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Lessons Learned from the Central Bank's Position in the Case of Certain Iranian Assets for Application in the Case of Alleged Violations of the 1955 Treaty of Amity

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Article Info	Abstract
Article Type: Research Article	Purpose and Problem Having rendered the judgment of the International Court of Justice in the case of Certain Iranian Assets on 30 March 2023, and finding a violation of obligations arising from the 1955 Treaty of Amity between Iran and the United States in the context of the United States' unreasonable and discriminatory treatment of the assets of Iranian companies and the violation of freedom of trade between the two countries, hopes have been strengthened for the finding of similar violations in another case between Iran and the United States entitled Alleged Violations of the Treaty of Amity.
Received: 2025/03/07	This is because it seems that the legislative and judicial actions of the United States, which have led to the seizure of assets of the Iranian government and Iranian companies in the United States, and have also effectively eliminated the possibility of conducting any trade between the two countries through the imposition of strict regulations such as Executive Order 13599 in 2012 onwards, will ultimately lead to a similar conclusion in the Alleged Violations case by the Court. In the Certain Assets case, the Court dismissed the Central Bank's claim on two grounds: the absence of immunity in the Treaty of Amity and the fact that the Bank was not assessed as a company in the conceptual framework of the Treaty of Amity. Accordingly, the focus of this article is on the revival of the Central Bank's claim regarding the alleged bonds in the Alleged Violations case. It appears that the framework of Iran's claims in this case and the temporal jurisdiction of the Court to consider Iran's claims even after the United States withdrew from the Treaty of Amity in October 2019 provide the necessary basis for assessing the United States' sanctions measures until the conclusion of the proceedings in this case.
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Keywords: <i>Company, Continuing Breach of Obligation, Freedom of Trade, Sovereignty, Temporal Jurisdiction.</i>	Research Method The present study is based on the description of the Court's decision in the case of Certain Iranian Assets and the analysis of the Court's

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	<p>findings in light of the provisions of the 1955 Treaty of Amity and case law. Accordingly, the Court's approach to whether or not the Central Bank is a company is first explained. Then, while analyzing this Court's approach, the possibility of re-submitting the Central Bank's claim in the form of the bonds at issue in this case and also the activities of the Central Bank in general are analyzed. Further, based on the Court's inductive approach in describing the commercial nature of the Central Bank's activities, the issue of the continuation of the review of the United States' measures after its withdrawal from the Treaty of Amity is addressed.</p> <p>Results</p> <p>The emphasis of this article is on paragraph 1 of Article 10. According to this Article, freedom of trade and navigation will be established between the States parties to the Treaty. The content of this Article helps to address the rights of the Iranian government alongside nationals and companies, apart from the issues of companies and nationals. Therefore, the question of the article will be whether the Central Bank, as an Iranian institution, can enjoy the protections of this treaty in the form of a company within the framework of the Treaty of Amity? The answer to this question leads us to another question: If the Central Bank is considered outside the concept of a company in the Treaty of Amity, can it also benefit from the Treaty of Amity and its protections outside the concept of a company? After examining these two questions, we will address the question of whether the measures of the United States after October 2019 (the time when the withdrawal from the Treaty of Amity became effective) can be within the temporal jurisdiction of the Court?</p> <p>The Court seems to believe that it is the Applicant State that has failed to prove that the purchase of bonds was a commercial act. In other words, if the Applicant could have proven such a claim, the Court would have ruled that the Central Bank enjoyed the rights of a company within the meaning of the Treaty of Amity. In effect, the Court had placed itself in the position of confirming or rejecting the commercial nature of the purchase of bonds by the Central Bank, and the final assessment depended on the extent to which the evidence and documents that Iran presented for commerciality could convince the judges that it was ultimately a commercial act. Ultimately, the Court judges declared by a majority of 10 to 5 that they were not convinced by the reasons presented and the arguments put forward by Iran in this particular case.</p> <p>Regarding the possibility of bringing claims after the United States withdrew from the 1955 Treaty of Amity, one can pay attention to the Court's case law in the case of <i>Nicaragua v. Colombia</i> in 2022. Referring to its case law in previous cases, the Court states that the relevance of events after the filing of the case with the Court for the purpose of assessing the subject matter of the dispute is important in that if the events subsequent to the filing of</p>

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	<p>the case are related to the events complained of by the requesting State at the time of filing the case and do not lead to a change in the nature of the dispute, they are still amenable to judicial review by the Court. Accordingly, the Court introduces two criteria of "continuity" and "connexity" of events subsequent to the filing of the case with the events in question at the time of filing the case, which may allow the Court to examine events subsequent to the filing of the case even after the Court's jurisdiction has ceased to exist after the filing of the case. In the Court's view, the events preceding and following the filing of Nicaragua's claim against Colombia are of the same nature (interference by Colombian military vessels and aircraft in Nicaragua's fishing and marine scientific research activities in its maritime zones) and have given rise to a claim by Nicaragua against Colombia. Accordingly, it can be argued that since the measures leading to the filing of Iran's claim against the United States in 2018 are of the same nature as those imposed and implemented by the United States against Iran in the form of sanctions measures after October 2019, both the criteria of connexity and continuity required by the Court are met and Iran's claims in this regard can also be raised and examined in the Court even after the United States' withdrawal from the Treaty of Amity in October 2019 until the conclusion of the Court's proceedings.</p> <p>The 30 March 2023 ruling showed that the Court does not consider the issue of the power of one party to the dispute over the other in legal arguments. The Court made this point by finding four violations committed by the United States in the context of the Treaty of Amity. Although the Treaty of Amity is bilateral, it is in a way an instrument of multilateralism and, like any other treaty, it creates rights and obligations for the parties. The parties can withdraw from it, as they accepted it with consent, and they can even violate it. However, in exchange for violating or even withdrawing from it, they must also accept the legal consequences arising from it. As we can see, the consequences of the imposition and implementation of unilateral sanctions against Iran by the United States — at least in the corporate sector — conflict with the United States' obligations in the Treaty of Amity, and this shows that the view of the omnipotence of a powerful state to take any action, including the imposition and implementation of sanctions, is not correct. Indeed, if a State is bound by a treaty, customary rule, or even general principles, unilateral measures such as sanctions may conflict with one of its treaty, customary, or general principles obligations.</p> <p>Since the Court has found significant breaches of obligations, such as unreasonable and discriminatory measures, in the case of alleged violations, it seems that, in the first instance, these breaches of sanctions, which are broader and more severe and do not necessarily only affect Iranian state-owned companies and institutions such as the Central Bank, also apply to Iranian non-state companies. For example, imagine that if a private pharmaceutical</p>

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	company in the case of alleged violations is unable to import essential pharmaceutical and health items, it would be difficult for the United States to justify not providing pharmaceutical services or financial transactions related to pharmaceuticals or medical equipment with an American pharmaceutical company. The scope of Iran's claims could also extend temporally to sanctions measures that violate the United States' obligations under the Treaty of Amity until the conclusion of the Court's proceedings.
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