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The (Il)legality of U.S. Sanctions on Iran Post-JCPOA Withdrawal, Focusing on the ICJ's Provisional Measures Order*

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Abstract

For over three decades, sanctions have been a consistent feature of United States policy towards Iran. Following the lifting of nuclear-related sanctions under the Joint Comprehensive Plan of Action (JCPOA) in 2015 and United Nations Security Council Resolution 2231, in 2018 the United States withdrew from the agreement through Executive Order 13846, reinstating previous sanctions. Consequently, Iran decided to bring its case against the United States before the International Court of Justice (ICJ) based on the 1955 Treaty of Amity. The present article analyzes the ICJ's substantive jurisdiction (Merits) over this case, as well as the political and legal implications of the United States' unilateral sanctions against Iran. The research employs an analytical methodology, utilizing library research and note-taking to collect data. The research findings indicate that the ICJ's opinion is based on the illegality of comprehensive economic sanctions imposed on national security grounds, and that the Court has substantive jurisdiction over this case. Furthermore, the findings reveal that the United States' unilateral and extraterritorial sanctions not only violate Iran's sovereignty, but also infringe upon the human rights of the Iranian people. The United States' sanctions policy aligns with liberal and realist theories of international relations.

Keywords: Joint Comprehensive Plan of Action (JCPOA), Liberalism, Realism, Resolution 2231, Substantive Jurisdiction, Treaty of Amity Economic Relations and Consular Rights 1955

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1. A Brief Background

According to article 3 of the Non-Proliferation Treaty (NPT) of July 01, 1968, each non-nuclear-weapon State Party to the Treaty (such as Iran) is obligated to provide assurances that its nuclear program is of peaceful nature, and that the materials and substances used in the nuclear facilities shall never be used for military purposes (Masni, 2021, p. 95). To comply with this requirement, Iran signed an Agreement for the Application of Safeguards with the IAEA on June 19, 1973¹. On June 6, 2003 the IAEA announced that Iran has failed to comply with the obligation under the Safeguards agreement concerning reports on nuclear materials, their processing and later uses, and in reporting the facilities in which such materials have been stored and processed (International Atomic Energy Agency, 2003, p. 7). This failure caused a Resolution by the Board of Governors of the IAEA against Iran (International Atomic Energy Agency, 2006, p. 3). The resolution was a beginning to a tsunami of sanctions against Iran and its nuclear program².

The United States of America and Iran have maintained hostile relations since 1979 (the Islamic Revolution in Iran). The United

1. The contract which, also known as the safeguards, was signed between Iran and the IAEA on June 19, 1973 with the agreement came into force on May 15, 1974. purpose of turning the Middle East into a zone free of nuclear weapons.

2. 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010), 2224 (2015) European Union sanctions against Iran: EU Council decision on July 26, 2010: 2010/413/CFSP, Regulation No. 267/2012 on March 23, 2012 for limitations of financial transactions and freezing of assets, etc.

US sanctions: executive orders: 13574 (2011), 13590 (2011), 13622 (2012), 13628 (2012), 13645 (2013) in relating with various Iran's economy sections and Iran's nuclear program.

States has consistently adopted an adversarial approach towards Iran, accusing it of supporting terrorism, developing weapons of mass destruction, and initiating a nuclear weapons program (Jahanbegloo, 2009, p. 1). After years of sanctions and conflict between Iran and the so called 5+1 group¹ on verification of Iran's nuclear program, the parties finally reached a political agreement known as JCPOA² to be executed in close cooperation with the IAEA. The UN Security Council Resolution 2231 endorsed the JCPOA³, consequently previous sanctions were removed, including those previously imposed by the US⁴. The Trump Administration renounced and withdrew from the JCPOA on May 8, 2018⁵ based on the alleged violations of Iran of JCPOA and US national security, therefore sanctions were re-imposed against Iran (Shafar & Mutmainah, 2020, p. 159). On the contrary, before the US withdrew from the JCPOA, the IAEA and even the US government reaffirmed Iran's compliance with the JCPOA many times (Daugirdas & Mortenson, 2017, p. 1056). Furthermore, based on the target of the re-installed sanctions, which primarily affect ordinary people, those sanctions are considered illegal (Chachko, 2019, p. 103).

Article 36 of JCPOA⁶ indicates any disputes arising from the

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1. China, France, Russia, the UK, the US, and Germany.
 2. The "Joint Comprehensive Plan of Action" (JCPOA), 2015.
 3. UNSC Resolution 2231, 2015.
 4. Executive Order 13716, 2016 .
 5. Executive order No. 13846, 2018.
 6. If Iran believed that any or all of the E3/EU+3 were not meeting their commitments under this JCPOA, Iran could refer the issue to the Joint Commission for resolution; similarly, if any of the E3/EU+3 believed that Iran was not meeting its commitments under this JCPOA, any of the E3/EU+3 could do the same. The Joint Commission would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to Ministers →

Deal must be settled by a Joint Commission. Iran submitted two letters to the Swiss Embassy in Tehran on June 11, 2018 and June 19, 2018. No response received from the US (Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, Judgment, 2021, p. 19). Accordingly, Iran decided to sue the US before the International Court of Justice (ICJ), grounding the case on the 1955 Treaty of Amity, Economic Relations and Consular Rights. Article 21, paragraph 2 of the Treaty of Amity states that in case of any dispute between the parties not resolved through diplomacy, the case shall be submitted to the Court.

Since treaties of Amity act like live tools, particular and contractual treaties such as the 1955 Treaty of Amity act like customary law by their nature. Since in accordance with article 38 of the ICJ Statute¹ the customary law is the source of international

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of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration – in parallel with (or in lieu of) review at the Ministerial level - either the complaining participant or the participant whose performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member). The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant non- performance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.

1. Article 38 of the ICJ Statute : 1.The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b) international custom, as →

law, violation of such treaties brings about international consequences for the defaulting country.

Accompanying the same claim, in its complaints against the US at the International Court, Iran drew on clause 2 of article XXI of the Treaty of Amity¹ and article 36 of the ICJ Statute² and

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evidence of a general practice accepted as law; c) the general principles of law recognized by civilized nations; d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. 2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

1. Article XXI of the Treaty of Amity: 1. Each High Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other High Contracting Party may make with respect to any matter affecting the operation of the present Treaty. 2. Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means.
2. Article 36 of the ICJ Statute: 1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. 2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a) the interpretation of a treaty; b) any question of international law; c) the existence of any fact which, if established, would constitute a breach of an international obligation; d) the nature or extent of the reparation to be made for the breach of an international obligation 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time. 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court. 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

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requested termination of unilateral sanctions and payment of compensation for economic damages caused to Iran. In addition, in its claim, Iran referred to articles 73 and 75 of the Rules of the Court¹ and applied for issuance of Provisional Measures. According to the article 73, “a written request for the indication of provisional measures may be made by a party at any time during the course of the proceedings in the case in connection with which the request is made”. The court reacted positively to the request of Iran and proceeded to issue such Provisional Measures, based on Iran’s request and article 41 of its Statute² on October 3, 2018.

2. Hypothesis and Research Methodology

The premise of this article is based on the argument that in the case

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6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.
1. Articles 73 of the Rules of the Court: 1. A written request for the indication of provisional measures may be made by a party at any time during the course of the proceedings in the case in connection with which the request is made. 2. The request shall specify the reasons therefor, the possible consequences if it is not granted, and the measures requested. A certified copy shall forthwith be transmitted by the Registrar to the other party. Article 75: 1. The Court may at any time decide to examine proprio motu whether the circumstances of the case require the indication of provisional measures which ought to be taken or complied with by any or all of the parties. 2. When a request for provisional measures has been made, the Court may indicate measures that are in whole or in part other than those requested, or that ought to be taken or complied with by the party which has itself made the request. 3. The rejection of a request for the indication of provisional measures shall not prevent the party which made it from making a fresh request in the same case based on new facts.
2. Article 41 of the ICJ Statute: 1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party. 2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

of Iran's complaint against the United States regarding unilateral and extraterritorial sanctions, which was referred to the International Court of Justice on the grounds of violating the 1955 Treaty of Amity, the Court's opinion is grounded in the illegality of economic sanctions based on national security, and the Court has substantive jurisdiction (Merits) over this case. Furthermore, the unilateral and extraterritorial sanctions imposed by the United States, in addition to violating Iran's sovereignty, have resulted in the violation of the human rights of the Iranian people. The United States' sanctions policy aligns with the liberal and realist theories of international relations.

Examining and assisting in resolving existing conflicts and tensions could be of particular importance. It is also worth noting that the Court's ruling could have a significant and positive impact on the economic condition of the Iranian people, and could remove serious obstacles that exist in providing health and well-being, earning a living, and resolving food and medicine shortages, as well as repairing the aging fleet of aircraft. Therefore, the audience for this article includes the Iranian people and, in particular, Iranian and international legal experts.

The research method employed in this article is analytical. The information used in this article has been obtained through note-taking from academic books and articles, as well as primary sources such as reports from the International Court of Justice and the Court's judgments in previous and similar cases.

3. Theoretical Framework

Sanctions have a political basis, and different schools of thought in international relations have varying perspectives regarding

sanctions. The two main theories that view sanctions as an important tool in international relations are realism and liberalism.

3. 1. Realism

Realism, in its classical form, is reflected in Thucydides' work "The Peloponnesian War" (twenty-seven centuries ago). In modern times, this tradition has been followed in America by scholars and policymakers such as Hans Morgenthau, Henry Kissinger, and George Kennan. Realists consider states as the primary actors on the international political stage, with other actors, such as organizations operating within the framework of inter-state relations. While emphasizing power and national interests, they believe that the eradication of the power instinct is merely an ideal, and the struggle for power takes place in an environment devoid of central authority (Ghavam, (1390 [2011 A.D.]), pp. 356-357). Furthermore, national security and the survival of the state play a central normative role in the realist approach. These values shape the realist doctrine and foreign policy. The fact that all states must pursue their national interests means that countries and governments never fully trust one another. All international agreements are temporary and conditional upon the will of the signatory states, and states must be prepared to sacrifice their international commitments for their national interests in case of conflict. Therefore, all treaties, agreements, conventions, customs, laws, and inter-state rights are merely expedient arrangements, and in case of conflict with the vital interests of states, they can and should be set aside (Jackson & Sørensen, 2011, pp. 94-95).

3.2. Offensive Realism

From the perspective of offensive realists, international anarchy is of great importance. In this anarchy, security is a scarce

commodity, and states strive to maximize their power and influence to achieve maximum security. In this world, prudent states pursuing security tend to take actions that may lead to conflicts with others. As states become increasingly wealthy, they tend to build large armies, and when their key decision-makers perceive that the country's relative capabilities have increased, they will pursue offensive strategies aimed at maximizing their influence on the global stage (Moshirzadeh, 1388 [2009 A.D.], pp. 130-131).

3. 3. Liberalism

Although the realist tradition is typically emphasized more in discussions of international relations, it can be argued that the field of international relations is fundamentally rooted in the principles and ideals of liberalism. Wilson's emphasis on establishing mechanisms for maintaining peace, such as international laws, international organizations, democracy, removal of economic barriers, equal trade conditions for all peace-loving countries, etc. heralded a new world. The most defining aspect of liberal theories is the belief in the possibility of transforming international relations toward cooperation, reduced conflicts, and ultimately achieving world peace. Liberals believe that all human beings are rational creatures. Rationality can be applied in two ways: 1- Instrumentally, as the ability to shape and pursue interests, and 2- The capacity to understand moral principles and live under the rule of law (Moshirzadeh, 1388 [2009 A.D.], pp. 26-27).

3.4. Liberal Internationalism

Immanuel Kant and Jeremy Bentham are considered to be the most prominent liberal figures of the Enlightenment era. Both reacted to the chaotic state of international relations and, on this basis, sought to propose plans for the establishment of perpetual peace. In Kant's

view, the realization of perpetual peace necessitated a transformation in human consciousness. Liberal internationalists believed that an international society governed by the rule of law could emerge instead of a world government. The idea of establishing a natural order in society is the main focus of liberal internationalism. Accordingly, although everyone pursues their own interests, the common good is ultimately served (Ghavam, 1390 [2011 A. D.], pp. 345-346).

4. U.S. Sanctions Policy against Iran after Withdrawing from the JCPOA

Since the 1979 Iranian Revolution, the most significant interaction between the United States and Iran occurred during the Bush administration. This interaction and hope for good relations was replaced by tensions between Tehran and Washington due to Iran's nuclear program. Iran's nuclear program posed a threat to America's power play in the Middle East. The Bush administration adopted a strategy of relying on the international community and peace organizations to confront Iran over its nuclear facilities (Hurst, 2018, p. 133).

After Obama's inauguration, it seemed that diplomatic relations had improved, as Obama's liberal internationalism focused on reconciliation and promoting peace and cooperation in the region (Feste, 2011, p. 4). The Iran nuclear deal was a positive step toward this relationship. With Trump's presidency and the U.S. withdrawal from the JCPOA, this short-lived cooperation was disrupted. While the Obama administration sought to align with international norms, Trump emphasized American national interests without regard for international norms and regulations. The Obama administration, in addition to emphasizing national interests, chose to strengthen

international laws. In his view, Iran's nuclear program impacted international peace and was contrary to the norms of the global community. He believed that cooperation between Iran and the United States would benefit both countries as well as the international community (Jahanbegloo, 2009, p. 7). In contrast to Obama, Trump had no incentive to follow international laws. Trump's policy was based on realism and the adoption of a unilateral policy. Trump's realism was rooted in offensive realism, with power as both a means and an end. His emphasis was on U.S. hegemony in the global order, rejecting cooperation and alliances, even with allies, and emphasizing his nationalist policy.

The United States' sanctions consist of primary and secondary sanctions. Primary sanctions prohibit American individuals and companies from engaging in trade with Iran, while secondary sanctions impede trade between third-party companies and countries with Iran (Zamani & Farahmandzad, 1400 [2022 A. D.], p. 14), and if these third countries violate the secondary sanctions, they will be subject to penalties and sanctions by the United States.

The United States considers national security as the source of its sanctions; in other words, the United States is exercising its actual jurisdiction. Actual jurisdiction refers to the situation where if an individual or individuals commit a crime outside the United States and the effect of that crime manifests itself within the United States, the United States can exercise its jurisdiction over that individual or individuals. What must be noted here is that extending territorial jurisdiction through sanctions to non-economic issues such as nuclear energy leads to abuse. Consequently, U.S. laws, in order to prevent this issue, and in line with the exercise of actual jurisdiction, have deemed the following five conditions as essential:

- a) **Substantiality of the Effect on the Territory:** This means that the effect of the criminal conduct must be greater than the effect of exercising jurisdiction. In this case, what is clear is that Iran has never directly or indirectly threatened the United States regarding its nuclear program (Mohebbi & Safaee, 1397 [2018 A. D.], p. 819).
- b) **Directness of the Effect:** This means that the effect that occurs in the country exercising its jurisdiction must be a direct and unmediated consequence of the criminal conduct. In this regard, as in the previous case, Iran had never engaged in any conduct prior to the unilateral sanctions imposed by the United States that would have such an effect on the United States (Mohebbi & Safaee, 1397 [2018 A.D.], p. 820).
- c) **Foreseeability:** This means that the effects must be foreseeable for the country exercising jurisdiction and should not occur unexpectedly (Mohebbi & Safaee, 1397 [2018 A.D.], p. 821).
- d) **Balance of Interests:** The balance of interests is essentially the principle of reasonableness or mutual respect among states (Mohebbi & Safaee, 1397 [2018 A.D.], p. 822).
- e) **Observance of Objective Criteria:** This principle implies that when exercising jurisdiction or imposing sanctions, the conduct must be such that the principle of non-intervention or the sovereign rights of countries are not violated (Mohebbi & Safaee, 1397 [2018 A.D.], p. 823).

What is evident is that the President of the United States, without observing and considering the five aforementioned conditions, none of which applied to the case of Iran and its nuclear program, proceeded to impose sanctions that have extraterritorial implications and lack legitimacy under U.S. domestic law.

The U.S. sanctions aim to change Iran's behavior in accordance

with the demands of the United States and alter the policies of that country.

The United Nations General Assembly and the Human Rights Council regard coercive economic measures, including unilateral sanctions, as instruments for achieving political objectives contrary to international law. The Human Rights Council, in resolutions 15/24 and 24/14, has declared that unilateral coercive actions violate international law, principles and norms governing relations between states, and the rules of the Charter and humanitarian law (Zamani & Farahmandzad, 1400 [2022 A.D.], pp. 19-20). Therefore, unilateral coercive actions contravene Article 1, paragraph 3 of the UN Charter¹ regarding the principle of cooperation among countries, as well as Article 2, paragraph 7² concerning the principle of non-intervention in the domestic jurisdiction of states.

The fact that the United States, relying on its domestic laws, which as we have examined, lack legitimacy due to the non-observance of the conditions, has endangered the territorial integrity and independence of Iran constitutes a violation of the peremptory norm of sovereign equality of states. Consequently, as previously mentioned, Iran, faced with a set of extraterritorial and unlawful sanctions, decided to institute proceedings against the

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1. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.
 2. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

United States before the International Court of Justice based on the Treaty of Amity.

As previously mentioned, the court reacted positively to the request of Iran and proceeded to issue Provisional Measures based on Iran's request and article 41 of its Statute on October 3, 2018¹; it issued an order, declaring that prohibitions on exporting the following goods to Iran must be lifted:

1. Drugs and medical supplies,
2. Food materials and agricultural goods and machinery,
3. Goods and services needed for safety and security of civil aviation, such as spare parts, equipment and related services.

The Court noted: For the performance of the aforementioned activities, there must not be any financial prohibitions, and the parties should refrain from resorting to actions that would exacerbate and widen the dispute, thereby making its resolution

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1. The Provisional Measures of October 3, 2018 includes the following terms:
 1. Prohibition on export of the following commodities to Iran have to be lifted:
Drugs and medical supplies,
Food materials and agricultural goods and machinery,
Goods and services needed for safety and security of civil aviation, such as spare parts, equipment and related services.
 2. Imposing no financial restrictions or bans for the above activities.
 3. The parties shall avoid any kind of actions or measures that might serve to further complicate and intensity disputes, that render the final settlement of disputes more difficult.

*The court also quotes the following two quotes:

- A. The Provisional Measures has a binding effect and is considered as an international obligation for both parties.
- B. The Provisional Measures order does not mean that the court has jurisdiction (*ratione materiae*) or substantive competence (Merits) (Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, Provisional Measures, 2018, p. 652, para. 102).

more difficult (Yadegarian & Firoozabadian, 2023, p. 512). Based on Article 94 of the United Nations Charter and the provisional measure issued in the LaGrand case, a provisional measure constitutes a binding order, and in the event of its violation, the United States would bear responsibility (Zamani & Farahmandzad, 1400 [2022 A.D.], p. 26). The US claims that according to section 2(e) of executive order 13846, none of the sections quoted in the Provisional Measures are subject to sanctions, and all of those items are among the exceptions to the executive order issued by President Trump (Chachko, 2019, p. 78).

This claim is, however, rather far from reality. In the opinion of the Court, although food, drugs, and medical supplies have been made exceptions to US sanctions, the bans imposed by US on international activities and deals of Iranian people and companies, made it impossible for Iran to access or receive those goods (Chachko, 2019, p. 31). This claim by Iran was approved by the International Monetary Fund (IMF) as well as the World Bank: "Sanctions have cut of Iran's ties with global trade and financial systems" (Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, Application Instituting proceedings, 2018, p. 28). In line with the restrictions to Iran in its access to global markets, the US Department of the Treasury, on November 5, 2018 acknowledged that: "the strictest sanctions have been imposed on Iran and targeting its economic sector." It should not therefore be surprising that such a trend would cause a sharp drop in the value of Iranian currency, shortage of drugs and medical supplies, and increased prices for vital products and food.

The impose unilateral sanctions by the US, two contracts of Iran with Airbus and Boeing were cancelled. The first contract with Boeing encompassed the purchase of 140 aircrafts worth US\$24

billion, and the second, with Airbus for the purchase of 171 aircrafts worth US\$30 billion (Dadpay & Dadpay, 2019, p. 3). Except for the few aircrafts that were delivered to Iran after JCPOA and before the sanctions, all contracts were cancelled and the companies were refrained from selling any kind of necessary or vital parts related to civil aviation, transportation or flight security. According to Iranian officials: “The risks of US sanctions against the aerial fleet of Iran have been officially recognized by independent experts in 2006” (Dadpay & Dadpay, 2019, p. 3).

As is evident, the extraterritorial sanctions imposed by the United States, in addition to violating Iran's sovereignty, have resulted in the violation of the human rights of the Iranian people. On February 3, 2021, the Court affirmed its jurisdiction over the case and proceeded to consider the Merits. Hereafter, by focusing on the Treaty of Amity and examining the claims of the parties, we will determine whether the U.S. sanctions are lawful or not. It is evident that if the United States is defeated in this case and the unilateral sanctions against Iran are deemed unlawful, Iran can not only claim damages for the violation of the Treaty of Amity, but also demand compensation for the violation of the human rights of its people.

5. The Substantive Jurisdiction of the Court

As previously explained, the provisional measure ordered by the Court was in favor of Iran and imposed limitations on sanctions in three human rights areas, with which the United States has not complied. It is noteworthy that issuing a provisional measure ruling does not imply jurisdiction or substantive jurisdiction. However, the critical point is that if the final judgment on the

Merits stage favors Iran, the Court will append the provisional measure ruling to the final judgment. Consequently, the United States, having defied the implementation of the provisional measure, would be obligated not only to compensate for the violation of the Treaty of Amity, but also, at Iran's request, to compensate for damages resulting from the violation of human rights concerning the provisional measure. Hence, the importance of examining the Court's substantive jurisdiction in this case becomes evident. We will proceed to analyze the arguments raised by Iran and the United States to clarify whether the Court has jurisdiction or lacks jurisdiction on the Merits.

5. 1. Jurisdiction of the Court (*Ratione Materiae*)

Iran's claim arises from of the decision of the US regarding reimposing sanctions relief by the UN before the Court in May 8, 2018. While Iran considers sanctions as the violation of the agreed-upon JCPOA, therefore the US, this dispute is exclusively pertaining to JCPOA and not the Amity Treaty of 1955. The US further argued that in none of the two letters submitted to the Switzerland Embassy in Tehran, Iran pointed to the Amity Treaty. Indeed, both letters contained complaints against the US decision to withdraw from JCPOA and re-install the sanctions without any reference to the Amity Treaty.

Apart from this line of argument, the US argues that JCPOA is a political agreement with no legally binding nature, therefore the Court lacks jurisdiction over the matter.

The US took one more step forward and claimed that since Iran did not point to the Treaty of Amity or other non-JCPOA sanctions

in its two letters to the Switzerland Embassy in Tehran, its claim is completely baseless. Indeed, Iran did not see any reasons to place its claim on the Treaty of Amity at different points in the past due to JCPOA talks and the overall positive diplomatic atmosphere, but once Iran saw the diplomatic path obstructed, it decided to sue not only for JCPOA-related sanctions, but also for the rest of the sanctions based on the Treaty of Amity.

The reaction of the Court against the preliminary counterargument by the US against Iran was more concentrated on the political nature of the dispute. The Court generally holds the view that disputes of a political nature do not provide reasonable grounds for the Court to refuse to consider the case (Bordin, 2018, p. 66). In the Court recalls the Border and Transborder Armed Actions (Nicaragua v. Honduras) of 1986, and advanced the idea that “the Court’s judgment cannot concern itself with the political motivation which may lead a State at a particular time, or in particular circumstances, to choose judicial settlement” (Trooboff, 1989, p. 354).

5. 2. Subject-Matter Jurisdiction (*Ratione Materiae*)

The US argues that the 1955 Treaty of Amity only covers trade between Iran and the US, and the US sanctions have only targeted certain companies and third-party affiliates; hence, technically there is no relation between sanctions against such groups and the Treaty of Amity. For this reason, the Court lacks jurisdiction (*Ratione Materiae*) or substantive competence (Merits) related to such matters.

In response to this objection by the US, its verdict of February 3, 2021, the Court did not recognize the induction as one related to

jurisdiction, but rather a substantive one, which may be brought forward and addressed in the next stage. In line with the same objection pertaining to trade between the US and Iran, the US argued that the US further argued that the question of trade in article 10 of the Treaty of Amity was used in a more specific and tight sense. This specific tone of the article is only applicable to “maritime commerce”. The term maritime commerce refers to “buying and selling” exclusively between the US and Iran, and is subject to territorial restrictions.

Iran questioned this objection by the US and argued that the term commerce did not only mean buying and selling, but included all preliminary operations needed to prepare the merchandise for exchange, and that the article also covered commerce without territorial restrictions. In this regard, the imposed sanctions by the US restrict Iran’s oil rigs. In its opinion about the oil rigs, the conclusion by the Court was in favor of a more general sense of the term “commerce”, as quoted in article 10 of the Treaty of Amity. According to the Court, the term commerce in the Treaty means “freedom of commerce”, therefore, referring to any action that would undermine such freedoms as a violation of the treaty¹. The issue of territorial restrictions was also of the careful attention and deliberate view of the Court. For the US, both cases of the oil rigs

1. The court’s opinion about Iran’s take on article 10 and freedom of commerce reads as follows: “Commerce in this article has a general meaning and not sea commerce. Also, commerce does not only mean selling and buying, but includes all previous operations required to prepare commodities. The court also pointed out that commerce did not mean only buying and selling, but included a set of deals for import and export, exchange, purchase or sales, transportation and international financial operations; and it did not just mean commerce but the freedom of commerce, and thus any action that undermines the freedom of commerce is forbidden (Rostami Amani, 1381 [2002 A.D.], p. 199).

and the Treaty of Amity did not involve a third-party, hence did not ascertain the jurisdiction of the Court in neither case. In the view of the Court, freedom of commerce and outlawing any actions undermining the freedom of commerce by the US is in contradiction with the spirit of the Treaty of Amity, and article 10 thereof concerning free commerce. Moreover, the Court implicitly pointed in the case of oil rigs that had Iran based its claims on the US sanctions against it, the Court would have handled the case in a different manner that would further Iran's cause¹.

In a tight connection with the question of trade is the damages caused by the US against Iran. The US Treasury and Foreign Assets Control Department sanctions and punishes any subsidiary either the US or non-US company that dares trade with Iran (Early & Peterson, 2021, p. 782). This restricts access of Iran to free trade in accordance with article 10 of the Treaty of Amity. In this regard, the Court believes that such restrictions to Iran weaken its economy. Consequently, the sanctions by the US have targeted the Iranian people, companies and Iranian goods as well (Akbarialiabad et al., 2021, p. 58), hence all these actions are in complete contradiction with the spirit of the Treaty of Amity. Indeed, such actions are all manifestations of the violation of the Treaty. The Court believes that a precise analysis of the actions taken by the US and the interpretation of the submissions of the parties will depend on whether or not the Treaty has been violated², and the case

1. It also implicitly stated that: "If in its final demand Iran wished to question the legitimacy of the executive order of the US President (Ronald Reagan) imposing sanctions on purchase of Iranian oil, and asked for ruling that it was in contradiction of article 10 of the Treaty of Amity, the court would then approach the US military attacks against the oil rigs from another perspective (Mirfakhraie & Piri, 1395 [2016 A.D.], p. 121).

2. This is one of the attributes of ICJ judicial functions.

cannot be denied solely on the basis of sanctions against third-parties. Moreover, according to the Court, even if it is established that the actions in question have directly targeted third countries, their citizens and companies¹, those actions shall not be automatically excluded from the Treaty of Amity (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955, Judgment, 2021, p. 2).

In conclusion, the Court has not only jurisdiction, but also can enter in the Merits stage; and if the case goes into the Merits stage, the objection by the US will be denied based on the provided statements by the Court:

- I. The general sense of the word commerce in freedom of commerce
- II. The implied pointing of the ICJ in the case of frozen assets to the US sanctions against Iran's oil exports
- III. The behavior of the United States to Iranian citizens and companies without excluding third-party people, companies and countries, which is in contradiction of the spirit and goals of the Treaty of Amity

5. 3. Admission of the Case (Admissibility)

Generally speaking, when the parties to a lawsuit lack the required competence, or the case itself lacks the required elements, the case cannot be heard by the Court. For example, if a case is brought before the Court as political support, and it is later revealed that the demanding country lacks the necessary requirements for receiving

1. This is while most sanctions have targeted Iranian citizens, companies and products such as petroleum, petrochemical products, rugs, etc.; and the claim that the sanctions were only in regard of third-party countries is widely different in practice than theory and legal documents.

such political support, or that either party to the case is incompetent due to having unclean hands, the case itself can be protested to, and the procedures concerning the case are then ended, and the Court starts the jurisdiction procedures.

This is exactly the case related to the US objection against Iran. The US believes that Iran is abusing the judicial process and the verdict of Court will give Iran a winning card in its nuclear program (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955, Judgment, 2021, p. 22). This, in turn, provides legitimacy to Iran's countermeasures in reducing its nuclear obligations, and that would be a complete misuse of judicial process and harmful to both the court and the international community.

The court invalidates such a claim by the US. In its verdict of February 3, 2021, the Court points to its decision in similar claims of the US v. Iran's Frozen Assets Case (Certain Iranian Assets, 2019, pp. 42-43, para. 113), Preliminary Objections in The Diplomatic Premises Case between Equatorial Guinea and France (Immunities and Criminal Proceedings, 2018, p. 336, para 150), and The India-Pakistan Espionage case, (Jadhav, 2019, p. 433, para. 49). According to the Court, and in light of the mentioned cases, denial of jurisdiction based on lack of good faith and misuse of judicial procedures can happen only in exceptional circumstances, and such claims have to be supported by solid evidence and clear examples; furthermore, the question of lack of concepts such as good faith also need proof by the claimant.

The Court, in paragraphs 94 and 95 of its verdict of February 3, 2021 states: "There is no evidence of exceptional circumstances in the current case, and ICJ jurisdiction and proceedings are not necessarily in favor of giving illegitimate advantages to Iran in

connection with its nuclear program, and the connection of the case of the Treaty of Amity with JCPOA does not signify judicial abuse of the procedures”. The Court, therefore, denies this objection by the US.

In the same third objection, the US made the claim that Iran’s unclean hands support terrorism. Iran also abuses judicial procedures to find legitimacy in its nuclear program. By freezing the Iranian assets, the US is actually trying to bring the abuse of judicial procedures by Iran to a halt. However, the US failed to provide any sort of witnesses, evidences, documents to establish such claims (Mohebbi & Bazzar, 1398 [2019 A.D.], p. 76). Having all these failures into account, the Court dismissed the US claims about the abuses of the procedures by Iran.

5.4. Article 79 of ICJ Rules of Court

The article covers some issues that the court has to handle before entering a substantive competence (Merits) phase of decision making. Covering the preliminary objections, article 79 gives the Court an option, after consulting with the parties, and if the circumstances so warrant, “questions concerning its jurisdiction or the admissibility of the application shall be determined separately”. This is a crucial point in the position of the Court. This needs a short explanation. Grounding its objection on Article XX, paragraph 1(b) and (d) of the Treaty of Amity (1955), the US argued that since the nature of Iran’s petition conforms with the nuclear materials and the US national security, it therefore falls outside of the Court’s jurisdiction. Concerning the said clause (d), as the court had offered its argument about these claims in the case of frozen assets (Certain Iranian Assets, Judgment, 2019, p. 25) and

oil rigs (Oil Platforms, Judgment, 1996, p. 811, para. 20), considering that article is to cover only the right of defense for the parties, and not restricting jurisdiction. In the previous two cases, the US had based its objections on clauses (b) and (d) of article 20 concerning jurisdiction and admissibility issues, and in the Treaty of Amity on the article 79 of the Court's procedure codes. However, all these objections were of the same meaning in nature. The Court was of the opinion that changing the titles and posing same objections into different chapters cannot change the Court's view about the same issue.

As evident in its verdict of February 3, the Court repeated the same opinion in the case of violations of the Treaty of Amity, denying the objection, and said that handling of that objection depended on precise analysis of legal issues, facts and realities in the Merits stage. It has to be noted that actions such as weakening the economy of a country and putting the lives of its people at risk and harming them with sanctions cannot be justified by issues such as national security. Furthermore, just like the Merits stage of the US vs. Nicaragua Case, such a claim based on article 21 of the 1956 Treaty could not justify full economic sanctions as legitimate measures for protection of the national interests (Leigh, 1987, p. 210). Hence, any objection concerning clause (d) of article XX posed in the Merits stage will be denied again on the same basis.

One more aspect of the argument and the counterargument must also be shortly cited. Concerning clause (b) of article XX, concerning fissionable materials, each of the parties provides different statements. The US argues that based on this clause, the Treaty of Amity poses no obstacle to any action related to nuclear energy, while Iran believes those actions are only applicable to purchase, sales, and trading of fissionable materials. According to

the statements of the US officials as well as the US Treasury Department, and in view of the actions taken towards the Iranian economy, people, and companies, and the bans imposed on export of goods to Iran and imports of goods with Iranian origin into the US, it seems that the goals of the treaty have been substantially violated. Furthermore, if one is to reason according to the Court's opinion, i.e., analyzing the goals of the Treaty, it would become clear that in view of the time in which the Treaty was signed and its goals, which consisted of facilitation of commerce between the parties, the prediction of such terms like clause (b) of the said article have been in the same direction. In other words, the Treaty may not pose any obstacle to the atomic activities of the parties and the actions they take on that path, such as purchase, sale or trade of (fissionable) materials. According to the amendment, clause 2 of article 79 of the Court's procedure codes, which was entered into force on October 21, 2019, in order for a preliminary objection to be accepted by the Court, the facts and laws on which the objections are based have to be presented. Moreover, all documents and evidence that may help to establish such claims have to be presented to the court as well. Obviously, the US has failed to present such evidence and documents, and has only offered some rationales to challenge the Court's objections and cause delay in the proceedings. The Court has reviewed the statements of the parties and the provided documents and evidence, and finally given its opinion in favor of Iran. Therefore, actions such as economic sanctions based on this clause are bereft of any legal legitimacy (Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights, Judgment, 2021, P. 40, para. 110), and this US claim will be denied in the next stage.

A thorough analysis of the 1955 Treaty of Amity serves to

reveal the fact that apart from the violation of the UN charter, the UNSC Resolution 2231, and the terms of JCPOA by the US, already discussed, as well as Iran's claims on the 1955 Treaty of Amity quoted in Iran's case¹, the Court was of the opinion that the US has violated the following terms of the Treaty of Amity:

- I. Clause 1 of article 2: In relation to freedom of travel for citizens of the parties to the other country with commercial purposes, the new US laws forbidding Iranian citizens from travelling to the United States clearly violates the terms of this article.
- II. Article 10 and all of its clauses in relation with free commerce and freedom of navigation and shipping.

The economic sanctions imposed by the United States are contrary to the friendship that is the objective of the Treaties of Amity, and they lack legitimacy both under U.S. domestic law and international law. The extraterritorial and secondary sanctions imposed by the United States, aimed at changing Iran's policies and behavior have directly impacted the lives and life conditions of the Iranian people, and have hindered their ability to meet basic needs such as healthcare, education, social services, and security. The said hardship is deteriorated by Iran's inability in marketing its oil. In fact, since 80% of Iran's gross national income comes from oil exports and U.S. sanctions have reduced Iran's oil exports to zero, Iran is facing countless problems (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955, Application Instituting Proceedings, 2018, p. 24). Oil incomes comprise 50-60% of the annual budget of the Iranian government, and the sharp decline of incomes had made the government

1. Articles 4 (clauses 1 & 2), 5 (clause 1), 7 (clause 1), 8 (clauses 1 & 2), 9 (clauses 2 & 3), 10 (clauses 1).

incapable of providing the necessary public and vital services to its citizens (Astrov et al., 2018, p. 1). Sanctions destroyed the chances of foreign investment and directly influenced 500 institutions¹ and industries such as automobile manufacturers, the Iranian Central Bank and the Iranian Rial. All of this stands as proof of violation of free commerce based on the 1955 Treaty of Amity. Therefore, the United States is in obvious violation of its obligations and has significant international responsibilities towards Iran. It must be noted that one cannot violate the rights of a nation or country based on national laws or interests. According to Judge Cancado, in the case of violation of 1955 treaty, “it is the duty of international law to protect human beings against evil. International law has precedence over national security and interests, and it considers the duty to protect human lives and health to be entangled with the rights of the International Court of Justice to process this case” (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955, Separate opinion of Judge Cançado Trindade, 2018, p. 673, para. 63).

6. Conclusion

As we have examined, sanctions have a political basis. Realists and liberals consider sanctions to be an important instrument in international relations. Liberals believe that the international system is based on a liberal world order. After taking office in 2009, Obama adopted Wilson's liberal policy of promoting democracy and human rights. In this regard, Obama offered

1. Such as the National Iranian Oil Company (NIOC), Naft Iran Company (NICO), National Iranian Tanker Company (NITC), Central Ban of Iran (CBI), Iran Airlines (Iran Air), and Iran Shipping Lines (IRISL).

cooperation and extensive support to the Iranian government on the condition that Iran convinces global powers not to work on its nuclear program. Consequently, during Rouhani's administration, Iran agreed to come to the negotiating table, and as a result of the conclusion of the JCPOA with Executive Order 13716 by Obama, nuclear sanctions were lifted.

Given that Obama had adopted a liberal policy, Trump chose a realist approach. Realists believe that a country's national interests should be the highest priority of its foreign policy. From a realist perspective, power and national security are the most important objectives, and international organizations and norms are only valuable insofar as they serve national interests.

For this reason, Trump violated the JCPOA, which he viewed as not in the interest of America's national interests, and imposed severe sanctions against Iran. These sanctions not only put pressure on Iran's economy, but also aimed to weaken the Iranian regime. Trump believed that maximum pressure through sanctions could compel Iran to surrender to America's demands.

This approach was in complete contrast to Obama's liberalism, which emphasized international cooperation and respect for norms. Instead of engaging through international organizations, Trump adopted the "America First" policy and made unilateral decisions. Therefore, Trump's sanctions against Iran were more rooted in realism than liberalism.

According to clause 22 of the JCPOA, the United States was committed to allow the sales of passenger aircrafts to the Iranian government, and according to section VIII (Preamble), clauses 21, 26, 28, 29 and 30 of JCPOA, US and other JCPOA parties were committed to execute the JCPOA in good faith and avoid re-

imposing the cancelled sanctions or imposing new unilateral and national sanctions against Iran.

The important point however is paragraph 2 of UNSC Resolution 2231 related to avoiding taking measures which are not in line with the JCPOA and also paragraphs 14 and 15 of Resolution 2231. This paragraph clearly states that sanctions cannot be applied retroactively in respect of contracts signed after and within the framework of JCPOA. Thus, Iran's agreements with companies and other countries according to the JCPOA, including the contracts for purchase of civilian aircrafts, are immune to the snap back of sanctions. It can therefore be concluded that the U.S. still had to remain committed to Resolution 2231 of the UNSC, which was issued with the purpose of protecting the international peace and security, and according to article 25 of the UN Charter, all member nations must obey the decisions of the UNSC (Tsilonis, 2019, p. 209). In addition, obligations rising from the UN Charter (e.g., Resolutions) have priority over other contractual obligations (e.g., JCPOA) according to article 103 of the charter (Liivoja, 2008, p. 583), and naturally violation of such obligations will have severe consequences for the violators.

The United States has imposed sanctions that go far beyond their realm, and their actual goal is to shape the foreign policy of the Iranian government. The United States withdrew from the JCPOA based on its violation by Iran, including 2 cases in 2016, as well as its missile tests; the two cases of violation are not consistent with reports of the IAEA and its inspectors, as well as in view of the interpretation of Resolution 2231 (Yadegarian, 2019, pp. 96-97). Therefore, US actions are devoid of any international legitimacy. Hence, the US has ignored paragraphs 3, 4, and 19 of the Resolution about the duties of the IAEA in submitting reports

on Iran's nuclear program, and by claiming Iran's breach of JCPOA terms without using the dispute resolution mechanism, i.e., clause 36, withdrew from the JCPOA unilaterally. The US also violated paragraphs 14 and 15 of the Resolution about the non-retroactive nature of sanctions.

The US has also ignored the Provisional Measures of the ICJ and imposed new sanctions and refused to remove the previous sanctions of grounds of human rights in order to cut Iran's access to financial activities and international markets resulting in blocking Iran's access to basic and vital goods and commodities, and has taken tension rising operations in the region, like the assassination of the Iranian general in Iraq, which was in direct violation of the Provisional Measures. And finally, the United States has violated articles 2 (clause 1), 4 (clauses 1 and 2), 5 (clause 1), 7 (clause 1), 8 (clauses 1 and 2), 9 (clauses 2 and 3) and 10 of the 1955 Treaty of Amity, Economic Relations and Consular Rights, which is the main basis for Iran's claims at the International Court of Justice.

Therefore, the Islamic Republic of Iran faces numerous, sanctions by the United States which violate several terms of the treaty, Resolution, charter and international conventions, and are in fact beyond the realm of the domestic laws of the United States. It is therefore the duty of the International Court of Justice, when the superior economic and military might of one country overpowers the rights of a nation, to consider all details and the least significant aspects of the presented case, and to pass a legal and legitimate verdict.

Obviously, the legal arm of the UN, i.e., the International Court of Justice, is the foundation by means of which Iran may recover its rights. Thus, determining the ICJ jurisdiction and Substantive Competence (Merits) in this issue is of essential nature. Given the

implicit hint of the ICJ in the oil rigs case to Iran's failure to base its claims about US sanctions on the 1955 Treaty of Amity (Alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights 1955 (Judgment), 2021, p. 24), and given the ICJ's adherence to its previous decisions and verdicts (Brabandere, 2016, p. 24), it may be concluded that in the present case and based on the evidence provided herein, the ICJ has substantive competence (Merits) in the matter and all unilateral and extraterritorial sanctions imposed by the United States are illegitimate and violate human rights, for which Iran can pursue its rights at the International Court of Justice.

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