



Between Procedure and Substance: A Legal Analysis of the ICJ Judgment in Certain Iranian Assets (*Iran v United States*)

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Abstract

This article provides a legal analysis of the International Court of Justice's judgment in *Certain Iranian Assets (Iran v. United States)*, a treaty-based dispute arising from legislative, executive, and judicial measures adopted by the United States. These measures, including amendments to the Foreign Sovereign Immunities Act, the Terrorism Risk Insurance Act, and Executive Order 13599, enabled enforcement of terrorism-related judgments against assets associated with Iranian state-connected entities. Iran argued that these measures breached the 1955 Treaty of Amity, exposing broader tensions between domestic enforcement mechanisms, sovereign control over state-linked assets, and international treaty obligations in contexts shaped by economic pressure and national security policy. A central theme of the article is the interaction between procedural and substantive dimensions of ICJ adjudication. It explains how the Court's preliminary objections phase, particularly the 2019 judgment, functioned as a decisive procedural filter, narrowing the dispute to claims falling within the Treaty's *ratione materiae* scope while excluding arguments framed as violations of customary international law concerning sovereign immunity. This delimitation significantly shaped the subsequent merits analysis and the remedies available. The article also clarifies a common misunderstanding regarding the outcome. Although the dispute was publicly associated with the attachment of approximately USD 1.75 billion in assets linked to Bank Markazi, the Court did not order their return. It held that claims advanced on behalf of Bank Markazi fell outside the Treaty's protections because Iran failed to demonstrate that the bank engaged in commercial activities capable of bringing it within the Treaty's concept of a protected "company." By contrast, other Iranian entities were found to fall within the Treaty framework, and certain United States measures were held to breach obligations relating to juridical status, treatment of companies, unlawful taking of property, and freedom of commerce. Finally, the article examines the Court's rejection of the United States' essential security defence and its approach to remedies, emphasizing compensation and the principle of full reparation following the Treaty's termination.

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Introduction

The judgment of the International Court of Justice (ICJ) in *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)* constitutes a significant decision at the intersection of international economic law, State responsibility, and treaty-based inter-State adjudication. Decided pursuant to the compromissory clause of the 1955 *Treaty of Amity, Economic Relations¹ and Consular Rights*, the dispute arose from a series of legislative, executive, and judicial measures adopted by the United States that enabled private claimants to enforce terrorism-related judgments against assets associated with Iranian State-linked entities.²

Iran challenged these measures before the Court on the basis that they violated obligations contained in the 1955 Treaty of Amity³, in particular provisions relating to juridical status, the treatment of companies, and protection of property, financial transfers, and freedom of commerce. The case thereby raised complex questions concerning the relationship between domestic regulatory frameworks, the enforcement of claims against sovereign-linked assets, and binding international treaty commitments.⁴

Beyond its factual background, the dispute offers an important lens for analyzing the interaction between procedural architecture and substantive legal determinations in international adjudication. The litigation required the Court to address multiple doctrinal issues, including jurisdiction under bilateral treaties, admissibility and the doctrine of exhaustion of local remedies, the distinction between jurisdictional limitations and substantive defenses, treaty interpretation, and the principles governing remedies and reparation. Although the measures at issue originated from legislative, executive, and judicial action, attribution to the respondent State was not itself contentious; rather, the central legal questions concerned the scope and application of treaty obligations.⁵

The proceedings also involved significant jurisdictional filtering during the preliminary objections phase, particularly in the Court's 2019 judgment, which excluded claims framed as violations of customary international law concerning sovereign immunity from the Court's treaty-based jurisdiction.⁶

The purpose of this article is to provide a comprehensive legal analysis of the Court's judgment and its doctrinal implications for contemporary international law. In particular, the article addresses three principal research questions. First, how does the Court reconcile procedural doctrines, particularly jurisdiction, admissibility, and preliminary objections, with substantive determinations concerning treaty breaches and State responsibility? Second, what

1 Merits 41–45

2 ICJ, *Certain Iranian Assets* (n above) paras 39–63; Chester Brown SC, 'Certain Iranian Assets (Iran v United States): An Introduction to the Judgment' (2025) 39 *ICSID Review* 447, 448–450. The case concerned US government measures authorizing attachment of property of certain Iranian State-owned entities, including its central bank, to satisfy default judgments obtained in terrorism-related cases against Iran

3 Treaty of Amity, Economic Relations, and Consular Rights (Iran–United States) (signed 15 August 1955, entered into force 16 June 1957) 284 UNTS 93 art XXI(2); ICJ, *Certain Iranian Assets* (Merits) paras 15–18.

4 Jürgen Kurtz, 'The Use and Abuse of Investment Treaty Arbitration: Reconciling Foreign Investment Protection with Public Policy' (Cambridge University Press 2016) 36–38; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 584–586.

5 ICJ, *Certain Iranian Assets* (Merits) paras 80–101.

6 ICJ, *Certain Iranian Assets* (Merits) paras 80–101.

contributions does the judgment make to the development of international law concerning State-owned entities, treaty protections, and the invocation of essential security exceptions? Third, what implications does the decision hold for the relationship between unilateral economic measures, sanctions regimes, and international treaty obligations? By addressing these questions, the article situates the judgment within the broader evolution of international economic governance and international adjudicatory practice.

In its 2019 Preliminary Objections Judgment, the Court did not finally determine the status of *Bank Markazi* and deferred the issue to the merits stage. In its 2023 Judgment, the Court ultimately upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims predicated on the treatment accorded to *Bank Markazi*, concluding that the bank could not be characterized as a "company" within the meaning of the relevant Treaty provisions. The Court found that Iran had failed to demonstrate that *Bank Markazi* engaged, alongside its sovereign central-banking functions, in activities of a commercial character; the investment operations relied upon were considered inseparable from the exercise of sovereign reserve-management functions. As a consequence, the Court lacked jurisdiction over Treaty claims relating to *Bank Markazi* and did not order the release or restitution of the assets associated with the bank.

The judgment further reinforces the continuing relevance of treaty-based dispute settlement mechanisms even in politically sensitive contexts marked by deteriorating diplomatic relations. Although the United States notified termination of the Treaty of Amity during the proceedings, the Court confirmed that its jurisdiction remained intact because the Treaty was in force at the date of *seisin*¹ and that international responsibility could arise in relation to conduct occurring while the Treaty remained operative². At the same time, the subsequent termination of the Treaty had implications for the availability of prospective remedies. The Court therefore held that cessation was not an appropriate remedy because the breached obligations were no longer in force. This illustrates how temporal considerations interact with substantive legal consequences in international adjudication. The Court's treatment of remedies, particularly its emphasis on compensation and the principle of full reparation, contributes to the consolidation of remedies jurisprudence in contemporary international law.

This article proceeds in several stages. It begins by examining the factual and legal background of the dispute, including the legislative and executive framework underlying the contested measures and the role of the Treaty of Amity as both a jurisdictional and substantive framework. It then analyses the procedural architecture of the case before the Court, with particular emphasis on the preliminary objections phase and jurisdictional filtering. The discussion subsequently turns to questions of jurisdiction and admissibility, including the distinction between jurisdictional limitations and substantive defenses, the treatment of sovereign immunity claims outside the Treaty framework, and the doctrine of exhaustion of local remedies.³

1 Merits 43–45; PO 2019 38–39. The date of *seisin* is the date on which proceedings are formally instituted before the Court.

2 ICJ, *Certain Iranian Assets* (Merits) paras 33–36; ICJ, *Nicaragua v United States* (Jurisdiction) ICJ Reports 1984, para 59.

3 ICJ, *Certain Iranian Assets* (Preliminary Objections) paras 36–44; Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn, OUP 2015) 167–170

The article then evaluates the Court's substantive determinations on the merits, including the status of *Bank Markazi*, the identification of treaty breaches, attribution of State conduct, and the application of the essential security exception. This is followed by an examination of the remedies phase and the application of the principle of full reparation¹. The analysis further explores the doctrinal contributions and legal significance of the judgment, including its implications for the treatment of State-owned entities, before considering the broader implications of the decision for international law, particularly in relation to international economic law and sanctions regimes. The article concludes with a critical evaluation of the judgment and its potential impact on future litigation and the development of international law.

Through this analysis, the article argues that *Certain Iranian Assets* represents an important precedent demonstrating how international adjudication mediates tensions between sovereign regulatory autonomy and binding treaty obligations, while simultaneously reinforcing the coherence of procedural and substantive doctrines within the international legal order². The decision illustrates both the possibilities and the structural limits of treaty-based litigation in addressing disputes involving economic coercive measures, sovereign assets, and politically sensitive regulatory actions, thereby contributing to the progressive development of international law.³

1. Factual and Legal Background of the Dispute

1.1. Background and Origins of the Dispute

The dispute in *Certain Iranian Assets (Iran v United States)* arose from a series of legislative, executive, and judicial measures adopted by the United States, notably provisions of the Terrorism Risk Insurance Act of 2002 (TRIA), amendments to the Foreign Sovereign Immunities Act (FSIA), and related executive actions, which enabled private plaintiffs to obtain and enforce terrorism-related judgments against Iranian State entities and financial

1 Factory at Chorzów (Germany v Poland) (Merits) PCIJ Series A No 17 (1928) 47; ICJ, *Certain Iranian Assets* (Merits) paras 236–244.

2 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Preliminary Objections, Judgment) ICJ Reports 2019, paras 32–45; Hugh Thirlway, *ICJ* (2nd edn, OUP 2016) 149–156; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment, 30 March 2023, ICJ Reports 2023, paras 102–110. <https://www.icj-cij.org/case/164>

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Merits, Judgment) [2023] ICJ Rep — Judgment of 30 March 2023, available at: <https://www.icj-cij.org/case/164/judgments> accessed 19 February 2026; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Preliminary Objections, Judgment) [2019] ICJ Rep 7, paras 41–57, available at: <https://www.icj-cij.org/case/164/judgments> accessed 19 February 2026; ICJ, *Certain Iranian Assets* (Merits Judgment) (n 1) paras 36–44 and 222–252; Kentaro Nakajima, 'Sovereign Function Test Out of Thin Air? The Status of the Central Bank of Iran in Certain Iranian Assets' (2024) 15(3) *Journal of International Dispute Settlement* 474, available at: <https://academic.oup.com/jids/article/15/3/474/7637709> accessed 19 February 2026; Chester Brown and Kate Parlett (eds), *The Law of International Courts and Tribunals* (2nd edn, OUP 2024) ch 12; Factory at Chorzów (Germany v Poland) (Merits) PCIJ Rep Series A No 17 (1928) 47; Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2015* (5th edn, Brill 2016) vol II, 575–580; David A. Wirth, 'Certain Iranian Assets: Treaty Litigation in a Sanctions Context' (2024) 118 *American Journal of International Law* 345; Sidley Austin LLP, 'Implications for Investor-State Disputes Arising From the ICJ's Judgment in Certain Iranian Assets' (26 April 2023) available at: <https://www.sidley.com/en/insights/newsupdates/2023/04/implications-for-investor-state-disputes-arising-from-the-icjs-judgment> accessed 19 February 2026

institutions.¹ Beginning in the late 1990s and continuing into the early 2010s, these measures established mechanisms through which assets associated with Iran could be attached and distributed to satisfy judgments rendered by United States courts. One of the most politically prominent aspects of the dispute concerned approximately USD 1.75 billion in bond proceeds linked to the Central Bank of Iran (*Bank Markazi*), which became subject to attachment and execution proceedings in the United States, although claims relating to that entity were subsequently found by the Court to fall outside its jurisdiction under the Treaty framework.²

Iran instituted proceedings before the International Court of Justice in June 2016, alleging that these measures violated obligations owed under the 1955 *Treaty of Amity, Economic Relations and Consular Rights*, including provisions relating to the juridical status and treatment of companies, protection of property, access to courts, financial transfers, and freedom of commerce. Iran contended that the United States had failed to respect the separate legal personality and property rights of Iranian companies and had impaired their commercial activities in a manner inconsistent with treaty guarantees. The United States contested both jurisdiction and the merits of Iran's claims, raising objections based on the scope of the Treaty, the doctrine of exhaustion of local remedies, and several substantive defenses, including reliance on the security exceptions contained in Article XX. The dispute therefore emerged at the intersection of international economic law, sovereign asset enforcement, and inter-State treaty obligations, ultimately culminating in the Court's merits judgment of 30 March 2023.³

Beyond the immediate legal issues, the case reflects broader geopolitical tensions between the parties following the deterioration of diplomatic relations after the 1979 Iranian Revolution and the subsequent rupture of bilateral relations. Nevertheless, the continued existence of the Treaty of Amity as a binding legal instrument, despite the absence of diplomatic relations, permitted the dispute to be adjudicated within the framework of international law. The proceedings therefore illustrate the enduring legal relevance of treaty commitments even in contexts of profound political hostility and strategic confrontation.⁴

The domestic legal framework underlying the dispute formed part of a broader United States policy response to State-sponsored terrorism. Legislative developments progressively curtailed sovereign immunity protections for designated State sponsors of terrorism and authorized the enforcement of judgments against assets of foreign States and their agencies or instrumentalities.

1 Merits 152–159, 172–189

2 *Bank Markazi, Aka Central Bank of Iran, v. Peterson et al. Certiorari to the United States Court of Appeals for the Second Circuit* No. 14–770. Argued January 13, 2016—Decided April 20, 2016; *The ICJ's Judgment in Certain Iranian Assets: Consequences for Investment Disputes Arising Out of Economic Sanctions*; Alexander Dünkelsbühler; *European Investment Law and Arbitration Review*; Volume 8, Issue 1 (2023) pp. 263 – 282; <https://doi.org/10.54648/eila2024016>; No. 24In the Supreme Court of the United States *Clearstream Banking, S.A., V. Deborah D. Peterson, et al., Petitioner, Respondents. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit* Petition for a Writ of Certiorari Benjamin S. Kaminetzky Counsel of Record David B. Toscano Corey M. Meyer Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 (212) 450-4000 ben.kaminetzky@davispolk.com Counsel for Petitioner *Clearstream Banking S.A.* May 7, 2025]; Case Note *Investment Law at ICJ: Certain Iranian Assets (Islamic Republic of Iran V United States of America)* Jarrod Hepburn, *Melbourne Journal of International Law* [Vol 24(2); *Iran Initiates Suit Against the United States in ICJ, While Sanctions Take Effect. American Journal of International Law.* 2019;113(1):173-182. doi:10.1017/ajil.2018.116

3 Case 164 - *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*, Number (Press Release, Order, etc.) 2023/3, Date 03/30/2023, Document Number 164-20230330-SUM-01-00-EN

4 *Iran Initiates Suit Against the United States in ICJ, While Sanctions Take Effect. American Journal of International Law.* 2019;113(1):173-182. doi:10.1017/ajil.2018.116

Although grounded in domestic policy objectives relating to victim compensation and national security, these measures generated significant tensions with international legal principles governing sovereign property and the treaty-based protections afforded to foreign companies.

1.2. U.S. Legislative and Executive Framework Leading to the Dispute

The legal framework underlying the dispute was shaped by a series of United States legislative and executive measures designed to facilitate compensation for victims of terrorism through enforcement against assets associated with designated State sponsors of terrorism, including Iran. Statutory developments, most notably Section 201(a) of the Terrorism Risk Insurance Act of 2002 (TRIA) and Section 1610(g)(1) of the Foreign Sovereign Immunities Act (FSIA), expanded the scope of property available for execution against foreign State assets and established mechanisms enabling plaintiffs holding terrorism-related judgments to attach assets belonging to foreign States and their agencies or instrumentalities. These legislative measures were complemented by executive action, in particular Executive Order 13599 issued in 2012, which comprehensively blocked Iranian government and financial assets within United States jurisdiction, although the purposes and legal basis of that executive measure differed from the statutory compensation framework.¹

Within this legal environment, United States courts authorized attachment and execution against assets linked to Iranian entities through a series of enforcement proceedings, including the *Weinstein, Bennett, Heiser, and Levin* cases that the Court examined. These proceedings involved various categories of property, including real estate, funds representing contractual debts owed to Iranian companies, and proceeds of electronic fund transfers held through intermediary financial institutions. Among the most prominent were funds associated with *Bank Markazi* held through custodial arrangements involving intermediary financial institutions.²

Iran argued before the International Court of Justice that these measures, taken collectively, constituted a pattern of conduct incompatible with treaty obligations protecting the juridical status of companies, property rights, and commercial activities. The United States, by contrast, maintained that the measures fell outside the scope of the Treaty or were justified by permissible treaty exceptions, particularly the security provisions contained in Article XX, while also raising both procedural and substantive defenses. The legislative and executive framework therefore formed the factual foundation of the dispute and highlighted the tension between domestic legal mechanisms designed to advance foreign policy and victim-compensation objectives and international obligations arising under bilateral treaties.³

1 Foreign Sovereign Immunities Act 1976, 28 USC §§ 1602–1611 (as amended); Terrorism Risk Insurance Act of 2002, Pub L No 107-297, § 201, 116 Stat 2322; Executive Order No 13,599, ‘Blocking Property of the Government of Iran and Iranian Financial Institutions’ (5 February 2012) 77 Fed Reg 6659; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) [2023] ICJ Rep, paras 30–49.

2 *Bank Markazi v Peterson* 578 US 212 (2016)

3 CJ Judgment (2023) paras 51–70 (factual background of assets and litigation); Ingrid Wuerth, ‘The Future of the Federal Common Law of Foreign Relations’ (2017) 106 Georgetown Law Journal 1825; Chimène Keitner, ‘Foreign Sovereign Immunity and the Enforcement of Terrorism Judgments’ (2016) 110 AJIL Unbound 181; Vienna Convention on the Law of Treaties (opened for signature 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 27; *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466, para 90; Foreign Sovereign Immunities Act 1976, 28 USC §§ 1602–1611 (as amended); Terrorism Risk Insurance Act of 2002, Pub L No 107-297, § 201, 116 Stat 2322; *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) [2023] ICJ Rep paras 30–49;

The Court's findings that certain measures violated Treaty protections illustrate the established principle that the adoption and application of domestic legislation do not preclude the international responsibility of a State where those measures are inconsistent with its treaty obligations. In the present case, the Court concluded that the legislative provisions, together with their judicial enforcement, were unreasonable and resulted in compensable takings of property belonging to Iranian companies protected under the Treaty. More broadly, the case demonstrates how national regulatory regimes, even when adopted for legitimate public policy purposes, may give rise to international responsibility when they interfere with rights protected under binding international agreements.

In assessing these measures, the Court accepted that providing compensation to victims of terrorism could constitute a legitimate public purpose. However, it concluded that the legislative framework, as applied, failed to respect the separate juridical personality of the Iranian companies concerned and produced effects that were unreasonable and disproportionate within the meaning of the Treaty provisions invoked. The resulting impairment of rights was therefore considered incompatible with the standards established in Articles III and IV of the Treaty.

1.3. The Treaty of Amity as a Jurisdictional and Substantive Framework

The 1955 *Treaty of Amity, Economic Relations and Consular Rights* constituted the central legal framework governing the dispute and performed both jurisdictional and substantive functions in the proceedings. In particular, Article XXI, paragraph 2, of the Treaty provided the compromissory clause through which the Court's jurisdiction was invoked, while the substantive provisions of the Treaty supplied the legal standards against which the challenged measures were assessed.¹

Concluded during a period of diplomatic cooperation between Iran and the United States, the Treaty established reciprocal protections concerning economic relations, the treatment of nationals and companies, property rights, access to courts, financial transfers, and freedom of commerce. It also contained a compromissory clause conferring jurisdiction on the International Court of Justice over disputes concerning its interpretation or application, thereby creating a direct pathway for treaty-based adjudication between the Parties.²

Despite the profound deterioration of bilateral relations following the Iranian Revolution of 1979, the Treaty remained in force during the relevant period. The United States gave notice of termination on 3 October 2018, and the Treaty ceased to have effect one year later pursuant to its termination clause. This development did not affect the Court's jurisdiction over a dispute instituted in June 2016, since jurisdiction is determined as of the date of seisin and international responsibility may arise in relation to conduct occurring while the treaty remained in force. However, the subsequent termination of the Treaty had implications for remedies, particularly the availability of cessation, because the breached obligations were no longer in force at the time of judgment.³

Executive Order No 13,599, 'Blocking Property of the Government of Iran and Iranian Financial Institutions' (5 February 2012) 77 Fed Reg 6659; ICJ Judgment (2023) paras 37–40; *Bank Markazi v Peterson* 578 US 212 (2016); ICJ Judgment (2023) paras 51–70; Vienna Convention on the Law of Treaties (1969) art 27; *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466 para 90; ICJ Judgment (2023) merits findings.

1 Treaty of Amity; ICJ 2023 Judgment paras 38–46.

2 Treaty of Amity art XXI(2).

3 The United States notified termination of the Treaty of Amity on 3 October 2018, and the Treaty is treated as ceasing to be in

The provisions invoked by Iran, particularly those relating to the recognition of juridical status (Article III), fair and equitable treatment and protection against unreasonable measures (Article IV), property rights (Article IV), financial transfers (Article VII), and freedom of commerce (Article X), illustrate the capacity of friendship, commerce, and navigation (FCN) treaties to regulate State conduct affecting foreign nationals and companies. The Treaty also contains exceptions relating to essential security interests in Article XX, which became a central issue in the litigation.¹ The Court clarified that these exceptions operate as substantive defenses on the merits rather than jurisdictional limitations, thereby requiring evidentiary substantiation and judicial assessment of their applicability in the circumstances of the case.

More broadly, the case illustrates the resilience of treaty commitments² within the international legal system. Even in the absence of diplomatic relations, treaty obligations continued to provide a legal basis for adjudication and dispute resolution until their formal termination in accordance with treaty procedures. The Treaty of Amity therefore served not only as a jurisdictional instrument enabling access to the Court but also as a substantive framework governing the legality of the measures in question. This dual function³ highlights the enduring relevance of bilateral economic treaties as mechanisms for regulating inter-State conduct and resolving disputes in contemporary international law.⁴

The Court's approach is consistent with its earlier jurisprudence concerning the same Treaty, particularly in *Oil Platforms (Islamic Republic of Iran v United States of America)*, where the Treaty likewise operated as both the jurisdictional basis and the substantive legal framework.

1.3.1. Scope of the Dispute and Relief Sought vs Relief Granted

A recurrent misunderstanding in both public and academic commentary is that the Court “ordered” the United States to return or unfreeze the approximately USD 1.75 billion in assets associated with *Bank Markazi*. The judgment is more nuanced. Although the proceedings arose in the shadow of that asset-enforcement episode, the Court's determinations were structured around the Treaty-defined beneficiaries and the Treaty-defined obligations that fell within its jurisdiction. In its merits analysis, the Court concluded that claims predicated on the treatment accorded to *Bank Markazi* fell outside its jurisdiction under the relevant Treaty provisions. It reasoned that Iran had not demonstrated that *Bank Markazi* engaged, alongside its sovereign central-banking functions, in activities of a commercial character

force one year after that notice. ICJ 2023 Judgment paras 40–42; ICJ 2019 Judgment paras 35–41.

1 Treaty of Amity art XX; ICJ 2023 Judgment paras 173–186.

2 Brown (ICSID Review); Dupont article.

3 Rosenne, *Law and Practice of the ICJ*.

4 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023] ICJ Rep (30 March 2023); Jurisdiction basis in paras 38–46; Treaty provisions in paras 41–45; Termination effect in paras 40–42; Pierre-Emmanuel Dupont, ‘The ICJ and the Treaty of Amity Litigation Between Iran and the United States’ (2021); Shabtai Rosenne, *The Law and Practice of the International Court* (4th edn, Nijhoff 2006); Treaty of Amity, Economic Relations and Consular Rights (Iran–United States) signed 15 August 1955, 284 UNTS 93; ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment) [2023] ICJ Rep (30 March 2023) paras 38–46; ICJ, Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) [2019] ICJ Rep 7 paras 35–41; Treaty of Amity arts III, IV, V, X; ICJ 2023 Judgment paras 105–140; Treaty of Amity art XX; ICJ 2023 Judgment paras 173–186; Chester Brown, ‘Certain Iranian Assets (Iran v United States): Introduction’ (2025) 39 ICSID Review; Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2005* (4th edn, Martinus Nijhoff 2006).

capable of bringing it within the Treaty's concept of a protected "company." In its 2019 Preliminary Objections Judgment, the Court had deferred determination of this issue; in the 2023 Judgment, it upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims relating to *Bank Markazi*. Consequently, the Court did not grant relief directing the release or restitution of the assets linked to *Bank Markazi*.¹

By contrast, the Court did find that other Iranian entities qualified as "companies" protected under the Treaty of Amity and that certain United States legislative and judicial measures affecting their assets breached Treaty obligations, including those relating to juridical status, fair and equitable treatment, protection against unreasonable measures, and freedom of commerce. The operative consequence of those established breaches was not an order of immediate restitution or legislative reversal, but rather a declaration of international responsibility accompanied by an obligation to provide compensation. The Court held that the amount of compensation should be determined either by agreement of the Parties within a specified period or, failing such agreement, in a subsequent phase of the proceedings before the Court. Requests for cessation were rejected because the Treaty had been terminated and was no longer in force at the time of judgment.²

This framing is important for both factual accuracy and doctrinal clarity. The case is best understood as a treaty-based inter-State responsibility dispute resulting in declaratory findings of breach and compensation-oriented reparation, rather than as a judicial mechanism for the direct recovery of specific assets such as the *Bank Markazi* funds. The judgment therefore illustrates the structural limits of treaty litigation, where jurisdiction is confined to treaty-defined rights and beneficiaries, and remedies follow the law of State responsibility rather than the logic of private asset recovery.³

The distinction drawn by the Court between *Bank Markazi* and other Iranian entities further underscores the functional approach adopted in determining treaty beneficiaries, focusing on the nature of the activities concerned rather than on formal State ownership alone.

2. Procedural Architecture of the Case before the ICJ

2.1. Procedural History of the Proceedings

The procedural development of *Certain Iranian Assets (Iran v United States)* reflects the multi-stage structure typical of complex inter-State litigation before the International Court of Justice. Proceedings were instituted by Iran in June 2016, invoking Article XXI, paragraph 2, of the 1955 Treaty of Amity as the jurisdictional basis. The case subsequently proceeded through a preliminary objections phase, culminating in the Court's judgment of 13 February

1 Merits 90, 256 operative clause

2 *Certain Iranian Assets (Merits)* [2023] ICJ Rep, paras 277–283.

3 *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits)* [2023] ICJ Rep, paras 47–56, 103–121; André Ouellet, 'ICJ and the Protection of Foreign Property under Customary International Law: Reflections on Certain Iranian Assets' (2025) 16 *Journal of International Dispute Settlement*; ICJ, *Certain Iranian Assets (Judgment of 30 March 2023)* Press Release No 2023/16; *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits)* [2023] ICJ Rep, paras 103–121; ; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits)* [2023] ICJ Rep ___, paras 277–283; ICJ, Press Release No 2023/16 (30 March 2023); US Institute of Peace, 'UN Court Rejects Iran's Case to Unfreeze Assets' (2023); *Factory at Chorzów (Germany v Poland) (Merits)* PCIJ Rep Series A No 17 (1928) 47.

2019, followed by a merits phase that concluded with the final judgment delivered on 30 March 2023.¹ This procedural trajectory illustrates the Court's systematic approach to addressing jurisdictional and admissibility questions prior to the examination of the merits, while also demonstrating how certain issues, such as the status of particular entities, may require further clarification at the merits stage.²

Throughout the proceedings, the case engaged a number of procedural doctrines central to international adjudication. These included jurisdictional filtering concerning the *ratione materiae* scope of the Treaty and the status of specific entities such as *Bank Markazi*; admissibility challenges based on the doctrine of exhaustion of local remedies; and the treatment of arguments relating to abuse of process, clean hands, and abuse of rights. The litigation also involved evidentiary burdens associated with the invocation of treaty exceptions, particularly the essential security provisions contained in Article XX.³

The Court further addressed questions concerning the relationship between earlier procedural findings and subsequent merits analysis, clarifying the limits of the *res judicata* effect of its judgment in preliminary objections. It emphasized that arguments resembling previously rejected objections could nevertheless be raised as substantive defenses on the merits, provided they were examined within the appropriate legal framework and with due regard to the reasoning adopted in the earlier phase.⁴

An additional procedural dimension arose from the termination of the Treaty of Amity by the United States, which notified Iran of its denunciation on 3 October 2018,⁵ after proceedings had been instituted but before the judgment on the merits was delivered. The Court held that this development did not affect its jurisdiction, which is determined as of the date of seisin, but it did affect the scope of available remedies.⁶

The Court's handling of this development, maintaining jurisdiction while recognizing the absence of continuing treaty obligations for purposes of cessation, demonstrates the interaction between procedural timing and substantive legal consequences. Because the Treaty was no longer in force at the time of judgment, the Court rejected Iran's request for cessation of wrongful acts while confirming that responsibility could still arise for past breaches. Finally, the Court structured the remedies phase to allow for a potential subsequent proceeding concerning the quantification of compensation if negotiations between the Parties failed within twenty-four months.⁷

Collectively, the procedural architecture of the case illustrates how ICJ proceedings integrate jurisdictional, admissibility, evidentiary, and remedial considerations within a

1 *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits)* Judgment of 30 March 2023

2 Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2015* (5th edn, Brill 2016) vol II, 831–845; Hugh Thirlway, *ICJ* (2nd edn, OUP 2016) 108–115.

3 ICJ, *Certain Iranian Assets (Preliminary Objections)* paras 101–123; Elettronica Sicula SpA (ELSI) (United States v Italy) (Judgment) [1989] ICJ Rep 15, paras 50–55; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 686–691.

4 Merits 106–113

5 ICJ, *Certain Iranian Assets (Merits)* paras 33–36; Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331, art 70.

6 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Application Instituting Proceedings, 14 June 2016); Treaty of Amity, Economic Relations and Consular Rights (Iran–United States) (signed 15 August 1955, entered into force 16 June 1957) 284 UNTS 93, art XXI(2).

7 ICJ, *Certain Iranian Assets (Merits)* operative clause; paras 281–289.

coherent adjudicatory framework. The progression from preliminary objections to merits and remedies also demonstrates the interaction between procedural determinations and substantive outcomes, reinforcing the central analytical theme of this article concerning the relationship between procedure and substance in international adjudication. The case further illustrates that the distinction between jurisdiction and merits is not always rigid, as certain factual and legal questions, such as the characterization of entities, may require reconsideration at different procedural stages.

2.2. Preliminary Objections and the Role of Jurisdictional Filtering

The preliminary objections phase played a decisive role in shaping the scope of the dispute ultimately adjudicated on the merits. In its 2019 Judgment on Preliminary Objections, the Court undertook a detailed jurisdictional filtering exercise to determine which of Iran's claims fell within its jurisdiction under the Treaty of Amity and which did not. The Court examined objections concerning jurisdiction *ratione materiae*, admissibility, and the doctrine of exhaustion of local remedies, rejecting several objections while clarifying important limitations on the scope of the case. This stage illustrates the Court's methodological approach to treaty-based jurisdiction, whereby the applicability of treaty provisions is assessed at an early procedural stage in order to delimit the issues to be examined on the merits. The Court's reasoning confirmed that jurisdiction depends not only on the existence of a treaty conferring jurisdiction but also on whether the specific claims advanced fall within the material scope of the treaty obligations invoked.

A particularly significant aspect of this phase concerned the qualification of entities under the Treaty's definition of "companies." The Court acknowledged that such questions may possess both jurisdictional and substantive dimensions, depending on the context in which they arise. This dual character was especially evident in relation to *Bank Markazi*. In the preliminary objections judgment, the Court did not definitively resolve whether *Bank Markazi* qualified as a protected "company," considering that the issue required a fuller examination of the factual record and should therefore be addressed at the merits stage. The question nevertheless remained central, as the characterization of the entity would ultimately determine whether Treaty protections, and thus the Court's jurisdiction, were engaged. The preliminary objections judgment therefore illustrates how procedural determinations may shape substantive outcomes by narrowing the range of claims available for adjudication while leaving certain issues for later clarification.

The Court also clarified the relationship between preliminary objections and later stages of proceedings through its treatment of arguments resembling previously rejected objections. In particular, it emphasized that the rejection of an admissibility objection, such as the United States' earlier abuse of process argument, did not preclude the respondent from advancing related arguments as substantive defenses on the merits, provided they were examined within the appropriate legal framework. In doing so, the Court reaffirmed a nuanced approach to the *res judicata* effect of preliminary rulings in international litigation, ensuring procedural fairness while maintaining consistency with prior determinations.¹

¹ ICJ, *Certain Iranian Assets (Iran v United States)*, Preliminary Objections Judgment (2019); Merits Judgment (2023); Treaty

Overall, the preliminary objections phase demonstrates the central role of jurisdictional filtering in ICJ practice and highlights the importance of procedural architecture in structuring complex inter-State disputes involving economic measures and treaty obligations. The case also illustrates how early jurisdictional determinations can influence the trajectory of substantive analysis, reinforcing the interdependence between procedural and merits phases in international adjudication. More broadly, the Court's approach reflects a wider trend in international adjudication toward treating jurisdictional questions in treaty-based cases as closely intertwined with the interpretation of substantive treaty provisions.

2.3. Res Judicata and Consistency Between Procedural and Merits Phases

An additional procedural dimension shaping the litigation concerns the Court's approach to the relationship between its 2019 Preliminary Objections Judgment and the subsequent merits phase. The Court reaffirmed that earlier determinations on jurisdiction and admissibility have res judicata effect only with respect to issues actually decided, while still permitting arguments to be reformulated and advanced at the merits stage, where they operate as substantive defenses rather than as renewed procedural objections. In particular, the Court explained that the rejection of the United States' earlier objection based on abuse of process did not preclude the respondent from advancing related arguments framed as abuse of rights on the merits. This approach reflects a functional understanding of *res judicata* in ICJ practice, and it prevents the relitigation of settled issues, yet does not artificially foreclose a respondent from raising defenses that are conceptually distinct from previously rejected procedural objections, provided they remain consistent with the Court's earlier reasoning.

In the present case, this approach was significant because the preliminary objections phase did not merely "delay" consideration of the merits; rather, it actively structured the litigation by defining the Treaty provisions within scope, delimiting which claims could proceed, and clarifying the proper characterization of certain arguments (jurisdictional limitations versus merits defenses). The resulting procedural framework provides a clear illustration of the central theme of this article that is the Court's procedural architecture did not operate independently from substance but instead shaped the substantive field within which responsibility, defenses, and remedies were subsequently assessed.¹

This reasoning confirms that the ICJ adopts a pragmatic approach to procedural finality,

of Amity (1955); *Bank Markazi v Peterson* 578 US 212 (2016); Crawford – Brownlie's Principles of Public International Law Crawford, James. Brownlie's Principles of Public International Law. 9th ed. Oxford: Oxford University Press, 2019; Shaw – International Law Shaw, Malcolm N. International Law. 9th ed. Cambridge: Cambridge University Press, 2021; Zimmermann et al. – The Statute of ICJ: A Commentary Zimmermann, Andreas, Christian J. Tams, Karin Oellers-Frahm, and Christian Tomuschat (eds.). The Statute of the International Court of Justice: A Commentary. 3rd ed. Oxford: Oxford University Press, 2019; Pellet / Crawford / Olleson – State Responsibility (ILC Articles Commentary) Crawford, James. State Responsibility: The General Part. Cambridge: Cambridge University Press, 2013; Crawford, James, Alain Pellet, and Simon Olleson (eds.). The Law of International Responsibility. Oxford: Oxford University Press, 2010.

¹ ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment of 13 February 2019, ICJ Reports 2019, paras 37–41. <https://www.icj-cij.org/sites/default/files/case-related/164/164-20190213-JUD-01-00-EN.pdf> accessed 19 February 2026; ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, Judgment, ICJ Reports 2015, para 95. <https://www.icj-cij.org/sites/default/files/case-related/118/118-20150203-JUD-01-00-EN.pdf>; accessed 19 February 2026; Andrea Viterbo, 'Certain Iranian Assets (Islamic Republic of Iran v United States of America)' (2024) 118 *American Journal of International Law* 332. <https://doi.org/10.1017/ajil.2023.66> accessed 19 February 2026; Shabtai Rosenne, *The Law and Practice of the International Court, 1920–2015* (5th edn, Brill 2016) vol II, 853–860.

balancing the requirements of legal certainty with the need to permit a full examination of substantive defenses.

3. Jurisdiction and Admissibility

3.1. Jurisdiction under the 1955 Treaty of Amity

The jurisdiction of the Court in *Certain Iranian Assets (Iran v United States)* was founded on Article XXI, paragraph 2, of the 1955 *Treaty of Amity, Economic Relations and Consular Rights*,¹ which confers jurisdiction over disputes concerning the interpretation or application of the Treaty. The Court confirmed that the Treaty was in force at the time proceedings were instituted in June 2016 and that the United States' subsequent notification of termination on 3 October 2018,² which took effect one year later, did not affect the Court's jurisdiction. This conclusion is consistent with the well-established principle that jurisdiction is determined at the date of *seisin*. The Court thereby reaffirmed that the unilateral termination of a treaty after proceedings have commenced cannot deprive it of jurisdiction over disputes arising while the treaty remained operative.

Building on its findings in the 2019 Preliminary Objections Judgment, the Court further determined that the dispute fell within the *ratione materiae* scope of the Treaty to the extent that it concerned alleged violations of provisions relating to the treatment of companies, protection of property, and access to courts, including Articles III, IV, V, and X. In reaching this conclusion, the Court interpreted the Treaty in light of its economic and commercial object and purpose, while emphasizing that jurisdiction depended on whether the claims could plausibly be characterized as arising under the Treaty rather than under general international law. These conclusions illustrate the continuity between the procedural and substantive phases of the litigation, as the jurisdictional framework established at the preliminary objections stage structured the subsequent merits analysis. More broadly, the Court's reasoning confirms the continuing relevance of treaty-based jurisdiction even in circumstances where diplomatic relations between the parties have significantly deteriorated.³

The Court's analysis also underscores that its jurisdiction remained strictly consent-based, confined to disputes capable of being characterized as involving the interpretation or application of the Treaty, rather than extending to broader allegations of illegality under customary international law.

1 Merits 41–45

2 Merits 100

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment of 13 February 2019, ICJ Reports 2019, paras 35–40; *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [2019] ICJ Rep 7*, paras 35–; *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [2019] ICJ Rep 7*, paras 44–50; Shabtai Rosenne, *The Law and Practice of the International Court 1920–2005* (4th edn, Martinus Nijhoff 2006) vol II, 848–850; *Alleged Violations of the 1955 Treaty of Amity (Islamic Republic of Iran v United States of America) (Provisional Measures) Order [2018] ICJ Rep 623*, para 39; *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment [2019] ICJ Rep 7*, paras 54–60, 73–78; Jarrod Hepburn, 'The International Court of Justice and State Economic Measures: Certain Iranian Assets' (2024) University of Melbourne Law School Research Paper 1–5; *United States Diplomatic and Consular Staff in Tehran (United States v Iran) Judgment [1980] ICJ Rep 3*, para 37.

3.2. Jurisdictional Limits and the Status of *Bank Markazi*

A central issue concerned whether *Bank Markazi* could be treated as a “company” within the meaning of the Treaty. In its 2019 Preliminary Objections Judgment, the Court did not finally determine the status of *Bank Markazi* and deferred the issue to the merits stage, considering that it required a fuller examination of the factual record.¹

In its 2023 Judgment, the Court upheld the United States’ objection to jurisdiction *ratione materiae* in respect of Treaty claims predicated on the treatment accorded to *Bank Markazi*. The Court concluded that Iran had not demonstrated that *Bank Markazi* engaged, alongside its sovereign central-banking functions, in activities of a commercial character capable of bringing it within the Treaty provisions protecting “companies.” Consequently,² claims relating to *Bank Markazi* fell outside the Court’s jurisdiction under the relevant Treaty provisions.³

As a result, the Court did not order the release or restitution of the assets linked to *Bank Markazi*. This outcome illustrates the decisive role played by the characterization of entities in determining the scope of treaty protection and, consequently, the limits of the Court’s jurisdiction.⁴

The Court’s reasoning should not be understood as a general pronouncement that central banks are excluded from treaty protection, but rather as a context-specific determination grounded in the evidentiary record and the particular Treaty provisions invoked

3.3. The Distinction Between Jurisdictional Limitations and Substantive Defenses

An important doctrinal contribution of the judgment lies in the Court’s clarification of the distinction between jurisdictional limitations and substantive treaty defenses, particularly in relation to the essential security exception contained in Article XX of the Treaty.⁵ The United States argued that this provision operated as a limitation on the Court’s jurisdiction, thereby precluding judicial review of measures adopted for national security reasons. The Court rejected this interpretation,⁶ holding that Article XX does not restrict the scope of the Court’s jurisdiction under the compromissory clause but instead constitutes a potential justification to be examined at the merits stage.⁷

1 “The Court considers that the question whether Bank Markazi qualifies as a ‘company’ within the meaning of the Treaty is closely linked to the merits and should therefore be examined at that stage.” ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment of 13 February 2019, ICJ Reports 2019, para 89.

2 Merits 86–90

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment of 30 March 2023, ICJ Reports 2023, para 103 (see also paras 102–107);

4 *Certain Iranian Assets (Iran v United States)* (Judgment) (n above) dispositif para 1; see also paras 102–107; Federica Paddeu, ‘Certain Iranian Assets (Iran v United States)’ (2024) 118 *American Journal of International Law* 165, 168; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment of 13 February 2019, ICJ Reports 2019, para 89 (“The Court considers that the question whether Bank Markazi qualifies as a ‘company’... should therefore be examined at [the merits] stage.”); ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment of 30 March 2023, ICJ Reports 2023, paras 102–107 (“The Court concludes that Bank Markazi does not qualify as a ‘company’...”); *ibid* dispositif para 1; Federica Paddeu, ‘Certain Iranian Assets (Iran v United States)’ (2024) 118 *American Journal of International Law* 165, 168.

5 James Crawford, *Brownlie’s Principles of Public International Law* (9th edn, OUP 2019) 431.

6 PO 2019 121–123; Merits 208

7 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) ICJ Reports 2023, para 92,

This distinction is significant because it preserves the Court's authority to determine whether the conditions for invoking the exception are satisfied, rather than allowing a respondent State to exclude judicial scrutiny merely by asserting security interests. By treating Article XX as a merits defense rather than a jurisdictional bar, the Court reaffirmed the principle that treaty exceptions qualify substantive obligations without automatically depriving the Court of competence to interpret and apply the treaty. The Court's approach is consistent with its broader jurisprudence emphasizing that the characterization of treaty provisions depends on their function within the treaty framework and that jurisdictional consent remains governed by the compromissory clause unless explicitly limited.¹

The case therefore provides a clear illustration of how procedural characterization, whether a treaty provision is treated as jurisdictional or substantive, can decisively influence the scope of judicial review in treaty litigation. By confirming that Article XX operates within the merits analysis, the Court preserved its authority to assess whether the factual and legal conditions for invoking the exception were satisfied in the circumstances of the case, rather than permitting a respondent State to exclude scrutiny through the mere assertion of security interests.

3.4. Admissibility and the Exhaustion of Local Remedies Doctrine

The Court rejected the United States' objection that Iran's claims were inadmissible for failure to exhaust local remedies. It first emphasized that the exhaustion of local remedies rule applies primarily in situations of diplomatic protection,² where a State espouses claims on behalf of its nationals. In the present case, however, Iran was invoking its own rights under the Treaty of Amity, which created direct inter-State obligations. Consequently, the Court concluded that the exhaustion requirement was not applicable as a matter of principle.³

The Court further observed that, even if the rule were applicable, the United States had not demonstrated the existence of effective and reasonably available domestic remedies capable of addressing the substance of the claims advanced under the Treaty. Requiring exhaustion would therefore not serve the underlying rationale of the rule. On that basis, the objection to admissibility was rejected.

This reasoning reflects the Court's consistent jurisprudence that the exhaustion requirement operates only where domestic remedies offer a genuine possibility of redressing the alleged injury and where the claim is properly characterized as one of diplomatic

https://www.icj-cij.org/case/164; Julian Arato, 'The ICJ's Merits Decision in Certain Iranian Assets' (2024) 28(3) *ASIL Insights*, *https://www.asil.org/insights/volume/28/issue/3* ;*Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) [1996] ICJ Rep 803, para 20*;

1 ICJ, *Certain Iranian Assets (Iran v United States of America)* (Judgment) ICJ Reports 2023, para 92; Julian Arato, 'The ICJ's Merits Decision in Certain Iranian Assets' (2024) 28(3) *ASIL Insights*; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 431; *Oil Platforms (Iran v United States of America)* (Preliminary Objections) [1996] ICJ Rep 803, para 20; Richard Gardiner, *Treaty Interpretation* (2nd edn, OUP 2015) 303; Vienna Convention on the Law of Treaties 1969, arts 31–32.

2 Merits 106–113, esp 108

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment (30 March 2023) paras 188–195, available at: *https://www.icj-cij.org/case/164/judgments*

protection. The Court's approach therefore reinforces the functional and context-dependent nature of admissibility analysis in treaty-based inter-State litigation.¹

More broadly, the Court's reasoning illustrates how the characterization of claims, whether as diplomatic protection or the invocation of direct treaty rights, operates as a procedural gateway capable of decisively influencing admissibility determinations.

3.4.1. *Ratione materiae* Exclusion: No Jurisdiction over Customary International Law Sovereign Immunity Claims

A central element of the Court's jurisdictional filtering, and one that merits particular emphasis given the prominence of sovereign immunity issues in the broader dispute, was the Court's conclusion that its jurisdiction did not extend to claims framed solely as violations of customary international law rules on State immunity,² including central bank immunity. The Court's jurisdiction in this case derived exclusively from Article XXI, paragraph 2, of the Treaty of Amity, which confines its competence to disputes concerning the interpretation or application of the Treaty. On that basis, the Court emphasized that it could not transform treaty-based jurisdiction into a general mandate to adjudicate alleged breaches of customary international law relating to immunity from jurisdiction or enforcement. Only claims capable of being characterized as violations of Treaty obligations fell within its competence.³

This *ratione materiae* limitation is doctrinally significant for at least two reasons. First, it reinforces the Court's consistent position that compromissory clauses in bilateral treaties do not operate as gateways to the adjudication of general international law unless the treaty itself incorporates the relevant customary rules or otherwise renders them applicable. Second, it explains why the judgment should not be read as a definitive pronouncement on the content or scope of customary central bank immunity. The Court deliberately refrained from addressing those issues because they lay beyond the Treaty-defined subject matter of the dispute.

In structural terms, this jurisdictional filtering illustrates how the procedural boundary created by consent decisively shaped what the Court could, and could not, address on the merits. Read together with the Preliminary Objections Judgment, the case demonstrates that jurisdictional consent expressed through a compromissory clause operates not merely as a procedural gateway but also as a substantive filter defining the permissible legal framework of judicial reasoning.⁴

1 *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo) (Preliminary Objections)* [2007] ICJ Rep 582, paras 42–49; *A A Cançado Trindade, The Application of the Rule of Exhaustion of Local Remedies in International Law* (Cambridge University Press 1983); *A R Tohidi and F Mirakhorli, 'ICJ's Approach to the Objection of the United States Regarding Compliance with the Exhaustion of Local Remedy Rule: A Focus on the Certain Iranian Assets Case' (2024) 41 International Law Review 101*; *ELSI Case (Elettronica Sicula SpA (United States v Italy))* [1989] ICJ Rep 15, paras 50–59;

2 Merits 52–55; PO 2019 80–91

3 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Preliminary Objections, Judgment* [2019] ICJ Rep 7, paras 37–42, 52–60.

4 *Certain Iranian Assets (Preliminary Objections)* (n 1) paras 61–72; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America), Judgment* (30 March 2023) paras 40–44; Andrea Viterbo, 'Certain Iranian Assets (Iran v United States)' (2024) 118 *American Journal of International Law* 339, 340–343; Robert Kolb, *The International Court of Justice* (Hart 2013) 560–565; *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections)* [2019] ICJ Rep 7 paras 37–42, 52–60; *ibid* paras 61–72; *Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Judgment)* (30 March 2023) paras 40–44; Andrea Viterbo, 'Certain Iranian Assets (Iran v United States of America)' (2024) 118 *American Journal of International Law* 339, 340–343.

The case therefore illustrates the limits of attempts to internationalize disputes concerning sovereign immunity through treaty litigation where the treaty itself does not regulate immunity questions explicitly.

3.4.2. Temporal Issues: Termination Notice, Effective Termination, and Legal Consequences

The temporal dimension of the dispute raises important questions concerning the relationship between jurisdiction, treaty termination, and remedies. On 3 October 2018, the United States notified Iran of its decision to terminate the Treaty of Amity pursuant to the Treaty's denunciation clause, thereby triggering the applicable notice period. The Treaty is generally regarded as having ceased to be in force on 3 October 2019, one year after that notification.¹

This temporal sequence is significant for two reasons. First, it reinforces the Court's conclusion that jurisdiction remained intact because the Treaty was unquestionably in force in June 2016, when proceedings were instituted, consistent with the principle that jurisdiction is determined at the date of *seisin*. Termination of the Treaty after that date could not retroactively deprive the Court of jurisdiction over disputes arising while the Treaty remained operative.²

Second, the termination of the Treaty clarified the structure of the remedies analysis. The Court distinguished between (i) responsibility for breaches allegedly committed while the Treaty was in force and (ii) the availability of forward-looking remedies, such as cessation, which presuppose the existence of a continuing obligation at the time of judgment. Because the Treaty had ceased to be in force by the time the Court rendered its merits judgment, cessation was not considered an appropriate form of relief. Consequently, the Court emphasized compensation and declaratory findings as the principal legal consequences of any established breaches.

This temporal reasoning illustrates how the procedural principle governing jurisdiction at the date of *seisin* interacts with substantive rules on State responsibility and remedies. While termination could not retroactively defeat jurisdiction, it influenced the judgment's forward-looking remedial logic, helping to explain the Court's focus on compensation rather than on orders of prospective compliance with treaty obligations that were no longer in force.³

The case therefore demonstrates that the temporal status of a treaty may affect remedies without altering jurisdiction, highlighting the distinct legal functions of consent and responsibility within international adjudication.

States)' (2024) 118 American Journal of International Law 339, 340–343.

1 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment [2019] ICJ Rep 7, paras 42–43.

2 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, (Preliminary Objections, Judgment [2019] ICJ Rep 7, para 44.

3 ICJ, *Nottebohm (Liechtenstein v Guatemala)*, Preliminary Objection, Judgment [1953] ICJ Rep 111, 122; Tom Ruys and Cedric De Weerd, 'Certain Iranian Assets: The ICJ's Merits Judgment' (Ghent Rolin-Jaequemyns International Law Institute Working Paper No 12, 2023) 5–6; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment (30 March 2023) paras 210–216; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment [2019] ICJ Rep 7, paras 42–44; *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment (30 March 2023) ; ; Jean d'Aspremont, 'The ICJ and the Treaty of Amity Cases' (2023) 117 AJIL Unbound 192.

4. Substantive Determinations on the Merits

4.1. Status of *Bank Markazi* and Qualification of Protected Entities

The status of *Bank Markazi* constituted a central issue in the merits phase, following the Court's decision in its 2019 Preliminary Objections Judgment to defer a final determination pending a fuller examination of the factual record.¹

In its 2023 Judgment, the Court upheld the United States' objection to jurisdiction *ratione materiae* in respect of Treaty claims predicated on the treatment accorded to *Bank Markazi*. The Court concluded that Iran had not demonstrated that *Bank Markazi* engaged, at the relevant time, in activities of a commercial nature capable of bringing it within the Treaty definition of a "company." The investment transactions relied upon by Iran were considered inseparable from the bank's sovereign functions as a central bank, particularly the management of foreign currency reserves. Consequently, *Bank Markazi* could not qualify as a protected entity under Articles III, IV, and V of the Treaty, and claims advanced on its behalf under those provisions fell outside the Court's jurisdiction.²

By contrast, the Court proceeded on the basis that other Iranian entities constituted "companies" within the meaning of the Treaty, thereby enabling an examination of whether measures directed against their assets engaged the international responsibility of the United States.³

In reaching its conclusions, the Court reaffirmed a functional approach centered on the nature of the activities performed by the entity concerned, rather than solely on its formal legal status or State ownership⁴. The Court emphasized that State ownership does not preclude qualification as a protected company, but that entities engaged exclusively in sovereign functions fall outside the Treaty's protective scope. This reasoning contributes to the jurisprudence concerning State-linked corporations by clarifying that treaty protection depends on whether an entity operates within the commercial sphere contemplated by the treaty framework.⁵

At the same time, the Court's analysis leaves certain uncertainties regarding entities engaged in mixed sovereign and commercial activities. While the Court accepted in principle that an entity may qualify as a protected company even if commercial activities are not its principal functions, the judgment provides limited guidance on how substantial such activities must be to satisfy the Treaty threshold. This issue is likely to arise in future disputes involving State-owned enterprises and sovereign financial institutions operating across regulatory and commercial domains.

1 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Preliminary Objections) [2019] ICJ Rep 7 paras 91–92.

2 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) [2023] ICJ Rep (Judgment of 30 March 2023) paras 83–90.

3 Certain Iranian Assets (Merits) [2023] ICJ Rep paras 115–120.

4 Merits 81–83

5 Certain Iranian Assets (Merits) [2023] ICJ Rep paras 85–87; Jennifer Hepburn, 'Certain Iranian Assets Case Note' (University of Melbourne Law School Research Paper, 2023); Hazel Fox and Philippa Webb, *The Law of State Immunity* (3rd edn, OUP 2015) 129–135; Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2nd edn, OUP 2012) 44–47.

The *Bank Markazi* determination further illustrates how jurisdictional characterization may depend upon substantive factual evaluation, thereby demonstrating the interaction between procedural architecture and merits reasoning that runs throughout the case.

4.2. Breach of Treaty Obligations

Having identified the entities falling within the Treaty's protective scope, the Court proceeded to examine whether the legislative, executive, and judicial measures adopted by the United States concerning the attachment and distribution of Iranian assets were consistent with the substantive obligations of the Treaty of Amity. The Court concluded that the United States had failed to respect the juridical status of certain Iranian companies, in violation of Article III(1), and had adopted measures¹ that were unreasonable within the meaning of Article IV(1).² Having reached this conclusion, the Court considered it unnecessary to determine separately whether the measures were also discriminatory. In addition, the Court found that Section 201(a) of the Terrorism Risk Insurance Act (TRIA) and Section 1610(g)(1) of the Foreign Sovereign Immunities Act (FSIA), as applied, amounted to a taking of property contrary to Article IV(2),³ because the impairment of rights they produced was manifestly excessive and could not be regarded as a lawful exercise of regulatory powers. By contrast, the Court did not consider that a taking had been established with respect to Executive Order 13599. The Court further determined that certain measures created concrete impediments to commerce between the territories of the Parties,⁴ in violation of Article X(1). These findings reflect the Court's interpretation of treaty protections as encompassing both respect for the separate legal personality of protected companies and substantive protection against measures producing disproportionate or confiscatory effects.⁵

At the same time, the Court rejected several of Iran's claims. It found no violation of Article III(2),⁶ concluding that Iranian companies retained access to United States courts notwithstanding the substantive limitations affecting their claims. The Court also rejected the contention that the obligation of most constant protection and security under Article IV(2) had been breached, explaining that this element of Article IV(2) was not intended to apply to situations already addressed under Article IV(1) in the circumstances of the case. The Court further rejected the United States' defenses based on the doctrines of clean hands⁷ and abuse of rights, finding insufficient legal basis and factual connection to the claims presented. With respect to the essential security exception contained in Article XX, the Court held that the

1 Merits 152–159

2 Merits 160–171

3 Merits 172–189, esp 186–188

4 Merits 189, 190–198

5 Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment (30 March 2023) ICJ Rep, paras 147–156, 185–186. Available at: <https://www.icj-cij.org/case/164/judgments>

Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment (30 March 2023) ICJ Rep, paras 185–187. <https://www.icj-cij.org/case/164/judgments> ; Certain Iranian Assets (Islamic Republic of Iran v United States of America) (Merits) Judgment (30 March 2023) ICJ Rep, paras 188–189. <https://www.icj-cij.org/case/164/judgments> ; Certain Iranian Assets (Islam v United States) (Merits) Judgment (30 March 2023) ICJ Rep, paras 210–216. <https://www.icj-cij.org/case/164/judgments>

6 Merits 146–151, Merits 146–151

7 Merits 199–207

United States had not demonstrated that the measures fell within Article XX(1)(c),¹ nor that they were “necessary” to protect essential security interests under Article XX(1)(d). This aspect of the judgment is particularly significant because it clarifies that the invocation of security exceptions requires concrete justification and does not automatically shield State conduct from treaty scrutiny.

Collectively, the Court’s analysis confirms that domestic legislative and judicial measures adopted for foreign policy or national security purposes remain attributable to the State and may engage international responsibility where they are inconsistent with applicable treaty obligations. The decision therefore illustrates the binding nature of treaty commitments and demonstrates the capacity of international adjudication to assess national measures affecting foreign property and commercial rights within the framework of State responsibility.

The Court’s reasoning also illustrates the close relationship between Articles III(1) and IV(1), treating respect for juridical personality and protection against unreasonable interference as mutually reinforcing obligations within the Treaty’s economic protection regime.

4.3. Attribution of Legislative and Judicial Conduct to the State

The judgment also reflects the well-established principles governing attribution under the law of State responsibility. The Court proceeded on the basis that the legislative enactments, executive measures, and judicial decisions forming the subject matter of the dispute were all attributable to the United States as acts of State organs². In doing so, the Court implicitly reaffirmed the unity of State responsibility irrespective of internal constitutional divisions among governmental branches. This approach is consistent with customary international law and with the International Law Commission’s Articles on State Responsibility, according to which the conduct of any State organ, whether legislative, executive, or judicial, is attributable to the State when acting in its official capacity.³

This aspect of the judgment is particularly relevant in disputes involving domestic court judgments or statutory frameworks designed to implement national policy objectives. Respondent States may seek to distinguish between different branches of government or to emphasize the autonomy of judicial decision-making; however, the Court’s reasoning confirms that such internal distinctions are irrelevant for purposes of international responsibility. The conduct of courts applying national legislation, like that of legislatures and executives adopting such measures, remains attributable to the State under international law. The judgment therefore reinforces the principle that States cannot evade international obligations by invoking internal institutional arrangements or doctrines of separation of powers.

More broadly, the Court’s approach contributes to doctrinal clarity concerning responsibility for economic measures implemented through domestic legal systems, including asset attachment procedures and enforcement mechanisms. By treating all branches of government as manifestations of State conduct under international law, the judgment underscores the comprehensive nature of

¹ Merits 214–227

² Merits 129–131

³ ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment (Merits) [2023] ICJ Reports, paras 155–156; International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, with Commentaries (2001) Yearbook of the International Law Commission, vol II (Part Two), art 4 and commentary.

State responsibility where multiple organs collectively produce internationally wrongful outcomes. This reasoning has potential implications for future disputes involving sanctions regimes, asset freezes, and enforcement actions against foreign State-linked entities.¹

The attribution of judicial enforcement measures was particularly significant in establishing violations of Articles III, IV, and X, since the impugned interference resulted from the combined operation of legislation and judicial application.

4.3.1. Article XX Essential Security Exception: Evidentiary Burden and Standard of Assessment

Although Article XX was addressed earlier in relation to jurisdiction, its treatment at the merits stage constitutes one of the judgment's most practically significant contributions. The United States invoked Article XX, paragraphs 1(c) and 1(d), of the Treaty of Amity to justify the measures at issue on grounds linked to national security and foreign policy objectives. Consistent with its 2019 Preliminary Objections Judgment, the Court treated Article XX not as a jurisdictional limitation but as a substantive defense to be examined within the merits analysis. This characterization preserved the Court's authority to assess whether the factual and legal requirements of the exception were satisfied.

With respect to Article XX(1)(c), concerning measures regulating the production of or traffic in arms, the Court rejected the United States' broad interpretation and concluded that Executive Order 13599 did not fall within the provision's scope.² The Court interpreted the clause as covering measures regulating a State's own arms production or trade, rather than measures intended to exert indirect effects on another State's activities.

More significantly, in relation to Article XX(1)(d), which permits measures necessary to protect essential security interests, the Court clarified the applicable standard of assessment. Drawing on its prior jurisprudence, the Court emphasized that the requirement of necessity is not purely a matter for the subjective judgment of the invoking State and may be assessed judicially. While acknowledging that a State enjoys a certain margin of discretion in identifying its security interests, the Court held that it remained incumbent upon the respondent to demonstrate, on the basis of the evidentiary record, that the specific measures adopted were necessary for the protection of those interests. The United States failed to make such a demonstration, particularly in light of the financial regulatory rationale expressed in the Executive Order itself, which did not substantiate the claimed security necessity. The defense under Article XX(1)(d) was therefore rejected.

This reasoning is important for the architecture of treaty litigation before the Court. By treating Article XX as a merits defense requiring evidentiary substantiation, the Court reinforced the principle that security exceptions cannot operate as automatic escape clauses from treaty obligations. Instead, they function within a structured justificatory framework in which the respondent State bears the burden of demonstrating that the conditions of the exception are satisfied. The judgment therefore contributes to a more disciplined and

¹ *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights* (Advisory Opinion) [1999] ICJ Rep 62, para 62; *LaGrand (Germany v United States of America)* (Judgment) [2001] ICJ Rep 466, para 77; James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 113–118.

² Merits 214–220

evidence-sensitive model of security reasoning in economic treaty disputes, particularly where domestic measures justified by counterterrorism or foreign policy concerns generate concrete interference with property and commercial rights protected by treaty. In this respect, Article XX illustrates the interaction between procedure and substance that forms the central theme of the present article that is the procedural characterization determines the analytical framework, while substantive standards govern the outcome.¹

The Court's relatively limited engagement with proportionality analysis, despite its references to necessity, leaves open questions regarding the precise intensity of review applicable to essential security clauses in future treaty disputes.

5. Remedies and Reparation

5.1. Remedies Awarded by the Court

With respect to remedies, the Court applied the classical framework of State responsibility by examining the forms of reparation traditionally recognized under international law, namely cessation, compensation, and satisfaction. Iran sought, inter alia, declarations of wrongful conduct, cessation of the alleged violations, compensation for the injury suffered, and forms of satisfaction including a formal apology. The Court declined to order cessation on the ground that the Treaty of Amity was no longer in force at the time of the judgment.² Referring to the customary rule reflected in Article 30 of the International Law Commission's Articles on State Responsibility, the Court emphasized that an obligation of cessation arises only where the internationally wrongful act is continuing and the breached obligation remains operative. Because the Treaty had ceased to have effect in October 2019 following the United States' notice of termination, this condition was not met. This reasoning confirms that the termination of a treaty does not extinguish responsibility for breaches committed while it was in force, but it may affect the availability of prospective remedies premised on continuing obligations.³

Notwithstanding the absence of continuing obligations, the Court concluded that the United States had incurred international responsibility for violations of the Treaty in respect of protected Iranian entities and was therefore under an obligation to compensate Iran for the injury caused.⁴ The Court did not determine the quantum of compensation at the merits stage. Instead, it granted the Parties a period of twenty-four months to reach agreement on the amount due, failing which either Party may request the Court to determine the quantum in a subsequent phase of the proceedings.⁵ This approach is consistent with established ICJ

1 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment, 30 March 2023, ICJ Reports 2023, paras 352–377; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Preliminary Objections, Judgment, 13 February 2019, ICJ Reports 2019, paras 91–97; Prabhash Ranjan, "Essential Security Interests in International Investment Law" (2024) ICSID Review; Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331, arts 31–32; WTO Appellate Body, *Russia — Traffic in Transit* (2019); ICJ, *Certain Iranian Assets (Iran v United States)* Judgment (30 March 2023); ICJ, *Certain Iranian Assets* Preliminary Objections (13 February 2019); Prabhash Ranjan, 'Essential Security Interests in International Investment Law' (2024) ICSID Review; .

2 Merits 233–238, esp 236

3 *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Merits) Judgment of 30 March 2023, ICJ, paras 229–238, available at: <https://www.icj-cij.org/case/164/judgments>

4 Merits 239–244

5 Merits 244, 256(7) operative clause

practice in cases involving complex financial injury, where the quantification of damages requires detailed evidentiary assessment beyond the scope of the principal judgment.¹

In addition, the Court held that the declaratory findings of internationally wrongful conduct contained in the judgment constituted sufficient satisfaction and therefore declined to require further measures such as a formal apology.² This conclusion reflects the principle, recognized in Article 37 of the ILC Articles on State Responsibility, that a judicial declaration of breach may, in appropriate circumstances, constitute adequate satisfaction for the injured State.

Overall, the remedies awarded reaffirm the central role of compensation within the law of State responsibility while illustrating how temporal factors, particularly treaty termination, may limit the availability of forward-looking remedies without affecting responsibility for past violations.³

The Court's refusal to order cessation also illustrates a structural limitation of treaty-based litigation, i.e. where the underlying treaty framework has been terminated during the proceedings, judicial remedies may become predominantly retrospective, centered on compensation rather than behavioral compliance.

5.2. Compensation and the Principle of Full Reparation in Contemporary Practice

The Court's treatment of compensation illustrates the continued relevance of classical reparation principles within modern international adjudication. Although the Court did not expressly invoke the jurisprudence of the Permanent Court of International Justice in the *Chorzów Factory* case, its reasoning reflects the well-established principle that reparation must, as far as possible, eliminate the consequences of the internationally wrongful act. By emphasizing compensation as the appropriate form of reparation in circumstances where cessation was unavailable, the Court reaffirmed that financial compensation remains the principal mechanism for remedying economic injury arising from treaty breaches. The obligation to compensate was framed in inter-State terms, with the United States required to compensate Iran for injury resulting from violations affecting Iranian companies protected under the Treaty.⁴

The Court's decision to defer the quantification of compensation to a later phase reflects practical considerations frequently encountered in disputes involving large-scale financial claims, asset attachment, and complex economic losses. By separating the determination of liability from the assessment of quantum, the Court created procedural space for negotiation

1 Ibid paras 239–242; see also American Society of International Law, Julian Arato and others, *The ICJ's Merits Decision in Certain Iranian Assets (Iran v United States)* (ASIL Insights, Vol 28, Issue 3, 12 February 2024) <https://www.asil.org/insights/volume/28/issue/3>

2 Merits 245

3 *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Merits) Judgment of 30 March 2023, paras 243–246; see also Sidley Austin LLP, *Implications for Investor-State Disputes Arising From the ICJ's Judgment in Certain Iranian Assets* (26 April 2023) <https://www.sidley.com/en/insights/newsupdates/2023/04/implications-for-investor-state-disputes-arising-from-the-icjs-judgment>

4 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment of 30 March 2023; *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) [2023] ICJ Rep (30 March 2023) paras 247–256, available at: <https://www.icj-cij.org/case/164> accessed 19 February 2026; *Factory at Chorzów (Germany v Poland)* (Merits) PCIJ Rep Series A No 17 (1928) 47, available at: https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_17/54_Usine_de_Chorzow_Fond_Arret.pdf accessed 19 February 2026.

between the Parties while preserving its authority to determine compensation should agreement not be reached within the specified period. This approach aligns with established ICJ practice and illustrates how traditional doctrines of State responsibility can be applied flexibly in contemporary disputes involving sophisticated financial instruments and cross-border enforcement measures. The future determination of compensation will necessarily involve questions of causation, valuation, and proof of injury, even though those issues were not addressed at the merits stage.

More broadly, the remedies phase highlights an important structural feature of international responsibility, i.e. the obligation to make reparation arises at the moment of breach and is not extinguished by the subsequent termination of the treaty under which the obligation originated. By reaffirming the United States' obligation to compensate notwithstanding the termination of the Treaty of Amity, the Court confirmed the independence of responsibility from the continued existence of the treaty relationship once a breach has occurred. The judgment therefore reinforces the stability of remedies doctrine in international law and provides guidance for future disputes involving economic measures, asset seizure, or treaty-based financial claims, where compensation may remain the primary form of relief available to injured States.¹

At the same time, the absence of detailed guidance on valuation methodology leaves open important questions concerning the assessment of damages in cases involving complex financial assets and indirect economic loss, particularly with respect to standards of proof, methods of valuation, and the treatment of consequential losses. These issues are likely to assume practical significance in any subsequent phase of the proceedings and in future treaty-based economic disputes before international courts and tribunals.

6. Doctrinal Contributions and Legal Significance

6.1. Doctrinal and Legal Significance of the Judgment

The judgment in *Certain Iranian Assets* engages a wide range of foundational doctrines of international law and provides clarification across both procedural and substantive dimensions of treaty adjudication. At the level of treaty interpretation, the Court applied methods consistent with the Vienna Convention on the Law of Treaties, interpreting the provisions of the 1955 Treaty of Amity in accordance with their ordinary meaning, context, and object and purpose. In doing so, the Court combined textual analysis with a functional understanding of treaty protections, particularly in relation to the definition of “companies” and the scope of the economic rights protected under the Treaty. This approach confirms that bilateral economic treaties may generate enforceable legal protections even in circumstances where political relations between the parties have deteriorated significantly.

The judgment also reflects established principles of State responsibility, particularly

¹ James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 487–492; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) (Reparations)* [2022] ICJ Rep 13 paras 28–32, available at: <https://www.icj-cij.org/case/116> accessed 19 February 2026; Chester Brown SC, ‘*Certain Iranian Assets (Iran v United States)*’ (2024) 39 ICSID Review – Foreign Investment Law Journal 447, available at: <https://academic.oup.com/icsidreview/article/39/3/447/7918744> accessed 19 February 2026.

with respect to attribution. By proceeding on the basis that legislative enactments, executive measures, and judicial decisions were all attributable to the United States, the Court implicitly reaffirmed the principle that the conduct of all State organs engages international responsibility when inconsistent with international obligations. This aspect is especially relevant in disputes involving domestic court judgments or statutory frameworks, where respondent States may seek to differentiate between governmental branches. The Court's reasoning underscores the unity of State responsibility and confirms that internal constitutional arrangements cannot affect the attribution of internationally wrongful conduct.

Procedurally, the decision provides clarification concerning the distinction between jurisdiction, admissibility, and merits. In particular, the Court's treatment of the exhaustion of local remedies objection reaffirmed that the rule applies primarily in the context of diplomatic protection and does not operate where a State invokes its own treaty rights. This aspect of the judgment reinforces the functional and context-dependent nature of admissibility analysis in treaty-based inter-State litigation. Similarly, the Court's treatment of the essential security exception confirms that such clauses operate as substantive justifications to be assessed on the merits rather than as jurisdictional limitations, thereby preserving judicial authority to determine whether the conditions for invoking the exception are satisfied.

The judgment further illustrates the evidentiary discipline required in treaty litigation. By requiring the respondent State to substantiate its reliance on security justifications, and by rejecting arguments based on abuse of rights in the absence of sufficient legal and factual support, the Court reaffirmed that treaty defenses must be grounded in demonstrable facts rather than abstract assertions. At the substantive level, the Court applied principles of reasonableness, respect for juridical personality, protection of property, and freedom of commerce, thereby consolidating doctrinal links between international economic law and general international law.

Collectively, these elements demonstrate the Court's role in integrating procedural architecture with substantive legal analysis. The judgment does not radically transform existing doctrine, but it provides a coherent illustration of how established principles of jurisdiction, admissibility, treaty interpretation, State responsibility, and remedies operate together within a single treaty-based dispute. In this sense, the decision reinforces the jurisprudential continuity of ICJ practice while clarifying the structural interaction between procedure and substance that characterizes contemporary international adjudication.¹

¹ Vienna Convention on the Law of Treaties (opened for signature 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 31; International Court of Justice, *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, ICJ Reports 1999, para 18; Sean D. Murphy, 'The ICJ's Merits Decision in Certain Iranian Assets' (2024) 28 ASIL Insights. <https://www.asil.org/insights/volume/28/issue/3>; International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) UN Doc A/56/10, art 4; International Court of Justice, *Difference Relating to Immunity from Legal Process of a Special Rapporteur (Advisory Opinion)* ICJ Reports 1999, para 62; James Crawford, *State Responsibility: The General Part* (Cambridge University Press 2013) 113–118; International Court of Justice, *Interhandel (Switzerland v United States)*, Preliminary Objections, ICJ Reports 1959, 27; Andrew Sanger, 'The Contemporary Law of the Exhaustion of Local Remedies' (2013) 26 *Leiden Journal of International Law* 533; International Court of Justice, *Oil Platforms (Islamic Republic of Iran v United States)*, Judgment, ICJ Reports 2003, paras 43–44; Kurtz, Jürgen, *The WTO and International Investment Law* (CUP 2016) 210–215; International Court of Justice, *Barcelona Traction (Belgium v Spain)* ICJ Reports 1970, para 38; Jarrod Hepburn, 'The ICJ Decides on the Content of International Protection Standards: A Lost Opportunity?' (2023) *Investment Treaty News*. <https://www.iisd.org/itm/2023/07/01/the-icj-decides-on-the-content-of-international-protection-standards-a-lost-opportunity/>

One of the most distinctive contributions of the judgment lies in its treatment of the status of *Bank Markazi*, where the Court resolved a jurisdictional question by reference to substantive factual analysis concerning the nature of the entity's activities. This illustrates how jurisdictional determinations in treaty litigation may depend upon merits-level factual evaluation, further blurring the boundary between procedural and substantive reasoning.

6.2. Sovereign Functions versus Commercial Activities: Implications for State-Owned Entities

The Court's analysis of *Bank Markazi* constitutes one of the most significant aspects of the judgment and raises broader questions concerning the legal treatment of State-owned entities operating at the intersection of sovereign authority and commercial activity. Although *Bank Markazi* possessed separate legal personality under Iranian law, the Court concluded that Iran had not demonstrated that the bank engaged, at the relevant time, in activities of a commercial nature capable of bringing it within the Treaty definition of a protected "company." The investment transactions relied upon by Iran were considered inseparable from the bank's sovereign functions as a central bank, particularly the management of foreign currency reserves. On this basis, the Court determined that *Bank Markazi* did not qualify as a protected entity under the relevant Treaty provisions. This reasoning reflects a functional approach that focuses on the nature of the activities performed rather than on formal legal status alone, thereby contributing to the broader body of international jurisprudence that distinguishes sovereign functions from commercial conduct.

The implications of this reasoning extend beyond the present dispute. The functional distinction between sovereign and commercial activities is central to multiple areas of international law, including sovereign immunity litigation, investment treaty arbitration, and disputes involving State-owned enterprises. While the judgment does not establish a general rule concerning the status of central banks, it underscores that the availability of treaty protection depends on whether an entity's activities fall within the commercial sphere contemplated by the treaty framework. By emphasizing the sovereign character of core central-banking functions, the Court's analysis may influence how central banks and sovereign financial institutions are assessed in future proceedings involving asset attachment, enforcement measures, or treaty protections.

At the same time, the judgment leaves important questions unresolved, particularly regarding entities engaged in mixed activities combining sovereign authority with commercial operations. Although the Court accepted in principle that an entity may qualify as a protected company even where commercial activities are not its principal functions, it provided limited guidance on the threshold required for such activities to suffice. The absence of a fully articulated test for hybrid entities introduces a degree of doctrinal uncertainty that may require clarification in future jurisprudence.

More broadly, the decision contributes to ongoing debates concerning the international legal treatment of State-controlled corporations and the extent to which treaty protections extend to entities closely linked to governmental functions. The Court's reasoning underscores the importance of functional analysis in determining treaty beneficiaries while simultaneously

highlighting the challenges associated with categorizing modern State-owned entities operating within global financial markets. In addition, the *Bank Markazi* determination illustrates how jurisdictional questions in treaty litigation may depend on substantive factual evaluation concerning the nature of an entity's activities, further demonstrating the interaction between procedural characterization and substantive analysis that runs throughout the judgment. As such, the decision represents an important reference point for future disputes involving sovereign wealth funds, central banks, and State-owned enterprises, with potential implications for both international adjudication and domestic court practice concerning State-linked assets.

The judgment also suggests that the functional distinction applied in treaty interpretation may not perfectly coincide with the commercial–sovereign distinction developed in sovereign immunity jurisprudence, thereby raising questions about the potential fragmentation or convergence of legal standards across different areas of international law.

7. Broader Implications for International Law

7.1. Importance for the Development of International Law

Beyond its immediate bilateral context, the judgment in *Certain Iranian Assets* holds substantial importance for the development of international law, particularly at the intersection of international economic law, State responsibility, and inter-State treaty litigation. One of the most significant contributions of the decision lies in clarifying the relationship between the procedural and substantive dimensions of treaty adjudication. By distinguishing jurisdictional limitations from substantive defenses, most notably regarding the essential security exception under Article XX of the 1955 Treaty of Amity, the Court confirmed that the provision operates as a merits defense rather than a jurisdictional bar. As a result, the applicability of the exception had to be examined as part of the substantive analysis of treaty obligations, thereby preserving judicial scrutiny even when national security considerations were invoked. Although grounded in the interpretation of a specific treaty clause, this approach contributes to broader debates concerning the role of security exceptions in international adjudication and strengthens the capacity of judicial mechanisms to operate in politically sensitive disputes.

The judgment also reinforces doctrinal coherence in the law of State responsibility by reaffirming that legislative, executive, and judicial acts are equally attributable to the State under international law. In doing so, the Court confirmed the unity of State responsibility regardless of the internal constitutional allocation of powers, a principle particularly relevant in disputes involving domestic court judgments or statutory measures adopted by national legislatures. Furthermore, the Court's analysis of corporate protection under the Treaty of Amity provides guidance on the treatment of juridical entities linked to foreign States, clarifying that treaty protection depends on the functional nature of the entity's activities rather than solely on formal legal personality. Although the Court ultimately concluded that *Bank Markazi* did not qualify as a protected “company” because Iran had not demonstrated relevant commercial activity separable from its sovereign central-banking functions, the

reasoning contributes to broader debates concerning the legal treatment of State-owned entities in international law.

The remedies phase of the judgment is equally significant. By emphasizing compensation as the principal consequence of internationally wrongful conduct where cessation was no longer applicable due to the termination of the Treaty, the Court reaffirmed the enduring authority of the *Chorzów Factory* principle of full reparation. At the same time, the Court held that its declarations of breach constituted appropriate satisfaction and deferred the quantification of compensation to a subsequent phase should negotiations between the Parties fail. This combination of declaratory relief, compensation, and procedural flexibility demonstrates how classical reparation principles may be adapted to complex financial disputes involving large-scale economic injury.

Collectively, the decision consolidates doctrinal coherence across multiple areas of international law, including treaty interpretation, attribution, remedies, and the evidentiary burden associated with invoking treaty exceptions. It therefore provides authoritative guidance for future inter-State litigation before the International Court of Justice and contributes to the progressive development of international adjudicatory practice.¹

7.2. Implications for International Economic Law and Sanctions Regimes

The judgment also carries significant implications for the interaction between unilateral economic measures and international treaty obligations. Although the Court did not determine the legality of economic sanctions *per se*, its findings demonstrate that domestic legislative and executive measures, including those adopted in pursuit of foreign policy or national security objectives, remain subject to international legal constraints where applicable treaty commitments exist. In particular, the Court's determination that certain United States measures violated obligations relating to the protection of companies, property rights, and freedom of commerce underscores that a State cannot rely on internal legal mechanisms to justify noncompliance with its treaty obligations. This reflects the well-established principle that domestic law does not excuse the breach of international obligations.²

The case also illustrates structural tensions that may arise in contemporary regimes of

1 Chester Brown, *A Common Law of International Adjudication* (OUP 2007) 226–227, <https://global.oup.com/academic/product/a-common-law-of-international-adjudication-9780199206506> accessed 19 February 2026; International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001) art 4, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf accessed 19 February 2026; International Court of Justice, *United States Diplomatic and Consular Staff in Tehran (United States v Iran)* Judgment (24 May 1980) ICJ Reports 1980, para 56, <https://www.icj-cij.org/case/64/judgments> accessed 19 February 2026; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment (30 March 2023) paras 47–58, <https://www.icj-cij.org/case/164/judgments> accessed 19 February 2026; *Factory at Chorzów (Germany v Poland) (Merits)* PCIJ Series A No 17 (1928) 47, https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_A/A_17/54_Chorzow_Merits.pdf accessed 19 February 2026; ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, Judgment (30 March 2023) para 221, <https://www.icj-cij.org/case/164/judgments> accessed 19 February 2026; International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Compensation, Judgment ICJ Reports 2012; James Crawford, *Brownlie's Principles of Public International Law* (9th edn, OUP 2019) 28–30, <https://global.oup.com/academic/product/brownlies-principles-of-public-international-law-9780198737445> accessed 19 February 2026.

2 ICJ, *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* (Judgment) [2023] ICJ Rep 1, paras 1–25, <https://www.icj-cij.org/case/164> accessed 19 February 2026; Annamaria Viterbo, 'Certain Iranian Assets (Iran v United States)' (2024) 118 *American Journal of International Law* 154.

economic measures, particularly where asset freezing or attachment affects foreign State-linked entities. By scrutinizing the compatibility of such measures with treaty protections, the Court confirmed that conduct undertaken for national policy objectives must still be assessed within the framework of applicable international commitments. This has broader implications for States increasingly relying on financial and economic instruments as tools of foreign policy, especially where such measures intersect with bilateral or multilateral treaty regimes governing trade, investment, or property protection.

Furthermore, the judgment may have indirect relevance for the treatment of central banks and sovereign financial institutions in international disputes. Although the Court did not address customary international law rules on sovereign or central bank immunity, its functional analysis distinguishing sovereign from commercial activities for treaty purposes may influence future litigation involving State-owned entities, asset freezes, or enforcement measures. The decision therefore resonates beyond the ICJ context, potentially informing debates in international investment arbitration, domestic sovereign immunity litigation, and disputes involving cross-border financial regulation. In an era marked by the growing use of financial restrictions and asset control mechanisms, the case underscores the necessity for States to reconcile national security policies with their international economic obligations where such obligations have been undertaken, thereby reinforcing the continued relevance of international law as a framework governing unilateral economic measures.¹

Conclusion

The ICJ's judgment in *Certain Iranian Assets (Islamic Republic of Iran v United States of America)* is best understood as a treaty-based State responsibility decision whose significance lies less in the headline figure of USD 1.75 billion than in the Court's management of the procedural–substantive interface. The Court did not operate as a mechanism for ordering the return or “unfreezing” of *Bank Markazi*'s assets; rather, it adjudicated the dispute within the conceptual boundaries of the Treaty of Amity, determining which claims and entities fell within the Treaty's protective framework and then applying that framework to the United States measures at issue. That jurisdictional filtering proved decisive in relation to *Bank Markazi*, as the Court concluded that claims advanced on its behalf did not fall within the relevant Treaty protections because Iran had not demonstrated commercial activity separable from the bank's sovereign central-banking functions, thereby foreclosing Treaty-based relief.

¹ ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, *Preliminary Objections, Judgment*, ICJ Reports 2019, p. 7, paras 80–81; Wang Jia, “Certain Iranian Assets: The Judgment on Preliminary Objections and the Terrorism Exception to State Immunity” (2021) 18(4) *US-China Law Review* 162, 165; ICJ , *Certain Iranian Assets (Preliminary Objections) Judgment* [2019] ICJ Rep 7, para 45; *Oil Platforms (Islamic Republic of Iran v United States of America) (Preliminary Objections) Judgment* [1996] ICJ Rep 803, para 20; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, *Judgment*, 30 March 2023, I.C.J. Reports 2023, paras 84–92, 228; ICJ , *Certain Iranian Assets (Preliminary Objections) Judgment* [2019] ICJ Rep 7, para 92; August Reinisch, “State-Owned Enterprises and International Investment Law” in Andrea Bjorklund (ed), *Yearbook on International Investment Law & Policy* (OUP 2011) 45; *Oil Platforms (Islamic Republic of Iran v United States of America) Judgment* [2003] ICJ Rep 161; *Alleged Violations of the 1955 Treaty of Amity (Iran v United States) Provisional Measures Order* [2018] ICJ Rep 623; Robert Kolb, *The International Court of Justice* (Hart 2013) 1080–1085; Vienna Convention on the Law of Treaties 1969, Article 27; ICJ , *Certain Iranian Assets (Islamic Republic of Iran v United States of America)*, *Judgment*, I.C.J. Reports 2023, paras 242–244.

First, the judgment illustrates how procedural structure can shape substantive outcomes in treaty litigation before the ICJ. The Court's jurisdiction derived exclusively from the Treaty's compromissory clause, and this consent-based framework necessarily circumscribed the dispute. Claims formulated as violations of customary international law concerning sovereign immunity could not be entertained unless they could be characterized as disputes regarding the interpretation or application of the Treaty. This jurisdictional filtering explains why the decision should not be read as a general pronouncement by the Court on central bank immunity. Rather, the Court decided only what the Treaty permitted it to decide and then proceeded to the merits of the surviving treaty claims.

Second, the case consolidates several points of doctrinal coherence. On the merits, the Court's reasoning demonstrates how treaty protections for "companies" and "property" depend upon the functional characterization of both the entity and the activity concerned, most prominently reflected in its conclusion that Iran had not established that *Bank Markazi* engaged in commercial activities separable from its sovereign central-banking functions. Similarly, the Court's approach to Article XX (essential security) confirms that security clauses operate as substantive justifications to be examined on the merits rather than jurisdictional escape routes, and that reliance upon them requires evidentiary substantiation rather than broad assertion.

Third, the remedies analysis reinforces the Court's cautious yet orthodox remedial architecture. Because the relevant treaty obligations were no longer in force at the time of judgment, cessation was not considered an appropriate form of relief, while compensation remained the central form of reparation for breaches committed during the Treaty's operation, complemented by declaratory satisfaction. Temporal precision is central to this reasoning. The United States provided notice of termination in October 2018, and the Treaty ceased to operate following the expiry of the notice period, thereby enabling the Court to distinguish responsibility for past breaches from prospective relief tied to continuing obligations.

Looking forward, *Certain Iranian Assets* is likely to influence future litigation in at least four respects. It provides a template for how the Court may (i) police the boundary between treaty-based claims and free-standing customary law arguments, (ii) address State-linked entities operating at the sovereign-commercial interface, (iii) scrutinize security exceptions as evidentiary and merits-based justifications rather than jurisdictional bars, and (iv) structure compensation-oriented remedies in complex economic disputes where quantification may require a subsequent phase or negotiated settlement. In this sense, the case strengthens the ICJ's role as an adjudicator of economically and politically sensitive disputes while simultaneously illustrating the structural limits of treaty litigation where the claimant's most visible grievance falls outside the treaty's protective scope.

Ultimately, the judgment demonstrates that, in contemporary international adjudication, the relationship between procedure and substance is not merely sequential but constitutive and the procedural determinations define the substantive legal universe within which international responsibility can be established.

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