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LEGAL CONSEQUENCES ARISING FROM US INTERNATIONAL RESPONSIBILITY FOR VIOLATIONS OF THE TREATY OF AMITY

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ABSTRACT

The term “legal consequences of international responsibility” covers the new legal relations which arise under international law as a result of a State’s Internationally Wrongful Act (IWA). In this context, three types of obligations can be identified: the duty (a) to perform the obligation breached, (b) to cease the wrongful conduct, and (c) to make full reparation for the injury caused. In the Certain Iranian Assets Case, the International Court of Justice (ICJ) found that the United States had breached Articles III (1); IV (1) & (2); and X (1) of the Treaty of Amity. This article seeks to explore the legal consequences of US international responsibility. Specifically, it examines these consequences in the light of the International Law Commission’s Articles on State Responsibility and the relevant case-law. The study recruits a descriptive-analytical method, relying on library sources for collecting data. In the Certain Iranian Assets Case, the ICJ concluded that, due to the fact that the Treaty of Amity no longer creates obligations on the Parties, as of October 3, 2019, the US has not obligation to perform its duties under the Treaty or to cease the wrongful conduct. The Court only ruled that the US should provide reparation for the injury caused. The most important finding of this article is that the Court is likely to reach similar results in the Case of Alleged Violations of the 1955 Treaty of Amity. Consequently, the United States bears no obligation to comply with the Treaty of Amity following its termination in October 2019. Similar to the Certain Iranian Assets Case, this termination has similar implications concerning the US responsibility to compensate the damages incurred by the injured State.

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Introduction

The dispute between Iran and the United States arose from certain measures taken by the US following its designation of Iran as a state sponsor of terrorism. As a result of the actions of the American judicial and executive authorities, the properties belonging to the Iranian companies were confiscated. After Iran's disappointment in referring to the American courts, Iran decided to refer to the International Court of Justice (ICJ) invoking the mechanism contained in the Treaty of Amity.¹

On March 30, 2023, the ICJ delivered its judgment in the case concerning *Certain Iranian Assets* (Islamic Republic of Iran v. United States of America). The Court rejected the US objection to admissibility, which claimed that Iranian companies had not exhausted local remedies. Moreover, the Court found that the United States had violated its obligation under the 1955 Treaty of Amity,² particularly the provision stating that the property of nationals and companies of the Contracting Parties "shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation."³

This article aims to explore the legal consequences resulting from US's violation of the Treaty of Amity. Additionally, it will examine the effect of the March 30 decision of the Court on the other ongoing case between Iran and the United States. The research adopts a descriptive- analytical method, and the author's hypothesis is that the Court identified certain legal consequences of international responsibility. It is also anticipated that the findings of the March 30 judgment will have significant implications for the other case.

This article is organized into two sections. The first section outlines the obligations arising from the Treaty of Amity that were breached by the United States. The second section examines the three above-mentioned effects concerning the Legal Consequences of International Responsibility, focus-

1 . Giulio Alvaro Cortesi, 'The Case of Certain Iranian Assets: The Standard for Joining Preliminary Objections to the Merits Revisited and the Treatment of State-Owned Enterprises before the International Court of Justice' (2020) Vol 25 Austrian Review of International and European Law 220-221.

2 . The Treaty of Amity entered into force on 16 June 1957 and remained in force when the United States and Iran cut diplomatic ties in 1980 following the 1979 Iranian Revolution that resulted in the seizure of the US Embassy in Tehran.

3 . *Certain Iranian Assets*; (Islamic Republic of Iran v. United States of America), International Law Reports, Vol 201, 2023, Cambridge University Press, 1 – 88.



ing on the judgment of the Court in the *Certain Iranian Assets* Case and relevant case-law of the ICJ. The significant purpose and implication of this study is that the effects of the Court's findings in the recent case will be revealed on the second case between Iran and the United States.

1. Violations of the Treaty of Amity by the United States

It is necessary to note at the time that Iran initiated proceedings at the ICJ in 2016, US courts had already rendered judgments totaling USD 56 billion in damages against Iran.¹ These judgments were the result of certain legislative and executive measures taken by the United States, leading to default judgments and substantial damage awards against the State of Iran and certain Iranian state-owned entities. Furthermore, the assets of Iran and certain Iranian entities, including the Central Bank of Iran, known as Bank Markazi, became subject to enforcement proceedings either in the US or abroad, or had already been distributed to judgment creditors. Iran argued that the United States had thereby violated its obligations under the Treaty of Amity. Iran specifically claimed that United States had violated Article III (1), Article III (2), Article IV (1), Article IV (2), Article V (1), Article VII (1), and Article X (1) of the Treaty.

It should be noted that the two necessary elements in proving the illegality of a State's action are: First, the conduct in question must be attributable to the State under international law. Secondly, for the State to be held responsible, the conduct must constitute a breach of an international legal obligation applicable to that State at that time.² It is only with the gathering of the aforementioned elements that international responsibility would be created.

Regarding the first element, it is certain that the property confiscation judgments on Iranian State-owned entities including the Central Bank of Iran, was based on the implementation of the US statutes and judicial decisions. According to Article 4 of the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Actions, these actions are attributable to the United States.

Regarding the second element, the Court concluded that the United States had violated certain obligatory provisions of the Treaty of Amity against Iran. Specifically, the Court found that the United States had violated its obligations under Article III (1), Article IV (1), and Article X (1) of the Treaty. However, this article does not examine the reasons behind the Court's agreement or disagreement with the arguments presented by the Parties. As indicated by the article's title, the focus is solely on the legal consequences of the violations identified by the Court. Brief mention will be made of the Treaty violations by the United States, establishing the link between the breach of primary rules (above-mentioned articles of the Treaty of Amity) and the international Consequences arising from such breaches.

First, it is necessary to outline the examples of the violation of the Treaty of Amity committed by the United States, as determined by the Court, and provide a brief explanation of each.

1.1. Breach of Article III (1) and Article IV (1)

Article III (1) of the Treaty contained the obligation that each of the contracting states is obliged to recognize the legal personality of companies registered in another country in their own legal

1 . Natalie Klein, 'Iran and Its Encounters with the International Court of Justice' (2021) Vol 21 Melbourne Journal of International Law 20.

2 . ILC Articles on State Responsibility, Article 2.



system. The Court considers that the expression “juridical status” refers to the companies’ own legal personality. The recognition of a company’s own legal personality entails the legal existence of the company as an entity that is distinct from other natural or legal persons, including States¹.

Therefore, the Court came to the conclusion that the United States has violated the obligation contained in Article 3 (1) to recognize the independent legal personality of Iranian companies from the state.

Article IV (1) of the Treaty contained this obligation that “Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party...”

Since the Court has determined that it lacks jurisdiction under the Treaty of Amity to entertain claims related to alleged violations of Articles III and IV concerning treatment with Bank Markazi,² the Court said that it will not consider Iran’s claims regarding US’s wrongful acts in relation to this entity. This was while Iran argued that the United States disregarded the principle of separate legal personality and unlawfully blocked and seized the assets of Bank Markazi.³

According to the Court, Article IV(1) consists of three clauses separated by semicolons, with each clause starting with the word “shall”.⁴ The Court notes that the rights of Iranian companies to appear before US courts, make legal submissions, and lodge appeals, have not been curtailed.⁵ The Court further considers that the terms “unreasonable” or “discriminatory” in the second clause of Article IV(1) reflect two distinct standards against which a State’s conduct may be separately assessed.⁶ The Court concludes that even assuming the legislative provisions adopted by the United States and their application by US courts pursued a legitimate public purpose, they nonetheless caused a disproportionate impairment of the rights of the Iranian companies when measured against the protection invoked for that purpose.

The Court, therefore, concludes that the legislative and judicial measures were unreasonable, constituting a violation of the obligation under Article IV (1) of the Treaty of Amity.⁷

1.2. Breach of Article X (1)

Article X (1) of the Treaty of Amity provides that “[b]etween the territories of the two High Contracting Parties there shall be freedom of commerce and navigation.”

Iran claimed that the set of executive and judicial actions of the United States against Iranian companies violates the obligations contained in this article, including the freedom of commerce. According to Iran, each of the parties has committed to respect the freedom of trade and seizing the assets of Iranian companies has violated this obligation.

The United States contends that Iran’s allegations are unfounded for three reasons. First, it argues that the reference to “commerce” in Article X (1), when interpreted in context, means

1 . Certain Iranian Assets, (Islamic Republic of Iran v. United States of America), Judgment of 30 March 2023, para. 136.

2 . Certain Iranian Assets, (Islamic Republic of Iran v. United States of America), Judgment of 30 March 2023, para. 115.

3 . Memorial of Islamic Republic of Iran, 01 February 2017, para.4.23.

4 . Ibid, para. 140.

5 . Ibid, para. 143.

6 . Ibid, para. 145.

7 . Ibid, para. 156.



commerce related to navigation. Iran rightly emphasized that the Court rejected the view that Article X, paragraph 1, is limited to maritime commerce in the *Oil Platforms Case*.¹

Secondly, the United States argues that Iran disregards the territorial limitation in Article X (1). According to the American, there was no practical trade between the territories of the parties at the time of seizure of Iranian property.

Thirdly, the United States maintains that the type of “legal impediments” to commerce, such as rules governing enforcement of judgments in domestic courts, do not invoke Article X (1) since they have too tenuous a connection, if any, to the commercial relations between the Parties. According to the United States, seizing the property of the Iranian state by the respondent is an issue unrelated to the issue of freedom of commerce.

The Court referred to its 2003 Judgment in the *Oil Platforms Case* and noted that the word “commerce” in Article X (1) “includes commercial activities in general not merely the immediate act of purchase and sale, but also the ancillary activities integrally related to commerce.”² The Court noted that it deems unnecessary to depart from its previous interpretation of the concept of “freedom of commerce” in Article X (1) of the Treaty.³

In the *Oil Platforms* case, the Court was concerned with physical interferences with freedom of commerce. However, the decision in that case does not prevent the Court from examining in the present case whether the legal measures adopted by the United States interfered with freedom of commerce between the Parties. The Court is of the opinion that Executive Order 13599 and Section 1610(g)(1) of the Foreign Sovereign Immunities Act (FSIA) blocked any assets of any Iranian companies in which the State holds an interest. Moreover, the judicial application of Section 1610(g)(1) of the FSIA and Section 201(a) of Terrorism Risk Insurance Act (TRIA) caused concrete interference with commerce.⁴ The Court notes that “the effects of the enforcement proceedings with respect to contractual debts in the telecommunications industry and in the credit card services sector mentioned above (see paragraphs 180-181) constitute clear examples of such concrete interference with commerce.”⁵ Therefore, the Court concludes that the United States has violated its obligations under Article X(1) of the Treaty of Amity.⁶

It seems that the court believed that the executive and judicial actions of the United States are not a case-by-case seizure of corporate property, but that the respondent, by seizing all property belonging to the Iranian state and its companies, has practically disrupted any free trade and commerce between the parties. The lack of connection between the issue of seizure of property and disruption of trade freedom can be true where seizure of property is a case-by-case measure, but the seizure of property of the Iranian government and Iranian companies is a general policy of the US government and is related to all assets of Iran state, and the court rightly found the US action it to be a violation of Article 10 of the Treaty.

1 . Ibid, para. 210.

2 . Certain Iranian Assets (Islamic Republic of Iran v. United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I), p. 34, para. 78, citing *Oil Platforms* (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II), 818-819, paras. 45-46 and 49.

3 . Judgment, Certain Iranian Assets, para. 212.

4 . Ibid, paras. 220-221.

5 . Ibid, para. 222.

6 . Ibid, para. 223.

2. The Triple Consequences of Treaty Violation

There is a well-established principle that legal consequences are entailed whenever there is an IWA of a State. The above-mentioned violations of the Treaty of Amity have consequences in the field of State responsibility, including the duty to perform the obligation breached, provide compensation, cease ongoing wrongful acts, and offer appropriate assurances and guarantees of non-repetition, if circumstances require so (see Article 30 of ILC Articles on State Responsibility).

These triple obligations also apply to the IWAs of international organizations.¹ Article 28 of the ARSIWA provides: “The international responsibility of a State which is entailed by an IWA in accordance with the provisions of Part One involves legal consequences as set out in this Part.” The three types of obligations will be examined below:

A: The duty to perform the breached obligation.

B: The duty to cease the wrongful conduct and to offer appropriate assurances and guarantees of non-repetition.

C: The duty to make full reparation for the injury caused.

However, it should be noted that in certain cases, it may not be appropriate to demand the fulfillment of all three obligations in one time, based on the relevant primary rules. For example, if State agents kill foreign diplomats illegally, the duty to perform or to cease the wrongful act is practically ruled out. However, where a part of a State’s territory is occupied by an aggressor State, it is feasible to demand all the three obligations. that is, the duty to perform the obligation breached (that is, to respect the independence and territorial integrity of the injured state), and also to cease the wrongful conduct, that is, upon the withdrawal of the aggressor State from the occupied territories. The injured state may also obtain reparation for the damage suffered.

Iran wanted to achieve all three demands in this case. As stated by the Court: “In its final submissions, Iran requests that the Court, having placed on record the alleged violations of the Treaty of Amity, declare, “(c) . . . that the United States is consequently obliged to put an end to the situation brought about by the aforementioned violations of international law, by (a) ceasing those acts and (b) making full reparation for the injury caused by those acts, in an amount to be determined in a later phase of these proceedings, and (c) offering a formal apology to the Islamic Republic of Iran for those wrongful acts and injuries.”²

It is worth noting that satisfaction is one of the forms of reparation (which also include restitution and compensation). Therefore, Iran’s demands in section B and C can be considered as two forms of reparations. In the following discussion, these consequences will be examined in light of Iran’s demands.

2.1. The Duty to Perform the Obligation Breached

Article 29 of ILC Articles on State Responsibility provides that, the legal consequences of an IWA do not absolve the responsible State of its ongoing duty to perform the obligation breached.

Requiring the responsible State to re-implement the violated obligations is a representation of

1 . Kristina Daugirdas, ‘Member States’ Due Diligence Obligations to Supervise International Organizations’ in Heike Krieger, Anne Peters, and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford University Press 2020) 67.

2 . *Ibid.*, para. 224.



the rule of law. In many cases, the implementation of the primary obligation is still the desired goal of the injured state and payment of compensation alone cannot be considered as full compensation of the injured state unless the wrongful state is required to perform the breached obligation, so that the legal status of the parties returns to the point before the breach of obligations. Therefore, the breach of an obligation does not exonerate the default State from its continued duty to perform the obligation it has breached. The wrongful State is obligated to put an end to those treaty breaches. It is understandable that, as a result of an IWA, secondary rules under international responsibility may emerge between the State default and injured State. However, this does not imply that the previous legal relation resulting from the primary rules are disappeared.

Therefore, the first legal effect resulting from the international responsibility is the obligation of the responsible State to implement the primary obligations, including those outlined in the Treaty of Amity. The Treaty contains a set of rights and obligations for the parties involved. Iran has claimed that the United States, through the legislative, executive and judicial measures, has deprived Iranian companies of their independent legal personality conferred on them by their juridical status and conflated their assets with those of the Iranian State, in violation of Article III (1), of the Treaty of Amity.¹

By accepting Iran's claim², the Court has found that certain private or state-owned companies, such as Bank Melli, should be considered a "company" within the scope of Treaty of Amity, whose rights have been violated by the United States. However, the Court has concluded that Bank Markazi is not a "company" within the purview of the Treaty.

The first legal consequence resulting from the US international responsibility is its obligation to perform the primary obligation (recognition of the juridical status of Iranian companies). This obligation resulted from article 29, and it can be referred to as secondary rule.

Though the breach of an obligation in certain situations may ultimately terminate the obligation itself,³ the mere occurrence of a breach and even repudiation of a treaty does not inherently terminate the treaty, as specified by the relevant provisions of the 1969 Vienna Convention on the Law of Treaties (VCLT). According to Article 60 of the VCLT, the injured State may invoke the breach as a ground for suspending or terminating the treaty. Alternatively, the injured party may equally allow the treaty to remain in force and assert its right to the performance of the treaty. The ICJ held in *Gabčíkovo-Nagymaros Project Case* that, continuing material breaches by both parties did not lead to the termination of the 1977 Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System.⁴ Therefore, the mere violation of the treaty does not mean the termination of that treaty *ipso facto*.

The power to terminate a treaty (and thereby terminate its binding obligations) lies solely with the injured State, and the responsible State cannot use this power. Therefore, the termination of the treaty did not occur *ipso facto* and had to be invoked within a reasonable period of time.⁵ In other words, as long as the injured State has not exercised this authority, the respon-

1 . Certain Iranian Assets; (Islamic Republic of Iran v. United States of America), Memorial of Islamic Republic of Iran, 01 February 2017, para.1.22.

2 . Certain Iranian Assets, (Islamic Republic of Iran v. United States of America) I.C.J. Reports 2023, p.48, para. 159.

3

4 . *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 68, para. 114.

5 . Marl E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff Publisher 2009)



sible State must continue to fulfill its obligations and he cannot claim the termination of the treaty.

The options of suspension or termination prevent the defaulting State from enforcing the treaty against the innocent party while simultaneously violating it. However, the innocent party may choose to demand the resumption of treaty performance from the defaulting party, which cannot by its breach, force the termination or suspension of the treaty.¹

Of course, it is possible that any party to a treaty, including the wrongful or injured State, may have the right to terminate the treaty based on the treaty provisions. The treaty may provide for a right to terminate or withdraw from the treaty. The term “withdrawal” is usually applied to multilateral treaties, while “termination” also includes the denunciation of bilateral treaties.² Article 54(a) of the VCLT provides that termination or withdrawal may take place in accordance with the provisions of the treaty. For instance, in a diplomatic Note dated October 3, 2018, the US Ministry of Foreign Affairs informed the Iranian Ministry of Foreign Affairs that, in accordance with Article XXIII (3) of the Treaty of Amity, that it has terminated the Treaty of Amity based on Article 21, paragraph 3. According to the provisions of the mentioned article, the Treaty is terminated one year after the written notice of the United States.

While it is true that the United States violated the Treaty of Amity, the termination of the treaty was done in accordance with the provisions of the treaty itself. In other words, the United States possessed the right to denounce the treaty based on Article 54(1) of the VCLT, and this matter had nothing to do with the legal consequences resulting from international responsibility.

To conclude, it seems that the US withdrawal from the Treaty of Amity was done in accordance with the provisions of the treaty itself and does not violate the provisions of the VCLT. Therefore, the termination of the primary obligations resulting from the Treaty of Amity was not due to the violation of those obligations by the United States, but because of the permission to terminate the treaty contained in Article 21(3) of the treaty. Therefore, since the termination of the treaty, the United States has no obligation to fulfill the primary obligations resulting from the Treaty of Amity.

As a general principle of state responsibility, where the IWA or omission constitutes a breach of a treaty, no state responsibility is generated, unless the treaty was in force at the time of the wrongful conduct.³ This general principle is reflected in Article 13 of the ARSIWA, which state that “an act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs.” Since the Treaty of Amity no longer imposes obligations on the parties from October 3, 2019, there are no binding obligations arising from the treaty for the parties, from that date onwards.

This point has important implications for the second case between two states (Iran and the United States), and The United States of America has not been accountable for violation of

736.

1 . Ibid, 738.

2 . Ibid, 685.

3 . Robert Howse, Barry Appleton ‘Time and Tide Wait for No One: The Curious Consideration of Time in International Investment Treaty Law’ in Klara Polackova Van der Ploeg, Luca Pasquet, León Castellanos-Jankiewicz (eds), *International Law and Time: Narratives and Techniques* (Springer 2022) 222.



the provisions of the Treaty of Amity in connection with the sanctions imposed by President Trump, at least since October 3, 2019.

2.2. The Duty to Cease the Wrongful Conduct and to Offer Appropriate Assurances and Guarantees of Non-Repetition

The second legal consequence resulting from the international responsibility is outlined in Article 30 of the ARSIWA. Article 30 stipulates that “[t]he State responsible for an internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.” The primary focus of this Article is the obligation set forth in the paragraph (a), which emphasizes the restoration of the previous situation as the primary goal of the international responsibility system. It is impossible to conceive of a legal order which does not impose on every party responsible for a breach the obligation to cease the breach.¹ The obligation to cease the wrongful conduct is a formulation of the principle of *pacta sunt servanda*, highlighting the fact that States must respect their international obligations.

In certain cases, the mere act of terminating the wrongful act, in itself, may be considered sufficient and appropriate compensation. Accordingly, it is possible, even the filing of a lawsuit may be rejected due to the unilateral obligation of the plaintiff to cease the wrongful act, and even the Court may not consider it necessary to award compensation. In the Nuclear Tests Case, the ICJ dismissed the Application on the ground that the Case had ceased to have any object in view of the French Declaration of a Cessation of Atmospheric Testing.²

Article 13 of the ARSIWA establishes the basic principle that for state responsibility to arise, the breach must occur when the State is bound by the obligation.

It is necessary to distinguish between breaches that extend in time and those which have already been completed. A completed act occurs “at the moment when the act is performed,” even though its effects or consequences may continue. Article 14(1) of the ARSIWA expresses the division between terminated wrongful acts and continuing wrongful acts. For instance, killing a foreign diplomat should be considered as completed wrongful act. On the other hand, according to paragraph 2 of Article 14, a continuing wrongful act, occupies the entire period during which the act continues and remains in violation of the international obligation, provided that the State is bound by the obligation during that period. “Examples of continuing wrongful acts include the maintenance in effect of legislative provisions incompatible with treaty obligations of the enacting State, unlawful detention of a foreign official or unlawful occupation of embassy premises, maintenance by force of colonial domination, unlawful occupation of part of the territory of another State or stationing armed forces in another State without its consent.”³

Iran requested the Cessation of internationally wrongful acts of the United States with regard to measures adopted by its Legislature and its Executive, and the decisions of its courts and those of other authorities infringing the rights of Iran and of Iranian companies. Also, another

1 . Oliver Corten, ‘The Obligation of Cessation’ in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (First Published, Oxford University Press 2010) 545.

2 . Nuclear Tests (Australia v France) case, ICJ Reports, 1974, p 253, at pp 312–19.

3 . See the commentary of ILC articles on Responsibility, article 14. Para 3.



demand of Iran was that the United States commits not to take any action against the provisions of the Treaty of Amity in the future.¹

According to the Articles 13 and 14 of the ARSIWA, it seems that a difference should be made between the two time periods. The first period, when the Treaty of Amity between Iran and the United States was still in force. The second period, which begins on October 3, 2019, is related to the time when the United States terminated the Treaty and was no longer obligated to comply with its provisions. From this date onwards, there is no longer an enforceable obligation for the United States, and the US's wrongful acts before October 3, 2019 are considered to be terminated, for which the US only has to pay compensation for their violation.

It is obvious that the request to cease the wrongful acts is only reasonable in the assumption that the wrongful act has a continuous nature and that, at the time of the request to cease, the illegal act is still ongoing, and that the relevant obligation is still valid at the time of the stop request. If the wrongful act has already been terminated or completed, the request to cease the wrongful act is no longer relevant. Because there is no longer an enforceable obligation for the respective state at that time.

In the Court's opinion, those conditions are not met in this Case. "Since the Treaty of Amity is no longer in force, as the United States denounced the Treaty by giving notification of its denunciation to Iran on 3 October 2018, the Treaty ceased to have effect a year later in accordance with the provisions of Article XXIII, paragraph 3, thereof."² It follows that Iran's request relating to the cessation of internationally wrongful acts must be rejected.³

Now that there is no binding obligation anymore, it is obvious that the obligation to offer appropriate assurances and guarantees of non-repetition does not exist as well.

The termination of the Treaty of Amity will have a similar effect on the second case (*Alleged Violations of the 1955 Treaty of Amity case*), and the Court will reject Iran's claim that the Treaty was involved due to the sanctions imposed by Trump from October 3, 2019 onwards.

2.3. Full Reparation for the Injury Caused

The third legal consequence resulting from the international responsibility is to make full reparation for the injury caused. According to Article 31(1) of the ARSIWA, "[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."

It should be taken into consideration that violations of international law, State responsibility, and remedies are closely interlinked.⁴ A new legal relationship arises on the commission of an internationally wrongful act attributable to a State. Where a State has been recognized as the author of an internationally wrongful act- whether it is an act or an omission- it is certain that the State has an obligation to make reparation for the injury caused by its conduct.⁵ The

1 . subparagraph (d) of the final submissions of Islamic Republic of Iran.

2 . Judgment, *Certain Iranian Assets*, para. 228.

3 . *Ibid*, para. 229.

4 . Malcolm Shaw, 'The International Court, Responsibility and Remedies' in Malgosia Fitzmaurice and Dan Sarooshi (eds), *Issues of State Responsibility before International Judicial Institutions* (Great Britain, Oxford and Portland Oregon, First Published 2010)19.

5 . Brigitte Stern, 'The Obligation to make Reparation' in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (First Published, Oxford University Press 2010) 563- 570, 563.



principle that a breach of a primary obligation (including Treaty of Amity) gives rise to a secondary obligation, on the part of the responsible State, to make reparation was clearly affirmed by the Permanent Court of International Justice (PCIJ) in the *Factory at Chorzow* Case, where it stated:

*“It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation.”*¹

As the Court stated in the *LaGrand* Case, “[w]here jurisdiction exists over a dispute over a particular matter, no separate basis for jurisdiction is required by the Court to consider the remedies a party has requested for the breach of the obligation.”² Therefore, it is not necessary to find a separate basis for jurisdiction in the Treaty of Amity to consider the remedies that Iran requested. In fact, the necessary and inevitable consequence of committing a wrongful act is the compensation, and the courts do not need to rely on a separate jurisdictional basis to issue a judgment to compensate. It is only necessary that the Courts have jurisdiction to deal with the dispute.

As stated by the PCIJ in the *Factory at Chorzów case*, reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed.³

Reparation can be described as the immediate corollary of a State’s responsibility, i.e. as an obligation of the responsible State resulting from the breach, rather than as a right of the injured State(s). As Judge Higgins said, “[n]either a separate jurisdictional basis nor a separate finding of the engagement of responsibility is needed for the Court to order a remedy— once it has determined conduct to be illegal.”⁴

The Court in *Certain Iranian Assets* Case declared that the respondent (USA) had violated its obligations under articles Article III (1), Article IV (1), and Article X (1). Having established these violations, the Court concluded that the United States was under an obligation to compensate Iran for the injurious consequences thereof, and decided that in case the Parties failed to reach an agreement on compensation within 24 months from the date of the Judgment, the matter would be settled by the Court at the request of either Party.

Giving a deadline to the disputing parties to determine the amount of compensation is a well-established rule in the Court procedure. In fact, in some cases, the Court is satisfied with finding a violation and leaving the determination of the extent of damages to the injured State based on the negotiations between the parties. It is obvious that if the parties do not reach an agreement in this regard, the Court will inevitably take the final decision on this issue. If they can’t reach an agreement, then the Court will decide exactly on the amount of compensation.

Iran has also requested that the wrongful State (USA) make a formal apology for its internationally wrongful acts. It is interesting to note that an apology (or statements of regret)

1 . *Factory at Chorzów case*, Merits, 1928, PCIJ, Series A, No 17 at p 29.

2 . *LaGrand case*, ICJ Reports, 2001, para 48 and the *Avena case*, ICJ Reports, 2004, para 34.

3 . *Factory at Chorzów case*, at p 47.

4 . Rosalyn Higgins, ‘Issues of State Responsibility before the International Court of Justice’ in Malgosia Fitzmaurice and Dan Sarooshi (eds), *Issues of State Responsibility before International Judicial Institutions* (First Published, Oxford and Portland Oregon 2010) 7.



is a traditional form of satisfaction referred to in jurisprudence.¹ The Anglo-American Claims Commission in the *I'm Alone* Case recommended that:

*“The United States ought to finally acknowledge its illegality and apologize to His Majesty’s Canadian Government. Furthermore, as a material amend in respect of the wrong, the United States should pay the sum of \$25,000 to His Majesty’s Canadian Government.”*²

The *Rainbow warrior* Case followed a similar approach. Following the sabotage of the Rainbow warrior (owned by Greenpeace) by two French secret service agents in the port of Auckland in July 1985, France and New Zealand brought their dispute before the Secretary-General of the United Nations, who acted as a sort of arbitrator whose decision was beforehand accepted as binding by the parties. The Secretary-General ruled, *inter alia*, that:

*“The Prime Minister of France should convey to the Prime Minister of New Zealand a formal and unqualified apology for the attack, contrary to International law.”*³

The State which seeks an apology from another State it holds responsible for an incident which violated its international legal rights will, in principle, be seeking three things:

1. Acknowledgement by the other State that the incident did indeed take place (for it is often the case that the very occurrence of the incident—at least in the manner in which the State requesting the apology presents it will be denied or be in doubt),
2. Admission by that other State that it bears international responsibility for the occurrence of the incident (for even if the incident did occur in the manner alleged, any ensuing international responsibility is by no means automatically established), and
3. Expression of regret that the incident ever happened.⁴

In *Certain Iranian Assets* Case, the Court, in principle, accepts that a formal apology under appropriate circumstances, would constitute a form of satisfaction that the injured State is entitled to claim following a finding of wrongfulness.⁵ In this Case, the Court considers that a finding of wrongful acts committed by the United States is sufficient satisfaction for the Applicant.⁶ It seems that ICJ rarely accept the request for formal apology particularly in cases where the breached obligation arises from trade treaty rules.

Basically, the Court believes that an official apology is considered a form of double compensation. Therefore, in cases where monetary compensation is ordered, there is no need for an official apology as additional compensation. Also, it seems that the failure to find the violation

1 . Eric Wyler, Alain Papaux, ‘The Different Forms of Reparation: Satisfaction’ in James Crawford, Alain Pellet and Simon Olleson (eds), *The Law of International Responsibility* (First Published, Oxford University Press 2010) 630.

2 . The SS “I’m Alone” (Canada v. United States of America), 5 January 1935, 3 RIAA 1609-1618.

3 . Differences Between New Zealand and France arising from the Rainbow warrior affair, Ruling of the Secretary-General of the United Nations, 6 July 1986, 19 RIAA 199,214.

4 . Arthur Watts, ‘The Art of Apology’ in Maurizio Ragazzi (eds), *International Responsibility Today* (First Published, Koninklijke Brill NV 2005) 107-108.

5 . Ibid, para. 232.

6 . Ibid, para. 233.



of some other articles of the Treaty of Amity (Article 3(2), Article 5(1), Article 7(1)) was one of the other reasons why the Court did not consider it necessary to condemn the United States to an official apology to Iran.

Conclusion

On March 30, 2023, the International Court of Justice (ICJ) delivered its judgment in the case concerning *Certain Iranian Assets* (Islamic Republic of Iran v. United States of America). The Court found that the United States of America had violated some of its obligations under the 1955 Treaty of Amity. It is a well-established rule that every internationally wrongful act committed by a State entails the international responsibility of that State. The term “legal consequences of international responsibility” covers the new legal relations which arise under international law as a result of the internationally wrongful act of a State. Specifically, three types of obligations are identified under Articles 28-31 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (the ARSIWA): the duty to perform the obligation breached, the duty to cease the wrongful conduct, and the duty to make full reparation for the injury caused.

In the case of *Certain Iranian Assets*, Iran requests that the Court, by announcing the violation of the obligations arising from the Treaty of Amity, the United States is obligated, firstly, to end the violation of those obligations. Secondly, to pay the damages caused to Iran due to the violation of those obligations and thirdly, to formally apologize to the Islamic Republic of Iran for the violation of the relevant obligations and the damages caused to Iran.

ICJ finally decided that the United States had breached Articles III (1), IV (1) & (2), and X (1) of the Treaty of Amity. However, considering that the United States has terminated its primary obligation in accordance with Article XXIII (3) of the Treaty of Amity. Furthermore, as of October 3, 2019, onwards, the Treaty of Amity no longer creates binding obligations for the parties. Therefore, it should be acknowledged that, from that date onwards, there are no more binding obligations arising from the Treaty for the parties.

It is noteworthy that on July 16, 2018, the Islamic Republic of Iran filed an Application with the Court instituting proceedings against the United States for alleged violations of the Treaty of Amity. Iran sought a declaration from the Court that the US withdrawal from the Joint Comprehensive Plan of Action (JCPOA) on May 8, 2018, and the imposition of American sanctions from that date onward, violated the Treaty of Amity. The findings of the Court in the judgment of March 30, 2023, has important consequences on the other case between Iran and the United States in the *Alleged Violations of the 1955 Treaty of Amity* case. In that case, among other things, Iran requests the Court to adjudge, order, and declare that the United States shall immediately terminate the May 8 sanctions without delay and terminate the threats regarding further sanctions. Having found that the obligations of the United States under the Treaty of Amity no longer exist, the Court would conclude that the United States is not required to lift its sanctions on Iran based on its obligations under the Treaty of Amity. Therefore, Iran needs to modify its demands in the second case against the United States in light of the results obtained from the current judgment of the Court.



Iran also requests the Cessation of internationally wrongful acts of the United States in the *Certain Iranian Assets case*. It is obvious that the request to cease the wrongful acts is only reasonable if the wrongful act has a continuous nature, and at the time of the request, the illegal act is still going on. Therefore, this request was rejected by the Court.

The court finally accepted the third legal consequence of the US wrongful act against Iran. The Court declared that the United States was under an obligation to compensate Iran for the injurious consequences of its wrongful acts. It further decided that if the Parties fail to reach an agreement on compensation within 24 months from the date of the judgment, the matter would be settled by the Court upon the request of either Party. Therefore, it seems that in cases where the calculation of damages is complicated, the Court primarily leaves it to the parties to determine the amount of compensation, and if they do not reach a conclusion within a certain time, then the Court itself will determine the damages caused to the injured state.



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