte, postérieur à la requête comme à notre demande en indication de mesures conservatoires, réimpose un ensemble complet de sanctions économiques et financières. Ainsi,

- toutes les transactions en dollars au profit du Gouvernement iranien sont interdites²³ comme le sont aussi toutes les transactions avec les principales institutions financières et entreprises iraniennes²⁴ ou celles qui sont faites en rials — la monnaie iranienne²⁵ ;
- il en va de même des transactions relatives aux secteurs de l'énergie, du transport maritime ou de la construction navale²⁶ ; et
- d'autres sanctions sont imposées aux institutions financières effectuant ou facilitant des opérations dans les secteurs de l'automobile²⁷, du pétrole²⁸ et des produits pétrochimiques²⁹.

17. En outre, l'Executive Order (dont je rappelle qu'il n'est pas l'unique source des mesures contestées)

²¹ Remarks by President Trump on the Joint Comprehensive Plan of Action, 8 mai 2018, disponible sur : www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action/ (dossier des juges, onglet n° 2-2).

²² *Ibid.*

²³ Sect. 1 a) i).

²⁴ Sect. 1 a) ii) et iii).

²⁵ Sect. 6.

²⁶ Sect. 1 a) iv).

²⁷ Sect. 2 a) i).

²⁸ Sect. 2.

²⁹ Sect. 3 a) iii).

- inclut des sanctions relatives à de nouveaux secteurs d'activités tels que le marketing ou le transport³⁰ ; et
- aggrave celles liées aux transactions pétrolières, notamment en prévoyant un «menu de sanctions à appliquer aux principaux dirigeants ou actionnaires des sociétés sanctionnées et en interdisant la délivrance de visas en leur faveur ; il est également interdit aux ressortissants des Etats-Unis d'investir dans ces sociétés³¹.

18. L'Executive Order n° 13846 réimpose également des sanctions contre toute entité détenue ou contrôlée par des ressortissants américains, établie en dehors des Etats-Unis, qui se livre sciemment à des transactions interdites avec l'Iran ou des sociétés ou des nationaux iraniens (notamment dans les secteurs de l'énergie, du transport maritime ou de la construction navale). En outre, l'Executive Order renforce l'application de ces sanctions en ciblant également les ressortissants américains qui possèdent ou contrôlent une entité engagée dans des transactions interdites³².

19. Ce sont ces sanctions, dont je viens de donner un aperçu aussi clair que possible — elles sont complexes et très détaillées —, qui font l'objet du présent différend. Comme mes collègues le montreront plus précisément, elles affectent, et risquent d'affecter plus encore à l'avenir, d'une manière à la fois gravissime et irréparable, les droits que l'Iran, ses ressortissants et ses entreprises tiennent du traité d'amitié de 1955, avec lequel elles sont en contradiction flagrante.

II. La compétence *prima facie* de la Cour

20. Monsieur le président, dire que le JCPOA n'est ni l'objet ni le fondement de l'affaire portée devant la Cour ne signifie pas que celui-ci et les mesures subséquentes prises par les participants n'ont aucun rôle à jouer dans la présente affaire. Mais ce rôle est purement contextuel : les circonstances qui ont entouré la conclusion de cet instrument, sa mise en œuvre, puis le retrait des Etats-Unis établissent que ceux-ci ne sauraient échapper à la juridiction de la Cour en invoquant l'article XXI, paragraphe 1, du traité d'amitié de 1955 et, en particulier, l'alinéa *d*) de cette disposition.

³⁰ Sect. 2 et 3.

³¹ Sect. 4 et 5.

³² Sect. 8.

21. Comme je l'ai rappelé au début de ma présentation, l'Iran fonde la compétence de la Cour sur l'article XXI, paragraphe 2, du traité d'amitié de 1955. Il s'agit d'une disposition claire, qui ne suppose aucune contorsion interprétative : dès lors qu'il existe un différend entre les Parties sur l'application du traité, la Cour est compétente. Elle peut donc indiquer des mesures conservatoires à condition, bien sûr, que «les dispositions invoquées par le demandeur semblent *prima facie* constituer une base sur laquelle sa compétence pourrait être fondée», sans qu'il soit besoin qu'elle s'assure «de manière définitive qu'elle a compétence quant au fond de l'affaire»³³. M^e Aughey montrera dans quelques instants — peut-être après la pause — que cette condition, relative à la plausibilité de la requête, est pleinement remplie en la présente affaire.

[Projection n^o 9 : Article XX, paragraphe 1, du traité d'amitié de 1955 (dossier des juges, onglet n^o 1-1)]

22. Selon les Etats-Unis, «[t]he matters of which Iran complains [would be] outside the scope of the Treaty of Amity . . . and beyond the limited jurisdictional grant provided by Article XXI (2), [if] read in conjunction with Article XX (1), of the Treaty».

[Fin de la projection n^o 9 — projection n^o 10 : *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique)*, exception préliminaire, arrêt, C.I.J. Recueil 1996 (II) (par. 20 — extraits)]

23. A cet égard, il suffit de rappeler que, dans votre arrêt du 12 décembre 1996 sur l'exception préliminaire soulevée par les Etats-Unis dans l'affaire des *Plates-formes pétrolières*, après avoir relevé «que le traité de 1955 ne contient aucune disposition excluant expressément certaines matières de la compétence de la Cour», vous avez estimé «que le paragraphe 1 *d*) de l'article XX ne restreint pas sa compétence dans la présente affaire, mais offre seulement aux Parties *une défense au fond* qu'il leur appartiendra, le cas échéant, de faire valoir le moment venu»³⁴. Ceci est conforme à l'interprétation que vous aviez donnée d'une clause identique figurant

³³ *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017, p. 114, par. 17, citant : *Immunités et procédures pénales (Guinée équatoriale c. France)*, mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1155, par. 31 ; voir aussi p. 126, par. 63.

³⁴ *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique)*, exception préliminaire, arrêt, C.I.J. Recueil 1996 (II), p. 811, par. 20 **souligné par nous** ; voir aussi *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique)*, arrêt, C.I.J. Recueil 2003, p. 179, par. 33.

dans le traité d'amitié, de commerce et de navigation entre les Etats-Unis et le Nicaragua du 21 janvier 1956³⁵. Telle était également la position des Etats-Unis eux-mêmes qui, dans l'affaire des *Plates-formes*, avaient déclaré «qu'aborder la question de l'interprétation et de l'application du paragraphe 1 *d*) de l'article XX *relevait de l'examen au fond*»³⁶.

24. On voit mal pourquoi il en irait différemment dans la présente affaire, qu'il s'agisse d'ailleurs de l'alinéa *d*) ou des alinéas *a*) à *c*) : ils sont tous introduits par le même chapeau. Et, comme la Cour l'a précisé dans son arrêt sur le fond de 2003, l'article XX dans son ensemble (comme l'article XXI du traité américano-nicaraguayen de 1956)³⁷ prévoit «des «exceptions» [le mot est entre guillemets] aux obligations *de fond* énoncées dans d'autres articles du traité»³⁸.

[Fin de la projection n° 10 – projection n° 11 : Article XX, paragraphe 1, du traité d'amitié de 1955 (dossier des juges, onglet n° 1-1)]

25. Cette interprétation est également dictée par l'agencement de ces deux dispositions dans le traité : les limitations de l'article XX clôturent les dispositions de fond du traité. Il serait très curieux qu'elles précèdent l'article XXI sur le règlement des différends si elles devaient déroger à cette disposition. Si les rédacteurs du traité avaient voulu en faire des exceptions à la compétence de la Cour, prévue dans l'article *suivant*, soit ils les auraient intégrées dans cette dernière disposition, soit ils auraient inversé l'ordre des articles XXI et XX de façon à ce que l'exception suive le principe.

26. Le paragraphe 1 de l'article XX n'énumère donc pas des exceptions à la compétence de la Cour. En conséquence, dans l'affaire des *Plates-formes pétrolières*, vous avez, très logiquement, rejeté l'exception préliminaire des Etats-Unis fondée sur l'article XX, paragraphe 1, du traité de 1955 et invité les parties à discuter de son application lors de l'examen du fond de l'affaire³⁹. Il

³⁵ Entré en vigueur le 24 mai 1958, Nations Unies, *Recueil des traités*, vol. 367, p. 3, disponible sur <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280139d26>.

³⁶ *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique)*, exception préliminaire, arrêt, C.I.J. Recueil 1996 (II), p. 811, par. 20.

³⁷ *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. Etats-Unis d'Amérique)*, mesures conservatoires, ordonnance du 10 mai 1984, C.I.J. Recueil 1984, p. 116, par. 222.

³⁸ *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique)*, arrêt, C.I.J. Recueil 2003, p. 180, par. 35 ; les italiques sont de nous.

³⁹ *Plates-formes pétrolières (République islamique d'Iran c. Etats-Unis d'Amérique)*, exception préliminaire, arrêt, C.I.J. Recueil 1996 (II), p. 811, par. 20.

n'existe décidément, *Madame* et Messieurs les juges, aucune espèce de raison pour qu'il en aille différemment dans la présente affaire.

[Fin de la projection n° 11]

27. Je vous remercie vivement de votre attention et je vous prie, Monsieur le président, de bien vouloir appeler M^e Aughey à la barre — peut-être après la pause ?

Le PRESIDENT : Je remercie M. le professeur Alain Pellet. La Cour va maintenant observer une pause café de 10 minutes. La séance est suspendue.

L'audience est suspendue de 11 h 40 à 11 h 50.

The PRESIDENT: Please be seated. This sitting is resumed. I will now give the floor to Mr. Aughey. You have the floor.

Mr. AUGHEY:

PART II

THE PLAUSIBILITY OF IRAN'S RIGHTS UNDER THE 1955 TREATY OF AMITY THAT ARE THE SUBJECT OF THE PROCEEDING, AND THE LINK BETWEEN THE MEASURES REQUESTED AND IRAN'S TREATY RIGHTS

1. Thank you, Mr. President, Members of the Court: it is a privilege to appear before you, and it is an honour to have been entrusted with the presentation of this part of Iran's Request for provisional measures, which is of such immense importance for its people and its future.

2. My task is to explain that Iran's rights under the 1955 Treaty of Amity are plausible, and that those rights are linked to the provisional measures requested by Iran.

I. The applicable test for the grant of provisional measures under Article 41

3. I will start by very briefly summarizing the law on this aspect of the test for the grant of provisional measures under Article 41 of the Court's Statute, with which the Court will be very familiar. There are two relevant requirements.

4. First, the Court has held that the rights asserted by the requesting party, and for which it is seeking protection, must be “at least plausible”⁴⁰.

5. The Court is not required to decide, at this stage of the proceedings, between any divergent views that there might be between the Parties on the interpretation of any of the provisions of the 1955 Treaty of Amity⁴¹. In its Order in *Belgium v. Senegal* the Court stated that “at this stage of the proceedings the Court does not need to establish definitively the existence of the rights claimed . . . or to consider [the requesting State’s] capacity to assert such rights before the Court”⁴². It is sufficient that the rights asserted be “grounded in a possible interpretation” of the treaty invoked⁴³.

6. Second, “a link must exist between the rights whose protection is sought and the provisional measures being requested”⁴⁴.

7. I will address each of these requirements in turn.

II. The rights Iran is seeking to protect are plausible under the 1955 Treaty of Amity

8. I begin with the question of plausibility. Iran’s rights under the 1955 Treaty of Amity are plainly, at the very least, plausible for two key reasons. First, Iran’s rights are grounded in a natural reading of the Treaty, giving their words their ordinary meaning, in their context. It must be plausible to suggest that the Treaty means what it says, and its true meaning is not in some way buried beneath and hidden by its actual words. Second, the evidence already before the Court, a tiny part of the evidence growing and reported every day, demonstrates beyond any possible doubt that the adoption and implementation of the 8 May sanctions by the United States is, as it was intended to be, incompatible with Iran’s rights under the Treaty.

⁴⁰ *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018*, para. 43; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017*, I.C.J. Reports 2017, p. 126, para. 63.

⁴¹ *Qatar v. United Arab Emirates*, paras. 27 and 53.

⁴² *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Provisional Measures, Order of 28 May 2009*, I.C.J. Reports 2009, p. 152, para. 60.

⁴³ *Ibid.*

⁴⁴ *Qatar v. United Arab Emirates*, para. 44; *Ukraine v. Russia*, para. 64.

9. The Court will recall that it has previously ruled on the interpretation of provisions of the 1955 Treaty of Amity on two occasions: in *United States Diplomatic and Consular Staff in Tehran*⁴⁵ and in *Oil Platforms*⁴⁶.

10. In *United States Diplomatic and Consular Staff in Tehran* the Court observed that “It is precisely when difficulties arise that the treaty assumes its greatest importance”⁴⁷. You have heard from Iran’s Agent that the United States economic campaign against Iran and its nationals and companies has reached an unprecedented level of hostility. It therefore follows that the 1955 Treaty of Amity is more important now than ever before.

11. The 1955 Treaty of Amity imposes a range of obligations on the Parties, both obligations to secure various protections for “nationals” and “companies”, and obligations not to interfere with transactions and activities relating to the contracting parties. As explained in its Request, Iran seeks to protect its rights under both types of provisions.

12. The 8 May sanctions, and the announced further sanctions, some of which have been implemented, are plainly incompatible with the provisions of the 1955 Treaty of Amity as well as contrary to its object and purpose of “encouraging mutually beneficial trade and investments and closer economic intercourse generally”⁴⁸.

13. The evidence before the Court demonstrates that the 8 May sanctions and announced further sanctions target, directly and indirectly, by design and by effect, Iran and its nationals and its companies.

14. On 6 August, the US President stated that the purpose of the US measures is to “apply maximum economic pressure”⁴⁹. The ultimate purpose of the US measures, Members of the Court, is to cripple Iran’s economy.

⁴⁵ *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3.

⁴⁶ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 803; *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 161.

⁴⁷ *United States Diplomatic and Consular Staff in Tehran*, p. 28, para. 54.

⁴⁸ *Oil Platforms, Preliminary Objection, Judgment*, p. 813, para. 27. See also p. 815, para. 31.

⁴⁹ “Statement from the President on the Reimposition of United States Sanctions with Respect to Iran”, 6 Aug. 2016, at <https://www.whitehouse.gov/briefings-statements/statement-president-reimposition-united-states-sanctions-respect-iran/> (judges’ folder, tab 3-1).

15. As explained in Iran's Application, the 8 May sanctions are incompatible with Iran's rights under the 1955 Treaty, which can be found at tab 1 of your judges' folders, and which will also appear on the screen. I will briefly address each of the relevant provisions in turn.

Slide No. 1: *Iran's rights under Article IV (1) of the 1955 Treaty of Amity*

16. Turning first, then, to Article IV, paragraph 1, this guarantees three sets of rights with respect to Iranian nationals and companies. First, it requires the United States to accord fair and equitable treatment to Iranian nationals and companies and to their property and enterprises (including businesses and business deals). Second, it prohibits unreasonable or discriminatory measures that would impair the legally acquired rights (including contractual rights) and interests of Iranian nationals and companies. Third, it requires the United States to ensure that the lawful contractual rights of Iranian nationals and companies are afforded effective means of enforcement. Unlike certain other provisions, Article IV, paragraph 1, contains no territorial limitation. That is to say, it is not limited to actions taken by the United States and its agencies that occur within its national borders.

17. The 8 May sanctions and announced further sanctions are incompatible with each of the three sets of rights guaranteed to Iranian nationals and companies under Article IV (I), that I have just referred to. The US measures compel US and non-US persons to terminate a whole series of economic or contractual relations and transactions with Iranian nationals and companies (including State-owned companies), under threat of draconian penalties including the preclusion of commercial activities in the territory of the United States. To take just one example, section 1 (ii) of the Executive Order of 6 August, which was adopted days after the President's call under Article 74 (4) of the Rules and which can be found at tab 2 of your judges' folders, prohibits any person from "materially assist[ing], sponsor[ing], or provid[ing] financial, material, or technological support for, or goods or services in support of", among others, the National Iranian Oil Company and the Central Bank of Iran after 5 November 2018⁵⁰. There are currently or will be equivalent prohibitions with respect to the energy⁵¹, shipping and shipbuilding⁵² (including the

⁵⁰ Section 1 (a) (ii), US Executive Order 13846 of 6 Aug. 2018, available at <https://www.gpo.gov/fdsys/pkg/FR-2018-08-07/pdf/2018-17068.pdf> (judges' folder, tab 2-1).

⁵¹ See e.g. sections 3 (a) (ii) and (iii), US Executive Order 13846 of 6 Aug. 2018, (judges' folder, tab 2-1).

provision of crude and product tankers to Iran)⁵³ and automotive⁵⁴ sectors of Iran's economy, as well as with respect to transactions by foreign financial institutions relating to the rial⁵⁵.

18. A foreign company risks being barred from the entire US market simply for fulfilling its existing obligations to Iran under a binding contract, a contract that was lawful not only in the place where it was made but even in the United States itself at the time that it was concluded. The United States measures are targeted and directly discriminatory by design, and could never be consistent with the obligation to accord fair and equitable treatment or be considered to be reasonable. Rather than securing effective means of enforcement for the legally acquired rights of Iranian nationals and companies, the US measures require the abrogation of such rights.

Slide No. 2: *Iran's rights under Article VII (1) of the 1955 Treaty of Amity*

19. I turn to Article VII, paragraph 1; this prohibits the United States from imposing "restrictions" on the making of payments, remittances, and other transfers of funds "to [and] from the territories of [Iran]", except on conditions that have no application in the present case. That prohibition is not limited to restrictions on transfers between the territories of Iran and the United States: it applies equally to transfers to Iran from a third State or from Iran to a third State. The prohibition is also not limited to transfers made by Iranian nationals and companies: it applies also equally to transfers made by Iran, and by organs of the State, as well as to transfers made by foreign nationals and companies. The term "restrictions" in Article VII is unqualified and, pursuant to its ordinary meaning, encompasses a very wide range of acts aimed at or effecting some form of restriction on the freedom to pay, remit or transfer funds.

20. The 8 May sanctions directly targeting the Iranian financial and banking, automotive, energy and other sectors — including those with respect to the US bank notes, the rial, the Central Bank of Iran and to foreign financial institutions more generally — plainly entail the imposition of "restrictions" on the making of payments, remittances, and other transfers to or from Iran.

⁵² See e.g. section 1 (a) (iv), US Executive Order 13846 of 6 Aug. 2018 (judges' folder, tab 2-1).

⁵³ OFAC, "FAQs: Iran Sanctions", para. 295 (b), available at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx (judges' folder, tab 4-1).

⁵⁴ Section 2 (i), US Executive Order 13846 of 6 Aug. 2018 (judges' folder, tab 2-1).

⁵⁵ Section 8, US Executive Order 13846 of 6 Aug. 2018 (judges' folder, tab 2-1).

21. The practical effect of the US measures is that foreign financial institutions have withdrawn and are withdrawing from all forms of co-operation with Iranian banks. It is easy to see why foreign banks are not willing to take the risk of being considered, by the United States, to have fallen foul of its measures. The US penalties include, for example, prohibitions or restrictions on the opening of correspondent and payable through accounts in the United States, and the blocking of all property and interests in property of the foreign bank that are located (or may in future be located) in the United States or that are in (or may in future come into) the possession or control of any US person⁵⁶. The terms “financial institution” and “foreign financial institution” are defined very broadly to include not only banks and credit unions but also, for example, clearing corporations and investment companies⁵⁷.

22. The US measures plainly interfere with Iran’s rights under Article VII, paragraph 1. Mr. Wordsworth will explain in more detail that, as a result of the 8 May sanctions, many banks and insurance companies have withdrawn or refused to provide products to Iran and to Iranian nationals and companies.

Slide No. 3: *Iran’s rights under Article VIII (1) of the 1955 Treaty of Amity*

23. I move to Article VIII, paragraph 1, which requires the United States to accord to Iranian products arriving in the United States from whatever place, and to products destined for export to the territory of Iran, by whatever route, treatment no less favourable than that accorded to like products of or destined for export to any third country, in all matters relating to duties, other charges, regulations and formalities, on or in connection with import and export.

24. The same provision stipulates that that obligation also applies with respect to international transfer of payments for imports and exports by Iranian nationals and companies and by Iran. A more than plausible interpretation of that obligation is that it is not limited to payments for imports and exports between the territories of the United States and Iran. Its terms are general, applicable to all international transfers for any imports and exports by Iranian nationals and companies and by Iran, from or to whatever place.

⁵⁶ See e.g. sections 1 (b), 2 (b), 6 (b), US Executive Order 13846 of 6 Aug. 2018 (judges’ folder, tab 2-1).

⁵⁷ Sections 16 (c) and (d), US Executive Order 13846 of 6 Aug. 2018 (judges’ folder, tab 2-1).

Slide No. 4: *Iran's rights under Article VIII (2) of the 1955 Treaty of Amity*

25. Article VIII, paragraph 2 prohibits the United States from imposing restrictions or prohibitions on the “importation of any [Iranian] product” “or on the exportation of *any product* to” the territory of Iran, unless the import or export of the like product to all third countries is similarly restricted or prohibited. A natural interpretation of this provision is that it is not limited to the exportation of products to Iran from the United States: its terms are, again, general, applicable to all exports to Iran.

26. The 8 May sanctions and further announced sanctions, and in particular the revocation of relevant licenses and OFAC authorizations under which US and non-US entities were, until earlier this year, able to enter into economic relations with Iran and its nationals and companies⁵⁸, plainly interfere with the import and export of Iranian and US products between the territories of Iran and the United States. The effect of that revocation is to prohibit the export to Iran of, among other things, commercial aircraft and related parts, and to prohibit the import of Iranian products (including foodstuffs and carpets) to the United States.

Slide No. 5: *Iran's rights under Article IX of the 1955 Treaty of Amity*

27. I turn to Article IX of the Treaty, which is also engaged. In paragraph 2 it requires the United States to accord to Iranian nationals and companies treatment no less favourable than that accorded to nationals and companies of any third State with respect to all matters relating to import and export. Pursuant to their ordinary meaning, the term “treatment” and the phrase “all matters relating to importation and exportation”, neither of which is qualified in any way in the text, show that the intended scope of this provision is very broad. An indisputably plausible interpretation of Article IX, paragraph 2, is that it also contains no territorial limitation: on its terms that provision applies to Iranian imports from and exports to third States every bit as much as it applies to Iranian imports and exports directly to the United States.

⁵⁸ US Office of Foreign Assets Control (OFAC); see e.g. OFAC General License H Authorizing Certain Transactions Relating to Foreign Entities Owned or Controlled by a United States Person, 16 Jan. 2016, revoked as of 27 June 2018, available at www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_glh.pdf (judges' folder, tab 4-2); OFAC General License I Authorizing Certain Transactions Related to the Negotiation, and Entry into Contingent Contracts for Activities Eligible for Authorization Under the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services, 24 March 2016, revoked as of 27 June 2018, available at www.treasury.gov/resource-center/sanctions/Programs/Documents/iran_gli.pdf, (judges' folder, tab 4-3).

28. The 8 May sanctions single Iran out for the *least* favourable treatment, and numerous components entail the imposition of restrictions on matters relating to imports from and exports to Iran. That includes restrictions on Iran’s exports to the United States, such as the revocation of OFAC licenses⁵⁹, and restrictions on Iran’s imports from the United States such as with respect to civil aircraft and spare parts⁶⁰. It also encompasses the US measures targeting, for example, the Iranian financial, banking, shipping and oil sectors, which impact on Iranian exports, for example of oil and energy products, and imports from third States.

29. In paragraph 3, Article IX prohibits any measure of a discriminatory nature that hinders or prevents Iranian importers and exporters from obtaining marine insurance from US companies. Various components of the 8 May sanctions specifically interfere with this right also. On 6 August 2018, the United States reintroduced sanctions on persons who “provide underwriting services or reinsurance for the National Iranian Oil Company [or] the National Iranian Tanker Company”⁶¹. Professor Pellet has explained that the Executive Order of 6 August specifically sanctions any person who knowingly provides significant support to, or goods and services in support of, any activity or transaction on behalf of, among others, the National Iranian Oil Company (NIOC) and any person determined to be part of the energy, shipping, or shipbuilding and other sectors of Iran.

Slide No. 6: *Iran’s rights under Article X (1) of the 1955 Treaty of Amity*

30. As to Article X, this Court has already determined that “freedom of commerce” within the meaning of paragraph 1 is a broad concept. I make three brief points:

Slide No. 7: *Iran’s rights under Article X (1) of the 1955 Treaty of Amity: Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), p. 803, paras. 45 and 49-50.*

(a) First, the Court has found that the term “commerce” in this provision “includes commercial activities in general — not merely the immediate act of sale and purchase, but also the ancillary

⁵⁹ *Ibid.*

⁶⁰ Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services, 16 Jan. 2016, revoked as of 8 May 2018, available at www.treasury.gov/resource-center/sanctions/Programs/Documents/lic_pol_statement_aircraft_icpoa.pdf (judges’ folder, tab 4-4).

⁶¹ Section 212, Iran Threat Reduction and Syria Human Rights Act of 2012, (judges’ folder, tab 4-5).

activities integrally related to commerce”⁶². The Court also noted that “the expression ‘international commerce’ designates, in its true sense, ‘all transactions of import and export, relationships of exchange, purchase, sale, transport, and financial operations between nations’”⁶³.

(b) Second, as to “freedom of commerce”, the Court has found: “Any act which would impede that ‘freedom’ is thereby prohibited.”⁶⁴

(c) Third, the Court has emphasized that Article X (1) protects “freedom of commerce” that is “[b]etween the territories of the two High Contracting Parties”⁶⁵. In *Oil Platforms*, the Court found that Iranian oil that was exported from Iran and that might end up in the United States — via a number of third countries and separate transactions — was not commerce between the territories of the two States⁶⁶. The facts of the current case are, however, entirely different. The relevant measures are far broader in scope, aimed at Iran’s economy as a whole, and moreover cover products that were, until 6 August, being imported and exported directly such as aircraft, carpets and foodstuffs⁶⁷.

31. Iran, as well as Iranian nationals and companies, have a legal right to freedom of commerce under Article X (1).

32. Multiple elements of the 8 May sanctions impact directly on individual acts of commerce such as the import of aircraft and the export of carpets as well as foodstuffs. Other elements of the US measures impact indirectly by making commerce impossible in practice.

33. In some cases, these provisions of the 1955 Treaty that I have taken you to overlap with one another, and the exact application of each provision to each transaction affected by these

⁶² *Oil Platforms, Preliminary Objection*, p. 819, para. 49, quoted in *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 200, para. 80.

⁶³ *Oil Platforms, Preliminary Objection*, p. 818, para. 45. See also *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009*, pp. 240-244, paras. 57-71.

⁶⁴ *Oil Platforms, Preliminary Objection*, p. 819, para. 50, quoted in *Oil Platforms, Judgment*, p. 201, para. 83. See also p. 203, para. 89.

⁶⁵ *Oil Platforms, Judgment*, p. 207, para. 97.

⁶⁶ *Oil Platforms, Judgment*, p. 207, para. 97.

⁶⁷ See US Census Bureau, “U.S. Imports from Iran by 5-digit End-Use Code 2008-2017”, available at <https://www.census.gov/foreign-trade/statistics/product/enduse/imports/c5070.html> (judges’ folder, tab 5-1). See also US Census Bureau, “U.S. Exports to Iran by 5-digit End-Use Code 2008-2017”, available at <https://www.census.gov/foreign-trade/statistics/product/enduse/exports/c5070.html> (judges’ folder, tab 5-2).

sanctions is a matter that may need to be addressed at a later stage. For the present, however, it is sufficient to note that the effect of the US sanctions on Iran is not controversial: the United States has made it abundantly clear that its aim and intention is to inflict harm and suffering on Iran by imposing what the US Secretary of State called “the strongest sanctions in history”⁶⁸. At the same time, the United States disingenuously asserts that it “stands with the Iranian people”⁶⁹. Mr. Wordsworth will explain the details of the irreparable harm the US measures are causing and will cause to Iran’s rights and to its people under the 1955 Treaty.

III. The provisional measures requested by Iran are linked to the rights whose protection is sought

34. I turn to the second issue. The provisional measures requested by Iran are plainly linked to the rights under the 1955 Treaty which Iran seeks to protect.

35. Iran seeks five provisional measures aimed at ensuring that the United States will take no action that would further prejudice its treaty rights. They were read out earlier by the Registrar and so I will not trouble you by repeating them.

36. The first measure requested by Iran is linked to Iran’s rights under Articles IV (1), VII (I), VIII (I), VIII (2), IX and X (1) of the Treaty.

37. The second measure will protect Iran’s rights under Articles IV, VIII and X in particular.

38. Now, those first two measures are intended to address in an immediate sense the US sanctions, but in order to ensure the effectiveness of the first two measures sought and to prevent the treaty rights that I have just referred to from being rendered illusory, it is necessary for the Court to grant further measures. That is especially so given that the United States ignored the President’s call under Article 74 (4) of the Rules.

39. Iran’s third request is considered by Iran to be an important guarantee of the protection of its rights under the Treaty that will be afforded by the first and second measures⁷⁰.

⁶⁸ US Secretary of State, “After the Deal: A New Iran Strategy”, 21 May 2018, available at www.state.gov/secretary/remarks/2018/05/282301.htm.

⁶⁹ US Department of State, “Senior Administration Officials Previewing Iran Sanctions”, Special Briefing, 6 Aug. 2018, available at <https://www.state.gov/r/pa/prs/ps/2018/08/284955.htm> (judges’ folder, tab 3-2).

⁷⁰ See e.g. *Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Provisional Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 353, para. 149 (D).

40. The fourth measure will generate the confidence necessary to protect Iran's rights under the Treaty from further prejudice and damage due to, among other things, the chilling effect of the 8 May sanctions, the forthcoming 4 November sanctions and the ongoing threats of further measures.

41. The fifth measure is a standard clause that provides Iran's rights with further protection from US actions that may take place between now and the final judgment.

42. The measures sought are different to those sought in the merits phase of this case and Iran is not asking the Court to prejudge the merits of its claims. When the case on the merits is heard, the Court will decide whether or not to order the United States to terminate the existing sanctions and to terminate the threats of further sanctions, to grant appropriate further relief, and not to circumvent the order. It will also decide on Iran's application for full compensation for the damage so far caused by the violations of the United States of its obligations and of Iran's rights under the Treaty.

43. At present, however, Iran seeks an order that the United States be restrained from continuing to engage in the severely harmful acts that are not only plausibly but flagrantly incompatible with the duties that the United States has accepted under the Treaty of Amity.

44. This is a case, Members of the Court, in which the Respondent has made clear its intention of bringing the Government of Iran to its knees by crippling the Iranian economy. The United States is asserting a right to compel another State to submit to its economic might by depriving that State, its nationals and its companies of the benefit of lawful transactions and activities. No doubt régime change is another result that the Respondent hopes will quickly eventuate, although the United States has more recently, but unconvincingly, sought to deny this. There has probably never been a case before the Court involving such a flagrant and severe violation of a treaty of this nature. Iran trusts the Court not to stand by passively in the face of this challenge to the international rule of law.

45. Mr. President, Members of the Court, I thank you for your attention. Mr. Wordsworth will now continue Iran's opening by addressing the issue of irreparable harm to Iran's treaty rights.

The PRESIDENT: I thank Mr. Aughey and I will now give the floor to Mr. Wordsworth. You have the floor.

Mr. WORDSWORTH:

PART III

IRREPARABLE PREJUDICE TO THE RIGHTS OF IRAN THAT ARE THE SUBJECT OF JUDICIAL PROCEEDINGS

I. Introduction

1. Mr. President, Members of the Court, it is a privilege to appear before you, and to have been asked by Iran to develop its case on irreparable prejudice to the rights under the Treaty of Amity. I make three short points in introduction.

2. First, as you have already heard this morning, the US measures at issue are positively intended to cause — and indeed are already causing — acute harm to Iran, its nationals and its companies. The announced measures are anticipated and aimed to apply, in the words of the United States of America, “maximum economic pressure” on Iran⁷¹.

3. And, as to the impact of this pressure on and in Iran, these are the words of the United Nations Special Rapporteur on unilateral measures, just one week ago, on 20 August: “These unjust and harmful sanctions are destroying the economy and currency of Iran, driving millions of people into poverty and making imported goods unaffordable.” With specific regard to food and medicine, he continues: “The current system creates doubt and ambiguity which makes it all but impossible for Iran to import these urgently needed humanitarian goods. This ambiguity causes a ‘chilling effect’ which is likely to lead to silent deaths in hospitals as medicines run out, while the international media fail to notice.”⁷² The document is at tab 6 of your folders.

⁷¹ Statement from the President on the Reimposition of United States Sanctions with Respect to Iran, 6 Aug. 2016, at <https://www.whitehouse.gov/briefings-statements/statement-president-reimposition-united-states-sanctions-respect-iran/> (judges’ folder, tab 3-1).

⁷² “Iran sanctions are unjust and harmful, says UN expert warning against generalised economic war”, United Nations Human Rights Special Procedures, 20 Aug. 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23469&LangID=E> (judges’ folder, tab 6-2). Cf. e.g. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, paras. 57-58, 133. See also UN doc. A/73/173, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, 17 July 2018, para. 7, and forthcoming report to the Human Rights Council (A/HRC/39/54).

4. In this case, irreparable prejudice — absent an order from the Court — appears an inevitability.

5. Second, however, as the Court has repeated on many occasions, the power to indicate provisional measures under Article 41 of the Statute arises “when irreparable prejudice *could* be caused to rights which are the subject of judicial proceedings”⁷³. This threshold is more than readily met with respect to the rights of Iran that are at issue in the current case.

6. Third, there is no closed list as to the types of prejudice that may be considered irreparable. Relevant to the different types of harm that Iran is now suffering, the Court has found in the past that irreparable prejudice could be caused to relevant rights:

- (a) where there is potential loss of life or bodily injury and in situations where human beings are “exposed to privation, hardship, anguish and even danger to life and health”⁷⁴;
- (b) where there is a threat to assets and resources on the territory of a State⁷⁵; and
- (c) where, as follows from the *Anglo-Iranian Oil Co.* case, there is a threat to “the carrying on of the industrial and commercial operations” of a company⁷⁶.

7. The Court has not been faced with a situation in past provisional measures cases where, as here, it is the whole economy of a State that risks being crippled. However, consistent with the Court’s past jurisprudence, such prejudice could only be regarded as irreparable. Indeed, as noted by former President Jiménez de Aréchaga in his separate opinion in the *Aegean Sea* case: “The essential object of provisional measures is to ensure that the execution of a future judgment on the merits shall not be frustrated by the actions of one party *pendente lite*.”⁷⁷ A final judgment on the

⁷³ See e.g. *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, para. 87; emphasis added; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 25 July 2018*, para. 60; emphasis added.

⁷⁴ See *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, Order of 15 December 1979*, para. 42; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Order of 15 October 2008*, para. 142.

⁷⁵ See e.g. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 1 July 2001*, para. 43.

⁷⁶ See *Anglo-Iranian Oil Co. (United Kingdom v. Iran), Interim Protection, Order of 5 July 1951, I.C.J. Reports 1951*, p. 89, *dispositif* para. 3. See also the United Kingdom’s Request for the Indication of Interim Measures of Protection, 22 June 1951, para. 8, indicating the types of harm risked to the business of the Anglo-Iranian Oil Company.

⁷⁷ *Aegean Sea Continental Shelf (Greece v. Turkey), Interim Protection, Order of 11 September 1976, I.C.J. Reports 1976*, p. 16; separate opinion of President Jiménez de Aréchaga.

merits upholding Iran's rights, some years down the line, would be of little use to Iran if its economy had been crippled in the meanwhile, as the United States of America appears to intend⁷⁸.

II. Irreparable prejudice to the rights of Iran: actual and intended harm to Iran's economy and individual sectors of the economy

8. I turn, then, to the details, and I wish to start by looking at the severe impacts of the US measures on Iran, both generally and as to the key sectors of its economy, before examining how these impacts constitute irreparable prejudice specifically to the Treaty rights that are the subject of these proceedings.

9. First, the impact of the US measures and related announcements is positively intended to be dramatic. The United States of America is very deliberately placing companies of all nationalities with a stark choice between doing business in Iran or with the United States of America, and in light of the relative might of the US economy, both US and non-US companies are intended to be left with no practical choice. As the US President stated on 7 August [on screen, at judges' folder, tab 3-2]: "Anyone doing business with Iran will NOT be doing business with the United States."⁷⁹ [Slide off]

10. Second, as one aspect of the dramatic impact, the US measures have caused the value of the rial to plummet. According to the statement of Mr. Mehdizadeh, Director of Economic Research and Planning at the Central Bank of Iran: "From May 1 to August 20, 2018, [the] rial depreciated against [the US] dollar [and the] euro by 78.5% [and] 68.6% in parallel exchange market". As he explains (at judges' folder, tab 7-1): "The U.S. sanctions would have and are currently having many negative effects on various macroeconomic indicators such as GDP growth, employment, inflation and various welfare indicators of households."⁸⁰

11. Indeed, in the words of senior US Administration officials in a briefing of 6 August [judges' folder, tab 3-3, on screen]:

"The rial is tanking, unemployment in Iran is rising, and there are widespread protests over social issues and labor unrest . . . in the last 90 days we have seen

⁷⁸ Cf. e.g. *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, Order of 7 December 2016, para. 90.

⁷⁹ See at <https://twitter.com/realDonaldTrump/status/1026762818773757955> (judges' folder, tab 3-3).

⁸⁰ Witness statement of Jafaar Mehdizadeh, Director of Economic Research and Policy Department, Central Bank of Iran, 21 Aug. 2018, paras. 6 and 3 (judges' folder, tab 7-1).

company after company after company announce that they are getting out, so there's no question that this pressure is already working."⁸¹ [Slide off]

12. Third, as a result of the US measures targeting the financial sector, numerous banks have already withdrawn from financing agreements or suspended co-operation with Iranian banks, and are also refusing to accept transfers or to provide correspondent services⁸². For example, and as shown by the documents at tab 9 of your folders, DZ Bank, Germany's second largest lender, stated as early as 18 May that it would "completely suspend [its] foreign payment transactions related to Iran starting July 1st"⁸³. On 12 July, Japan's largest bank, Mitsubishi UFG Financial Group, announced that it would halt all Iranian transactions in order to comply with the US sanctions⁸⁴. It was reported: "The move by MUFG is likely to force a halt in Iranian crude oil purchases by Japanese companies as its banking unit handles the bulk of those imports, industry sources have told Reuters." And Chinese banks have also withdrawn services to Iranian banks⁸⁵.

13. It is thus becoming difficult or impossible for Iranian companies and nationals to engage in international financial transactions and to purchase even items not directly covered by US sanctions, such as medical supplies and equipment. The point is a simple one: because Iranian access to the international banking sector is being severely restricted, imports and exports will likewise be severely affected, with consequent serious and adverse impact to trade, investment and to the ability of Iranians to obtain the necessities of life that cannot be manufactured or produced in Iran.

(a) As an example of the ongoing practical impact of the US measures in terms of projects in Iran, the Italian steel manufacturer, Danieli, announced on 17 May that it had halted work on finding

⁸¹ "Senior Administration Officials Previewing Iran Sanctions", Special Briefing, 6 Aug. 2018, available at <https://www.state.gov/r/pa/prs/ps/2018/08/284955.htm> (judges' folder, tab 3-2).

⁸² E-mail from Danske Bank to Bank Pasargad Iran, 30 May 2018; SWIFT message from BCP Bank to Bank Pasargad Iran, 7 June 2018; e-mail from BCP Bank to Bank Pasargad Iran, 22 May 2018; e-mail from Banco BMP to Bank Pasargad Iran, 16 July 2018; SWIFT message from Aktif Bank to DAY Bank, 26 July 2018 (judges' folder, tabs 8-1 to 8-5). See also "Swiss bank BCP says halt all new business with Iran", Reuters, 29 May 2018, available at <https://www.reuters.com/article/switzerland-iran-bcp/swiss-bank-bcp-says-halts-all-new-business-with-iran-idUSL5N1T03C8>; "Austria's Oberbank withdraws from Iran", Reuters, 13 June 2018, available at <https://www.reuters.com/article/us-oberbank-iran/austrias-oberbank-withdraws-from-iran-idUSKBN1J926D> (judges' folder, tab to 9-4).

⁸³ "Germany's DZ Bank to halt Iran transactions in July" at <https://www.reuters.com/article/germany-iran-dz-bank/update-1-germanys-dz-bank-to-halt-iran-transactions-in-july-idUSL5N1SP5N8> (judges' folder, tab 9-2).

⁸⁴ "Japanese banks MUFG, Mizuho to stop Iranian transactions" at <https://www.reuters.com/article/us-japan-iran-mufg/japanese-banks-mufg-mizuho-to-stop-iranian-transactions-idUSKBN1K20X0> (judges' folder, tab 9-5).

⁸⁵ See e.g. with respect to Agricultural Bank of China, "Trump aims sanctions at Iran . . . Hong Kong bank customers get hit", *South China Morning Post*, 19 Aug. 2018, available at <https://www.scmp.com/week-asia/geopolitics/article/2160217/trump-aims-sanctions-iran-hong-kong-bank-customers-get-hit> (judges' folder, tab 9-8).

financial coverage for orders in Iran worth €1.5 billion, with the Chief Executive Officer explaining that “the banks are no longer ready to fund Iranian projects for fear of secondary sanctions”⁸⁶. As another example, Austria’s Oberbank announced on 13 June its withdrawal from financing business in Iran, including a September 2017 agreement to provide project finance to Iran worth €1 billion, stating that “the threat to European companies by US secondary sanctions is forcing us to retreat”⁸⁷.

(b) As an example of impacts on health, as appears from the documents at tab 8 of your folders, the Swiss bank, Banque de Commerce et de Placements, has stated that it will not accept any new transactions, including payments for medical raw materials supplied by the healthcare company Sanofi — and this is despite the Iranian bank concerned, Bank Pasargad, protesting that medical products are meant to be exempt from the US measures⁸⁸. As an example of impacts to food imports into Iran, cattle in the thousands ready for export from northern France were reported on 9 August as staying put because of a bank’s refusal to process payment, and also the withdrawal of the insurer⁸⁹.

14. The US measures targeting the financial sector will even impact on Iran’s ability to repay its sovereign debt and, as explained by Mr. Mehdizadeh of the Central Bank of Iran, this will result in defaults and the downgrading of Iran’s credit-worthiness, which will in turn exacerbate the difficulties and costs of obtaining long-term financing from foreign sources⁹⁰.

⁸⁶ “Italy’s Danieli Iranian orders blocked after U.S. decision on nuclear deal” at <https://www.reuters.com/article/us-danieli-iran-sanctions/italys-danieli-iranian-orders-blocked-after-u-s-decision-on-nuclear-deal-idUSKCN1111NL> (judges’ folder, tab 9-1).

⁸⁷ “Austria’s Oberbank withdraws from Iran”, Reuters, 13 June 2018, available at <https://www.reuters.com/article/us-oberbank-iran/austrias-oberbank-withdraws-from-iran-idUSKBN1J926D> (judges’ folder, tab 9-4).

⁸⁸ E-mail from BCP Bank to Bank Pasargad Iran, 22 May 2018 (judges’ folder, tab 8-1).

⁸⁹ “Iran sanctions hurt French cattle farmers”, RFI, 9 Aug. 2018 (modified on 11 Aug. 2018), available at <http://en.rfi.fr/france/20180809-iran-sanctions-hurt-french-livestock-exports> (judges’ folder, tab 9-7). As to reinsurance, see e.g. “Scor says will not sign or renew Iran contracts”, Reuters, 13 Jul. 2018, available at <https://www.reuters.com/article/scor-iran/scor-says-will-not-sign-or-renew-iran-contracts-idUSP6N1TU005> (judges’ folder, tab 9-6).

⁹⁰ Witness statement of Jafaar Mehdizadeh, Director of Economic Research and Policy Department, Central Bank of Iran, 21 Aug. 2018, para. 8 (judges’ folder, tab 7-1).

15. Fourth, it is of course the case that the production and export of oil and gas is critical to Iran's economy, as indeed was noted by this Court in the *Oil Platforms* case⁹¹. Just as in the *Fisheries Jurisdiction* cases, where the Court shaped its orders on provisional measures expressly taking into account "the exceptional dependence of the Icelandic nation upon coastal fisheries for its livelihood and economic development"⁹², so, here, particular account must be taken of Iran's exceptional dependence on the energy sector for its livelihood and economic development.

16. And irreparable prejudice is already being caused as the United States of America actively seeks to isolate and cripple Iran's oil exports, with the evidence set out at paragraph 36 of Iran's Request showing how, in accordance with the US directions and expectations, multiple companies have already announced their intention to withdraw (or have actually withdrawn) from transactions with the Iranian oil and gas industry and oil purchases⁹³.

(a) Indeed, in a statement of 6 August, a senior official of the US Administration said that "we're very pleased that nearly 100 international firms have announced their intent to leave the Iranian market, particularly in the energy and the finance sectors"⁹⁴.

(b) On the same day, it was reported in Bloomberg that: "In three months' time, US sanctions against Iran are due to enter into force that could drive the Persian Gulf nation's exports down towards zero and upend the global oil market. There are already signs that it will be harder for the country to export, as some international insurers stop covering shipments."⁹⁵

⁹¹ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), p. 820, para. 51. See also witness statement of Jafaar Mehdizadeh, Director of Economic Research and Policy Department, Central Bank of Iran, 21 Aug. 2018, para. 4 (judges' folder, tab 7-1).

⁹² See e.g. *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, para. 23.

⁹³ See also, by way of example, numerous notifications to Sinopec Engineering Incorporation (SEI): letter from Italian Petrochemical Manufacturers S.p.A. to SEI, 25 June 2018; letter from UOP Limited to SEI, 25 June 2018; e-mail from Linde AG to SEI, 19 June 2018; letter from MAN Diesel & Turbo SE to SEI, 15 June 2018; letter from ABB Engineering (Shanghai) Ltd to SEI, 20 June 2018; e-mail from Weir Group to SEI, 1 June 2018; letter from Sulzer Pumps Suzhou Ltd to SEI, 19 June 2018; letter from GEA Weirgard GmbH to SEI, 20 June 2018; letter from Howden Hua Engineering Co. Ltd to SEI, 19 June 2018; e-mail from Wuxi Compressor Co. Ltd to SEI, 19 June 2018; e-mail from Roots Systems Ltd to SEI, 18 June 2018; e-mail from Honeywell (China) Ltd. to SEI, 18 May 2018; e-mail from Kelvion China to SEI, 8 June 2018; e-mail from Phocenne to SEI, 7 June 2018; e-mail from EEW China Marketing & Services to SEI, 31 May 2018; letter from Beijing Kelitong Instrument Technology Development Co. LTD to SEI, 26 July 2018; telefax from EagleBurgmann Dailian Co. Ltd to SEI, 26 June 2018 (judges' folder, tabs 10-1 to 10-17).

⁹⁴ "Senior Administration Officials Previewing Iran Sanctions", Special Briefing, 6 Aug. 2018, available at <https://www.state.gov/r/pa/prs/ps/2018/08/284955.htm> (judges' folder, tab 3-2).

⁹⁵ "Iran's Oil-Market Realities: How Buyers Are Positioning for U.S. Sanctions", Bloomberg, 6 Aug. 2018, available at <https://www.bloomberg.com/news/articles/2018-08-06/iran-s-oil-market-realities-how-buyers-are-positioning-for-u-s-sanctions> (judges' folder, tab 11-8).

- (c) As was stated by Total in explaining its withdrawal on 7 July: “There’s not a single international company like Total who can work in any country with secondary sanctions . . . It’s impossible, let me be clear, to run an international company like Total without having access to U.S. financing or to U.S. shareholding.”⁹⁶ That appears to be a reference to the sanction established by section 5 of Executive Order 13846.
- (d) Similarly, on 18 May, in announcing plans to suspend its gas project in Iran, Poland’s dominant gas company, PGNiG, had stated: “There is not much we can do about the contract in Iran. Any moment the sanctions will be put in place and nobody wants to take a risk.”⁹⁷ The same basic reason was given by Indonesia’s Pertamina for its decision in June to freeze a deal to operate the Mansouri oilfield in Iran⁹⁸. And once a foreign investor has pulled out of a given project in Iran, the harm in terms of loss of development may be permanent. Investors do not have bottomless pockets and, once a decision is made to invest elsewhere, the impetus to invest in Iran may be lost forever.
- (e) Moreover, the harm caused by the US measures to Iran’s energy sector appears likely to extend to the loss of certain key oil markets as a whole — such as India, South Korea and Japan — due to difficulties in making payments or obtaining insurance for shipments of Iranian oil. For example, it is reported on 6 August by Bloomberg that, in Japan “[r]efiners were told that the banks won’t handle transactions for Iran-related deals that were signed on or after May 8, and that those signed before that period will be dealt with ‘on [a] case-by-case basis’”⁹⁹. And, again, once a refiner has dedicated and modified its infrastructure to obtain oil from a new

⁹⁶ “US sanctions mean no big oil company can risk doing business with Iran, Total CEO says”, CNBC, 20 June 2018, available at <https://www.cnbc.com/2018/06/20/no-big-oil-company-can-risk-doing-business-with-iran-total-ceo-says.html> (judges’ folder, tab 11-3).

⁹⁷ “Poland’s PGNiG plans to suspend gas project in Iran because of U.S. sanctions”, Reuters, 18 May 2018, available at <https://www.reuters.com/article/iran-nuclear-europe-pgnig/corrected-polands-pgnig-plans-to-suspend-gas-project-in-iran-because-of-u-s-sanctions-idUSFWN1SP0TA> (judges’ folder, tab 11-1).

⁹⁸ “Indonesia’s Pertamina says Iran oil field deal frozen over US sanctions” at <https://www.reuters.com/article/gas-conference-pertamina/indonesias-pertamina-says-iran-oil-field-deal-frozen-over-us-sanctions-idUSL8N1TS5UJ> (judges’ folder, tab 11-4).

⁹⁹ “Iran’s Oil-Market Realities: How Buyers Are Positioning for U.S. Sanctions”, Bloomberg, 6 Aug. 2018, available at <https://www.bloomberg.com/news/articles/2018-08-06/iran-s-oil-market-realities-how-buyers-are-positioning-for-u-s-sanctions> (judges’ folder, tab 11-8). See also “India’s HPCL cancels Iran oil shipment after insurer excludes coverage”, 26 July 2018, available at <https://www.reuters.com/article/us-india-iran-oil-exclusive/exclusive-indias-hpcl-cancels-iran-oil-shipment-after-insurer-excludes-coverage-sources-idUSKBN1KG1BO> (judges’ folder, tab 11-7). See also e.g. “European refiners winding down purchases of Iranian oil”, Reuters, 6 June 2018, available at <https://www.reuters.com/article/us-iran-oil-europe/european-refiners-winding-down-purchases-of-iranian-oil-idUSKCN1J21F0> (judges’ folder, tab 11-2).

source, such indeed as the United States (as has been reported with respect to India and Japan¹⁰⁰), it may not be considered cost-effective to return to purchase Iranian oil in the future.

(f) Also it is not just the oil and gas markets that are being affected. The US measures have caused renewable energy companies to terminate their activities in Iran, including the UK solar company Quercus which had intended to invest €500 million to build the sixth largest solar plant in the world¹⁰¹. This seriously jeopardizes Iran's aim, linked to the commitments it has accepted under the Paris Agreement, to add at least 5 gigawatt of generation capacity by 2022 and its aim also to reduce pollution.

17. And this pattern of mass withdrawal of investment and cancelled transactions is replicated in the other key sectors of Iran's economy that are being targeted by the United States.

18. As to civil aviation, the Court has already noted the loss of the very substantial transactions with Boeing and ATR and the loss of the US\$ 30 billion Airbus deal. Iran's airline companies are being deprived of the opportunity to renew their fleets, and are left with one of the oldest fleets in the world¹⁰². That is serious enough in terms of prejudice to running a safe and efficient business, but matters are further aggravated because of the impacts of US sanctions on purchasing spare parts and other necessary equipment and services as listed out at paragraph 34 of Iran's Request, including as to such basic matters as training pilots to international standards or using foreign airport services. And these impacts exist as a practical reality, notwithstanding the existence of a procedure for applying for specific licences under a US safety of flight licensing policy.

19. At tab 12 of your judges' folder you will see the statement of Mr. Samani, Secretary of the Association of Iranian Airlines, dated 18 August, who lists out the past impacts of the previous

¹⁰⁰ See "U.S. oil exports to India soar ahead of sanctions on Iran", Reuters, 12 July 2018, available at <https://www.reuters.com/article/us-usa-crude-india/u-s-oil-exports-to-india-soar-ahead-of-sanctions-on-iran-idUSKBN1K20AS> (judges' folder, tab 11-6); "Japan refiners boost U.S. crude purchases as Iran sanctions loom", Reuters, 29 June 2018, available at <https://www.reuters.com/article/us-japan-crude-usa/japan-refiners-boost-u-s-crude-purchases-as-iran-sanctions-loom-idUSKBN1JP0QW> (judges' folder, tab 11-5).

¹⁰¹ See e.g. "Exclusive: UK's Quercus pulls plug on \$570 million Iran solar plant as sanctions bite", Reuters, 14 Aug. 2018, available at <https://www.reuters.com/article/us-iran-sanctions-quercus-exclusive/exclusive-uks-s-crude-pulls-plug-on-570-million-iran-solar-plant-as-sanctions-bite-idUSKBN1KZ0ZR> (judges' folder, tab 11-9).

¹⁰² "Iran Aseman Airlines crash: Years of sanctions have left passengers with one of oldest air fleets in the world", *The Independent*, 18 Feb. 2018, available at www.independent.co.uk/news/world/middle-east/iran-aviation-crash-aseman-airlines-oldest-fleet-boeing-727-a8216221.html (judges' folder, tab 13-2). See also www.airfleets.net/ageflotte/fleet-age-search.htm and www.planespotters.net (judges' folder, tabs 13-4 and 13-5).

US sanctions on the civil aviation sector, and concludes: “If the international community fails to prevent the U.S. from giving full effect to its sanctions, the lives of Iranian passengers and crew and other customers of Iranian airlines will be placed in danger.”¹⁰³

20. As to the rail and automotive sectors, a large number of companies have already indicated that they are withdrawing from Iran. Examples are at tab 14 of your judges’ folder. And as one example, Peugeot-Citroen have announced that they are withdrawing¹⁰⁴, a very substantial loss to Iran as more than 230,000 of their cars were manufactured under licence in Iran in 2016, following the opening of a new plant¹⁰⁵. The departure of Mazda and Hyundai has also been announced¹⁰⁶, alongside further withdrawals or suspensions by Renault¹⁰⁷, Scania¹⁰⁸, Daimler¹⁰⁹ and the German automotive supplier, Duerr¹¹⁰. These are very serious losses to Iran’s economy and to its people in terms of their employment, well-being and prosperity.

21. As to shipping, as you have already heard from Mr. Aughey, the US measures target or are set to target the provisions of crude and product tankers to Iran as well as Iranian shipping and shipbuilding more generally¹¹¹. The world’s two largest container companies, MAERSK and MSC,

¹⁰³ See also ICAO, Continuity of the US Trade Embargo on the Civil Aviation of the Islamic Republic of Iran and the Safety Deficiencies Arising Out of it, 15 Mar. 2006, DGCA/06-IP/31, para. 3.2, available at [www.icao-int/Meetings/AMC/MA/Directors General of Civil Aviation Conference on a Global Strategy for Aviation Safety \(DGCA-06\)/dgca_06_ip_31_e.pdf](http://www.icao.int/Meetings/AMC/MA/Directors%20General%20of%20Civil%20Aviation%20Conference%20on%20a%20Global%20Strategy%20for%20Aviation%20Safety%20(DGCA-06)/dgca_06_ip_31_e.pdf) (judges’ folder, tab 12-2).

¹⁰⁴ “Iran car sales keep PSA on growth track”, Dawn, 12 Jan. 2017, available at <https://www.dawn.com/news/1307872> (judges’ folder, tab 14-1). See also “Peugeot, Renault Ties to Iran Deepen”, *Financial Tribune*, 18 Jan. 2018, available at <https://financialtribune.com/articles/auto/80215/peugeot-renault-ties-to-iran-deepen> (judges’ folder, tab 14-2).

¹⁰⁵ See also “France’s PSA suspends joint ventures in Iran to avoid U.S. sanctions”, Reuters, 4 June 2018, available at <https://www.reuters.com/article/us-iran-nuclear-peugeot/frances-psa-suspends-joint-ventures-in-iran-to-avoid-u-s-sanctions-idUSKCN1J026R> (judges’ folder, tab 14-3).

¹⁰⁶ Reported in *The Arab Weekly*, “US Sanctions on Iran leave European companies with difficult choice”, 25 June 2018, available at <https://the arabweekly.com/us-sanctions-iran-leave-european-companies-difficult-choice> (judges’ folder, tab 14-4).

¹⁰⁷ “French Carmaker Likely to Halt Iran Operations as Other Companies Leave”, Radio Farda, 28 July 2018, available at <https://en.radiofarda.com/a/french-carmaker-likely-to-halt-iran-operations-as-other-companies-leave/-29395780.html> (judges’ folder, tab 14-6).

¹⁰⁸ “Scania says U.S. sanctions put entire Iran truck sales in ‘jeopardy’”, Reuters, 3 Aug. 2018, available at <https://uk.reuters.com/article/uk-iran-sanctions-scania/scania-says-u-s-sanctions-put-entire-iran-truck-sales-in-jeopardy-idUKKBN1KO237> (judges’ folder, tab 14-7).

¹⁰⁹ “Iran sanctions: Trump warns trading partners”, BBC News, 7 Aug.

2018, available at <https://www.bbc.com/news/world-us-canada-45098031> (judges’ folder, tab 14-8).

¹¹⁰ “Auto supplier Duerr stops Iran business due to sanctions: Boersen-Zeitung” at <https://www.reuters.com/article/us-duerr-iran/auto-supplier-duerr-stops-iran-business-due-to-sanctions-boersen-zeitung-idUSKBN1KW08Y> (judges’ folder, tab 14-9).

¹¹¹ US Executive Order 13846, sec. 1 (a) (iv) (judges’ folder, tab 2-1).

have been reported as withdrawing from business with Iran. According to a Reuters report of 17 May, the Maersk Chief Executive explained: “With the sanctions the Americans are to impose, you can’t do business in Iran if you also have business in the U.S., and we have that on a large scale.”¹¹²

22. Some of the impacts of the US measures, including in terms of the reduction or withdrawal of commercial relations and immense problems in transferring payments for the freight and hire of vessels, are set out in a statement from the Commercial Director of the National Iranian Tanker Company (NITC) at tab 15-1 of your judges’ folder¹¹³. As this statement makes clear, the sanctions are also severely impacting Iran’s own fleets on which it is now being forced to rely.

(a) For example, the NITC is unable to obtain vessels, spare parts, fuel and bunkering and technical and other services, while multiple insurers have refused or withdrawn cover for NITC’s fleet, as is of course consistent with the aim of the US sanctions¹¹⁴.

(b) To take a second example, the Islamic Republic of Iran Shipping Lines (the IRISL) has a 2016 agreement with Hyundai Heavy Industries worth around US\$760 million for the building of four container ships and six 49,000-ton tankers for petrochemical products. The vessels were supposed to be delivered in the second quarter of this year. Although some of the ships are now finished, there have been no deliveries. An official from Hyundai is reported as explaining: “Not a single ship has been delivered to IRISL. It is impossible for us to deliver the ships with U.S. sanctions back in position.”¹¹⁵

23. And as follows from all the above, the acute harm that is being and will be caused to Iran’s economy, and to Iranian companies and Iranian nationals, is obvious. The situation is further

¹¹² “Maersk latest company to shun Iran as EU scrambles to save nuclear deal”, Reuters, 17 May 2018, available at <https://www.reuters.com/article/us-iran-nuclear-maersk/maersk-says-u-s-sanctions-make-doing-business-in-iran-impossible-idUSKCN1H0YR> (judges’ folder, tab 17-2). With respect to MSC, see “Re-imposition of U.S. sanctions on Iran”, MSC, 16 May 2018, available at <https://www.msc.com/mmr/notices/2018-may/re-imposition-of-u-s-sanctions-on-iran> (judges’ folder, tab 17-1).

¹¹³ Statement of Sh. Farahbod, Commercial Director, NITC, 18 July 2018 (judges’ folder, tab 15-1). See also numerous notifications received by Iran Insurance Co (IIC): e-mails from Chedid & Associates S.A.L. to IIC, 31 May 2018; e-mail from United Insurance Brokers Ltd to IIC, 9 July 2018; e-mail from Interlink Insurance & Reinsurance Brokers PVT. LTD to IIC, 11 July 2018; letter from Scor to IIC, 18 July 2018; e-mail from Chedid & Associates S.A.L. to IIC, 19 July 2018; e-mail from Partner Reinsurance Europe SE to IIC, 27 July 2018 (judges’ folder, tabs 16-1 to 16-7).

¹¹⁴ Statement of Sh. Farahbod, Commercial Director, NITC, 18 July 2018 (judges’ folder, tab 15-1).

¹¹⁵ Reported in “Mazda, Hyundai Leave Iranian Market, Affecting Cars and Shipping”, Radio Farda, 13 June 2018, available at <https://en.radiofarda.com/a/mazda-hyundai-leaving-iranian-market/29288201.html> (judges’ folder, tab 17-3).

aggravated because the impacts of the US measures are both wide-ranging and cumulative. A State's international commerce is like a spider's web, dependent upon multiple elements and links. It does not matter greatly which links are attacked: cut enough of them, and for all practical purposes the entire web is destroyed. And this is precisely what the United States of America's multiple cuts risk achieving.

24. Against that backdrop of the impact of the US measures on Iran, I turn to the specific Treaty rights in respect of which irreparable prejudice is risked. I start with Article IV (1) [on screen, judges' folder, tab 1-1] which, as already identified, contains a series of protections for Iranian nationals and companies (that is, of course, both privately-owned and state-owned companies).

25. The first right established by Article IV (1) is that Iranian nationals and companies and their property and enterprises be accorded fair and equitable treatment. Take as an example the property of the National Iranian Oil Company in the form of the contractual rights that it has under a contract such as with Total¹¹⁶, which are being removed or destroyed as a result of the US sanctions. As follows from what has been said by Mr. Aughey, it is at least plausible that this amounts to a failure by the United States of America to accord fair and equitable treatment. And the harm that is now being done to Iran's related rights will be, or risks being, irreparable absent an order from the Court:

(a) for, if in due course a final judgment is made by this Court in Iran's favour upholding these rights under Article IV (1), the United States of America could not be ordered to reinstate whatever given contract has been cancelled, such as with Total, or suspended, such as with Peugeot-Citroen.

(b) Indeed, the United States of America could not make the relevant company continue a project or enter a new contract even if it wished to do so. That could only be a matter for whoever the given contracting party might be. It follows that, once a contract or project is brought to an end as a result of the sanctions, the harm becomes irreparable, so far as concerns what could be cured by a final judgment of this Court.

¹¹⁶ "US sanctions mean no big oil company can risk doing business with Iran, Total CEO says", CNBC, 20 June 2018, available at <https://www.cnbc.com/2018/06/20/no-big-oil-company-can-risk-doing-business-with-iran-total-ceo-says.html> (judges' folder, tab 11-3).

26. The same point applies to the further rights of Iran with respect to the Article IV (1) prohibition of unreasonable or discriminatory measures that would impair the legally acquired rights and interests of Iranian nationals and companies. Where, as a result of the US measures, legally acquired rights are impaired through, for example, termination of a contract, the protection that this provision is intended to afford is lost altogether. The United States of America cannot reinstate the legally acquired rights and, as I have already said, it cannot make Total¹¹⁷ or Boeing¹¹⁸ or Airbus¹¹⁹ or whoever it may be enter a new contract with the given Iranian company.

27. A further way in which irreparable prejudice is — or risks — being caused to Iran’s rights in respect of fair and equitable treatment arises from the harm caused to Iranian companies and businesses by the sanctions. The *Anglo-Iranian Oil Co.* case provides a useful precedent, as there the Court ordered provisional measures in the light of risks including with respect to loss of skilled personnel, disruption, loss of markets and goodwill¹²⁰. Here, the risks to Iranian companies and businesses are if anything more serious, as it appears inevitable that the US sanctions will lead to certain companies losing large parts of their business or going out of business altogether. [Slide off.]

28. And please note that, as follows from the US Presidential Memorandum of 8 May 2018, it is precisely the intention of the United States of America that the harm from US or non-US disinvestment should be suffered by the Iranian party to any given transaction. [Slide on] As the US President stated with respect to the US steps to reimpose sanctions: “Those steps should be accomplished in a manner that, to the extent reasonably practicable, shifts the financial burden of

¹¹⁷ “US sanctions mean no big oil company can risk doing business with Iran, Total CEO says”, CNBC, 20 June 2018, available at <https://www.cnbc.com/2018/06/20/no-big-oil-company-can-risk-doing-business-with-iran-total-ceo-says.html> (judges’ folder, tab 11-3).

¹¹⁸ “Boeing confirms passing \$20B Iran deal”, *AeroTime News*, 7 June 2018, available at: www.aerotime.aero/clement.charpentreau/21390-boeing-confirms-passing-20b-iran-deal (judges’ folder, tab 13-3).

¹¹⁹ “FACTBOX-Iran’s \$38 billion airplane purchases under nuclear deal”, Reuters, 8 May 2018, available at: uk.reuters.com/article/iran-nuclear-aircraft-deals/factbox-irans-38-billion-airplane-purchases-under-nuclear-deal-idUKL8N1SE75Z (judges’ folder, tab 13-2).

¹²⁰ *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*, Request for the Indication of Interim Measures of Protection, 22 June 1951, para. 8.

unwinding any transaction or course of dealing primarily onto Iran or the Iranian counterparty.”¹²¹
[Slide off.]

29. To take an example of the burden, a press report of 12 July 2018 explains the impacts of the US sanctions on a manufacturer of car parts for Peugeot and other cars, the Headlight Modern Car Industries Co. [on screen]. The Financial Manager explains how the sanctions have caused the shutting down of the company’s factory:

“The main reasons are the sanctions on goods and the products are not transferred to Iran. The managers remitted the required money for purchasing the goods to South Korea but, due to the sanctions, goods cannot reach us.

. . . we have now tried to work through Turkey and have remitted money there but Turkish entities do not work with Iran either and this has made problems for us. These facts caused us not to be able to pay the salary of our over 700 workers in Ordibehesht and Khordad. As a result, the activities of our factory have been ceased.”¹²² [Slide off]

30. And once some enterprise or a company is lost, the right of protection that Iran enjoys under Article IV (1) in respect of that enterprise or company is rendered nugatory. The provision can no longer be invoked to protect and maintain the Iranian enterprise or company as a going concern with its personnel, market and goodwill maintained, and irreparable prejudice has thus been caused to the rights of Iran at issue.

31. I move to Article VII (1) [on screen] and the rights of Iran that arise as a corollary to the prohibition on the United States of America imposing “restrictions” on the making of payments, remittances, and other transfers of funds to or from the territory of Iran. The United States of America is doing what it can to make transfers of funds from Iran virtually impossible as to the key sectors of Iran’s economy, with an inevitable and severely adverse impact on the scope of Iran’s companies and nationals to acquire products from abroad. Irreparable prejudice to Iran’s rights under Article VII (1) arises in two ways.

(a) First, where a company cannot import materials or equipment vital to its business from abroad because it cannot pay for these due to the US measures, and the enterprise or even the company

¹²¹ Presidential Memorandum, 8 May 2018, “Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran’s Malign Influence and Deny Iran All Paths to a Nuclear Weapon”, available at <https://www.whitehouse.gov/presidential-actions/ceasing-u-s-participation-jcpoa-taking-additional-action-counter-irans-malign-influence-deny-iran-paths-nuclear-weapon/> (judges’ folder, tab 22-1).

¹²² ILNA Report re cessation of Headlight Modern Car Industries Co., 12 July 2018 (judges’ folder, tab 14-5).

itself is lost as a result, Iran's rights with respect to the transfer of funds under Article VII (1) are rendered nugatory so far as concerns that particular company or enterprise.

(b) Second, the materials or equipment that need to be purchased from abroad may be necessary for human health or safety. The difficulties that the US measures are causing in terms of making payments for goods from abroad are manifest, and these do not disappear where the goods themselves are not subject to sanctions, such as medical supplies or equipment. I will turn to the evidence on that shortly, but the point for now is that difficulties in payment have proved in the past to lead to medical shortages, including to the unavailability of, or delays in accessing, lifesaving drugs and equipment. And if an Iranian national dies prematurely as a result of the inability to purchase medicine or medical equipment, there is irreparable prejudice to Iran's rights under Article VII (1) as, of course, those rights can no longer be exercised and enjoyed with respect to that person. [Slide off.]

32. As to Articles VIII (1) and (2) [on screen], the US sanctions are having a direct and severe impact on products imported from the United States of America, as the cancellation of the Boeing transaction amply demonstrates, and likewise on exports from Iran. The risk of irreparable prejudice to Iran's rights under these provisions arises in substantially the same ways as I have already indicated. Specifically as to Article VIII (1), as I have already noted, the US sanctions seek to render international transfers of funds to and from Iran largely impossible in the key sectors of its economy, and numerous banks have already withdrawn services in respect of Iran, meaning that irreparable prejudice appears inevitable¹²³. [Slide off.]

33. The same points and the same risks of irreparable prejudice arise so far as concerns Iran's rights under Article IX (2) [on screen] to most-favoured nation treatment as to which you have already heard Mr. Aughey on plausible interpretation, and likewise so far as concerns Iran's rights under Article IX (3) with respect to marine insurance. [Slide off]

34. As to the risk of irreparable prejudice to Iran's rights in respect of freedom of commerce under Article X (1) [on screen]:

¹²³ See paras. 12-14 above.

- (a) first, this right can only be enjoyed to the extent that Iran's economy is not crippled and the companies that have been doing business with the United States of America can retain their markets and their solvency. The avowed aim of the US measures is to isolate Iran and apparently to cripple its economy and, to the extent that aim succeeds, the right of Iran to freedom of commerce will be undermined altogether. As the Court has noted, Article X (1) may be engaged "as a result of acts entailing the destruction of goods destined to be exported"¹²⁴, and it must apply *a fortiori* where the acts impugned may entail the destruction of companies, their businesses and even the crippling of the economy as a whole.
- (b) Second, Iran, Iranian companies and nationals have been engaging in commerce with the United States of America in many different areas, including with respect to products and services that impact on the health and safety of the Iranian population. Where, as a result of the reimposition of sanctions, the freedom of commerce is negated so that it is difficult or impossible to obtain medical equipment and supplies or, for example, necessary spare parts for aircraft, there is a risk of irreparable prejudice to Iran's rights under Article X (1) to the extent that the loss of freedom of commerce causes loss or harm to human life and health. [Slide off]

III. Irreparable prejudice to the rights of Iran: harm to public health in Iran

35. With that in mind, I wish to say a little more on the serious risk of loss of life, aggravated illness and harm to health that arises as a result of the US sanctions.

36. The importation of certain medical supplies and equipment is in theory exempted from sanctions¹²⁵, but that does not eradicate the difficulties and delays caused in terms of making payments and procuring such supplies and equipment that follow from the US measures aimed at Iran's financial sector. This was established when similar measures were in place prior to 2016. As noted, for example, in the Report of the Special Rapporteur on the situation of human rights in Iran dated 4 October 2013: [on screen]

¹²⁴ *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment* p. 819, para. 50, quoted at *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment*, p. 201, para. 83. See also p. 203, para. 89.

¹²⁵ See e.g. OFAC, "Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)", 8 May 2018 (updated 6 Aug. 2018), para. 2.7, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf (judges' folder, tab 4-6).

“68. Several reports have signalled that humanitarian safeguards in the form of exemptions for foodstuffs, medicines, chemicals for the production of medications and medical supplies are failing to meet their intended purpose. Reports indicate that financial sector sanctions effectively frustrate the purpose behind humanitarian exceptions. They also stress that the supply of advanced medicines, which treat the most serious illnesses, are particularly affected . . .”

And there afterward some of those specific illnesses are mentioned¹²⁶.

37. There are multiple references in the Reports of the Special Rapporteur to similar effect in the period 2012-2015. And they are included at tab 18 of your judges' folder¹²⁷.

38. In a report of the Human Rights Council dated 10 February 2015, it was stated that¹²⁸:
[on screen] “Although the United States of America and the European Union claim that the sanctions do not apply to humanitarian items, in actual fact they have deeply affected the delivery and availability of medical supplies.” [Slide off]

39. These reports are consistent with an abundant literature on the impacts of the sanctions prior to 2016, and we have included the relevant materials at tab 19 of your judges' folders. The 2018 report of Kheirandish and others in the *East Mediterranean Health Journal* is illustrative: [on screen]

“There is strong evidence that sanctions [and the reference here is to the sanctions on the Iranian banking system and its Central Bank introduced in 2011-2012] have had a negative effect on access to drugs, particularly those that

¹²⁶ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, [A/68/503](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/500/31/pdf/N1350031.pdf?OpenElement), 04.10.2013, paras. 68-69, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/500/31/pdf/N1350031.pdf?OpenElement> (judges' folder, tab 18-2).

¹²⁷ Report of the Secretary-General, Situation of human rights in the Islamic Republic of Iran, UN Doc. [A/67/327](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/469/90/pdf/N1246990.pdf?OpenElement), 22.08.2012, paras. 42-43, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/469/90/pdf/N1246990.pdf?OpenElement>; Report of the Secretary-General, Situation of human rights in the Islamic Republic of Iran, UN Doc. [A/68/377](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/470/13/pdf/N1347013.pdf?OpenElement), 10.09.2013, paras. 37-38, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/470/13/pdf/N1347013.pdf?OpenElement>; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, UN Doc. [A/68/503](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/500/31/pdf/N1350031.pdf?OpenElement), 04.10.2013, paras. 68-69, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/500/31/pdf/N1350031.pdf?OpenElement>; Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, UN Doc. [A/69/356](https://undocs.org/A/69/356), 27.08.2014, paras. 90-95, available at [http://undocs.org/A/69/356](https://undocs.org/A/69/356). See also Report of the Secretary-General on Human Rights and unilateral coercive measures, UN Doc. [A/69/97](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/445/55/PDF/N1444555.pdf?OpenElement), 27.06.2014, para. 10, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/445/55/PDF/N1444555.pdf?OpenElement>; Report of the Secretary-General, Situation of human rights in the Islamic Republic of Iran, UN Doc. [A/70/352](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/268/00/pdf/N1526800.pdf?OpenElement), 31.08.2015, para. 5, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/268/00/pdf/N1526800.pdf?OpenElement>. Also Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, UN Doc. [A/72/370](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/272/02/PDF/N1727202.pdf?OpenElement), paras. 13-14, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/272/02/PDF/N1727202.pdf?OpenElement>. (judges' folder, tabs 18-1 to 18-7)).

¹²⁸ Human Rights Council, ‘Research-based progress report of the Human Rights Advisory Council Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability’, UN Doc. [A/HRC/28/74](https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/28/74&Lang=E), 10.02.2015, para. 34, available at [http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/28/74&Lang=E](https://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/28/74&Lang=E) (judges' folder, tab 18-6).

depended on the import of their raw material or finished products for non-communicable diseases.”¹²⁹ [Slide off]

40. As the literature also shows, the difficulties caused by the past sanctions were not restricted to shortages of drugs, but also concerned for example radiotherapy equipment needed to treat cancer¹³⁰, and the unavailability of necessary clotting agents for haemophiliacs¹³¹.

41. According to the World Health Organization, commenting on the impact of the sanctions prior to 2016 [judges’ folder tab 18-9, on screen]: “The sanctions took a serious toll on the people and economy, which in turn affected the health system in terms of people’s access to life-saving and chronic treatment and preventive care.”¹³²

42. After sanctions were lifted in 2016, the shortages were greatly reduced¹³³. However, there is every reason to suppose that the US measures now at issue would, within the course of the current proceedings, lead to the same shortages as before, with the same risks and adverse impacts to human life and health. [Slide off] This is confirmed by the recent views of the Special Rapporteur that I referred to in opening. It is also confirmed by the statement of Iran’s Minister of Health dated 19 August, where Iran’s dependence on imports for medical supplies and equipment is explained; that’s at tab 20 of your judges’ folder. As the Minister says, the US measures “are expected, once again, to cause shortages of medicines (including essential medicines), raw materials, medical supplies and medical equipment, which will result in a significant rise in suffering among patients and an increase in the mortality rate”¹³⁴.

¹²⁹ M. Kheirandish, V. Varahrami, A. Kebriaeezade, AM. Cheraghali, “Impact of economic sanctions on access to noncommunicable diseases medicine in the Islamic Republic of Iran” (2018) 24 (1) *East Mediterranean Health Journal* 42, available at http://applications.emro.who.int/emhj/v24/01/EMHJ_2018_24_01_42_51.pdf?ua=1 (judges’ folder, tab 19-1).

¹³⁰ A. Ameri, M. Barzegartahamtan, M. Ghavamnasiri. R. Mohammadpour, H. Dehghan, A. Sebzari, K. Novin, M. Aloosh, “Current and Future Challenges of Radiation Oncology in Iran: A Report from the Iranian Society of Clinical Oncology” (2018) 30 (4) *Clinical Oncology* 262 (judges’ folder, tab 19-2). See also M. Aloosh, ‘How economic sanctions compromise cancer care in Iran’ (2018) 19 (7) *The Lancet* e334, available at [https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(18\)30427-3/fulltext](https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(18)30427-3/fulltext) (judges’ folder, tab 19-3).

¹³¹ R. Heidari, M. Akbariqomi, G. Tavoosidana, “Medical legacy of sanctions in Iran” (2017) 552 *Nature* 175, available at https://idp.nature.com/authorize?response_type=cookie&client_id=grover&redirect_uri=https%3A%2F%2Fwww.nature.com%2Farticles%2Fd41586-017-08580-z (judges’ folder, tab 19-4).

¹³² World Health Organization, Iran – Country Cooperation Strategy, at http://apps.who.int/iris/bitstream/handle/10665/136898/ccsbrief_irm_en.pdf?sequence=1 (judges’ folder, tab 18-9).

¹³³ See Statement of Dr Hassan Hashemi MD, Iran’s Minister of Health dated 19 Aug., paras. 25-27 (judges’ folder, tab 20-1).

¹³⁴ See also e.g. “LG [Chem] Joined the Entities That Comply with the Pharmaceutical Sanctions Against Iran”, Itabnak.ir, 23 July 2018, available at <http://itabnak.ir/fa/news/18500/پیوست-ایران-دارویی-های-کننده-تحریم-جمع-به-جی-ال-شرکت> (judges’ folder, tab 21-1).

43. I conclude. According to the US President, the US measures “are the most biting sanctions ever imposed, and in November they ratchet up to yet another level”¹³⁵. The measures are intended to and do bite deeply into the key areas of Iran’s economy, and they also bite into the health, well-being and safety of its citizens, as well as of its companies. They are designed to cause prejudice and, absent an order from this Court, many aspects of that prejudice will become irreparable.

44. The Treaty of Amity is aimed at “mutually beneficial trade and investments and closer economic intercourse generally”. That aim is being radically undermined by the US measures, and the rights of Iran under the Treaty risk being rendered altogether nugatory, whether so far as concerns the protections accorded by the Treaty to Iran, to Iranian companies or to Iranian nationals. And that is the clearest possible form of irreparable prejudice to the rights at issue.

45. Mr. President, Members of the Court, I thank you for your attention. Professor Thouvenin will now complete Iran’s opening by addressing the issue of urgency.

The PRESIDENT: I thank Mr. Wordsworth and I now give the floor to Professor Thouvenin. You have the floor.

M. THOUVENIN : Merci, Monsieur le président.

QUATRIÈME PARTIE

L’URGENCE

1. Monsieur le président, Madame, Messieurs de la Cour, c’est un grand honneur de paraître devant vous, et je remercie vivement l’Iran de m’en donner la possibilité.

2. M^e Wordsworth vient de présenter un aperçu des dommages irréparables attachés aux mesures en litige. Je le crois saisissant. Nous pourrions presque nous arrêter là, mais puisqu’il ressort de votre jurisprudence que vous n’exercez votre pouvoir d’indiquer des mesures conservatoires que s’il y a urgence à les ordonner, ma tâche consiste précisément à montrer qu’il existe, au moment où je parle, un risque réel et imminent que ces préjudices soient effectivement causés aux droits en litige avant que la Cour rende sa décision définitive.

¹³⁵ See at <https://twitter.com/realDonaldTrump/status/1026762818773757955> (judges’ folder, tab 3-3).

3. Il est vrai que la condition d'urgence ne figure pas expressément dans votre Statut ni dans votre Règlement. Mais elle est de bon sens et a été consacrée dans l'affaire du *Passage par le Grand Belt*¹³⁶. Depuis lors, vous avez confirmé à de nombreuses reprises que l'urgence, nécessaire à l'indication de mesures conservatoires, est déclarée :

«s'il existe un risque réel et imminent qu'un préjudice irréparable soit causé aux droits en litige avant que la Cour n'ait rendu sa décision définitive»¹³⁷,

c'est-à-dire

«s'il est probable qu'une action préjudiciable aux droits de l'une ou de l'autre Partie sera commise avant qu'un tel arrêt définitif ne soit rendu»¹³⁸ ;

ou encore

«lorsque les actes susceptibles de causer un préjudice irréparable peuvent «intervenir à tout moment» avant que la Cour statue sur le fond»¹³⁹.

4. Dans les minutes qui me sont allouées, je montrerai donc à la Cour :

- d'une part que les actes dont l'Iran soutient qu'ils sont susceptibles de causer un préjudice irréparable sont, pour certains d'entre eux, *déjà* adoptés, pour d'autres prévus pour intervenir avec certitude dans quelques semaines ; et
- d'autre part que ces actes sont d'autant plus susceptibles de causer de manière imminente un préjudice irréparable aux droits en litige que de tels préjudices sont déjà en train de se produire, et que les Etats-Unis ont fait savoir leur détermination à causer dans les semaines à venir un préjudice encore plus massif à l'Iran, à ses entreprises, et à ses nationaux.

¹³⁶ *Passage par le Grand-Belt (Finlande c. Danemark)*, mesures conservatoires, ordonnance du 29 juillet 1991, C.I.J. Recueil 1991, p. 17, par. 22.

¹³⁷ *Questions concernant l'obligation de poursuivre ou d'extrader (Belgique c. Sénégal)*, mesures conservatoires, ordonnance du 28 mai 2009, C.I.J. Recueil 2009, p. 152-153, par. 62 ; *Jadhav (Inde c. Pakistan)*, mesures conservatoires, ordonnance du 18 mai 2017, C.I.J. Recueil 2017, p. 243, par. 50 ; *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017, p. 136, par. 89 ; *Jadhav (Inde c. Pakistan)*, mesures conservatoires, ordonnance du 18 mai 2017, C.I.J. Recueil 2017, p. 243, par. 50 ; *Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*, mesures conservatoires, ordonnance du 19 avril 2017, C.I.J. Recueil 2017, p. 136, par. 89

¹³⁸ *Passage par le Grand-Belt (Finlande c. Danemark)*, mesures conservatoires, ordonnance du 29 juillet 1991, C.I.J. Recueil 1991, p. 17, par. 23

¹³⁹ *Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis)*, demande en indication de mesures conservatoires, ordonnance du 23 juillet 2018, par. 61, citant *Immunités et procédures pénales (Guinée équatoriale c. France)*, mesures conservatoires, ordonnance du 7 décembre 2016, C.I.J. Recueil 2016 (II), p. 1169, par. 90.

5. A cette fin, il est éclairant de suivre la chronologie des actions conduites par les autorités américaines. Elle démontre sans aucun doute l'urgence pour la Cour d'indiquer des mesures provisoires de protection des droits dont l'Iran se prévaut, car elle met en lumière que l'objet affirmé de l'action américaine est d'étouffer l'économie iranienne en quelques mois seulement, en mettant en œuvre une campagne déterminée, progressive, et à l'intensité grandissante.

6. On l'a déjà dit au cours de cette matinée, et c'est bien de cela dont il est question : les Etats-Unis entendent, sans aucunement s'en cacher, isoler économiquement l'Iran, en rendant pratiquement impossible tout commerce, de quiconque, avec ce pays, ses entreprises, et ses habitants. Rien n'entre, ou presque ; rien ne sort, ou presque. Le secrétaire d'Etat américain l'a ouvertement revendiqué : les Etats-Unis entendent, selon ses propres mots «apply unprecedented financial pressure» sur l'Iran, en mettant en œuvre «the strongest sanctions in history»¹⁴⁰.

7. Autrement dit, comme l'a résumé la revue *World Politics* : «Economic strangulation is the core of this strategy.»¹⁴¹

8. Le resserrement de l'étau américain s'articule autour de trois dates clefs, le 8 mai, le 6 août, et le 4 novembre 2018.

I. Le 8 mai 2018

A. L'annonce du 8 mai

9. La première de ces dates est le 8 mai 2018. Elle est marquée par la déclaration publique du président des Etats-Unis annonçant au monde sa décision de réinstaurer et d'aggraver les sanctions économiques qui avaient été levées dans le cadre du JCPOA. Cette déclaration solennelle, soigneusement mise en scène par la Maison-Blanche, a eu pour objet, et pour effet, d'avertir les acteurs du monde entier qu'il leur fallait cesser au plus tôt toute relation économique avec l'Iran, en fixant deux comptes à rebours, à l'échéance l'un du 6 août, l'autre du 4 novembre 2018. Puisque mon propos porte sur l'urgence, je note d'emblée que le mémorandum présidentiel du 8 mai reflète l'empressement de son auteur : en effet, il décide alors la réimposition des sanctions «as

¹⁴⁰ After the Deal, A New Iran Strategy, M. Pompeo, The Heritage Foundation, 21 mai 2018, p. 5/12.

¹⁴¹ M. Milani, With U.S. Sanctions Looming, Iran Faces a Potentially Explosive Economic Crisis, *World Politics Review*, 2 août 2018, <https://www.worldpoliticsreview.com/articles/25360/with-u-s-sanctions-looming-iran-faces-a-potentially-explosive-economic-crisis>.

expeditiously as possible». Par ailleurs, pour hâter les effets des sanctions sur les acteurs de l'économie, le président des Etats-Unis a aussi demandé la préparation de :

«guidance necessary to educate United States and non-United States business communities on the scope of prohibited and sanctionable activity and the need to unwind any such dealings with Iranian persons»¹⁴².

10. Il est bien évident que l'efficacité de ce dispositif «d'éducation» du monde économique voulu par Washington, que je crois assez inédit dans son ambition et son ampleur, dépend en premier lieu de la crédibilité de la menace qu'il lui adresse.

11. Or, les Etats-Unis sont d'autant plus crédibles dans ce domaine qu'ils sont incontournables sur le plan économique. Pratiquement tous les acteurs et tous les flux économiques passent un jour ou l'autre sous la juridiction américaine. C'est que, selon une étude de 2016 réalisée par des experts de la Banque mondiale :

«With an estimated nominal GDP of more than \$18 trillion in 2016, the United States is the world's single largest economy . . . It accounts for more than 25 percent of global GDP (at 2015 market exchange rates), 11 percent of global trade, 12 percent of bank foreign claims, and 35 percent of global stock market capitalization . . . The United States is the single largest international creditor and debtor : it holds the largest stock of foreign assets and liabilities and, by a wide margin, the largest net foreign asset position.

U.S. trade and financial integration with other advanced economies and EMDEs . . . runs deep. Countries whose trade and financial ties are predominantly with the United States are directly exposed to U.S. developments. In addition, those that are in general highly open to global trade and finance are indirectly exposed because of widespread spillovers from the United States.»¹⁴³

12. C'est cette puissance économique qui donne aux Etats-Unis des moyens de pression sur pratiquement tous les acteurs économiques, y compris les acteurs financiers, quels que soient leur nationalité, leur domicile, ou le lieu de leurs opérations. Elle permet à Washington, sans égard pour ce que peuvent souhaiter les Etats sous la juridiction desquels elles se trouvent, de dicter aux entreprises des interdictions qu'elles sont contraintes de respecter sous peine d'amendes extraordinairement élevées qu'elles finiront un jour ou l'autre par payer. Dans ce contexte, comme l'ont par exemple rapporté deux journalistes de l'agence Reuters :

«major lenders in Europe and Asia are reacting to the steady flow of punishments from the United States by doing ever more to comply with U.S. laws and by cutting

¹⁴² Mémoire présidentiel, 8 mai 2018 (dossier des juges, onglet n° 22-1).

¹⁴³ <https://openknowledge.worldbank.org/handle/10986/26021>.

business ties in countries Washington dislikes rather than risk its wrath and, in the worst scenario, risk exclusion from the dollar system . . . for now, each bank on its own has little choice but to toe Washington's line.»¹⁴⁴

13. C'est dire que, dans le monde des acteurs économiques, les menaces de représailles financières faites par Washington à l'encontre de ceux qui ne respecteraient pas les sanctions contre l'Iran sont extrêmement crédibles.

14. En dehors de sa crédibilité, l'efficacité du dispositif mis en place par la Maison-Blanche repose aussi sur sa médiatisation, son retentissement global. Pour que la menace porte ses fruits et discipline rapidement les conduites, elle doit être entendue et comprise partout, et par tous, et susciter un sentiment d'urgence à obéir aux injonctions américaines, en l'espèce en coupant au plus tôt tous liens économiques avec l'Iran.

15. C'est là l'objet non seulement de la mise en scène de la déclaration du 8 mai 2018, mais aussi de la «guidance» to «educate» voulue par la présidence américaine qui a pris forme dès le 8 mai 2018 dans la publication d'un document public contenant des «Frequently asked Questions» de l'OFAC. Vous trouverez ce document à votre dossier, onglet n° 4-6. Bien entendu, il ne s'agit en rien de questions fréquemment posées à l'administration, mais de la manière choisie par cette dernière pour bien faire comprendre ce qu'elle exige des personnes et entreprises concernées par les sanctions — c'est-à-dire toutes celles qui entretiennent des liens avec l'Iran — et pour afficher d'emblée la fermeté dont elle fera preuve dans l'infliction d'amendes à celles qui n'obéiraient pas, ou pas assez vite.

16. Comme on pouvait s'y attendre, l'annonce du 8 mai, accompagnée de sa «guidance» to «educate», largement reprise et commentée par les médias du monde entier, a eu les effets escomptés, et même au-delà.

B. Les effets de l'annonce du 8 mai 2018

17. L'une des entreprises les plus promptes à se soumettre à la volonté américaine a été la banque Sumitomo du Japon. Deux jours seulement après l'annonce, elle faisait savoir à ses clients

¹⁴⁴ Steve Slater, Michelle Price, The Huge US Fines On Foreign Banks Are Having The Intended Effect, Reuters, 13 juillet 2016, <https://www.businessinsider.com/r-bruised-and-grumbling-foreign-banks-bend-to-us-rules-2014-13>.

susceptibles d'avoir des relations avec l'Iran qu'elle cessait immédiatement toute activité en rapport avec l'Iran¹⁴⁵.

18. Les entreprises américaines ont-elles aussi rapidement pris la mesure des risques qu'elles encouraient si elles respectaient leurs engagements à l'égard des entreprises iraniennes. Par exemple, le 7 juin, l'entreprise Boeing confirmait qu'elle n'honorait pas les commandes de 110 avions passées par Iran Air et Aseman Airlines en vue de renouveler leurs flottes défaillantes¹⁴⁶. Un contrat de 16,6 milliards de dollars était annulé d'un trait, moins d'un mois après l'annonce américaine, et deux mois avant la première échéance ferme du 6 août, date à laquelle les autorisations qui avaient permis ces commandes devaient être retirées¹⁴⁷. Ceci en dit long sur l'effet dissuasif de la crainte suscitée par les postures de l'administration américaine avant même l'entrée en vigueur des mesures d'août et de novembre.

19. Les entreprises européennes ont pour leur part peut-être cru pouvoir échapper aux injonctions américaines, puisque les ministres français, allemand et britannique, ainsi que la haute représentante de l'Union européenne, ont signé le 4 juin une requête en ce sens, qu'ils ont adressée aux responsables américains. Elle fait notamment valoir que les dirigeants européens :

«expect that the extraterritorial effects of US secondary sanctions will not be enforced on EU entities and individuals, and the United States will thus respect our political decision and the good faith of economic operators within EU legal territory»¹⁴⁸.

20. Mais avant même la fin de non-recevoir opposée à la mi-juillet par l'administration américaine aux Européens, de très nombreuses entreprises avaient compris que cette requête serait probablement rejetée, et que, en dépit de l'adoption d'une loi de blocage, les Européens n'auraient aucune possibilité de protéger efficacement leurs entreprises des injonctions américaines. Dès le 6 juin, la presse annonçait que :

«it seems that America's economic weight is too great to ignore. Businesses of all types, ranging from insurance companies to car manufacturers to shipping companies

¹⁴⁵ Asian Productivity Organization (APO), email announcing the postponing of every Iran hosted projects until the sanction issue is resolved (+ appendices), 14 juin 2018, annexe 42.

¹⁴⁶ Clément Charpentreau, Boeing confirms passing Dollar 20 B Iran Deal, Aerotime.aero, 7 juin 2018 : <https://www.aerotime.aero/clement.charpentreau/21390-boeing-confirms-passing-20b-iran-deal>.

¹⁴⁷ D. Lawder, «U.S. Treasury's Mnuchin : Revoking Boeing Airbus Licenses to sell jets to Iran», Reuters, 8 mai 2018, <https://www.reuters.com/article/us-iran-nuclear-boeing/u-s-treasurys-mnuchin-revoking-boeing-airbus-licenses-to-sell-jets-to-iran-idUSKBN1I92Q6>.

¹⁴⁸ Letter to S. Mnuchin and M. Pompeo, 4 juin 2018 : https://static01.nyt.com/files/2018/world/Letter_to_U.S._Mnuchin_and_Pompeo_on_Iran_EU.pdf.

are now announcing that they will cease business with Iran or in Iran because of U.S. sanctions»¹⁴⁹.

21. Parmi ces entreprises, outre les américaines Boeing dont j'ai déjà parlé, ou General Electric, Honeywell et Dover, dont on vous a déjà parlé ce matin, on retiendra les françaises Total et Peugeot, l'allemande Siemens, la danoise Maesk, la compagnie russe Lukoil, la société indienne Reliance, la société indonésienne Pertamina¹⁵⁰. Toutes annoncèrent très tôt la cessation de leurs activités avec l'Iran, certaines s'en remettant temporairement à l'hypothétique exemption sollicitée par les capitales européennes, qu'elles n'obtiendront finalement jamais¹⁵¹.

22. La campagne d'intimidation a pris encore davantage d'ampleur à la fin du mois de juin, lorsque Washington a dissipé toute équivoque concernant l'éventuelle tolérance dont les Etats-Unis pourraient faire preuve s'agissant de l'exportation de pétrole et de gaz iranien, et ce, cinq mois avant l'échéance de novembre.

23. Le 26 juin, un haut responsable du département d'Etat a mis les choses au clair. Répondant à plusieurs questions de journalistes, il annonça que :

- «the U.S. is pushing allies to cut oil imports to zero» ;
- «we have a lot of diplomatic muscles memory for urging, cajoling, negotiating with our partners to reduce their investments to zero» ;
- «China, India . . . their companies will be subject to the same sanctions that everybody else's are if they engage in those sectors of the economy that are sanctionable» ;
- «they should be reducing now . . . they should be preparing now to go to zero»¹⁵².

24. L'analyse de Suzanne Maloney, pour le Brookings Institution, trois jours plus tard, relaye cette information en titrant «Trump tightens the screw on Iran's Oil». Sa description de la situation est la suivante :

¹⁴⁹ 10 Companies Leaving Iran As Trump's Sanctions Close In, Forbes, 6 juin 2018 (dossier des juges, onglet n° 23-1).

¹⁵⁰ Reuter, 26 juin 2018, Indonesia's Pertamina says Iran oil field deal frozen over US sanctions, <https://www.reuters.com/article/gas-conference-pertamina/indonesias-pertamina-says-iran-oil-field-deal-frozen-over-us-sanctions-idUSL8N1TS5UJ>.

¹⁵¹ 10 Companies Leaving Iran As Trump's Sanctions Close In, Forbes, 6 juin 2018 (dossier des juges, onglet n° 23-1).

¹⁵² U.S. Department of State, Special Briefing, Senior State Department Official, 26 juin 2018 (dossier des juges, onglet n° 22-2).

«The Trump administration is pushing its «maximum pressure» campaign against Iran into overdrive, with Tuesday’s announcement that the State Department is aiming to cut off all Iranian oil exports by November.

.....

It’s not just oil: U.S. sanctions will be felt across every aspect of the Iranian economy, although in theory, agricultural products, medicines, and medical devices are exempted. In practice, the repercussions are sweeping and unpredictable, and as the first of two U.S. deadlines for winding down business with Iran approaches, the creeping uncertainty about the future has fueled a spectacular plunge in the value of Iran’s currency.

The Trump administration is deploying U.S. sanctions on Iran as a bludgeon rather than a scalpel in hopes of wreaking maximum havoc on Iran as quickly as possible. The financial measures targeting Iran effectively cast a much wider net than traditional trade sanctions, and the risk of steep fines or worse — loss of access to the U.S. economy — acts as a powerful deterrent for individual and firm decision making even in the absence of government buy-in.»¹⁵³

25. Monsieur le président, Madame et Messieurs de la Cour, en dehors de ce qu’il indique concernant les entreprises pétrolières, j’attire votre attention sur un autre des aspects intéressants de ce rapport que je viens de citer, qui est qu’il souligne que les sanctions américaines ont développé et développent leurs effets non seulement avant les échéances d’août et de novembre, mais aussi bien au-delà de leurs seules cibles immédiates, et frappent y compris les secteurs de l’agriculture et de la santé. On pourrait donner d’autres exemples, mais le temps presse, il y a urgence et donc, je m’en remettrai à ces exemples-là.

26. Madame et Messieurs de la Cour, vous pouvez aisément le constater, la pression mise par le Gouvernement américain dès le 8 mai sur le monde économique pour l’inciter à couper très rapidement ses liens économiques avec l’Iran a porté ses fruits. Avant même l’échéance du premier ultimatum, le 6 août 2018, et encore plus en amont du second, en novembre, de nombreuses entreprises des secteurs industriel, financier et pétrolier, avaient déjà été poussées à mettre un terme à leurs engagements conclus avec des entreprises iraniennes.

II. Le 6 août

27. Dans ce contexte, même si le 6 août, seconde date clef du dispositif américain, n’aura marqué qu’une étape formelle dans la réinstauration des sanctions, l’isolement économique de l’Iran s’est accéléré depuis cette date. En effet, l’entrée en vigueur des mesures du 6 août a

¹⁵³ S. Maloney, Order from Chaos, The Trump administration tighten the screw on Iran’s oil, 29 juin 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/06/29/trump-tightens-the-screws-on-irans-oil/>.

confirmé une fois encore la détermination américaine, et a attesté une fois encore, aux yeux des acteurs économiques qui auraient pu en douter, du caractère inéluctable du dispositif annoncé en mai.

28. La Cour notera que le fournisseur allemand d'automobiles Duerr a attendu le 11 août pour faire savoir qu'il ne pourrait pas donner suite à deux contrats obtenus en 2017 à raison des sanctions réinstaurées le 6 août¹⁵⁴ ; et que, de la même façon, le fabricant de camions Scania, filiale du groupe Volkswagen, premier, et de loin, fournisseur de camions et d'autobus en Iran, a indiqué en août avoir annulé toutes les commandes qui ne pourraient pas être livrées avant le milieu de ce mois, et chercher par tous moyens à se faire payer avant le 4 novembre¹⁵⁵.

29. Mais, encore une fois, il est inutile de multiplier ici les exemples. Le fait est, et il est évident, que les mesures du 6 août ont causé des dommages considérables à l'Iran, à ses entreprises et à ses nationaux.

30. Cependant, c'est l'ultimatum du 4 novembre qui emporte le plus de conséquences dommageables.

III. Le 4 novembre

31. J'en viens alors, Monsieur le président, à cet ultimatum expirant le 4 novembre. Il est, comme je viens de le dire, sans doute le plus dommageable des deux. En premier lieu, à cette date, si du moins la Cour n'indiquait pas les mesures sollicitées, l'état américain serait complètement resserré, mettant en œuvre de manière très concrète la «pression maximale» promise par les Etats-Unis, avec pour objectif de couper presque totalement l'Iran du reste du monde économique. En second lieu, et surtout, la mesure du 4 novembre est celle qui s'attaque le plus directement aux fondements mêmes, autrement dit au cœur, de l'économie iranienne. Elle vise à couper physiquement cette économie des marchés, en s'attaquant au transport maritime et aux ports. Elle entend priver le pays du bénéfice de ses ressources naturelles, en s'en prenant aux secteurs pétrolier, gazier, et pétrochimique, qu'elle soumet à un embargo et à un boycottage intégraux. Elle

¹⁵⁴ Reuters, Auto supplier Duerr stops Iran business due to sanctions : Boersen-Zeitung, 11 août 2018, <https://www.reuters.com/article/us-duerr-iran/auto-supplier-duerr-stops-iran-business-due-to-sanctions-boersen-zeitung-idUSKBN1KW08Y>.

¹⁵⁵ Reuters, Scania Says US Sanctions put entire truck sales in jeopardy, 3 août 2018, <http://www.euronews.com/2018/08/03/scania-says-us-sanctions-put-entire-iran-truck-sales-in-jeopardy>.

entreprend également de neutraliser l'activité bancaire et financière iranienne, donc de priver l'économie iranienne de système financier, en interdisant les transactions entre toute institution financière, où qu'elle se trouve dans le monde, et une longue liste de banques et institutions financières iraniennes, y compris la banque centrale, et en privant en outre ces dernières de services de messageries financières spécialisées.

32. A compter du 4 novembre seront également rétablies les sanctions individuelles américaines applicables aux personnes et entités figurant sur les très longues listes de l'OFAC.

33. Bien sûr, la simple annonce de ce qui se produira le 4 novembre a déjà généré des effets dommageables. Comme je l'ai indiqué, et comme M^e Wordsworth l'a détaillé, les banques et institutions financières ont déjà massivement commencé à rompre leurs engagements vis-à-vis de leurs partenaires et cocontractants iraniens, et il en va de même des entreprises pétrolières, ou du secteur des assurances.

34. Pour autant, il est bien évident qu'à mesure que le 4 novembre se rapproche, la paralysie de l'économie iranienne que les Etats-Unis veulent créer ne peut que s'amplifier.

35. Du reste, Washington fait en sorte que les médias soient constamment alimentés par de nouvelles preuves de sa détermination. Ainsi de l'annonce, là encore soigneusement mise en scène le 16 août, d'une part que les sanctions contre l'Iran sont prioritaires dans l'agenda du département d'Etat, et d'autre part de la création de l'Iran Action Group en son sein¹⁵⁶. Il s'agit d'une équipe de fonctionnaires ou d'experts entièrement dédiée à faire en sorte que les sanctions produisent les effets les plus dommageables, et ce, le plus rapidement possible. Vous relèverez peut-être, Monsieur le président, que ceci est intervenu moins d'un mois après votre lettre adressée au secrétaire d'Etat américain lui demandant de ne pas prendre de mesures susceptibles de priver d'effet la décision de la Cour sur les mesures conservatoires.

IV. Conclusions sur l'urgence

36. Monsieur le président, Madame et Messieurs de la Cour, avant de conclure, laissez-moi rappeler que la demande en indication de mesures conservatoires a été déposée par l'Iran le 16 juillet. Nous sommes le 27 août. Il n'est cependant pas trop tard pour accéder à la requête

¹⁵⁶ <https://twitter.com/StateDept/status/1030163100501065728>.

iranienne, car entre ces deux dates l'urgence n'a fait que se confirmer. Il y a maintenant, je pense l'avoir montré, extrême urgence.

37. Il serait du reste absurde de postuler l'absence d'urgence à raison du fait que les deux premières mesures américaines, l'annonce du 8 mai et l'échéance du 6 août, ont déjà commencé à causer des dommages. En effet :

- d'une part, la Cour est manifestement saisie d'un fait illicite continu. Tant qu'il persiste, le dommage se perpétue et s'amplifie. Or, la Cour ordonne des mesures conservatoires dans ce type de circonstances. Dans l'affaire du *Personnel diplomatique et consulaire à Téhéran*, la conduite dénoncée comme illicite par les Etats-Unis était déjà en cours au moment de la saisine de votre juridiction, ce qui ne l'a pas empêchée d'indiquer des mesures conservatoires pour faire face non au risque qu'une situation se produise, mais à la «persistance» d'une situation déjà en cours¹⁵⁷ ;
- d'autre part, comme je l'ai montré, le troisième train de mesures, annoncé pour le 4 novembre, resserrera considérablement l'étau sur l'Iran, s'attaquant au cœur de son système économique, amplifiant les préjudices aux droits que l'Iran tire du traité d'amitié et de commerce.

38. Il serait tout aussi absurde de donner aux déclarations médiatiques sporadiques du président des Etats-Unis se prétendant ouvert à des négociations un quelconque effet sur la présente procédure.

39. Ce que la Cour retiendra des déclarations des autorités américaines qui vous ont été rapportées aujourd'hui, ce sont des assurances que, si la Cour n'indiquait pas de mesures conservatoires, les dommages les plus sévères seraient causés le plus rapidement possible à l'Iran.

40. Le temps n'est donc plus où l'on pourrait dissenter sur l'existence d'un simple *risque* de préjudice irréparable aux droits en litige. Les actes susceptibles de causer ces préjudices, ou plutôt les actes dont l'objet même est de causer ces préjudices aux droits dont l'Iran se prévaut sur la base du traité de 1955, ont *déjà été adoptés*, pour certains d'entre eux, et ont *déjà commencé à causer les effets dommageables pour lesquels ils ont été conçus*. D'autres sont annoncés, visant à mettre l'Iran en quasi-état de siège.

¹⁵⁷ *Personnel diplomatique et consulaire des Etats-Unis à Téhéran (Etats-Unis d'Amérique c. Iran), mesures conservatoires, ordonnance du 15 décembre 1979, C.I.J. Recueil 1979, p. 20, par. 42.*

41. Dans de telles circonstances, seule l'indication d'urgence de mesures conservatoires conduisant au rétablissement de la situation telle qu'elle existait avant la déclaration du 8 mai 2018 serait de nature à préserver autant qu'il est possible les droits en litige jusqu'à ce que la Cour statue au fond.

Monsieur le président, Madame et Messieurs les juges, ceci conclut le premier tour des plaidoiries du demandeur. Je vous remercie vivement pour votre bienveillante attention jusqu'à cette heure déjà très avancée.

The PRESIDENT: I thank Professor Thouvenin. As you correctly pointed out, your statement brings to an end the first round of oral observations of the Islamic Republic of Iran.

The Court will meet again tomorrow, at 10 a.m., to hear the first round of oral observations of the United States of America. The sitting is adjourned.

The Court rose at 1.30 p.m.
